

MINUTES OF THE MEETING OF THE ZONING BOARD OF ADJUSTMENT

Tuesday, July 26, 2011 - 4:00 p.m.
Council Chamber
City Hall

Pursuant to notice, the Zoning Board of Adjustment of the City of St. Joseph met in the Council Chamber, City Hall, on Tuesday, July 26, 2011, at 4:00 p.m.

	<u>Name</u>	<u>Attendance</u> (mtgs attended-mtgs absent)	<u>Term of Office</u>
MEMBERS PRESENT:	Richard Meng	(4-0)	4/30/14
	Terri Lowdon	(4-0)	2/23/14
	Lasha M. Dalakishvili	(2-2)	2/22/16
	Ken Beck	(4-0)	2/22/16
	Terry Hall, alternate	(4-0)	8/09/15
MEMBERS ABSENT:	Chad Gaddie	(3-1)	3/22/14

Quorum Present. Four members constitute a quorum (Four votes required to approve a request).

OTHERS PRESENT: Ted Elo, Assistant City Attorney

Lowdon: Call this meeting to order of July 26 of 2011. For all those in attendance, if you will listen, I'm going to read the rules of the board meeting and I'll try to speak up. If you can't hear me, raise your hand and I'll talk louder. Still can't hear me? Can you hear me better now? Ok. When you testify before the board, if you will give your name and complete address first. No one may speak more than twice on the same item. No one may speak more than five minutes at a time without permission of the chairman. No one may speak a second time on a question until every person who wants to speak has done so. And, all submissions of evidence such as photographs, drawings, anything like that, that you give to this board will be retained by the board and you won't give it back, we're not giving it back. So, don't, if you have some photograph that's important to you and it's the original, don't give it to us, because I'm not guaranteeing you'll get it back. Ok? I'm going to at this time, admit certified copies of Chapters 11, 26 and 31 of the Code of Ordinances of the City of St. Joseph. Now anyone who might speak, if you think you might speak, we're going to ask, need you to raise, stand up and raise your right hand to be sworn in. Do you swear to tell the truth, the whole truth and nothing but the truth?

Monroe, Reynolds, Rossiter, Barnes, Meeks: I do.

Lowdon: Very good. Thank you. Anyone that wishes to speak will come up to the microphone up front, you can see it right there, and you'll state your name and your address. After all those in favor of the proposal has been heard, then we'll ask everybody opposed to the, to the adjustment to be heard. At the very end, then we'll hear the staff report from the city and then there may be questions during this procedure from the board members and then at the end, then we'll take the vote. So, we go ones in favor first, ones against second, then staff and then we'll vote. Is there any adjustments or amendments to today's agenda?

Secretary: No.

Lowdon: We need to do roll call.

Secretary: Ken Beck?

Beck: Here.

Secretary: Lasha Dalakishvili?

Dalakishvili? Here.

Secretary: Chad Gaddie? Terry Hall?

Hall: Here.

Secretary: Terri Lowdon?

Lowdon: Here.

Secretary: Richard Meng?

Meng: Here.

Secretary: We have five members in attendance. That's enough for a quorum.

Lowdon: Ok, thank you. The first and the only thing on the agenda today is Case Number 2424, request for a variance from the zoning code to reduce the side yard setback from six foot one foot, from six foot to one foot, to allow supporting poles for an awning to remain on the lot. This location is at 3804A Charles Street and the petitioner is Louise Monroe by Gary Reynolds, Awnings Unlimited, by Richard Rossiter, agent. And, do we have someone on behalf of Ms. Monroe that is wishing to speak first? To present, in favor of?

Rossiter: I'm sorry, it's Maxine Monroe.

Lowdon: Ok, I have Lois, I have Lois Maxine Monroe. Ok.

Rossiter: There you go. And she's . . .

Lowdon: Ok. Do you or anyone on your behalf that wish to present to the board may do so first.

Monroe: Ok. Yes, my name is Lois Maxine Monroe Hurst and I live at 3804A Charles Street, Apartment A in the city. First of all, I'd like to thank everybody for being here and for your consideration of my problem. When I first signed the contract with Mr. Reynolds in March of this year, I had no idea it would cause so much trouble. I thought it would be something we

could enjoy and a nice addition to my home. But it started down a slippery slope when an anonymous call to City Hall stopped the building. I was truly shocked when the anonymous caller turned out to be the builder of my home. On several occasions, my husband and I tried to talk to Mr. Barnes to find out what his objections were so we could learn what it was and try to correct it. But he wouldn't talk to us and seemed upset so much that he wouldn't even speak to us. I guess what puzzles and frustrates me so much is that he wouldn't even speak to us and why he objects to anything I do on my own property which is taken good care of and we are proud of it.

Lowdon: Ms. Monroe? If I could, if you, because you're on such a limited time, I don't want you to spend your time talking about things that we don't have anything to do with.

Monroe: Ok.

Lowdon: If you would just get to what it is that you want and why you want it, I'd appreciate it.

Monroe: Ok. Thank you. The porch would protect the door to the west side of the house. It's been a problem all along as it has no protection from the freezing rain and drifting snow that made use of the door impossible unless we go out the front door, shovel around the house, and work to free the storm door. Last winter, a heavy snow drifted three foot high on the door making an emergency exit impossible. In case of emergency, we would not have access to this door at all. My health is compromised and we have called the ambulance to the house several times and if for some reason, they needed to use the door for my kitchen during bad weather, it would be impossible. I would ask that you please allow us to finish what we started almost five months and many delays ago so I can be free of the frustration and worry, which at the age of almost 89 I shouldn't have to endure. So again, thank you for helping me through this process so I can get my life, and live my life in peace.

Lowdon: Ok, stay right there if you would. I have a couple of questions for you, okay? Can you explain to me, this is a side door, is that correct?

Monroe: Yes, the west side of the house.

Lowdon: And you're wanting an awning over the door, is that correct?

Monroe: Yes.

Lowdon: And is there also like a patio or something right outside the door?

Monroe: Yes.

Lowdon: And this awning, then, would cover the patio and the door to help with the access and things like that.

Monroe: Yes, yes.

Lowdon: And the poles that you have to set for the awning so that the awning will cover it, are they right next to the end of your patio, or do they go out further?

Monroe: Yes. No, they don't go out further, we didn't extend any on the line at all. It's built on a slab that was already there when we bought the house.

Lowdon: Ok. And the patio was already in existence when you bought the house . . .

Monroe: Yes.

Lowdon: And so the only thing you're asking is to cover that patio.

Monroe: Right.

Lowdon: And the poles that go down from the top of the awning go right to the edge of the patio, is that correct?

Monroe: Yes.

Lowdon: And do you know approximately how many feet from the edge of that patio to the next house?

Monroe: It's I think approximately 14 feet, I'm not sure about that.

Lowdon: Ok, so there's not somebody abutted right next to you or you're not getting right up next to their house with this?

Monroe: No, no.

Lowdon: Ok. I don't have any other questions. Does any else on the board have a question? Ok, thank you. Is there anyone else here to speak in favor of the adjustment?

Reynolds: I'm Gary Reynolds. I'm the owner and operator of Awnings Unlimited here in St. Joe, 2317 Frederick Avenue. I would ask for your favor of this project. I apologize for the inconvenience and the mix-up. This was something we learned after the fact and to explain a little more for your questions, the posts do sit on the existing patio slab that's there. We extended the length of that area to cover of her garden area, just to give her a little more coverage. The patio slab that's there now is only 8 feet 6 projection from the house and 13 foot wide. The canopy that we put up, or awning, is actually 11 foot by 24 feet so it gives her a little more shaded area. It not only covers the door, but it also covers some windows that she has on that west side of the house to give her a lot more protection in sun control. Plus, getting her a little area that she can sit outside and enjoy when the weather permits it and keep some of the run off and the rain off. That is an issue, too, and after talking to Ms. Monroe, there's a, the way the contour of the land is right there, this becomes kind of a swampy area so this awning would help alleviate some of that drainage coming into that because we're catching a lot of that water and putting it into a gutter and a down spout and carrying it out to another location. So, that is what we're asking for. I

think you have pictures of the existing canopy that we started putting up before we got started [I think he meant stopped but what he said was actually started]. We are going to be, if we can get permission to finish, screening this the small patio in for her as well so there'll be a small little screened area that will accommodate her sitting outside when the weather allows it without being attacked by the insects. So, I mean, it's, it's an inextrusive system, it's attractive, it increases the value of the property, it doesn't decrease, it increases the living area that the customers have, they're strong enough to take the snow loads, the wind loads and they're kind of a maintenance free item. I mean, it's a powder coated aluminum finished product that is very durable and long lasting.

Lowdon: If you, explain to me again, because you gave me the dimensions but then I got confused and didn't write them down. From outside her door, her patio extends how far towards . . .

Reynolds: The posts extend 8 foot 6, the patio roof itself will extend 11 feet almost – it's not quite 11 feet but it's right at that.

Lowdon: Ok.

Reynolds: Just to give you a clarity of what that is . . .

Lowdon: Ok, but the poles . . .

Reynolds: Are at 8 foot 6.

Lowdon: Oh, right by the patio.

Reynolds: They're standing right on the patio slab.

Lowdon: Ok, but the roof, then extends a little further out.

Reynolds: Right.

Lowdon: And is that kind of a sloped roof?

Reynolds: Yes.

Lowdon: And would that then help in the winter time with ice building up around the back door as well?

Reynolds: Yes. It extends to the south another 12 feet past the patio that's there.

Lowdon: But that's on her property and you don't need a variance for that, correct?

Reynolds: Right. Correct. I think the photos that we applied, that we gave with the request for the variance shows the patio on that area at a little bit of an angle so you can kind of see.

There is a vinyl fence that's there already. In talking with Mrs. Monroe, we are going to actually, if we get permission to finish this project, we are cutting that canopy back to the same depth as the fence that's there now. There's, and it's really not a fence. It's just a petition or a wall.

Lowdon: Ok.

Reynolds: She put that up to try to help with some of that and did not have any success with getting that protection.

Lowdon: So the roof's not going to go past an existing divider that's already . . .

Reynolds: Ok.

Lowdon: Does anyone else have a question?

Dalakishvili: Yeah, I have a question. You indicate that roof is going to slope, so during snow and ice on a sloped roof, when that comes down, does it go in her yard or would it be . . .

Reynolds: No, it goes into a gutter and then into a down spout system and then drains out onto her yard. Just like a gutter or soffit overhang on any normal house, but it just catches the water and if you would like, I did bring a hand sample with me that shows what this system is like, what size the gutter is, and how it's put together and how well it's constructed.

Lowdon: But it's guttered, though.

Reynolds: It's guttered. Built right into the unit itself with a downspout.

Lowdon; Ok.

Meng: Exactly how much distance is there between the structure of the porch and the property line.

Reynolds; From what we can gather with the measurements that we have, we're within 6 inches of the property line with the roof itself and when we cut it back, we're going to be, I think, a foot back. When we cut it back even with the fence without looking at those numbers, I'm guessing. But I'm pretty close to it I think.

Meng: But the distance between the property line and the structure of the other house is 12 to 14 foot, is that right?

Reynolds: Correct.

Dalakishvili: And the patio is 8 feet?

Reynolds: Eight feet six, right.

Dalakishvili: That's where the poles are located at 8 feet and the . . .

Reynolds: Eight foot six right on the edge of the patio itself.

Dalakishvili: And overhang is another couple more feet.

Reynolds; Right.

Dalakishvili: Ok.

Lowdon: Is the overhang high enough where a person is able to walk underneath it without hitting their head so like, if a fireman or something was walking through, can they walk through there without hitting their head on the overhang?

Reynolds: Correct. If they could get past that fence.

Lowdon: Right, because there's already a wall there . . .

Reynolds: Right, basically. Part of a wall there, yeah.

Lowdon: Ok.

Hall: Are you going to cut the roof back so you're within the 1 foot variance that you're asking for now?

Reynolds: I believe so, yes. Where that vinyl fence petition is now, we're going to cut it back even with that.

Lowdon: Any other questions? Thank you, sir. Anyone else wish to speak in favor?

Rossiter: My name's Richard Rossiter, 4402 North 30th Terrace, St. Joe Missouri. I would also like to indicate that we have Cheryl Meeks. She's the property owner that's located directly west of this house and even though at first, the patio cover did extend over her property, we're going to cut it back so it does not extend over her property. She may have some additional questions. I don't know whether she has any questions or not. Cheryl Meeks is here.

Lowdon: And what, they'll have their opportunity to speak. So, you're speaking in favor of this saying what, sir?

Rossiter: I'm just here saying that Cheryl Meeks is here as well.

Lowdon: Ok.

Rossiter: That wasn't brought up before, I don't think. And she's the property owner located directly west of this house.

Lowdon: Ok. And, are you representing her or no or you're just . . .

Rossiter: No, I'm working with Gary Reynolds. I apologize. I'm working with Gary Reynolds.

Lowdon: Ok, ok. Anyone else wish to speak in favor? Anyone who wishes to speak against the proposal?

Barnes: Michael W. Barnes, 2014 Lover's Lane and I'm the developer I guess that went across the road and picked you up a week and a half ago and I've talked to you. I told the city who I was when I called. It wasn't anonymous. I've talked to them in the past about this. They expressed an interest and my understanding was there's a 6 foot side yard setback and that's what I always told them and my big complaint is, as the developer and a builder and an owner of the majority of properties in this area, I want to keep the values up and I want to keep them attractive and I believe this is a permanent structure. It has walls without footings, so there's some issues there as far as building. They didn't get a permit which then maybe would have solved some of these issues, but as I was thinking, if I came down here and got a speeding ticket and then I went to whoever I go to and said, well I want to change the law for what the speeding limit is in that area where I got caught, therefore allowing it to be legal what I'm doing. I mean I think what's happened here is that they've kind of overstepped the bounds. I think that this permanent structure should be set back to the 6 foot setback. There's a front porch where she can sit outside if she wants to. There's all the amenities that she wants to live out there but she wants more and more. This building I'm not sure is going to help her get out in a snow storm because in and off itself, it's got the three walls underneath it. She's still got to get outside again and will that get drifted in or snowed under? I don't know but I have questions about that. The other, I guess the other issues that I have is and today they brought forth a little different information, but in the last letter sent out by the city, there was a letter attached from Awnings Unlimited and it talks about that their plan, the patio will extend beyond the west property line. Now they're talking about changing that but that's what really draws my ire is that, you know, where in America can you take advantage of somebody like that and not have some kind of implications whether it's this Zoning Board or other legal implications, so, you know, them wanting to cut it back, that's a start I believe but I don't believe the compromise is at the property line. I think, you know, they could do a lot of this stuff closer to their house. You know, they could put a, you know, 5 foot awning and protect that door if they really wanted to. They want more than that. They want more than just covering the concrete. The concrete was on that property and still is on the property but the overhangs and some of that stuff is real close to the property line. I just don't think that's right. So, I think that's all I had to say. If there's any other questions.

Lowdon: Any question?

Dalakishvili: I have a question and maybe this is my misunderstanding, but is it just a regular awning supported by poles or does it actually have solid walls?

Barnes: It's got, I don't know if it's got glass in them or they're screened in. I don't know. There are some kind of doors and stuff that they've started to put up so I don't know if it's going to be glass or just screen. I guess that would be something for them. But to me it's a

permanent awning. It's not like you're going to take it down. We had some out there like Ms. Anderson here, she's got an awning that she can take on and off. It's on the back of her house. It meets within the 25 feet of her back yard. It's totally legal either way but, in my book, but I think that this is a permanent structure.

Beck: Madame Chairman, Mr. Barnes, did you or did you not say that there was a permit issued for this?

Barnes: There was not a permit issued originally, no.

Beck: And to this date there still has not been a permit?

Barnes: That I don't know.

Beck: You're not aware of any, is that correct?

Barnes: No, they would have to speak to that I guess and but originally, no, there was not. If there had been I'm not aware.

Beck: How did this come to your attention?

Barnes: Well, it was right across from my office and I've seen a number of these gone up and before I can get ahold of and I've even contacted the city about them and they pretty much have said well, there's not much we can do but at this one, it took more than a day to do and I'm sitting there watching it and my blood pressure's going up and I finally just about 3:00 in the afternoon decided, I've got to call. And I said you know, did the city give a permit for this and how did they get around the set back, is the reason why I called.

Beck: Thank you, Mr. Barnes.

Barnes: Thank you.

Lowdon: Anyone else? Thank you, sir.

Barnes: Thank you.

Meeks: Cheryl Meeks, 3802A Charles. I live on, my property abuts with the enclosure she's building. And I'd like to bring up three things. In the beginning when she told me she was going to do this, I did not have any opposition because the setback was supposed to be approximately 6 inches. Now that's no big deal. Now it's turned into a 6 feet setback. Secondly, I'd like to say that they are referring to it as an awning. I don't believe it is an awning. To me, it looks like an enclosure. It looks like metal panels. It looks actually like kind of a long wind tunnel. With a 12 inch side variance, I don't think that anybody can possibly get from the front yard to the back yard in 12 inches. I don't think that they can get their equipment around there to mow or anything like that. I do have a mowing service do my yard and chances are when they're mowing property, they're going to be damaging her enclosure. I don't see how you can do that in

12 inches. And also concerning the awning over my property, I have to look out for myself and I have to be opposed to that because down the road when I go to sell my home or my estates tries to sell it, it may be something that I can't get a clear title if she's over my property. Now they are saying today that they will fix that. If you folks do pass this, I would like to have that in writing, that it will be taken off of my property. And that's all that I have to say.

Lowdon: Thank you, ma'am. Any questions? No questions.

Meeks: Thank you.

Lowdon: Anyone else wish to speak in opposition? I would like to again hear from, was it Gary Reynolds? Mr. Reynolds with regard to a little more description.

Reynolds: Ok and let me clarify some other things that were mentioned too that I've been in business for myself for 7 years in the location I am. I worked for Pat Dillon for over 14 years managing the same company that I own now within his company. It has never been made known to us or clear to us from the City Hall that we did need permits for patio covers or canopies and awnings. Now, the only time I've been told when I've come down to this building and asked about different things and different situations, they have given me permits for awnings that have graphics and those kind of things on them but they said anything else that you do, you really don't need a permit on. Now, that is from two or three different people. Of course, the people keep changing in those offices down there and the interpretation of the ordinances continues to change a little bit as each person reads them and interprets them in their own understanding so that's why there was not a permit taken. And the reason that we didn't even look, there are 8 other awning systems already like the one we put up already existing in that same neighborhood.

Lowdon: Ok. Could you, I'm again confused, obviously having a hard time today. My understanding is that a structure like a roof, you're putting a roof over the existing patio that will extend outwards a little ways but only to the property line.

Reynolds: Correct.

Lowden: Correct?

Reynolds: Correct.

Lowdon: There's no sides on that.

Reynolds: No. The only thing that we're doing after we got the canopy up is we, Mrs. Monroe decided we wanted to screen this system in. Now, this is all aluminum, there's no load bearing system in this whatsoever. It's just a screened in area. There's two doors accessing through that. They're screen doors. There's no load bearing walls on there. This is not a structure that has to meet code. They're actually designed to be flexible in moving a little bit with the frost and freezing of the ground, but they're strong enough.

Lowdon: Does that enclose the entire patio?

Reynolds: No, it's only enclosing the slab area itself which is 8 foot 6 by 13 feet.

Lowdon: Ok. So the enclosed area does not extend past the already concreted slab, right?

Reynolds: Correct.

Lowdon: And those are like for lack of a better, kind of like in offices when you put up the temporary little walls and you make your little desk unit, they're removable such as that?

Reynolds: This whole system is removable. If Mrs. Monroe decides she wants to move, this system can be disassembled and re-assembled anywhere else on a house. It's not a permanent structure.

Lowdon: Those other existing ones in the same neighborhood, are any of those enclosed?

Reynolds: Not that I'm aware of.

Lowdon: They're just the awning.

Reynolds: Her neighbor's is enclosed. This lady's right here has a screened in gabled roof system that faces Mrs. Monroe's part of her house. That was the other reason that it was never any question of whether it was allowable or not.

Lowdon: What about, is there any difficulty with mowing near those structures, or are they just like any . . .

Reynolds: No, Mrs. Monroe's fence or petition that she already has there already has that area defined and if there's trouble mowing it, it's already existing so there wouldn't be any trouble with that at all. It is a very curve, unpassable area to start with. I mean, the terrain, I think if you look at the pictures you can see the difference in the terrain that's there. And that's why Mrs. Monroe has a little bit of an issue with the water drainage and those kind of things, too. So, we're trying to help alleviate some of those issues.

Lowdon: Ok.

Dalakishvili: I have a question. So concrete patio you extend it to 13 feet, right? It's 8 feet by 13 right now?

Reynolds: Yeah, the existing concrete slab is 8 foot 6 out from the house to the west and goes 13 feet to the south.

Dalakishvili: Thirteen feet to the south. And awning is going to be 24 feet by 11 feet.

Reynolds: Right. Mrs. Monroe has made a cobblestone extended patio area to the south and has a lot of nice plants and stuff that she's made a real nice outside garden to be able to set out

and enjoy. And in rebuttable to the comment about her front porch, her front porch isn't hardly big enough to set a chair out on and have any entertaining area at all with anything else. Now if you just want to sit out on your front porch, it's fine for that but there's no room for basic entertainment or a group of people to be able to set outside and be able to enjoy the plants and the garden area that she has.

Dalakishvili: And there is no fence between the properties?

Reynolds: The fence is just a petition. It doesn't actually fence in. It's just a petition system that was put up and it's all vinyl.

Dalakishvili: And the neighbor has that similar patio where is enclosed.

Reynolds: Right.

Dalakishvili: How far is that patio from the property line?

Reynolds: It's 14 feet I believe if I remember my measurements.

Dalakishvili: From the property line?

Reynolds: From the property line, yes. From Mrs. Monroe's property line, yeah.

Dalakishvili: And yours is going to be a foot from the property line.

Reynolds: Correct.

Hall: I have a little trouble understanding. He says the area is not entirely enclosed but if you're screening something in, the whole purpose of screening it in would be to entirely enclose it so you wouldn't have to fight the insects or whatever so, enclosing three sides?

Reynolds: We're only enclosing a portion of the canopy itself.

Hall: Ok.

Reynolds: Just enough where . . .

Hall: You're enclosing four sides on the patio but not the extra 11 feet that goes down the . . .

Reynolds: Right. Eleven? Well, it would just be 13 feet, it would be three sides of that. And like I said with the screen wall system, it's not really a load bearing wall. The load is taken by the awning itself. All the structure that we're putting in underneath is just to hold the screen wire. I mean there is nothing to that system at all. And like I said, this all could be disassembled within a day's time and moved if it needed to be.

Lowdon: Any other questions?

Beck: I have a question. Mr. Reynolds, have you at all talked to the neighbors and heard their concern about this and if so, how have you addressed their concern?

Reynolds: I haven't talked to any of the neighbors at all. When I got a call from the city saying that there was an issue that we weren't aware of, I called the city, I said what do I need to do, what is it that needs to be met? Not knowing exactly what was going on and why because we've never had this issue before. After talking to the city, that's when I contacted Richard Rossiter who used to work here at the city and knew more about this stuff than I did and asked him to help me get through this at this point to get it straightened out, figured out what it is we need to do to get this project finished, or if not, whatever we need to do.

Hall: I do have another question. The existing fence, the vinyl partition if you will, does that run the length of the property line?

Reynolds: No, it's only from the patio slab back to the south. I think it's approximately 24 feet. I don't know that I actually . . .

Hall: When this awning is complete, how far will it be from that fence?

Reynolds: It'll be above the fence, even with it and it may extend past a little bit on each end, but not by much. To the south it may extend past a few feet but I'm not sure without looking at the measurements. It's been a while since I've been out there.

Hall: Is that fence on the property line?

Reynolds: It's inside the property line.

Hall: It's inside the property line.

Dalakishvili: Let's say for example, the neighbor decide to make the fence more like a permanent structure, privacy type. Does it leave enough room for someone to get back to back yard through her property, I mean is there enough . . .

Reynolds: Yes. Yeah, you can get through, with the screened area or whatever, there's still going to be plenty of room to be able to access all the way through the back of the property. And the back of the property is not accessible too well, either. I mean, there's a huge bank that comes down to right almost to the back of the property as well as the slope coming down into her side yard as well.

Lowdon: Any other questions? Thank you, sir. Have we heard from everyone who wishes to speak here today?

Barnes: In regards . . .

Lowdon: Say your name for the record.

Barnes: Oh, Michael W. Barnes, 2014 Lover's Lane. In regards to the patio that Ms. Meeks has is that was built originally with the building and it had a, the building had an extra wide lot and it was probably a mistake on my part. I thought we could gussy them up a little bit and this has a shingle roof. It's a very nice covered patio, enclosed patio, and she paid substantially extra for that but it's in keeping with the design of the neighborhood and we did that all within the setbacks of the, you know, the zoning board and all that stuff, you know, so I just wanted to point that out.

Lowdon: Thank you, sir. Could I have the report from the city, please?

Elo: Yes, Madame Chairman, Board members. City staff's recommendation for this is approval to reduce the side yard setback from the 6 foot requirement to 1 foot in order to finalize the construction of an awning over an existing concrete patio. Issues regarding the extension of the patio over the existing concrete slab will be addressed through building development to ensure they do not encroach upon the adjoining property. That's not before this board to decide. Your decision is to determine whether or not the placement of the posts to support the structure are sufficient. This is being requested pursuant to Section 31-092(a) of the City code which gives you the authority to grant variances from the minimum requirement for setbacks. Oak Tree planned unit development, which is the development within which this structure or home is located, allows flexibility. For those of you that aren't aware, a planned unit development is a development that has odd or irregular sized lots. Normally due to development problems with the topography, some lots are larger than others, sometimes setbacks don't necessarily need to be strictly complied with and in fact, in this particular subdivision area, in December of 1997, the developer came in and modified the planned unit development to allow the construction of wooden decks within 1 foot of the side yard property line, based upon the very reason that the applicant cannot use her back yard. That is because of a topographical challenge. Her back yard falls off almost at a 45 degree angle and she would not be able to place this amenity in her back yard because of the way the lot is constructed. And it is the intent and integrity of a planned unit development to recommend approval because it is within those same bounds that the planned unit is allowing, or gave the authority to allow wooden decks to be built within the 1 foot setback requirement. Fire [Dept.] has no problem with this issue for issues of public health and safety. It is similar in nature to the wooden deck setback requirement. The unique topography of the property would not allow, as I have indicated, for any improvements in the rear of the property where the applicant would be able to place similar type of garden area/rest area for her outdoor enjoyment. It is for that reason that City staff is recommending approval of this variance and that is for the following reasons: The particular surroundings in this area, the topographical condition, specifically the property involved, due to its steep topography is there and the conditions upon which the petition for variance is based would be applicably general to other property within the same zoning classifications which I indicated the planned unit development was admitted in 1997 which allows other structures to be built within the 1 foot side yard setback, those structures being decks. There are already, based on conversation I had with former City Planner, Mike Kellam, nonconforming structures built in his opinion in the setback area unpermitted, unknown to the city until this event came about. The alleged hardship has not been created by the person presently having an interest in this property and the applicant did not create the hardship which is

the topographical issues. The granting of this variance will not be detrimental to the public health, safety and welfare or other property or improvements or the character of the neighborhood in which the property is located. There has been no evidence or testimony that this will have any effect on anyone's public health, safety or welfare. In the opinion of one property owner, she's of the opinion that it may have an impact upon the value of her property but there's been no other testimony regarding the issue of detrimental effects whatsoever. The granting of this variance is in keeping with the purpose and intent for the zoning district for which the property is located and is in keeping with the city's comprehensive plan. This is an area that is zoned residential under the comprehensive plan so it does comply with the comprehensive plan and a planned unit development anticipates flexibility and flexibility is something that is noted and was expressly granted to this development in 1997 allowing structures to be built up to within 1 foot of the side yard setback, i.e., wooden decks, to accommodate the needs of the residents in the area due to the same reason that this applicant came before this board. Because of the topographical problems that exist and for those reasons, City staff's recommendation is for approval. Does anyone have any questions?

Hall: I just have one. You said that Fire Prevention and Safety does not have an issue with the setback.

Elo: That is correct.

Lowdon: And my understanding is that there are wooden decks allowed with the same amount of setback as what she's requesting.

Elo: That is correct. They can be built up to within 1 foot of the side yard setback.

Lowdon: Any other question?

Beck: Mr. Elo, I have a couple of questions. I'm looking at that here sometime back and you talk about the topographical area there. That area is not as steep as some of the areas to the east where you can find more, the land dropping off where in fact some decks have been built in that respect. So I think in lieu of that I can understand where some of those areas might have a severe, what I would consider a severe topographical area, condition. However, under the circumstances I have a real problem with the fact that number one, you have a property owner that is adjacent to this property that has some real reservations about this sort of infringement if you will and it's, I believe that property rights are very important personally and were I to read over this information, which I have and then the city comes up justifying the fact that it is making this recommendation yet a property owner who lives next door is indicating that they've perhaps been misled and have indicated that they would prefer not to have this situation develop. Finally, it would seem to me that, based on the hearings that I heard this afternoon, that there could be a so-called downsizing of an awning in order to accommodate everybody in that neighborhood. So, my question is, staff indicates that the applicant is well within the conditions which you're recommending. However, I personally have to take exception to that and I just wanted, it's for the minutes, I don't agree with that situation.

Elo: And staff looks at these issues as they come in the door. We don't look at the issue of opposition or support to a particular request for variance or exception or any other zoning issue that comes in. It's based on the merits of the application, not based upon the input or lack of input from the surrounding property owners.

Hall: Currently, the awning as it sets does not fulfill the requirement of the 1 foot setback. Is that correct?

Elo: That I don't know. I went out to the area and I'm limited as to what I can see and get into myself personally. That is a building code issue and if it does in fact, infringe upon the property line setback, that is an issue that will be addressed at the building review process.

Meng: So basically, we're just making a decision as to whether or not those posts that are holding that particular structure are either on or off the, within the limitations of the property line. Is that right?

Elo: That is correct and if there is an overhang, it cannot, you know, be any closer than 1 foot from the property line and that will be defined by building regulations, personnel of the city.

Meng: Thank you.

Dalakishvili: And how far posts are from the property line?

Elo: I am not, I was looking for that specifically, sir, and I was unable to find it in Mr. Kellam's file and I apologize. I cannot give you that information.

Lowdon: But it is, the posts will be on the existing concrete . . .

Elo: Yes, on the existing concrete.

Meng: So it would be 6 inches to a foot.

Elo: Yes. They will definitely be on the applicant's property.

Lowdon: Any other questions?

Meng: I just wonder, one question. If the lady that is in opposition to this that's a neighbor, if she had in writing an agreement that she asked for, would that change her attitude?

Meeks: I do not have an agreement or anything in writing. I would like to have that.

Hall: What he asked was, if you had that in writing, would it change your opinion on the . . .

Meeks: I'm sorry, I didn't hear you.

Hall: If you had that in writing . . .

Lowdon: Ma'am, would you please come to the microphone? We have a question for you from the board members. And if you would please state your name again for the record.

Meeks: Cheryl Meeks.

Meng: My question was, you indicated that if you had it in writing that this was met with your approval, would that change your attitude as far as the complaint with your neighbor?

Meeks: What I would like to have in writing is the fact that they would remove the awning from my property, where it overhangs my property now. That's what I would like to have in writing. But I still would be opposed to it because the 12 inches from the property line. They're going to have a door on the front of it and the back of it. How can they get their lawn mowing equipment through this small section to the back yard? Their back yard has a tremendous amount of flowers. They have to have a lot of equipment back there to work on it. It's a very steep bank and it's not an easy thing to do. How are, how do they propose to get back there to do all this and to cut down trees and all of this sort of things.

Dalakishvili: I have a question.

Lowdon: Yes.

Dalakishvili: Quick question. To my understanding, that overhang and the gutter is going to be one foot from the property line. Walls of the building are going to be probably more than one foot, right? About two, three feet? Mr. Reynolds, is that correct? What's the distance between the concrete slab to where it falls on the place to property line?

Reynolds: It's approximately two feet I believe from the property line to where the poles are on the concrete slab now. I don't have that drawing right here in front of me, but . . . The fence is within, is inside the property line that is there now and that fence, that, what we talked about cutting that off.

Dalakishvili: That's fine. Ma'am, sorry about that. Your primary concern that where you're addressing, you're concerned about how they're going to mow the yard or . . .

Meeks: How will they get around their property from the front to the back with their equipment? A 12 inch space is not enough. And how, when people are taking care of my property, I don't see how they're going to keep from damaging their enclosed structure.

Dalakishvili: Their enclosed structure is going to be 2 feet from your property, right?

Meeks: No, it's going to be 12 inches from my property.

Dalakishvili: No, the overhang is going to be.

Meeks: I believe you're wrong, sir.

Dalakishvili: Ok.

Meeks: The enclosed structure will be 12 inches, is that not correct? That is our understanding according to the letter and that's not very much. In the beginning when she first asked me, they asked me to sign a letter saying I was not opposed which I was not because at that time it was going to be 5-1/2 feet from the property line. And now we're down to one foot and I am opposed to that. I don't feel that one foot is enough.

Lowdon: Ok, thank you very much.

Meng: I think our issue basically, is as to whether or not the posts are put where they're supposed to be and the other issue is a building issue that some, that the building people are going to have to handle.

Lowdon: Well, the issue is whether there should be a setback for the posts to those awnings which will then be on the concrete that is existing, ok?

Meng: Right.

Lowdon: Which is going to be the same as the setback for the wooden decks that are in the same neighborhood. That's our issue. Now, whether or not they go past that with a roof or what happens with that, that's for building code.

Meng: Right.

Lowdon: And they will have to deal with that. Our only concern is if she can have an awning with those poles setting on the existing concrete slab beside of her house.

Hall: Ours is a setback to one foot.

Lowdon: That's correct.

Hall: Period.

Meng: Right.

Lowdon: Setback to one foot for the poles that are there. And, sir, you've already spoke twice. We're already past taking comments. I'm sorry. The city, is that, am I stating that correctly?

Elo: That is correct. As long as none of the structure of the applicant is within one foot of the adjoining property owner's property line, then she would be in compliance.

Lowdon: So, the overhang cannot go any closer than one foot to the property line.

Elo: Correct.

Lowdon: Ok, so the entire structure will be at least one foot from the property line but the existing posts are going to be further than that just because of where the concrete slab is.

Meng: And that's the issue that we're actually here for.

Hall: Our issue is the one foot setback. The roof, the posts, it doesn't matter. It's the one foot setback.

Meng: Right. The rest of it is another matter.

Hall: Building code people will decide whether or not . . .

Elo: They will confirm compliance.

Meng: So in effect, if we were to turn this down, we would be stepping into somebody else's area basically.

Lowdon: No, there's not a setback, they're asking for an exception to the five foot setback.

Hall: To the six foot setback.

Lowdon: To the six foot, that's correct. And so, no, that is absolutely within our realm. The, there has been already an adjustment for wooden decks to have what they're asking us to give them with regards to . . . Excuse me, sir. No speaking, I'm sorry. You've had your opportunity. I need to ask you to remain quiet. Sir, sir, I'm sorry. Everyone knew the rules and everybody had two times to speak. I'm sorry, I'm going to ask you to remain quiet. If you cannot, I'm going to ask you to leave the building or at least step outside.

Hall: Our question is the one foot variance. Whether the building meets it or not, that's somebody else's in the city's responsibility.

Lowdon: And where that property line is somebody's else's responsibility to determine. We just know it needs to be at least set back one foot from the property line wherever that may be.

Hall: Madam Chairman, I call the question.

Meng: I second it.

Lowdon: So ordered, let's take a vote.

Secretary: On each individual finding separately?

Lowdon: No, let's do, you have to find all five in favor in order to vote yes. Ok? And everybody's aware of that, we're voting on everything at once. It's either yes or no. Ok?

Meng: Ok.

Lowdon: Roll call vote, please.

Secretary: Ken Beck?

Beck: No.

Secretary: Lasha Dalakishvili?

Dalakishvili? Yes.

Secretary: Terry Hall?

Hall: Yes.

Secretary: Terri Lowdon?

Lowdon: Yes.

Secretary: Richard Meng?

Meng: Yes.

Secretary: The vote's four yeses. The motion passes.

Lowdon: Now we need to move on to the next matter which is the approval of the minutes for the June the 28th meeting. Has everybody had an opportunity to review those minutes?

Beck: I move we accept.

Meng: I'll second it.

Lowdon: So noted. All in favor.

All: Aye.

Lowdon: They are approved. We also have to approve the findings of fact with regard to the Cooke Brothers Drive-In LLC at 4814 South 169 Highway.

Meng: I move we approve.

Hall: Second.

Lowdon: All in favor?

All: Aye.

Lowdon: Motion passes. Is there anything from the staff that we need to take up?

Elo: Not that I'm aware of. Mrs. Cline, is there any business for next month?

Secretary: Not yet. We have until Friday.

Lowdon: Meeting's adjourned.

Meeting adjourned at 5:00 p.m.

The next regular meeting of the Zoning Board of Adjustment is schedule for August 23, 2011 at 4:00 p.m.

Transcript submitted by Debbie Cline.