

# MINUTES OF THE MEETING OF THE ZONING BOARD OF ADJUSTMENT

Tuesday, November 15, 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, September 27, 2011, at 4:00 p.m.

	<u>Name</u>	<u>Attendance</u> (mtgs attended-mtgs absent)	<u>Term of Office</u>
<b>MEMBERS PRESENT:</b>	Terri Lowdon	(6-0)	2/23/14
	Chad Gaddie	(4-2)	3/22/14
	Richard Meng	(6-0)	4/30/14
	Lasha M. Dalakishvili	(4-2)	2/22/16
	Ken Beck	(6-0)	2/22/16

**MEMBERS ABSENT:** None

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

**OTHERS PRESENT:** Dustin Smith, City Planner  
Ted Elo, Assistant City Attorney

Lowdon: Ok, call this meeting to order. It's 4:02 and we have a quorum present. The first thing that I'm going to do today is before we get started, read the rules of conduct with regard to the agenda and speaking. I will call the case number and then people will be allowed to present their evidence. I'll ask you to give your name and complete address. No one can speak more than twice on the same item. No one may speak more than 10 minutes at a time without permission from the chairperson – that would be me. No one may speak a second time on a question until everyone else who wanted to speak has done so. All submissions of evidence, including photos, drawings, will be retained by the Board of Adjustment and will become a permanent part of the file, so don't give me anything that you want to get back. I'm going to ask that anybody who thinks that they might wish to speak at today's proceedings, to raise and take an oath. We'll do that all at one time so that we don't have to do it individually. So, if there's anyone here to speak with regard to the one item on the agenda, which is Case Number 2427, please stand. Yes, ma'am. Anybody else think they might speak? If you'll raise your right hand and swear that you will tell the truth, the whole truth and nothing but the truth under penalty of perjury.

Wessler: I do.

Lowdon: Thank you. I am admitting certified copies of Chapter 11, 26 and 31 of the Code of Ordinances of the City of St. Joseph. Also, there are exhibits including the St. Joseph Comprehensive Land Use Plan, a site plan, application, a mailing list of property owners within 185 feet that are submitted into the record today. We're going to take this up in this order. First, anyone who wants to speak in favor. Oh, I'm sorry. Absolutely. Let's do a roll first.

Smith: Terry Lowdon?

Lowdon: Present.

Smith: Dalakishvili? Meng?

Meng: Here.

Smith: Gaddie?

Gaddie: Here.

Smith: Beck?

Beck: Here.

Lowdon: We do have a quorum. Thank you. Anyone who wishes to speak in favor will go first and then anyone opposed will go second and then we'll hear from the city and have the city report and then it will be closed and we'll at that time then make our decision. The first and only case on the agenda today is a request for a variance from the zoning code to reduce the side yard setback from 7 ft. to 0 ft. from the property line and that's 11 ft. from the centerline of 35<sup>th</sup> Street for construction of a deck. This is located at 3425 Lafayette Street and the petitioner is Kathy L. Wessler. The case number is 2427. Is there anyone here to speak in favor? Yes, ma'am. If you will please come to the podium and state your name and address for the record.

Wessler: My name is Kathy Wessler. I live at 3425 Lafayette Street here in St. Joseph, Missouri and I am on that northwest corner of 35<sup>th</sup> & Lafayette where it meets. I would like to build a deck on my house to improve my home, to give me more living space and right now as I understand it, because of the set backs that's in code, I cannot build up to my property line and so that's why I'm requesting the variance from 7 ft. to 0 ft. so I can build to the property line which would give me a 12 ft. deck out from the house towards the street and that's basically it. I live on a dead end street of 35<sup>th</sup>. It dead ends about a block and a half north of me and I would just really appreciate this variance being approved. I would like to have this deck. I think it would be a nice addition to my home. It would look good in the neighborhood. It's not a high traffic street and I would appreciate you approving it.

Lowdon: Got a couple of questions for you, ma'am. My understanding then is the deck would be on the east side of the house, so it would go from the house towards 35<sup>th</sup> Street. Is that correct?

Wessler: Uh-huh.

Lowdon: And, if we approve this so there is a zero setback that would be contingent upon the City approval of the 5 ft. easement being given back to you, is that correct?

Wessler: That's correct.

Lowdon: And, then when the deck is completed and it comes out to the zero line, that won't interfere with any existing sidewalks or anything like that, will it?

Wessler: There's no sidewalks along the east side of my property at all, which would be the west side of 35<sup>th</sup> Street (?)

Lowdon: After your deck, how much grass would there be, if you know, or land, between the edge of the deck and 35<sup>th</sup> Street.

Wessler: I measured that last night and it is 25 ft.

Lowdon: Ok, so you'd have another 25 ft. until you got to the actual paved part. . .

Wessler: That's right.

Lowdon: . . . of 35<sup>th</sup> Street. Is that correct?

Wessler: That's correct.

Lowdon: In between there, isn't that an open ditch, no curb kind of situation?

Wessler: That's correct.

Lowdon: So, basically, it would be your deck, a couple of feet maybe, then the ditch and then the street. Is that correct?

Wessler: It's not hardly even a ditch anymore. It's just flat.

Lowdon: Ok. Have you had any concerns directed towards you from any of the neighbors or anyone that you know with regard to this deck?

Wessler: None whatsoever. I've heard nothing but positive . . .

Lowdon: Ok, thank you. Does anyone else have any questions?

Meng: Only thing that concerns me is, I'd like to ask one question. If by chance, if we approve this and later on they decide to put sidewalk in there, would that conflict with this situation or not?

Smith: There should still be plenty of room for a sidewalk.

Meng: Still plenty of room.

Smith: Yeah, it would still be a 60 ft. right-of-way. It's currently 70 ft. wide which is atypical for a street comparable to 35<sup>th</sup> Street. So, assuming the council vacates the 5 ft. of the right-of-

way on either side, it would become a 60 ft. right-of-way which still leaves plenty of room for the street improvements and future sidewalks.

Meng: Good enough. Thank you.

Lowdon: Thank you.

Wessler: Thank you.

Lowdon: That's fine. Thank you, ma'am. Anyone else in favor of, wishing to speak in favor of this application? I see no one. Anyone here to speak against the request for the variance? I see no one present to speak against it. Can I have the report from the city, please?

Smith: Yeah, this, Ms. Wessler has given you kind of a rundown of her intent, so I don't need to go back through that but the requested variance is from the section that I left out because I got in a hurry the other day and my apologies for that but the section of the Zoning Code that we are asking for a variance from is 31-021(e)(3) and it's for a, essentially a 7 ft. variance on the east side of the property and then up to an 11 ft. variance on the centerline of 35<sup>th</sup> Street because in the residential zoning district on corners lots, which this is, there are two, essentially two variances, two setbacks that they have to meet and it's the greater of 7 ft. from the property line or 32 ft. from the center of the street so I just wanted to cover that center of the street setback just in case because she said she's taken it, the measurement yesterday but from the aerial photographs which aren't 100% accurate, we can't be 100% accurate with the measurements, I just want to make sure we were covered from that setback from the centerline of the street. The property is 40 ft. by 120 ft. which is also atypical of a residential property, especially one on a corner lot. Most of them that are buildable or built on today are two 25 ft. lots that are put together creating a 50 ft. buildable lot and in this case, it's 40 ft. so that severely limits the appurtenances that can be attached to a structure such as a deck in this case. Again, the right-of-way is 70 ft. wide which is wider than what most of the comparable streets in the city are. Most of them are 60 and sometimes even 50 ft. wide so that was the reason for staff's initiation of the vacation of the right-of-way which will go to City Council I believe it will be second reading on the 28<sup>th</sup> of this month. So, assuming that that is approved, then that was contingent, this variance is as contingent of staff's approval for recommendation the vacation of the right-of-way is a contingency on this variance and staff is recommending approval of the variance at this time.

Lowdon: Thank you. Do any other members have questions for the city?

Meng: I don't have any further questions.

Beck: I have one question. [I cannot hear this speaker]

Smith: Up from 40 ft. of her lot and I believe her house sets back about 3 or 4 ft. off of the east property line, from the property line up to, from outside of the property line is street right-of-way which the city owns that.

Beck: Thank you.

Smith: And just a point of clarification, with the variance, she would be able to build up to the property line but not within the right-of-way.

Beck: Thank you.

Lowdon: Ok. It's my understanding that any approval of this that you're recommending is with the caveat that the city in fact does vacate that 5 ft. Correct?

Smith: Correct.

Lowdon: And you're asking that this board approve it upon that condition.

Smith: That's correct.

Lowdon: So it's a conditional approval.

Smith: That's correct.

Lowdon: And, Ms. Wessler, do you realize that if we do this, make it a conditional approval, that you still have to wait until the City Council has voted and approved that . . .

Wessler: Yes.

Lowdon: Thank you. Any further discussion before we take a vote?

Meng: Ready for the question.

Lowdon: Ok, I'm going to ask that you realize that we have to find in favor of all the issues and I'm just going to do one vote for all of them, so if anybody doesn't wish to do that, let me know. Otherwise we'll just have one vote instead of going through each one. Ok, at this time I'll call for a vote.

Smith: Beck?

Beck: I'm sorry, was there a motion?

Meng: Yes, I asked . . .

Smith: Beck?

Beck: Yes.

Smith: Gaddie?

Gaddie: Approve.

Smith: Meng?

Meng: Approve.

Smith: Lowdon?

Lowdon: Approve.

Smith: Four votes. Four in favor and it passes.

Lowdon: And I want to make sure that it's clear in the record that it is approved conditionally upon the vote by the City Council. On to other matters, we have today we need to, we didn't have a finding of fact last time, but we do need to approve or adjust the minutes of last meeting. Minutes. Did everybody have a chance to review those minutes? It would be the minutes from the September 27 meeting.

Beck: Madam Chairman, I understand the minutes but I wasn't sure what transpired during that whole meeting. It seemed like there was some confusion in that particular meeting. I didn't think it was clarified that much in the minutes.

Lowdon: Well, I have a clarification for the minutes myself that I want to put on the record. What actually transpired was that legal council for the petitioner withdrew their petition to us so we had nothing to decide. I think in the meeting it was discussed and they explained because the work order had been lifted, whatever we were going to do was kind of meaningless and in the minutes it just states that I said the issue is resolved. In fact, what I did was ask on several occasions and made them state verbally that they were withdrawing their petition to us and so there was nothing for us to decide. So, I do think that needs to be clarified in the minutes. Anybody else have any . . .

Beck: I believe that needs to be clarified.

Lowdon: Can I have a motion from anybody . . .

Meng: So moved.

Lowdon: Thank you. All in favor?

All: Aye.

Lowdon: So passed. Are there any other additions to the agenda that I'm not aware of? Do we have any other reports?

Smith: Ok, yeah. There is an oral argument on a previous case. You may remember the Underwood case that was before you I believe in May of this year.

Lowdon: Yes.

Smith: There will be an oral argument concerning that case before the district court on December 16 at I believe 7:30 a.m., 10:30, I'm sorry. So, several members of staff will be attending that. . .

Lowdon: What division is that in, do you know?

Elo: Judge Witt is on.

Lowdon: Judge Witt?

Elo: Yep.

Lowdon: Well, it'll be interesting to see how that comes out. Anything further? This meeting's adjourned.

Meeting adjourned at 4:20 p.m.

The next regular meeting of the Zoning Board of Adjustment is schedule for December 20, 2011 at 4:00 p.m.

Transcript submitted by Debbie Cline.