

CITY OF  
**LADUE**

City Hall

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**NOTICE OF PUBLIC HEARING**  
**ZONING BOARD OF ADJUSTMENT**  
**CITY OF LADUE, MISSOURI**  
**DOCKET NUMBER 1179**

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Special School District, 10094 Litzsinger Road, St. Louis, MO 63124, requesting relief from the ruling of the Building Official denying a building permit for a fence being located in a required rear yard which violates Section IV, C, 2

The hearing will be held at 4:00 p.m. on Monday, July 6, 2015, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

Stanley Walch, Chairman  
Zoning Board of Adjustment

*posted by Anne Lamitche  
6/16 at 3:30 PM*

DOCKET 1179

DATE OF HEARING	July 6, 2015
NAME	Special School District
DESCRIPTION OF PROPERTY	10094 Litzsinger
CAUSE FOR APPEAL	Relief from the decision of the Building Official for a fence being located in a required rear yard which violates Section IV, C, 2 of Zoning Ordinance 1175.
RULING OF THE BOARD	After a discussion of the facts presented, the Board continued the matter in order for the applicant to submit additional detailed information with regard to the existing elevations in the vicinity of the proposed fence.

MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
Monday, July 6, 2015

DOCKET 1179  
10094 Litzsinger Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, July 6, 2015, at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman  
Ms. Robbye Toft, Vice-Chairman  
Ms. Liza Forshaw  
Mr. David Schlafly  
Ms. Laura Gerdes Long

Also present were: Mr. Michael Gartenberg, Building Official; Ms. Anne Lamitola, Director of Public Works; Mayor Nancy Spewak

Mr. Walch called the meeting to order at 4:00 PM.

Notice of Public Hearing, as follows:

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Stanley Walch, Chairman  
Zoning Board of Adjustment

Mr. Walch introduced the following exhibits to be entered into the record:

Exhibit A – Zoning Ordinance 1175, as amended;  
Exhibit B – Public Notice of the Hearing;  
Exhibit C – Permit denial dated April 10, 2015;  
Exhibit D – List of Residents sent notice of meeting;  
Exhibit E – Letter from the resident requesting the variance date May 12, 2015  
Exhibit F – Entire file relating to the application

(Transcript attached as part of the minutes)

The court reported administered the oath to Timothy Huff, Council for the Special School District, Mr. Lux of 10088 Litzsinger Road who is funding the proposed improvements, Mr. John King, attorney for Mr. & Mrs. Lux, and Mr. Kiesecking of Empire Fence who is the contractor for the project.

Mr. Huff explained the proposed project which consists of an eight foot fence whereas the ordinance restricts the height to six feet. Mr. Huff noted that on the southern property line, a variance was granted for an eight foot fence and that this variance involves a fence with a lesser length. He noted that based on case law, the school district is exempt from zoning regulations.

Mr. Kiesecking explained that privacy was the primary concern for his client, Mr. & Mrs. Lux who reside at 10088 Litzsinger and are funding this project.

A discussion ensued regarding whether the fence could be located closer to the parking lot which is located at a higher elevation.

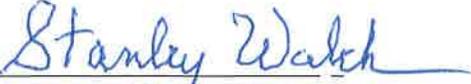
Mr. King provided photos of the vegetative buffer that existed prior to Fall 2014 when the buffer was removed. Mr. King stated that Mr. & Mrs. Lux and the Special School District have entered into an agreement that an eight foot high fence be installed two feet from the property line. Mr. Lux confirmed the terms of the agreement for the Board.

The members of the Board discussed the location and concluded that moving the fence up the slope would solve the lighting issue and would allow for a fence that complied with the zoning ordinance which limits the height to six feet. Ms. Toft asked for a site plan that clearly outlines what the elevations of the existing grade are at the property line and near the parking lot so that the Board could make an informed decision. She stated that inadequate evidence was presented to the Board.

Ms. Schoedinger of 10085 Litzsinger was sworn in by the Court reporter and explained that she had paid for the removal of the vegetative buffer in an effort to eradicate the honeysuckle. She stated that the native species that were planted will become established over the course of time and create a buffer.

The Public Hearing was closed.

Mr. Schlafly suggested that the matter be tabled and Mr. Walsch stated that the matter is continued.

  
Mr. Stanley Walch, Chairman

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
)  
SPECIAL SCHOOL DISTRICT )  
10094 LITZSINGER ROAD ) DOCKET NUMBER 1179  
LADUE, MISSOURI 63124 )

Monday, July 6, 2015

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ORIGINAL

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P.O. Box 31201 ~ 1015 Grupp Road ~ St. Louis, MO 63131  
314.541.3179



A P P E A R A N C E S:

BOARD MEMBERS:

Mr. Stanley Walch, Chairman

Ms. Liza Forshaw

Ms. Laura Long

Mr. David Schlafly

Ms. Robbye Toft

Also Present:

Ms. Nancy Spewak, Mayor

Ms. Anne Lamitola

Mr. Michael W. Gartenberg

Mr. Timothy Huff

Mr. John Long

Mr. Paul Lux

Mr. Steve Giesecking

Ms. Lesley Schoedinger

Court Reporter:

Bobbie L. Luber

Registered Professional Reporter #9209

Missouri CCR #621

Illinois CSR #084.004673

Bobbie Luber, LLC

P.O. Box 31201

St. Louis, MO 63131

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1 (The Meeting of the Zoning Board of  
2 Adjustment of the City of Ladue having been previously  
3 called to order at 4:00 p.m.)

4 CHAIRMAN WALCH: That brings us to the last  
5 case of the day, which is Docket Number 1179, which is  
6 the application of the Special School District  
7 requesting relief from the ruling of the building  
8 official who declined to issue a permit for a fence  
9 being located in a required rear yard which violates  
10 Section IV,C,2.

11 Mr. Gartenberg, will you explain the reason  
12 or reasons the plans were disapproved so we know what  
13 we are dealing with here?

14 MR. GARTENBERG: Yes, sir. The subject  
15 property actually has frontage on two streets, on  
16 Litzsinger and on Lindbergh, which it has access to  
17 both of those. There is also a common property line  
18 that the school district property has with the street  
19 to the east. However, there is no access there. By  
20 virtue of the fact that that is the third side of the  
21 property with frontage on the roadway and the fact  
22 that there is no access to it, it is not considered to  
23 be a front yard, it is considered to be a rear yard.  
24 So a 6-foot high fence is permitted on that property  
25 adjacent to the eastern property line. However, an

1 8-foot fence has been proposed to the city, and so we  
2 are not able to permit that as the 6-foot high is the  
3 maximum height.

4 CHAIRMAN WALCH: So the only issue is the  
5 additional two feet?

6 MR. GARTENBERG: Yes, sir.

7 CHAIRMAN WALCH: All right. Any other  
8 questions of Mr. Gartenberg? Hearing none, I will try  
9 to clear up the procedural issues as quickly as I can.

10 Exhibit B of this hearing will be the  
11 public notice of this particular hearing.

12 Exhibit C will be the denial letter from  
13 the building commissioner dated April 10th, 2015.

14 Exhibit D will be the list of residents to  
15 whom the notice of this public hearing was mailed.

16 Exhibit E is the appellant's letter  
17 requesting a variance dated May 12th, and another  
18 letter which was received just a few days ago dated  
19 June 26th from Timothy Huff, who represents the  
20 Special School District in this matter, along with  
21 Michael Hodge. That letter is dated June 16th, and  
22 has a number of attachments to it. One is a letter of  
23 June 26, 2015 addressed to the entire Board of  
24 Adjustment, myself as chairman. And it contains a  
25 number of legal arguments, and also attaches a case of

1 the Normandy School District versus the City of  
2 Pasadena Hills. So those letters are all part of  
3 Exhibit E in this case.

4 Are there any other letters, Mrs. Lamitola?

5 MS. LAMITOLA: No, there are not.

6 CHAIRMAN WALCH: Thank you. Finally, the  
7 entire file pertaining to this application, including  
8 all memoranda from staff and consultants to the Zoning  
9 Board of Adjustment of the City of Ladue will be  
10 marked as Exhibit F.

11 And at this point would the appellant -- it  
12 looks like he has come forward some time ago, will  
13 identify himself, and anybody who wants to speak on  
14 behalf of the appellant also come forward and identify  
15 yourself and give the court reporter your names and be  
16 sworn in.

17 (At this time Mr. Huff, Mr. Long, Mr. Lux,  
18 and Mr. Giesecking were sworn in by the court  
19 reporter.)

20 MR. HUFF: Thank you all for allowing us to  
21 come forward today. Again, my name is Tim Huff. I  
22 represent the Special School District. And again, I  
23 think it's stated well, the sole issue in our mind is  
24 the last two feet of height on the fence.

25 The denial of the original application I

1 believe is dated April 10th, 2015 based on Section  
2 IV,C,2 of Ordinance 1175. It was based on the fact  
3 that the requested fence exceeded the height of six  
4 feet as stated in the ordinance.

5 The fence that we are seeking to construct  
6 on the Special School District property is  
7 approximately 145 feet long. It would be a cedar  
8 fence with three-inch galvanized steel posts, four  
9 horizontal 2-by-4 cross beams with treated lumber  
10 8-feet tall with 36-inch posts.

11 The fence location would be on the west  
12 side of Rolling Hills Lane, which I believe is a  
13 private lane. I believe that that property is  
14 actually owned by the person here today, and his wife.  
15 That location is in between Litzsinger School which is  
16 located at 100094 Litzsinger Road and the property  
17 that is owned by Paul and Leslie Lux that is at 10088  
18 Litzsinger Road.

19 The fence would begin approximately 100  
20 feet south of Litzsinger Road at or near an existing  
21 utility pole, and would continue for approximately 145  
22 linear feet to the south. The fence would be parallel  
23 to the road and maintain a distance of about 5 feet.  
24 The fence would be constructed on property owned by  
25 the Special School District.

1           So, as I pointed out in my letter dated  
2 June 26th to the board, if the fence were only built  
3 to a height of six foot, it would not be high enough  
4 to properly serve the sound and sight barrier.

5           I believe you all mentioned that you had  
6 already visited the site and so I won't describe the  
7 characteristics.

8           CHAIRMAN WALCH: I do have a question in  
9 that regard. From the site it appears you would have  
10 more than two foot elevation sight or more, a two-foot  
11 elevation between where the road is and where the edge  
12 of the parking lot is, which is where I suspect you  
13 are trying to shield the neighboring properties from  
14 the noise and whatever else goes on in the parking  
15 lot.

16           MR. HUFF: Uh-huh. Lights.

17           CHAIRMAN WALCH: Lights, maybe. My  
18 question is: Wouldn't that 6-foot fence up there give  
19 you ample protection as opposed to an 8-foot fence  
20 down below -- down the hill?

21           MR. HUFF: Well, when Steve comes up to  
22 talk I think he can better explain why that probably  
23 would be workable, because I do believe there are  
24 possibilities for that. But that's a very good point.  
25 Steve might be a better person to answer that

1 question. Could we put it at the end of mine?

2 CHAIRMAN WALCH: Sure.

3 MR. HUFF: Our position is that if the  
4 fence is located where it is, which is in a lower  
5 point, that it needs to be higher to provide sight and  
6 sound.

7 I think that, a couple of things I would  
8 like to point out. A similar -- a similar case came  
9 before this board on December 4th of 2006, and  
10 actually in a very similar location.

11 The applicant was a PA Nobelli (phonetic),  
12 and in that case the original fence request was  
13 denied, and subsequently based upon various factors  
14 that are set forth in the minutes of that meeting they  
15 did allow an 8-foot fence. And I believe in the notes  
16 treated the situation as more akin to a commercial  
17 application than to a residential application, even  
18 though it was strictly a residential property. I'm  
19 not saying I disagree with that position, but  
20 certainly if you go around a school district and  
21 school district property such as the Special School  
22 District where there is light standards, a large  
23 parking lot, cars coming and going, a lot of people  
24 coming and going, it's going to have the look and feel  
25 of a commercial application. Probably much more so

1 than in this case that you approved an 8-foot fence in  
2 December of 2006.

3 CHAIRMAN WALCH: That was back at the back  
4 of the playground.

5 MR. HUFF: That's good memory. I believe  
6 you were on the board at the time.

7 CHAIRMAN WALCH: Do the minutes reflect I  
8 was there?

9 MR. HUFF: I believe it does, yes.

10 CHAIRMAN WALCH: And Ms. Toft was probably  
11 there too.

12 MR. HUFF: Yes. And Clay Mollman was  
13 there.

14 CHAIRMAN WALCH: Clay was the chairman at  
15 the time.

16 MR. HUFF: That fence isn't very far from  
17 where we are proposing to construct this fence. I  
18 think that the fact the property -- I can show you on  
19 this photo. Let me get my bearings here.

20 CHAIRMAN WALCH: We saw that fence today.

21 MR. HUFF: You know where that is. Just so  
22 you can see here on the application. The fence that  
23 we are proposing to construct would be along Rolling  
24 Hills Lane. Which, by the way, is a private lane.  
25 And it would only be for a section of it from here to

1 here.

2           And the fence that you allowed in the  
3 previous instance, which I believe starts  
4 approximately there and runs from there, is not very  
5 far away from this property at all. I think the  
6 similarities are striking. But this -- this has a  
7 very commercialized feel to it as much as any  
8 building, strip center, or any other type of  
9 commercial application may have. There are a lot of  
10 cars parked around it, a lot of structures. There are  
11 air conditioners going all the time. People coming  
12 and going. Light standards. Light can come over and  
13 affect other people's property.

14           So if you considered the other fence to be  
15 approved based upon factors that it was more akin to a  
16 commercial application than to a residential  
17 application, I think that is at least as much if not  
18 more true in this present case. That case was in  
19 December of 2006.

20           The other thing I would mention, and really  
21 it's not our goal to come in and play tough on the  
22 issue of the law, but we believe that the Zoning  
23 Board --

24           CHAIRMAN WALCH: You believe the school  
25 district is exempt from zoning?

1           MR. HUFF: I believe by and large they are  
2 with respect to the construction of structures,  
3 buildings, improvements on the property except for  
4 issues of health and safety. I think it's long been  
5 known that cities have police power to regulate issues  
6 of health and safety. And there are case decisions  
7 about that. Issues of zoning boards regulating the  
8 issue of the restaurants that are in -- the  
9 cafeteria/restaurants that are inside school districts  
10 for health and safety reasons, food reasons. Boilers  
11 have been subject to litigation.

12           But the case that I attached is just one of  
13 many that support the position that churches and  
14 schools, in this case schools, but churches fall in  
15 the same category, can build structures and  
16 improvements on their property that would not  
17 otherwise comply with the zoning regulations in the  
18 code.

19           That's our position. I really honestly  
20 think that the school district could have constructed  
21 the fence without applying for a permit.

22           MS. TOFT: Mr. Huff, let me ask about that  
23 if I may. As I read it, it says: Buildings for  
24 public use. Are you saying that an 8-foot fence  
25 constitutes a building for public use?

1 MR. HUFF: No. But in that case -- I know  
2 what you are getting ready to say. If you want to  
3 finish.

4 MS. TOFT: Go ahead.

5 MR. HUFF: The point is, that case that you  
6 are looking at dealt with buildings. In fact the  
7 issue was modular buildings. So the vista of the  
8 court addressed these should be built, but if it had  
9 been in this case I believe the result would have been  
10 no different.

11 MS. TOFT: The case I'm citing is the  
12 Missouri Supreme Court opinion from 1957. So do you  
13 have some case law that says a municipality has no  
14 right to impose its zoning ordinances on a subdivision  
15 or public agency for non-buildings?

16 MR. HUFF: I believe that case. I think if  
17 you read the entire case, and maybe you already have.

18 MS. TOFT: I have.

19 MR. HUFF: I think you will see that the  
20 limitations are such that it doesn't even say it can  
21 apply at all. I happen to know the applied health and  
22 safety issues, because I have had it in different  
23 cases. But I believe the language is quite clear in  
24 this case that zoning regulations don't apply.

25 MS. TOFT: But this case involves modular

1 buildings, but buildings none the less, does it not,  
2 the case that you cited?

3 MR. HUFF: That case dealt with modular  
4 buildings. The City of Pasadena Hills was attempting  
5 to regulate.

6 MS. TOFT: So, explain to me how a modular  
7 building, an opinion involving a modular building is  
8 comparable to a fence.

9 MS. LONG: I'm trying to, I actually worked  
10 at that firm when that case went on appeal, but it  
11 says it has the authority to regulate. Am I to assume  
12 that a fence is a building like a modular building  
13 argument?

14 MR. HUFF: Think about it for instance, if  
15 the city can regulate some things about the  
16 construction of the property, but not all. Say they  
17 can't regulate the height of the buildings, the  
18 materials of the buildings, you say they can't  
19 regulate the roof pitches like that, but they can  
20 start regulating things like the gates at the front of  
21 the property, or a fence on the property, or the  
22 screening on the air conditioner system, I think it's  
23 a stretch to say the city has any power at all.

24 CHAIRMAN WALCH: Mr. Huff, excuse me a  
25 minute.

1 MR. HUFF: Sure.

2 CHAIRMAN WALCH: I think generally speaking  
3 this board follows the ordinances of the City of  
4 Ladue. It's up to the Circuit Court to determine this  
5 case law if we can't come to some accommodation, and I  
6 think we are really not going to have a productive  
7 argument arguing the law here today.

8 I have my own views of that too, which are  
9 not dissimilar of Ms. Toft's.

10 MS. TOFT: If I may, Mr. Chairman. Am I to  
11 understand that the public use -- what is the public  
12 use of this fence? What benefit does the Special  
13 School District get from this fence? As I understand  
14 you, the purpose of the fence is not for the benefit  
15 of the public school district but rather is for to  
16 reduce the light and noise for the neighbors.

17 MR. HUFF: The benefit for the school  
18 district goes both ways. It's a screen for the school  
19 district as much as it is for the other side of the  
20 fence, the people who live outside.

21 MS. TOFT: The 2006 Zoning Board opinion  
22 that you cited, I think it's distinguishable in that  
23 the problem with the school district and the reason  
24 why we granted the 8-foot fence was that the children  
25 on the playground were having the balls go over the

1 6-foot fence into the neighbors' property, and they  
2 had no way of getting over the 6-foot fence to  
3 retrieve their balls from the playground. And so  
4 that's why the Special School District was seeking  
5 additional height on that fence to allow the children  
6 to use the playground without their balls going out  
7 into the neighbors' property.

8 MR. HUFF: There is not that much detail in  
9 that summary that I read, but I don't think the  
10 Special School District was the applicant in that  
11 case.

12 MS. TOFT: They did provide testimony  
13 though, and they were encountering a problem in that  
14 balls were going into the neighbors' yard, and that  
15 fence does abut the playground.

16 MR. HUFF: Yes, it does. It doesn't say  
17 anything else about that though.

18 MS. LONG: Did you say how far the fence  
19 was going to -- supposed to be built -- if you did I  
20 apologize -- from the street.

21 MR. HUFF: From the street?

22 MS. LONG: From the street.

23 AUDIENCE: It's about 100 from Litzsinger,  
24 about 5 feet from the private house.

25 MS. LONG: So 5 feet from the private

1 alley. So before it steps up there the grade kind of  
2 steps up.

3 MR. GIESEKING: No, that's why we are  
4 moving it back on their property a little bit is to  
5 gain a little height. That's one issue.

6 MS. TOFT: You were talking about a  
7 private, there are homes that use that street, are  
8 there not?

9 MS. FORSHAW: It's a private lane.

10 CHAIRMAN WALCH: It's a private lane. It's  
11 not an alley.

12 MS. TOFT: It's not an alley, okay. The  
13 land is not exclusively owned by --

14 MR. HUFF: I think the private alley is  
15 owned by three parties.

16 MS. TOFT: It's a private road.

17 MR. HUFF: Private road.

18 MS. TOFT: The roadway is within the  
19 property of the homeowners who access from that drive.  
20 Okay.

21 MR. HUFF: And there are three.

22 MR. GIESEKING: And there is a fourth, but  
23 is not a part owner.

24 MS. TOFT: Thank you.

25 MR. HUFF: So, I think -- I don't want to

1 engage in a debate about the law either. You are  
2 obviously attorneys. I think the issue is whether or  
3 not the extra two-foot height that's being proposed,  
4 outside of the legal issues, which I think would be a  
5 precedence of the Special School District, is to apply  
6 for this permit and be granted a permit based on  
7 factors of merit, outside the case law that I cited.

8 With respect to the extra two feet of  
9 height, I think there are some folks here today that  
10 will give some testimony that that would be beneficial  
11 to them, that they support that. Maybe there are  
12 others in opposition to it.

13 But generally speaking, it's the position  
14 of the Special School District that a permit is not  
15 actually required for this case. We would prefer to  
16 have one. It would be our preference to go through  
17 all the administrative procedures here and have a  
18 permit granted, and so we request your consideration.

19 CHAIRMAN WALCH: I'm particularly  
20 interested in the question I asked in the very  
21 beginning, which is why the fence couldn't be a 6-foot  
22 fence on the top of the hill instead of down at the  
23 bottom of the hill?

24 MR. HUFF: I will let Steve --

25 MR. GIESEKING: I'm Steve Giesecking. Owner

1 of Empire Fence.

2 One of the main reasons is what might  
3 happen on that piece of property in the future. If  
4 they put it up at the top and then they would decide  
5 to use that piece of property outside, which is owned  
6 by the Special School District, then we are right back  
7 to where we were.

8 CHAIRMAN WALCH: You can just tear the  
9 fence down.

10 MR. GIESEKING: What's that?

11 CHAIRMAN WALCH: You can tear the fence  
12 down.

13 MR. GIESEKING: And then you can construct  
14 another, and we are going to be standing here again  
15 because we are going to want an 8-foot high fence  
16 because maybe they might want to put a playground on  
17 the side yard or whatever.

18 CHAIRMAN WALCH: I don't think there is any  
19 move -- you are talking about 10 or 12 feet.

20 MR. GIESEKING: This is actually from the  
21 parking lot looking at the Lux's house. For years and  
22 years and years they have had a 20-foot high plus  
23 buffer in groves and bushes and whatever. And someone  
24 let them come in and cut it all down, even what was on  
25 their property.

1           AUDIENCE: No, absolutely not. Nothing was  
2 cut down.

3           MR. GIESEKING: Well, I have a picture here  
4 that shows the grove.

5           MS. TOFT: That's not before us.

6           CHAIRMAN WALCH: We have no jurisdiction  
7 over cutting trees.

8           MR. GIESEKING: I'm just saying that that  
9 is the area that we are talking about that had a  
10 tremendous amount of growth where we are wanting to  
11 put the fence. So we are trying to replace.

12           CHAIRMAN WALCH: I understand that. I'm  
13 talking about an area no further from you to me that  
14 goes up a rather steep incline, which if you put a  
15 6-foot fence up on top of that, it would probably give  
16 more noise and light protection.

17           MR. GIESEKING: It's much further than you  
18 are saying.

19           CHAIRMAN WALCH: I don't believe so. I was  
20 just there.

21           MR. GIESEKING: I will show you the  
22 picture. Here is the road right here. The parking  
23 lot is much further than what you are saying.

24           CHAIRMAN WALCH: I'm not talking about the  
25 parking lot.

1                   MR. SCHLAFLY: The utility easement. The  
2 other side of that you start going up.

3                   MR. GIESEKING: That's where we are wanting  
4 to put it. The property line is actually right where  
5 the telephone poles are. We are wanting to put it one  
6 foot onto the Special School District property. So  
7 there is no question about whose it is, and allows  
8 them to put some planting in front of it.

9                   This is another reason why they want to  
10 make sure it goes in the road. They don't allow  
11 smoking on, you know, Special School District  
12 property. But these people are smoking, and she is  
13 looking at it now. Because they had to walk over this  
14 roadway to get on the property. So that's another  
15 reason. She doesn't really want them on her property.  
16 She wants to have what she had before.

17                   CHAIRMAN WALCH: Who is "she".

18                   MR. GIESEKING: Mrs. Lux. I'm sorry.

19                   MS. TOFT: I agree people should not be  
20 trespassing. But wouldn't a 6-foot fence keep people  
21 from crossing over to the street? Certainly that's  
22 trespassing.

23                   MR. GIESEKING: If you push it back to  
24 where he is saying, they can certainly walk around it.

25                   CHAIRMAN WALCH: I'm talking about 5 or 6

1 feet. That hill is right there.

2 MS. TOFT: He is talking about where the  
3 grade changes.

4 MR. GIESEKING: This is a picture of the  
5 grade change. This is the road right here. From the  
6 road to the top of this little bit of grove right here  
7 is probably stepped up about two feet. It's going to  
8 go up on this ground right here.

9 MS. TOFT: I'm sorry, your name again.

10 MR. GIESEKING: Steve Giesecking.

11 MS. TOFT: Mr. Giesecking, can you  
12 explain -- I think what we are looking for is as an  
13 explanation as to what would be accomplished by the  
14 additional two feet of height. Given the current --  
15 the existence of the current conditions, not to --

16 MR. GIESEKING: The additional height,  
17 right now school buses, and when we get a little bit  
18 later in the fall, you know, it's dark when the kids  
19 come to school. The bus lights, they are always  
20 shining in there. You have lights on on the parking  
21 lot. All of which she just never dealt with before.

22 MS. TOFT: Do you have any studies that  
23 were done that would show us how much less light  
24 encroachment there would be with an 8-foot fence  
25 versus a 6-foot fence?

1 MR. GIESEKING: Well, I mean, with the  
2 6-foot high fence, where we want to put it, the lights  
3 would just go over the top of it. You can see that in  
4 this picture right here. Because that's her house  
5 right there.

6 MS. TOFT: And I think that's exactly what  
7 the chairman was questioning you about. Given that  
8 the difference in elevation between the parking lot  
9 being considerably lower, and where this fence would  
10 go, how is it --

11 MR. GIESEKING: The parking lot is higher.  
12 But the parking lot is not 5 feet from the road.

13 MS. TOFT: Okay. Have you done, do you  
14 have any studies or anything that show us that an  
15 8-foot fence would cut off the light, the headlights?

16 MR. GIESEKING: I don't have any  
17 elevations.

18 CHAIRMAN WALCH: Let me explain to you  
19 again what I'm asking about. To me, when I look at  
20 it, it looks like immediately starting with that road,  
21 and once you got into maybe a foot or two, that it  
22 started rising up the little hill.

23 MR. GIESEKING: It did, yes.

24 CHAIRMAN WALCH: It seems to me common  
25 sense in terms of the parking lot, if you had a 6-foot

1 fence on top of the hill, you are going to get as much  
2 if not more protection than you will get from an  
3 8-foot fence down at the bottom of the hill.

4 MR. GIESEKING: But I will say this. The  
5 distance from this road to that parking lot --

6 CHAIRMAN WALCH: I'm not talking about the  
7 distance from the road.

8 MR. GIESEKING: But you are talking about  
9 taking this fence and moving it back. You are talking  
10 about moving it back to the parking lot.

11 CHAIRMAN WALCH: Not to the parking lot,  
12 no, sir.

13 MR. GIESEKING: How far back would that be?

14 CHAIRMAN WALCH: I didn't make a  
15 measurement.

16 MR. GIESEKING: I'm saying from the road to  
17 the parking lot is probably 30 feet.

18 CHAIRMAN WALCH: I don't doubt that.

19 MS. TOFT: We are talking about taking it  
20 to it the high point.

21 CHAIRMAN WALCH: Up to the top of the hill.

22 MS. TOFT: The high point.

23 MR. GIESEKING: The top of the hill is the  
24 parking lot; is that correct?

25 CHAIRMAN WALCH: No, that's not correct.

1 By my looking at the site, where it looked to me like  
2 there was at least two feet of elevation, it's  
3 probably -- it may be 10 feet. I didn't measure it.  
4 But if you put it up there on top of that little rise  
5 you would gain two feet in elevation. By putting it  
6 down where you are you are losing two feet.

7 MR. GIESEKING: We are already pushing it  
8 back 5 feet from the road, and so we have gained that  
9 2 foot of elevation. Because there is a grade change  
10 from the road to where we are putting the fence of  
11 about a couple of feet.

12 MR. GARTENBERG: Are there any photographs  
13 that have been taken that would show that slope of  
14 that hillside?

15 MR. GIESEKING: I have them right here.

16 MS. TOFT: I don't think they do, but  
17 wouldn't elevation be the appropriate way to do this?

18 MR. GIESEKING: This is the roadway. This  
19 is where we want to do it.

20 MR. GARTENBERG: And going to this area,  
21 maybe the top.

22 MR. GIESEKING: That's what he is saying.

23 MR. GARTENBERG: Let me finish my question,  
24 if I may. How far back is that to the parking lot?  
25 Is that halfway back to here, or is that

1 three-quarters of the way back to the parking lot?

2 MR. GIESEKING: The parking lot is probably  
3 just above the street.

4 MR. GARTENBERG: Okay. So going from here  
5 to the property line to where the green starts here,  
6 is that roughly half the distance from the property  
7 line to the parking lot?

8 MR. GIESEKING: No. That's to the parking  
9 lot. The parking lot is about here.

10 MR. GARTENBERG: If it was to the parking  
11 lot, the parking lot would be starting right here.  
12 Obviously the parking lot is further back than where  
13 the green strip is starting.

14 MR. GIESEKING: There was growth here  
15 before and it's gone now. So it's hard to say what  
16 this green space is here.

17 MR. GARTENBERG: Right. So we are trying  
18 to compare this aerial photograph with this photograph  
19 taken standing out here on the street. So let me try  
20 this differently.

21 The distance from here -- I'm sorry. The  
22 distance from here to the parking lot, what is that  
23 distance?

24 MR. GIESEKING: It's about 30, at least 30.

25 MR. GARTENBERG: Okay. And if we look at

1 it here, what is the distance from the property line  
2 to the end of this disturbed area or mulch area, or  
3 whatever that is?

4 MR. GIESEKING: Probably at least 20.

5 MR. GARTENBERG: So there is roughly ten  
6 feet of grass strip before you get to the parking lot.  
7 And the incline, does the incline primarily occur in  
8 this area?

9 MR. GIESEKING: Right. It goes up pretty  
10 quickly in this area. And then it kind of levels out  
11 and goes up again.

12 MR. GARTENBERG: It looks like it is still  
13 going up.

14 MR. GIESEKING: It is. It is gradually  
15 going up.

16 MR. HUFF: Is that true of the entire  
17 property?

18 MR. GIESEKING: Yes.

19 MR. GARTENBERG: The incline is really from  
20 the property line to about where the grass starts?

21 MR. GIESEKING: Yes.

22 MR. GARTENBERG: Is that the information  
23 you were looking for, Mr. Chairman?

24 CHAIRMAN WALCH: Yes.

25 MS. TOFT: Do you have any --

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CHAIRMAN WALCH: Elevation.

MR. GIESEKING: I don't have any elevation. I mean, it's going to divide what they have to do for maintenance also. I mean, if they do agree for the Lux's to put the fence back up in there, or the Special School District that's their call, it does divide the maintenance. Right now the garden area, you know --

MR. GARTENBERG: May I ask one more question. I'm sorry. The difference in elevation from the street, from the private street to the parking lot, do you have a feel for what that is?

MR. GIESEKING: I would say probably roughly 6 to 8 feet. I would say no more than probably 6. Yeah. Probably 6.

CHAIRMAN WALCH: Would you agree you are putting a fence virtually at the bottom of the 6 or 8 feet?

MR. GIESEKING: I'm going to gain a two foot elevation from the roadway to where the fence is.

CHAIRMAN WALCH: If you went up the hill high enough to get another two feet in, put in a 6-foot fence, wouldn't that give you the same elevation as the 8-foot?

MR. GIESEKING: It would do that. It would

1 do that as far as sight line goes, yeah. But like I  
2 said, that's their call. This is an issue here.  
3 Moving it back up there doesn't stop anyone from  
4 walking around.

5 MS. TOFT: I mean the whole smoker thing is  
6 a problem, and I don't disagree that that would be  
7 offensive to have people coming over and trespassing  
8 on my property and smoking cigarettes. I think that's  
9 something the Special School District needs to address  
10 because, I mean, its employees are apparently  
11 trespassing in order to smoke a cigarette, but that's  
12 a problem that I think --

13 MR. GIESEKING: But the roadway is two  
14 projects.

15 MS. TOFT: What I'm looking at, so you  
16 understand where I'm coming from. We get people in  
17 here who want tall fences all the time. The Nobelli  
18 case, the argument was made about the playground, the  
19 balls and things going onto the adjacent property.  
20 That was a problem. And the Special School District  
21 admitted it was a problem, and that they would have to  
22 retrieve things from the neighbors' yard.

23 In this case I'm trying to determine what  
24 evidence you have that two more feet of fence will  
25 block out either car headlights, vehicular headlights,

1 or would reduce sound. Okay. I'm talking about a  
2 study. I'm talking about, you know, showing me where  
3 the headlight beams go, something. Because otherwise  
4 we get this request all the time for high fences  
5 because people want high fences. And setting aside  
6 the issue whether we have the right to regulate the  
7 Special School District, what evidence do you have  
8 that an additional two feet of fence is going to  
9 solve?

10 MR. GIESEKING: Other than us standing out  
11 there with a tape measure and holding it up and  
12 saying, yeah, that will go under this.

13 MR. HUFF: But you do get the opportunity  
14 to -- and if there is a tradition or isn't, they can  
15 build ten or 12.

16 MS. TOFT: You know, Counselor, threatening  
17 litigation is never a winning approach.

18 MR. HUFF: I know, but I'm just saying you  
19 do have lots of control here today.

20 CHAIRMAN WALCH: I think Mr. King wants to  
21 say something. Let him speak.

22 MR. KING: This is a picture you did not  
23 see. This is what this looked like. It was about 10  
24 or 15 or 20 feet high, and it was anywhere in 8 or 10  
25 feet in width along the roadway. Now Dr. Lux is going

1 to testify, I think, that he would be better to tell  
2 you a lot of these answers from a practical standpoint  
3 than I could be, or this man could be. But let me  
4 tell you how this all came about.

5 Last summer, late in the summer, the area,  
6 the buffer area that we show here started coming down,  
7 and Mrs. Lux contacted me and I contacted the Special  
8 School District. And by the time we got through this,  
9 half of it was down, and shortly thereafter it was all  
10 pretty well down at that time. I talked with the  
11 school district about it. We talked at great length  
12 about the loss of the property -- or the loss of the  
13 buffer area. They recognized what had happened, but  
14 after much negotiation we reached an agreement that we  
15 would put up a fence, the doctor would put up a fence,  
16 but we were told it had to be 8 feet high and it had  
17 to be two feet -- a foot to two feet within the school  
18 district's property to work. And that's where we --  
19 we took the -- the school district did, I did,  
20 Mr. Huff wasn't involved at the time. It was their  
21 general counsel, Mr. Hodge.

22 So Dr. Lux and his wife, Leslie, are the  
23 ones who I think can best explain what has happened to  
24 them since this has been taken down.

25 One other picture that I will show you --

1                   CHAIRMAN WALCH:  Are you representing  
2  Dr. Lux?

3                   MR. KING:  Yes.  This is after it has been  
4  cut by the school district on the private lane that is  
5  adjacent, the three houses.  We have to clean it up  
6  all the time.  That's part of why we wanted the fence.

7                   The two feet isn't a help to that part of  
8  it, but I will let Dr. Lux state what he was told.  
9  Basically, what I say to you is that we were told that  
10 the 8 foot would make the difference in the lights  
11 from the parking lot, you know, standard lights,  
12 because they do come down, and the headlights of the  
13 cars, because the fall from the -- from our fence to  
14 the backyard is about 15 feet, 15 to 20 feet all the  
15 way down to the pool and the patio area in the back  
16 yard.  This area where the bushes were removed goes  
17 all the way up past the pool.

18                  CHAIRMAN WALCH:  Who told you that?

19                  MR. KING:  Pardon me?

20                  CHAIRMAN WALCH:  Who told you that?

21                  MR. KING:  The fence people told us that.  
22 And that's who we relied on is the fence people.

23                  MS. TOFT:  The same gentleman who is here?

24                  MR. KING:  Well, his company.  I don't know  
25 if it was him, but his company told us that.  And I

1 will let Dr. Lux testify as to what is going on with  
2 him.

3 CHAIRMAN WALCH: Have you been sworn?

4 DR. LUX: I have.

5 Maybe I can clarify. The level of the  
6 driveway is here. The first rise is two feet, and the  
7 level of the parking lot is 8 feet from the driveway  
8 is 6 feet up. So if they put a 6-foot fence on that  
9 two foot rise, basically the top of the fence is flush  
10 with the parking lot, and any lights that come over  
11 are still going to come over. That's why we need an  
12 additional two feet. I hope that clarifies.

13 We were lucky for 22 years to have a  
14 barrier between the Special School and our house.  
15 From that parking lot you can see down into our  
16 garage, you can see down into our pool once the  
17 barrier was removed.

18 And so the request is -- we worked this  
19 agreement out with the Special School, to maintain  
20 their green space, to give us some privacy, and by  
21 putting up a 6-foot fence it doesn't shield us at all  
22 from the parking lot lights. The lights are all on  
23 all night long, obviously. They are bright lights.  
24 They shine into our back yard. People can see down  
25 into our pool from the parking lot. And it's for

1 those reasons that we are making this request.

2 Does anybody have any questions for me?

3 MS. LONG: Is there any reason why you  
4 couldn't build a fence on your side of the street?

5 DR. LUX: We put up some planting, but that  
6 would absolutely, I think, would just diminish the  
7 property value. It would just look terrible. It's  
8 not a natural. And again --

9 MS. FORSHAW: It's your front yard, isn't  
10 it?

11 DR. LUX: It's our side, but it's even two  
12 feet lower.

13 CHAIRMAN WALCH: You need to go up the  
14 hill, not down the hill.

15 MR. GARTENBERG: If I can interrupt. That  
16 opens up a whole different set of issues because that  
17 is a front yard. You would be dealing with some other  
18 things there.

19 MR. SCHLAFLY: You probably said it and it  
20 didn't stick with me. This elevation issue that Stan  
21 keeps bringing up. The location is 2 feet, that puts  
22 you at near grade.

23 DR. LUX: The road grade is here. The  
24 first rise is about two feet above.

25 MR. SCHLAFLY: Which is where the fence

1 goes down.

2 DR. LUX: Four feet from the road. And  
3 then another 6 feet up is the level. So when you are  
4 in the parking lot, you shine the lights, if you had a  
5 6-foot fence it would go right over the top.

6 MR. SCHLAFLY: By some agreement, you  
7 already have an agreement where this fence will go?

8 DR. LUX: Correct.

9 MR. SCHLAFLY: And that might be a  
10 practical solution, but you do need to get a permit.  
11 You need to get a permit, but you didn't need to get a  
12 variance from us, so you achieve the goal that you  
13 want but because by some other agreement you --

14 DR. LUX: We can do planting if the school  
15 wants to maintain. Obviously, if you moved it all the  
16 way up to the parking lot, we never discussed that to  
17 be honest with you.

18 MR. SCHLAFLY: We are not going to imply  
19 that.

20 DR. LUX: The grade goes -- is immediate to  
21 the rise here on the driveway. Then there is quite a  
22 bit of a plateau, and then there is a sharp rise to  
23 the parking lot. The school is planting some things  
24 so it actually cuts right through it. And so it's a  
25 compromise that we could all live with. It would give

1 us the privacy and allow them to continue with their  
2 green space.

3 MS. TOFT: Dr. Lux, could you use  
4 arborvitae or some other evergreen that would  
5 create -- since you have about four feet there, that  
6 would create a hedge?

7 DR. LUX: Sure. But we tried it. It's not  
8 the same. We put up bamboo. We had some other  
9 plantings in there for about 20 years. These plants  
10 here, it doesn't block the light. It doesn't block  
11 the sound. I hear their air conditioner compressor  
12 going on all night long. For some reason it's like an  
13 echo chamber. It bounces off the school and strikes  
14 our house.

15 MS. TOFT: I understand it was honeysuckle,  
16 which is an invasive plant.

17 DR. LUX: What is interesting is the  
18 additional 200 feet back between the school and my two  
19 neighbors is still 20 feet of honeysuckle. And so I  
20 appreciate that, but the school hadn't taken it all  
21 the way back, nor do I know of any plans to do that.

22 MS. TOFT: But, I mean, the honeysuckle  
23 loses its leaves in the winter. Do you get any --

24 DR. LUX: No. This wall is probably 20  
25 foot wide, the honeysuckle. If you look at the

1 original picture -- do we have that? The honeysuckle,  
2 do we have that picture? This honeysuckle goes all  
3 the way, 300 feet back. Basically just our portion of  
4 it was removed.

5 MS. TOFT: Are there any site plans that  
6 would show the actual elevations?

7 MR. HUFF: No. You normally wouldn't do a  
8 site plan for a fence. There is a location of it.

9 MS. TOFT: Well, if you are claiming height  
10 is the issue, then I would think elevations would be  
11 relevant before us. That's what I'm asking. If you  
12 are claiming the height of the fence is what is  
13 necessary, and you are not providing us with any  
14 elevation, and we don't have any evidence the  
15 additional -- I have heard what the doctor has had to  
16 say but I don't see how sound -- you have no evidence  
17 about how sound would be affected by an additional two  
18 feet of height. Can you give us something more  
19 substantive?

20 MR. HUFF: You are saying that you would  
21 need some type of site plan that would provide  
22 scientific evidence?

23 CHAIRMAN WALCH: All we need is elevations.

24 MS. TOFT: Elevations, and then some  
25 evidence that would support the headlights and the

1 noise. I don't know. It's my understanding that  
2 cedar fencing is largely ineffective as a sound  
3 barrier, and that's why I would determine that the use  
4 of cedar fences is better than using those tall  
5 concrete fencing. Right now I don't think we have  
6 anything that supports the noise claim. And without  
7 an elevation I don't think we have enough evidence. I  
8 don't see that happening.

9 MR. HUFF: I need to understand better what  
10 you are asking with respect to elevations. I think we  
11 are saying that we want to build a fence that is  
12 approximately two feet up from the road, that would be  
13 8-foot tall.

14 MS. TOFT: The claimed need, the hardship  
15 that you profess to have, is albeit as I understand  
16 it, it's not the school district's hardship, it's the  
17 hardship to the neighbors, is that it's light and  
18 sound, headlights in particular, vehicular headlights  
19 and noise from children. What I'm saying without any  
20 elevation showing us the grade of the lot on which the  
21 vehicles, which headlights come from, and any evidence  
22 as to how the additional two feet of fencing would  
23 reduce the incursion of light, and certainly how cedar  
24 fencing is going to address the sound issue.

25 MR. KING: But what you are looking for is

1 an engineer who would state that the 8 feet would be a  
2 better sound barrier than the 6-foot that would stop  
3 the noise and also be a better protection of the  
4 lights from bothering the Lux's as opposed to 6-foot.

5 MS. TOFT: I don't know it's for me to tell  
6 an applicant or a neighbor what is appropriate  
7 evidence, but I think you certainly suggested one  
8 route of evidence that we could consider.

9 MR. GARTENBERG: Would ground elevation  
10 contour lighting in that area be helpful?

11 MS. TOFT: Yes.

12 CHAIRMAN WALCH: Yes. But only -- only in  
13 that limited area. We don't need it for the whole  
14 property.

15 MR. KING: Just for that 140 feet.

16 CHAIRMAN WALCH: Just for that 145 feet.

17 MR. HUFF: I guess I'm -- hypothetically,  
18 if we came in with ground elevation and contour lines  
19 and provided that elevation, the sense I'm getting is  
20 you all think we should move the fence up the hill.

21 CHAIRMAN WALCH: It's not a question --  
22 it's a question of whether you need a variance. We  
23 have enough problems with our city council that thinks  
24 we are too lenient in trying to protect Ladue's  
25 homeowners. We don't want to just give out a variance

1 just without somebody coming in and proving some kind  
2 of hardship. It kind of sticks out as a sore thumb as  
3 night follows day you get as much protection from a  
4 6-foot fence that is two feet higher in elevation than  
5 you would an 8-foot fence in lower elevation.

6 MR. GIESEKING: If the fence is on the  
7 property like, say, undetermined amount, say, 10 or 20  
8 feet, is there still a restriction on height, or can a  
9 homeowner do whatever height they want when they are  
10 away from the property line?

11 MR. GARTENBERG: The answer to that  
12 question is yes, there is a restriction. It's 6 feet.

13 MR. GIESEKING: Regardless of where they  
14 are at?

15 MR. GARTENBERG: For purposes of what you  
16 are wanting to do, 6 feet is the limit.

17 MR. GIESEKING: You have to have a variance  
18 no matter where you put it if you want to put a 8-foot  
19 on that property?

20 MR. GARTENBERG: Yes.

21 MS. FORSHAW: I would like to suggest that  
22 we go ahead and hear from everyone else who wants to  
23 speak.

24 CHAIRMAN WALCH: I think that's right. Do  
25 you gentlemen have anything further to say? It is 20

1 till 6:00. Does anybody else want to speak on behalf  
2 of the appellant first? Does anybody want to speak on  
3 behalf of the public in opposition to this  
4 application?

5 (At this time Ms. Schoedinger was sworn in  
6 by the court reporter.)

7 MS. SCHOEDINGER: I think that what I can  
8 fill in will make sense of this whole thing. My  
9 husband and I own the property across from Dr. and  
10 Mrs. Lux that we bought solely to landscape so that  
11 the house where we live, which shares a property line  
12 with our empty house, we were not looking at the  
13 traffic along Litzsinger while we ate breakfast. So I  
14 have been landscaping that, and we don't see the  
15 traffic anymore. But a few years ago when I sat on  
16 Ladue's Planning and Zoning Board, our first directive  
17 from the then mayor was we are to protect the property  
18 values of the residents of Ladue.

19 We are very fortunate that we have a zoning  
20 code that was incorporated with this community, the  
21 Village of Ladue on the day of incorporation. Very  
22 few communities in the country have this. If you and  
23 the Planning and Zoning Board will stick by the zoning  
24 ordinance, property values will be maintained.

25 So it is always understood that communities

1 erode from the edges, and the plan that the code had  
2 written into it was if a community like Ladue which  
3 aspired to have a reputation like Lake Forest outside  
4 of Chicago, that they should buffer their edges with  
5 educational institutions.

6 The libraries, Litzsinger Special School  
7 District were two efforts that the city made in order  
8 to get educational organizations.

9 Now, the best laid plans, and I'm guilty of  
10 this, can go with unintended consequences. So my  
11 garden club and the Deer Creek ordinance, or the Deer  
12 Creek clearance organization, there has been a push to  
13 reduce the amount of Japanese Honeysuckle considered  
14 to be an invasive species. The only thing that is  
15 worse is bamboo as far as invasion. Bamboo is known  
16 to walk underground with cirriferous propagation and  
17 pop up right through asphalt, will be right into the  
18 Special School District. So I am the one who paid to  
19 have Japanese Honeysuckle, my husband and I, removed.

20 And as far as the next hundred feet, the  
21 Special School District will be building an auditorium  
22 and extended playground starting in the summer of  
23 2016, and all of the honeysuckle is coming out along  
24 that whole street.

25 So I agree that there is a very definite

1 light issue for Dr. and Mrs. Lux. It's very  
2 difficult, because when I try to call, you can't leave  
3 a message, and Mrs. Lux doesn't want to talk, and I  
4 haven't seen Dr. Lux there. So it's been very  
5 difficult.

6           But if I can give you the full story. I  
7 paid for this to remove the honeysuckle. We are  
8 currently, because there are very few entrances into  
9 the community of Ladue that aren't very attractive.  
10 So there is this beautiful opportunity, there is this  
11 space as large as a football field. It's been solid  
12 turf with broken down trees and no maintenance. They  
13 did have a string of arborvitae, all of which died  
14 because they weren't watered. So we have gone in to  
15 engineer the soil, plant species that are unusual but  
16 tolerate crazy 20-inch snowstorms in May or April  
17 without breaking, that three seasons of color, and it  
18 is true there was a 20-foot section depth, and about  
19 50 feet long of honeysuckle that I did remove and  
20 hauled it away. In the process I left every bit of  
21 the vegetation that was planted by Dr. and Mrs. Lux.  
22 I even left two honeysuckle. Even though they were  
23 planted by the birds, I left them in the row of level  
24 leaf viburnum. I also hauled away piles of debris  
25 that came from the little paths that went through the

1 level leaf viburnum. Which I don't know where that  
2 came from, but I also paid to have that carried away.

3 I know from having about 400 feet along  
4 Litzsinger and Babler Lane that I pick up probably 30  
5 cigarette butts a week, or the boys that work for me  
6 do. So the cigarette butts is a problem. There is a  
7 smoker at the school specifically because there is a  
8 chair there with cigarette butts at the corner.

9 Now, I proceeded on this project to  
10 beautify the entrance of Ladue having spoken with Dan  
11 Kelly who was the principal at the Special School  
12 District. And the agreement was that we would incur  
13 all expenses, and that we would do a class rate job  
14 for them, and that it would be educational in its  
15 intent. So the area that is across from the Lux's,  
16 the plans are to put in something called deadwood  
17 arborvitae. Anyway, it's a June-berry, and it's a  
18 common shrub-like tree. There is a grove at Missouri  
19 Botanical Garden. And these go to 30 feet.

20 Now, the honeysuckle also will go to 30  
21 feet, but there is a huge push and a big educational  
22 project throughout the public school system in  
23 Missouri, we are very fortunate that we have the best  
24 funded conservation commission in the country, and  
25 it's their effort to get rid of this. This is like a

1 comedy where it's totally out of hand and could have  
2 been solved by conversation it seems to me.

3           So if anybody has any questions, I'm the  
4 one to ask because I'm the one that's been doing the  
5 work.

6           MR. SCHLAFLY: I have a question. Do you  
7 have opposition to the 8-foot fence or do you support  
8 the 8-foot fence?

9           MS. SCHOEDINGER: I think that the 8-foot  
10 fence is insane because -- nobody has spoken about  
11 maintenance on it. It does not prevent the light. I  
12 went up there after I found out from Dan Kelly that  
13 the lighting was the big issue, and it's bad. It is  
14 terrible.

15           MR. SCHLAFLY: What light is that?

16           MS. SCHOEDINGER: The lighting from the  
17 school to the Luxs' property is bad. An 8-foot  
18 fence -- a 12-foot fence wouldn't keep it out. If  
19 these native trees are given three or four years. I  
20 guess I would say that I think Dr. and Mrs. Lux have  
21 been very, very fortunate to have had honeysuckle  
22 there that was not on their property.

23           I know when I was on the Zoning and  
24 Planning Board Horner and Shifrin would come in and  
25 they would say no fence is going to keep out the

1 noise. You need 100 feet of vegetation to totally  
2 block noise. That's the engineers from Horner and  
3 Shifrin.

4 We will get the effect, we have only got  
5 about a 35-foot strip that is parallel to the yard  
6 portion on Rolling Hills that is the Luxs' complaint.  
7 We will have height there. I have put emilancer plump  
8 (phonetic) in my empty house lot that were four feet  
9 tall five years ago, and they are probably 18 feet  
10 tall now. So we will get that back.

11 I think the fence is crazy. The bamboo is  
12 impenetrable. It's invasive beyond anything  
13 honeysuckle could do, and it is ugly. And when it  
14 goes to minus 10, it's all brown, it looks like a  
15 bunch of paper bags there, raggedy, and it takes a lot  
16 of maintenance.

17 So the fence is going to end up on the  
18 school's property being at taxpayer expense. To me,  
19 this looks like an intent to get around Ladue zoning  
20 by the Luxs' donating money to pay for a fence and  
21 it's the squeaky wheel that gets the grease. So you  
22 have got this squeaky homeowner offering to pay for it  
23 to get around Ladue's code. And that's my take on it.  
24 And I think it's unfortunate, because I think  
25 conversation would probably have solved this, but

1 Mrs. Lux is not available for conversation.

2 CHAIRMAN WALCH: I think we have got the  
3 gist of your position. Thank you for your comments.

4 MS. SCHOEDINGER: You are welcome.

5 CHAIRMAN WALCH: Does any other member of  
6 the public wish to speak to this case? All right.

7 MR. HUFF: I have a procedural question.  
8 In reviewing the procedural code about the appeal  
9 process, is there a time limit that an applicant must  
10 file their appeal after denial?

11 MS. FORSHAW: I believe there is.

12 MR. GARTENBERG: There is a 30-day limit,  
13 and I don't know if it's in the zoning code or in the  
14 board's ruling, but there is a 30-day limit.

15 MS. FORSHAW: Or maybe in the state  
16 statutes.

17 MS. LONG: You mean if there was a denial  
18 of the Board of Adjustment?

19 MR. KING: Unless it's in your ordinances  
20 or your state statutes it doesn't make a difference  
21 whether it's in your rules if it's not in the  
22 ordinances.

23 MR. GARTENBERG: The ordinances makes  
24 reference to the fact that the board may establish its  
25 own rules.

1           CHAIRMAN WALCH: I think we are getting two  
2 different things. We have an internal rule that we  
3 won't accept -- if there is a denial of an  
4 application, we won't accept an application for a  
5 new -- a new application for at least six months after  
6 that denial. That's our own rule.

7           MR. HUFF: We would request --

8           CHAIRMAN WALCH: I think that's state law.  
9 I think you have to figure out what the state law is.

10          MR. SCHLAFLY: I think they would like to  
11 table this.

12          CHAIRMAN WALCH: That was going to be my  
13 next question. Would you like to continue this?

14          MR. HUFF: Sure. I represent the  
15 applicant. I think the best thing to do is to table  
16 it and determine, based on the comments that you have  
17 all have provided, what the next step is as opposed to  
18 letting it go to a vote.

19          CHAIRMAN WALCH: I think that makes a lot  
20 of sense. We will be happy to continue the case, and  
21 when you are ready, contact the building department  
22 and they will get you on the next docket that's  
23 available at that time.

24          MR. HUFF: Okay. We appreciate your time.  
25 Thank you.

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CERTIFICATE OF REPORTER

I, Bobbie L. Lubber, Registered Professional Reporter, Certified Court Reporter, and Notary Public within and for the State of Missouri, do hereby certify that the meeting aforementioned was held on the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.



Bobbie L. Lubber, RPR, CCR #621

