

DOCKET 1132

DATE OF HEARING

January 7, 2013

NAME

Dick Rogers

DESCRIPTION OF PROPERTY

601 S. Price Road

CAUSE FOR APPEAL

Relief from the decision of the Building Official for an addition with violates Section V, C, 1, (a) & (b) of Zoning Ordinance 1175.

RULING OF THE BOARD

The meeting was continued to allow the applicant to revise the plan.

MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
Monday, January 7, 2013

DOCKET 1132  
601 S. Price Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Tuesday, September 4, 2012, at City Hall.

The following members of the board were present:

Ms. Robbye Toft, Vice-Chair  
Ms. Liza Forshaw  
Mr. David Schlafly  
Ms. Elizabeth Panke  
Mr. Fred Goebel

Also present were: Mayor Anthony M. Bommarito; Mr. Michael W. Wooldridge, Assistant to the Mayor / City Clerk; Mr. Michael Gartenberg, Building Official.

Vice-Chair Toft called the meeting to order. Notice of Public Hearing, as follows:

**NOTICE OF PUBLIC HEARING  
ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE, MISSOURI  
DOCKET NUMBER 1132**

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 Dick Rogers, 601 S. Price Rd., St. Louis, MO 63124, requesting relief from the ruling of the Building Official who declined to issue a permit for an addition which violates Section V, C, 1 (a) & (b) of Ordinance 1175.

The hearing will be held at 4:00 p.m. on Monday, January 7, 2013, 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

(Transcript attached as part of the minutes)

Ms. Toft continued the meeting for the applicant to revise their plan.



Robbye Toft, Chairman

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF:            )  
  )  
DICK ROGERS                    ) Docket No. 1132  
601 SOUTH PRICE ROAD        )  
LADUE, MISSOURI 63124        )

Monday, January 7, 2013

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BOBBIE LUBER, LLC  
P.O. Box 31201 ~ 1015 Grupp Road ~ St. Louis, MO 63131  
314.993.0911

**CERTIFIED COPY**

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ZONING BOARD OF ADJUSTMENT

CITY OF LADUE

LADUE, MISSOURI

IN THE MATTER OF:            )  
                                          )  
Dick Rogers                    ) Docket No. 1132  
601 South Price Road        )  
Ladue, Missouri 63124        )

BE IT REMEMBERED that on the 7th day of  
January, 2013, hearing was held before the Zoning  
Board of Adjustment of the City of Ladue, Missouri, at  
Ladue City Hall, 9345 Clayton Road, in the City of  
Ladue State of Missouri 63124, regarding the  
above-entitled matter before Bobbie L. Lubber,  
Certified Court Reporter, Registered Professional  
Reporter, a Notary Public within and for the State of  
Missouri, and the following proceedings were had.

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

BOARD MEMBERS:

- Ms. Robbye Toft, Chairman
- Ms. Liza Forshaw
- MR. George Goeble
- Ms. Elizabeth Panke
- Mr. David Schlafly

Also Present:

- Mr. Michael Wooldridge
- Mr. Michael Gartenberg
- Mayor Anthony Bommarito
- Mr. John Fox
- Mr. Dick Rogers
- Mr. Troy Duncan

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  
(314) 993-0911

1                   (The Meeting of the Zoning Board of  
2 Adjustment of the City of Ladue was called to order at  
3 4:00 P.M.)

4                   CHAIRPERSON TOFT: Good afternoon, and  
5 welcome to the Ladue Zoning Board of Adjustment. My  
6 name is Robbye Toft. I am the vice-chairman. We will  
7 start today's proceedings with general procedural  
8 matters that will be incorporated into the record,  
9 which are Docket Numbers 1132 and 1133.

10                  I would first like to introduce the members  
11 of the Board. To my far right is Mr. David Schlafly.  
12 To my immediate right is Liza Forshaw. I introduced  
13 myself, I'm Robbye Toft. To my immediate left is Fred  
14 Goeble. And to my far left is Elizabeth Panke. We  
15 also have present this afternoon Mayor Bommarito, Mike  
16 Wooldridge, the City Clerk, and Mike Gartenberg, the  
17 Deputy Building Commissioner. Pardon me, we also have  
18 Mr. Fox, who I didn't see over there. Welcome.

19                  The Code of Ordinances of the City of Ladue  
20 is incorporated into the record in both Docket Number  
21 1132 and 1133. The Zoning Code of the City of Ladue,  
22 Ordinance 1175 as amended, will be by the Board as the  
23 basis for reaching a decision in the two zoning appeal  
24 cases which will be marked as Exhibit A, and will be  
25 included in the record of the docket numbers I just

1 read.

2           As part of the record in the appeal we will  
3 hear this afternoon I will explain our process. The  
4 appellant in each appeal will be given an opportunity  
5 to present reasons why he or she feels that a variance  
6 is warranted based upon practical difficulty or undue  
7 hardship. Reasons of economic considerations and  
8 self-inflicted hardship will not be considered by the  
9 Board. The Board may have questions of each  
10 appellant. Following that, any member of the audience  
11 who wishes to address the case will be heard. Then  
12 the portion of the hearing which is for public comment  
13 will be closed and the Board will discuss amongst  
14 themselves and may ask additional questions of either  
15 the city staff and/or the appellant. After the  
16 discussion, I will ask if any member of the Board  
17 wishes to propose a motion to approve the requested  
18 variance. If a motion is proposed and seconded by the  
19 Board, we will then vote on the motion. Otherwise I  
20 will ask the Board to vote on whether the requested  
21 variance should be granted. Four out of five members  
22 of the Board must vote in the affirmative in order for  
23 a variance to be granted.

24           Finally, I will tell you, the members of  
25 the Board have visited the sites for which each of the

1 appellants is seeking a variance this afternoon.  
2 Since we know what the sites look like, the appellants  
3 do not need to describe the physical attributes or  
4 characteristics of the site to us.

5 I'm going to open the hearing now, which  
6 will be Docket Number 1132, and that is the  
7 application of Dick Rogers for 601 South Price Road,  
8 St. Louis, Missouri, requesting a variance --  
9 requesting relief from the ruling of the Building  
10 Official who declined to issue a permit for an  
11 addition which violates Section V, C, 1(a) and (b) of  
12 Ordinance 1175.

13 I would ask at this time that the appellant  
14 would please come forward, and anybody who wishes to  
15 speak, if you would be sworn in at this time.

16 (At this time Mr. Rogers was sworn in by  
17 the court reporter.)

18 CHAIRPERSON TOFT: If you would have a  
19 seat, please, and then I will have the Building  
20 Official, if you would be kind enough, please,  
21 Mr. Gartenberg, to explain the reason or reasons why  
22 the plans were disapproved so the audience and members  
23 of the Board will have a clear understanding of the  
24 issues in this case.

25 MR. GARTENBERG: Sure. The subject

1 property is in the B zoning district. All setbacks in  
2 the district are 50 feet from the property line. The  
3 proposed project is the extension or addition to  
4 existing accessory structure, the garage.

5 The garage currently extends slightly into  
6 the required 50-foot rear yard. The proposed addition  
7 is 5 feet wide, thus increasing the degree of  
8 nonconformity of the accessory structure. And as  
9 proposed would bring the accessory structure to a  
10 point approximately 38 feet within the property line.

11 CHAIRPERSON TOFT: Thank you very much.  
12 The following documents will be included in the record  
13 as exhibits in this appeal. First the notice of  
14 public hearing, which will be marked as Exhibit B.

15 The denial letter from the Building  
16 Official dated December 17th, 2012, which will be  
17 marked as Exhibit C.

18 The list of residents to whom the notice of  
19 public hearing has been sent will be marked as Exhibit  
20 D.

21 The appellant's letter requesting a  
22 variance dated December 17th, 2012, and any other  
23 letters in support of or opposition of the request for  
24 variance which will be marked as Exhibit E.

25 Mr. Wooldridge, do we have any letters in support of

1 or in opposition to this case.

2 MR. WOOLDRIDGE: No letters were received.

3 CHAIRPERSON TOFT: Thank you. The entire  
4 file pertaining to the application, including all  
5 memoranda from staff and consultants to the Zoning  
6 Board of Adjustment and the City of Ladue, which will  
7 be marked as Exhibit F.

8 There being no letters from the public, we  
9 will now turn the case over to the appellant and  
10 anyone else who would like to speak on your behalf.  
11 If you would be kind enough to come forward, Mr. Dick  
12 Rogers, and I will turn the hearing over to you.

13 MR. GARTENBERG: If I can interrupt for  
14 just a moment. I apologize. The site plan, I think  
15 that I have actually misinterpreted something on the  
16 site plan. I think the existing condition -- I'm  
17 quite confident, the existing condition is such that  
18 the garage is 38 feet from the rear property line, and  
19 the addition would bring it 5 feet closer.

20 MR. ROGERS: Yes. That is closer. We are  
21 not exactly sure when this garage was added to the  
22 house. The house was built in about 1903. According  
23 to the pictures that we have seen, maybe in the '40s,  
24 or something like that. It really is not large enough  
25 for two-car garages. What we want do is make it

1 effectively a two-car garage.

2 With the setbacks, we have talked to  
3 Burroughs, they have no objection to going back like  
4 that, going to the other side, kind of turning the  
5 garage around with the setbacks. Essentially what we  
6 are trying to do is make it an effective two-car  
7 garage out of it.

8 CHAIRPERSON TOFT: How many garages does  
9 the house currently have? I knew I could puzzle you  
10 with that question.

11 MR. ROGERS: This is the garage right here  
12 we are talking about, underneath the house. There is  
13 a greenhouse here. At one time these were garages  
14 underneath there. There is a slope here, and during  
15 an ice storm I guarantee you no one is going up or  
16 down that slope. I don't think anybody has used it  
17 for ages.

18 Effectively this is not a good garage.  
19 This is the only one we have.

20 CHAIRPERSON TOFT: It appeared where the  
21 greenhouse was there may have been at one time places  
22 for three older-style cars with smaller dimensions.

23 MR. ROGERS: There is one. There is a  
24 double-door right here. Single door right here. It  
25 would be hard to put a car through there. Plus you

1 have the greenhouse there right now. It's really  
2 sloped down. It goes down, I think, about 8 feet, and  
3 very slick.

4 CHAIRPERSON TOFT: Effectively right now  
5 you have functionally a garage which will accommodate  
6 one car.

7 MR. ROGERS: Essentially. You may get two  
8 in banging doors and stuff.

9 MR. SCHLAFLY: We looked at the garage. 5  
10 foot, we didn't know whether that was very helpful for  
11 you. Is the garage door high enough for you to drive  
12 an SUV into it?

13 MR. ROGERS: Yes, it is. We have an SUV.

14 MS. PANKE: And the garage seemed very  
15 short as well.

16 MR. ROGERS: It is. Just because the -- we  
17 don't want to go this way any farther, and we don't  
18 want some complications in here going this way. We  
19 have an SUV. We have about 5 feet from there to the  
20 end. As long as we get enough to walk around in  
21 there.

22 CHAIRPERSON TOFT: It appeared that to the  
23 east there is a walkway.

24 MR. ROGERS: Yes.

25 CHAIRPERSON TOFT: Do you know the

1 dimensions of that brick walkway to the east.

2 MR. ROGERS: 6 feet, give or take. A few  
3 inches, I think, in the area. In looking at some of  
4 the old pictures, that's the original of the house  
5 itself. Original wall and original section down where  
6 the garage is.

7 CHAIRPERSON TOFT: Has any consideration  
8 been given to -- and maybe it would require you to  
9 build a whole new garage, putting your addition over  
10 that walkway as opposed to adding to the garage?

11 MR. ROGERS: One of the problems in here is  
12 you have pretty good fall from here down to here is  
13 probably 8 feet, and so you are going to have to have  
14 a very strong wall in there. And if you move this in  
15 here, there could be complications. Plus, in fact,  
16 this is a walkway from getting through in the driveway  
17 into the back of the house. There is a back door  
18 right here right now.

19 MR. SCHLAFLY: The kitchen.

20 MR. ROGERS: The kitchen is right here.  
21 Essentially this is the kitchen area in here. There  
22 are actually two maids' room, a man's room. Back in  
23 the 1940's when we redid anything last. Then a coal  
24 area over here where they had to get up and shoveled  
25 coal.

1                   CHAIRPERSON TOFT: For purposes of the  
2 record, you are saying the kitchen on the plat that we  
3 have is the area that would be 39.7 foot by 34 feet,  
4 roughly this would be the kitchen?

5                   MR. ROGERS: Yes, it is going to be the  
6 kitchen. It is the kitchen, and it is going to be the  
7 kitchen.

8                   MR. SCHLAFLY: I'm just going to put it  
9 out. I don't know if all of us, but is this garage  
10 really productive for you kicking out 5 foot?

11                   MR. ROGERS: It would be great to go  
12 farther, but we are trying to minimize it.

13                   MR. SCHLAFLY: We didn't know if you were  
14 going to tear down and build a proper garage at some  
15 point.

16                   MR. ROGERS: The intention was to take this  
17 wall out here. We don't want to touch this, because  
18 of the structural nature of it.

19                   MS. PANKE: But you have to redo the roof.

20                   MR. ROGERS: We want to put slag wood on  
21 the side.

22                   MS. PANKE: I don't know this is any of our  
23 part, but it's not connected to the house, it's not  
24 large enough.

25                   MR. ROGERS: One of the things we have

1 already gone through for the permitting, because we  
2 are planning on doing some stuff in here, is connect  
3 this right here right into the garage.

4 CHAIRPERSON TOFT: Closing off your  
5 walkway?

6 MR. ROGERS: No. No. The walkway will  
7 still be there. It will be a breezeway. It won't be  
8 enclosed.

9 MR. SCHLAFLY: Some kind of roof?

10 MR. ROGERS: Yeah.

11 CHAIRPERSON TOFT: Mr. Rogers, I guess one  
12 of our concerns is that the encroachment on the  
13 backyard in lieu of potentially additional expense for  
14 structural work to allow you to expand the patio to  
15 the east rather than to the west. I mean, it sounds  
16 as if the option does exist to move -- pick up 5 or 6  
17 feet to the east, it's just that it would involve more  
18 structural work to support an eastern wall; is that  
19 what you are saying?

20 MR. ROGERS: It would require more, yeah.  
21 And we lose the use of this walkway in here, which is  
22 a major walkway through this part to this part of the  
23 house. It has been over the years.

24 I have been in the house for 45 years, and  
25 we are used to walking patterns. You take out this,

1 and we lost that, which is not effective in doing  
2 that.

3 CHAIRPERSON TOFT: Is there some reason why  
4 you couldn't swing, the walk over on the west end of  
5 the house wouldn't require a variance. Do you know  
6 what I'm saying?

7 MR. ROGERS: People aren't going to use it.  
8 This is going to be the direct line to go through, so  
9 you would block that.

10 MS. PANKE: It would get the garage closer  
11 to the back door too if you came that way to get to  
12 the house more quickly.

13 CHAIRPERSON TOFT: Does that make sense?  
14 One of the requirements that we have is we are not  
15 here to redesign.

16 MR. ROGERS: I understand that.

17 CHAIRPERSON TOFT: If there are other  
18 alternatives that would not require a variance would  
19 not --

20 MR. ROGERS: We talked about taking it and  
21 trying to turn it and doing all of this, but then you  
22 run in the setback on this side, which is further,  
23 depending on how far you have it, because you have  
24 this whole slope area because you fill this in. You  
25 would lose the use of this greenhouse here. We

1     figured the best way is to bump it out this way.

2                   CHAIRPERSON TOFT:   Does anyone on the Board  
3     have any questions of the applicant or is there anyone  
4     else who wishes to speak.

5                   MR. GOEBLE:   I was curious.   This is a very  
6     old house.   I was wondering if we knew what the  
7     original setbacks of the property were.   I'm guessing,  
8     like many of the older properties, were like 15 or  
9     20-foot setbacks year and years ago.   Do we know what  
10    it was years ago?   50 foot is a fairly recent one.

11                   MR. WOOLDRIDGE:   This house was built in  
12    1903, as Mr. Rogers indicates.   That was before the  
13    city was incorporated.   And I'm assuming that it was a  
14    village then in 1903, but I'm not sure.   There may not  
15    have been any setbacks.

16                   MS. PANKE:   It was probably a big farm.

17                   MR. ROGERS:   There was some walls.  
18    Probably a fence.   We found an aerial view.   You can  
19    see there is no house next to it on either side.   You  
20    can see the orange grove through the groves and the  
21    trees and chickens and hawks and the whole thing.   I  
22    think it was actually -- this was the farmhouse.

23                   The other thing, if we take this off, right  
24    now we have roses in here, and we have growing  
25    planting up on the side here.   If we take this out

1 then we will lose all of that. From an aesthetic  
2 point of view we will also lose that. I don't know if  
3 that makes any difference to you all. We are trying  
4 to make this thing as nice as we can from this view  
5 here.

6 MR. GOEBLE: It seems like we were already,  
7 as they say, a little bit pregnant, and then the  
8 setback is 50 feet, and the building is only 38 from  
9 the property line, so whether there is an addition or  
10 not an addition it is still into the setback. It's  
11 just a question of degree, whether it's 5 feet more  
12 into it or not. All the things you are counting could  
13 be advantages even if the variance is granted or not  
14 granted because it's, like you say, a little bit tight  
15 even after that, but they don't need a variance of  
16 increasing it to the -- I guess that's what, west?

17 CHAIRPERSON TOFT: That's west. This is  
18 east.

19 MR. GOEBLE: The existing building is  
20 already significantly into the setback.

21 CHAIRPERSON TOFT: Yes.

22 MR. ROGERS: There is a question. We did  
23 the 5 deep as the minimum. We can certainly  
24 appreciate it if we can get more than that, but,  
25 again, it's been filed for 5 feet, that's what the

1 plans are. We are just trying to keep it to a  
2 minimum.

3 CHAIRPERSON TOFT: Is there anyone else who  
4 wishes to speak in this case, any member of the public  
5 or anyone else? There being no one else I'm going to  
6 close the public portion of the meeting and the Board  
7 will discuss the case amongst itself. And I will open  
8 the floor to anybody. Fred, you were speaking.

9 MR. GOEBLE: It's interesting. It's a  
10 beautiful piece of property on Price Road there, and  
11 it's curious, because to set the house so far back is  
12 interesting. It could be years and years ago someone  
13 may have had more property and split it and sold it  
14 off and thought that would be enough. Of course, here  
15 we are in 2013, and it's a little bit tight back  
16 there.

17 It doesn't strike me to be problematic in  
18 the sense that it's already significantly over, and  
19 making the building functional in its current location  
20 would be a goal. If they get into design and find  
21 they need more space, I think increasing it or coming  
22 onto the part of the property that's not in the  
23 setbacks seemed like a great idea.

24 I mean, whether it's 38 feet back off of  
25 the property line, or 33 feet back, we are already

1 well within the 50-foot setback. So it doesn't raise  
2 a concern for me.

3 CHAIRPERSON TOFT: What about the fact that  
4 there are 6 or 8 feet of room to the east to not  
5 exacerbate the --

6 MR. GOEBLE: That's a good point. Even  
7 suggesting a greater depth. Maybe there is a way to  
8 do that, or other ideas about the design.

9 MS. PANKE: To me it's a beautiful old  
10 home, and obviously the whole thing of having the big  
11 sweeping front yard. This is a very inconsequential  
12 building. I know that is not anything we should  
13 probably be concerned with.

14 If you are going to put effort into making  
15 it larger and have to come a little further into the  
16 noncompliance, you should -- when you have all of this  
17 other property. I know we don't want it up in the  
18 front yard, but I'm wondering if there isn't a way to  
19 make it within the setback, and they get a garage that  
20 can be of value to today's family.

21 Do you want to connect it to the house? I  
22 know it means tearing it down, but we are already  
23 tearing out. It's a concrete block construction.  
24 It's already an issue to tear it down. I'm wondering  
25 if you really want to put that much effort into that

1 building, that little building. But maybe that's not  
2 our concern.

3 CHAIRPERSON TOFT: Anyone else.

4 MS FORSHAW: I guess I would note this is a  
5 very minor increase encroachment on the setback. The  
6 setback was adopted, I guess, long after the home was  
7 built. The adjoining property owner, who is most  
8 affected by it is John Burroughs School, and  
9 institutionally used, and apparently they have no  
10 objection to it. I guess I would say the impact on  
11 the adjoining property is truly minimal.

12 MR. GOEBLE: For the difference between  
13 being entirely out of setback or into it, I would  
14 maybe agree. We are already well into it regardless  
15 of whether we add to it or not.

16 CHAIRPERSON TOFT: So here, I will go and  
17 be the historian. I think that we have generally  
18 tried to grant variances if they are modest in nature  
19 in order to allow people to have two-car garages. It  
20 being thought that two-car garages are sort of a  
21 minimum standard in a community such as Ladue. I know  
22 from experience that I had a three-car underground  
23 garage like that, and it was very limited in terms of  
24 height and bad weather and it had its limitations. I  
25 considered the three garage bays on the lower level to

1 be effectively unusable.

2 MR. ROGERS: It's a nice greenhouse area.

3 CHAIRPERSON TOFT: Yes. My concern, very  
4 obviously, is that -- I appreciate the charm of the  
5 brick walkway, but there is an alternative there that  
6 would not exacerbate, you know, an encroachment that  
7 is already 22 -- 25 percent of the backyard setback.  
8 And while John Burroughs is institutional, the  
9 structure that is immediately to its west appears to  
10 me to be a residence. And so whether it's  
11 institutional or not, the people living in that  
12 residence are getting a garage, you know, the least  
13 desirable of all structures, push closer to their  
14 home.

15 And I'm just concerned -- I'm not sure in  
16 the 7 or 8 years that I have been on the Board that we  
17 have given a variance to either encroach or exacerbate  
18 an encroachment on the rear yard setback or side yard  
19 setback when there was alternatives available that  
20 would not require more encroachment. So, that's my  
21 concern.

22 MR. ROGERS: Is it possible for me to make  
23 just one comment because of the open or close, or  
24 something like that.

25 Your question was, what were the setbacks.

1 This used to be all one property. The Wallaces owned  
2 this, the white house, the house behind it, all the  
3 farmland, the houses on either side of it. That's why  
4 when he built the house he unfortunately put it in the  
5 back of the lot. Right there they owned land.

6 MR. GOEBLE: It was probably in the middle  
7 of the property when he built it.

8 MR. ROGERS: Exactly, if not farther  
9 forward. And the actual fact, this driveway used to  
10 continue on back into Burroughs property by that  
11 farmhouse, or that house that's back there now.

12 MR. SCHLAFLY: I think I asked Mike, and  
13 I'm going to ask the question again. If he builds 5  
14 feet going east and doesn't go west, is it necessary  
15 to come in here for a variance? I know you asked  
16 that, but I'm still puzzled by it. Does he still  
17 need --

18 MR. GARTENBERG: He is not increasing the  
19 degree of nonconformity. He can or he may make  
20 structural alterations to the structure so long as he  
21 is not -- - any reason that it is not in conformity.

22 MR. SCHLAFLY: So he can kick out and build  
23 5 feet to the east and not have to be here with us.

24 CHAIRPERSON TOFT: Again, we are not in the  
25 design business, but you could leave one garage bay

1 open with no doors so people could walk through if he  
2 wants to preserve the walkway. But I can't think of a  
3 case where we have granted a variance -- now you are  
4 talking about a structure with this additional 5 feet  
5 on it. It would be almost 33 percent of what, 40  
6 percent of approaching in the rear yard setback when  
7 there is an alternative that arguably, I mean, well,  
8 it might require some structural work for the existing  
9 wall there for the structure. I mean, we are not  
10 supposed to consider economic hardship in our  
11 decision-making, and so that's my concern.

12 From my tenure on the Board this would be,  
13 I believe, an unprecedented variance to allow this.  
14 So I throw that out. So, is there further discussion?

15 MR. ROGERS: One other thing. May I?

16 CHAIRPERSON TOFT: Certainly. I will allow  
17 you to.

18 MR. ROGERS: If we do go east, then you are  
19 going to have one solid wall all the way down, from  
20 the garage all the way down and down in the slope as  
21 far as aesthetically. Right now it's broken up with  
22 roses and planting on the side of the garage. We  
23 won't be able to do that. Aesthetically it's not  
24 going to be very pleasing for people looking up there  
25 and from the Meyers looking over from the side.

1                   Just as a comment, that's all. I can't  
2 remember if it's 6 feet. Maybe 5 and a half feet or  
3 whatever it is. That's including the wall itself.  
4 It's a walkway plus the original wall.

5                   CHAIRPERSON TOFT: I can -- we can -- at  
6 this point I will call and see if anyone would like to  
7 propose a motion for a variance. I should say to you  
8 that if there is no motion, and no second, then this  
9 would fail for lack of a motion.

10                   Alternatively, I can call it, if we have a  
11 motion and a second and we can vote on it, and if you  
12 don't get four affirmative votes then it will fail.  
13 So, while we don't normally offer continuances you  
14 have heard the discussion, and I would at this time if  
15 you would like to ask for a continuance on this case  
16 to go back and consider some alternatives for this  
17 garage given what you have heard us say, I think we  
18 would entertain a request for a continuance, or I can  
19 call for a motion.

20                   MR. DUNCAN: There is some confusion, and I  
21 apologize. When you say alternative. I don't know  
22 what alternative you are talking about. We don't need  
23 a variance to go east.

24                   CHAIRPERSON TOFT: That's correct. So you  
25 may well decide -- may I have your name for the

1 record?

2 MR. DUNCAN: Troy Duncan.

3 CHAIRPERSON TOFT: And you are?

4 MR. DUNCAN: I'm Troy Duncan. I'm a  
5 resident of Ladue. I also own TK Construction.

6 CHAIRPERSON TOFT: And you are the  
7 contractor?

8 MR. DUNCAN: Yes.

9 CHAIRPERSON TOFT: It may be that the  
10 homeowner would decide to choose to build to the east  
11 so they wouldn't be before us. There might be another  
12 alternative that would not require a variance besides  
13 going to the east.

14 MR. DUNCAN: We already had that  
15 discussion. Really create a double wide, a vertical  
16 surface of three stories of brick. Maybe I'm using --  
17 to understand the site and to see what we are talking  
18 about, I don't know if you are restricting access. In  
19 the end if you brought your big flap end out to the  
20 right instead of to the left, you have a direct path.  
21 You have an emerging brick wall that's wrapped in it.  
22 That's four to six feet, whatever it is, to come out  
23 this way. You are looking at building a wall on top  
24 of another wall. I'm fairly certain that you are  
25 creating a two-and-a-half-story minimum exposed brick

1 surface. I don't think Ladue would allow that.

2 Again, that would be a question to Mike,  
3 but I'm pretty sure that is right.

4 CHAIRPERSON TOFT: So if you believe you  
5 have considered all reasonable alternatives, I will  
6 ask for a motion and a second and we will vote. I'm  
7 not trying to redesign your plan or do anything else.

8 MR. DUNCAN: It's not my plan.

9 CHAIRPERSON TOFT: If you believe this is  
10 the only alternative and you have considered all  
11 viable options and you want us to vote on it, then we  
12 would --

13 MR. ROGERS: But then we will lose that  
14 walkway.

15 CHAIRPERSON TOFT: I will sound like some  
16 of the old-time members of this Board. There are some  
17 houses that you simply can't build on and make  
18 improvements. Just because we have a desire to do  
19 something doesn't mean the lot will allow for it. So,  
20 we can't promise you every time that you ask for a  
21 variance that you can keep everything you have always  
22 wanted about it.

23 I don't want to be harsh, but I think at  
24 some point in time we have to say this is reasonable  
25 and there is a hardship here, and so we will allow the

1 encroachment to become greater. Or maybe we will just  
2 say we think there are other alternatives that maybe  
3 haven't been considered and we will say no. You are  
4 allowed six months for a timetable, and that's why I  
5 offered you for your consideration a continuance,  
6 which could potentially allow you to be back in a  
7 month or two before us.

8 But it matters not to me. I'm just giving  
9 you that option.

10 MR. DUNCAN: I appreciate that. And with  
11 all due respect. Again, not having looked at it, I  
12 think it's an important thing then when you say you  
13 can build east, I'm saying you can't build east,  
14 because Ladue won't allow you to build east. And you  
15 can't get that 5 feet. Structural is not the issue.  
16 The reality is, and again I defer to Mike and say  
17 that's not correct, because having worked on other  
18 projects in the past, that has not been allowed.

19 So, in fact, you have a nonconforming  
20 condition, and we are asking for 5 feet, which is a  
21 very bare minimum, I think, for a two-car garage.  
22 That was an effort to say we are trying to get just  
23 enough to have it. We can't go east, there is nowhere  
24 else to go. We can't go closer to the neighbor,  
25 obviously, because we don't want to turn in the front

1 or the side. Pushing back there is a pool and we  
2 don't want to create a two-car garage is certainly not  
3 attractive. I don't think that's what you were  
4 referring to.

5 CHAIRPERSON TOFT: If you want to give  
6 testimony we probably need to have you sworn. And you  
7 can speak to all the alternatives that were  
8 considered.

9 MR. DUNCAN: I guess I was responding to  
10 the discussion when you were saying we could go east,  
11 I wanted to make sure the committee understood, it's  
12 really not an option.

13 CHAIRPERSON TOFT: What I'm saying is, if  
14 you want to attest to that, you can be sworn and then  
15 give testimony to that.

16 MR. DUNCAN: Fair enough.

17 CHAIRPERSON TOFT: It's your choice. If  
18 you want to be sworn in.

19 (At this time Mr. Duncan was sworn in by  
20 the court reporter.)

21 CHAIRPERSON TOFT: I'm sorry, Mr. Duncan.  
22 You were saying you have -- as the contractor you have  
23 considered alternatives?

24 MR. DUNCAN: Right. And, again, in  
25 responding, do I have to restate everything?

1                   CHAIRPERSON TOFT:  It sounds awfully legal,  
2  but that's what you need to do.

3                   MR. DUNCAN:  Yes.

4                   CHAIRPERSON TOFT:  It's not sworn, and  
5  that's why we have the sworn testimony.

6                   MR. DUNCAN:  My understanding, and again  
7  the space that we have, if we were to move the garage  
8  east, we in effect would be creating a -- we have a  
9  brick wall, and we have side wall sitting on top, that  
10 would span over two and a half stories because of the  
11 exposed -- I believe you all visited the site, and you  
12 saw the driveway.  If we were to move that garage all  
13 the way out you would create a giant wall.  It's not  
14 attractive, that's why Ladue doesn't allow you to do  
15 it because they also don't think it's attractive.

16                   But the issue is, therefore, to gain five  
17 feet, which is what we believe is the bare minimum to  
18 have a decent two-car garage, that's why we are  
19 leaving the wall intact.  Expanding -- leaving both  
20 the walls intact, just expanding that west wall  
21 pushing back closer to Burroughs property.  I'm just  
22 trying to summarize.

23                   CHAIRPERSON TOFT:  What is the width  
24 between the eastern edge of the garage and the  
25 driveway wall, how much --

1           MR. DUNCAN: I believe it's less than six  
2 feet. I believe it's four and a half. But I don't  
3 want to swear to that. It's a three-foot sidewalk and  
4 one-foot planting bed.

5           MR. ROGERS: Planting bed. It's a little  
6 planting bed and there is a little bed with roses.

7           MS. FORSHAW: Mr. Gartenberg, are you able  
8 to confirm or deny what he is talking about the high  
9 wall?

10          MR. GARTENBERG: Let me, hopefully, clarify  
11 that particular aspect of the issue. There is three  
12 components here. The primary structure, the retaining  
13 wall that comes off of it, and this accessory  
14 structure, the garage. The garage is now and either  
15 way it will be, whether it's expanded to the west or  
16 the east, will be an independent accessory structure.  
17 Its height is not tied in any way to the height of the  
18 primary structure.

19          MR. DUNCAN: This is application to the  
20 primary application to the breezeway. I didn't know  
21 how that would be the connection.

22          MR. GARTENBERG: I apologize. I don't  
23 recall the plans showing the breezeway. I know there  
24 was some conversation about it. But regardless, it is  
25 a structure that would happen to be on grade above the

1 retaining wall, the upper grade of the retaining wall.  
2 The retaining wall is not interpreted of being a wall  
3 of the structure. It's an independent wall. It just  
4 happens to establish a higher piece of ground.

5 If, in fact, the accessory structure were  
6 incorporated into the primary structure, again it  
7 would not create a height issue with respect to our  
8 zoning code. Hopefully that clarifies that issue.

9 CHAIRPERSON TOFT: If you are not building  
10 a retaining wall on top of a retaining wall.

11 MR. DUNCAN: No. It would be the side of  
12 the garage wall. I guess we had preliminary  
13 discussions it was explained we thought, because of  
14 the concern, I know a walkout basement is probably the  
15 same because of the wall, it doesn't.

16 MS. FORSHAW: These plans don't seem to  
17 show this breezeway that you are talking about, and  
18 that might have an impact on Mr. Gartenberg's answer.

19 MR. DUNCAN: Again, I was not in this  
20 process. There has been a lot of paper and a lot of  
21 stuff has happened. This is phase two. We were told  
22 to pull phase two out of phase one, and present it  
23 this way. I can answer questions about phase one if  
24 that helps.

25 CHAIRPERSON TOFT: Does any member of the

1 Board have a question?

2 MR. DUNCAN: I appreciate your indulgence.  
3 Are there any other questions?

4 MR. SCHLAFLY: I would like to make a  
5 comment. I don't know if you want to address the  
6 applicant. I think this 1904 house should have a  
7 two-car garage. That it's not practical to prevent a  
8 house like this, size, scale, not to have a two-car  
9 garage. This garage we are told is not a two-car  
10 garage. On the other hand, to get out of this  
11 quandary about giving this variance when you have this  
12 enormous property and it seems incredulous that we are  
13 facing this. We would like to know that it is not  
14 practical to go east. And I'm not sure that decision  
15 has been determined here in this conversation.

16 If the applicant would ask for a  
17 continuance and just insure us that in fact the east  
18 direction is not practical it would make it a lot  
19 easier.

20 CHAIRPERSON TOFT: That I think is a very  
21 sound thought.

22 MR. SCHLAFLY: I don't know if you want to  
23 ask him.

24 MR. GARTENBERG: For purposes and hopefully  
25 give some clarification to your conversation, looking

1 at the plans submitted by the applicant, a 5 foot  
2 extension to the west scales to be the same distance  
3 as would exist between the eastern wall of the  
4 existing garage and the western face of that retaining  
5 wall.

6 MR. SCHLAFLY: But other practicalities, we  
7 don't know.

8 MR. GARTENBERG: There has been talk about  
9 whether or not there is space for it. It appears to  
10 be exactly the same.

11 MR. DUNCAN: And, again, this is  
12 procedural, and so we will gladly ask for a  
13 continuance to explore one, if the structural engineer  
14 says we can do it. I guess the thought would be we  
15 have to make sure there is no objection from Ladue. I  
16 guess we have to resubmit the plans to see if they  
17 have a problem with that. Even though it sounds like  
18 it would be. We are not tying ourself by the 6-month  
19 restriction.

20 CHAIRPERSON TOFT: To the contrary. If we  
21 vote and you can't get a motion and second and four  
22 affirmative votes, then you don't get a variance and  
23 you can't come back before us for six months, unless  
24 there is some extraordinary circumstances.

25 If you were to request a continuance, and I

1 think we would be willing to grant it, then you can  
2 come back before us more quickly than six months and  
3 present evidence about let's say you examined it and  
4 you can go two feet to the east, but you need to go  
5 three feet to the west. After you fully examined all  
6 the alternatives, this is what you believe, and these  
7 are your reasons for it, and you have precise  
8 measurements and you can present that you considered  
9 all alternatives.

10 What we are saying, quite frankly, if I  
11 might be very candid, it doesn't sound as if all the  
12 alternatives have been fully explored. And I will be  
13 very candid, when we don't think you fully explore the  
14 alternatives it's very hard for us to say, well, there  
15 is a hardship because we have no evidence that there  
16 is a hardship.

17 And, so, if you would like to request a  
18 continuance, I think that we will grant that. Do you  
19 agree to grant a continuance or do I need some --

20 MR. WOOLDRIDGE: Clarification. Quite  
21 honestly, Mike and I were sitting here talking. If  
22 they go east, they don't have to come back.

23 CHAIRPERSON TOFT: You may never see us  
24 again.

25 MR. DUNCAN: If we want to go two feet east

1 or 3 feet west, we are still going back.

2 CHAIRPERSON TOFT: If I can say, I'm not  
3 trying to give you advice. There appears to be  
4 alternatives that have not been fully considered. And  
5 so I think -- I'm not saying two feet, three feet, one  
6 foot, considering the alternatives and coming forward  
7 with the presentation after having considered the  
8 alternatives would then give us the basis for making a  
9 determination for whether there is a hardship to this  
10 piece of property. But the choice is yours. If you  
11 want us to call this for a vote, I am more than happy  
12 to do it.

13 MR. ROGERS: Just ask for a continuance.

14 CHAIRPERSON TOFT: All right. It will be  
15 granted, and you may not be before us again.

16 (Hearing concluded.)

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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

