

DOCKET 1140

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|-------------------------|--|
| DATE OF HEARING | June 3, 2013 |
| NAME | Melissa Losos |
| DESCRIPTION OF PROPERTY | 247 N Price Road |
| CAUSE FOR APPEAL | Relief from the decision of the Building Official for a sign which violates Section V, C, (1), (a) and (b) of Zoning Ordinance 1175. |
| RULING OF THE BOARD | After a discussion of the facts presented, the Board reversed the decision of the Building Official based on practical difficulties and approved the variance per the site plan dated May 2012, with the condition that the hot tub remain screened. |

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
Monday, June 3, 2013

DOCKET 1140
247 N. Price Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, June 3, 2013, at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman
Ms. Liza Forshaw
Mr. David Schafly
Mr. Fred Goebel
Mr. John Shillington

Also present were: Mayor Nancy Spewak; Mr. Michael Wooldridge, Assistant to the Mayor / City Clerk; Mr. Michael Gartenberg, Building Official; Mr. John Maupin, City Attorney.

Chairman Walch 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 1140**

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 Melissa Losos, 247 N. Price Road, St. Louis, MO 63124, requesting relief from the ruling of the Deputy Building Commissioner who declined to issue a permit for a hot tub which violates Sections V, C, (1) (a) & (b) of Zoning Ordinance 1175.

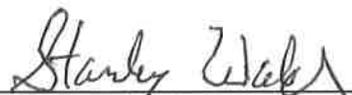
The hearing will be held at 4:00 p.m. on Monday, June 3, 2013, at the City Hall, 9345 Clayton Road.

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)


Stanley Walch, Chairman

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ZONING BOARD OF ADJUSTMENT
CITY OF LADUE
LADUE, MISSOURI

IN THE MATTER OF:)
)
MELISSA LOSOS) Docket No. 1140
247 NORTH PRICE ROAD)
LADUE, MISSOURI 63124)

Monday, June 3, 2013

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

**CERTIFIED COPY**

ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
MELISSA LOSOS ) Docket No. 1140  
247 NORTH PRICE ROAD )  
LADUE, MISSOURI 63124 )

Monday, June 3, 2013

BOBBIE LUBER, LLC  
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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
MELISSA LOSOS )  
247 NORTH PRICE ROAD )  
LADUE, MISSOURI 63124 )

BE IT REMEMBERED that on the 3rd day of June, 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. Lubert, Certified Court Reporter, Registered Professional Reporter, a Notary Public within and for the State of Missouri, and the following proceedings were had.

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

COUNCIL MEMBERS:

- Mr. Stanley Walch, Chairman
- Mr. Fred Goebel
- Ms. Liza Forshaw
- Mr. David Schlafly
- Mr. John Shillington

Also Present:

- Mr. John Maupin, City Attorney
- Mr. Michael Wooldridge, City Clerk
- Mr. Michael W. Gartenberg
- Mr. John King, Attorney for Appellant
- Ms. Melissa Losos
- Mr. Jonathan Losos
- Mr. Dale Anthon
- Mr. Sandy Cortopassi
- Ms. Diane Merritt

Court Reporter:

- Bobbie L. Lubert
- Registered Professional Reporter #9209
- Missouri CCR #621
- Illinois CSR #084.004673
- Bobbie Lubert, LLC
- P.O. Box 31201
- St. Louis, MO 63131
- (314) 993-0911

(The Meeting of the Zoning Board of Adjustment of the City of Ladue was called to order at 4:00 p.m.)  
CHAIRMAN WALCH: Good afternoon. My name is Stan Walch, and I want to welcome you to the monthly hearings of the Ladue Zoning Board of Adjustment.

We have two cases to be heard today. I'm going to start today's proceedings with some rather dull procedural matters that need to be incorporated in the record of the zoning hearings we will hear today, and that's Docket Numbers 1140 and 1141. Before doing so, however, I will introduce, first, the board.

On my far right is Fred Goebel. On my immediate right is Liza Forshaw. On my left is David Schlafly. And on my far left is John Shillington.

In attendance, we are honored to have a new mayor, Nancy Spewak. She is sitting right over there. Actually, the old mayor, Tony Bommarito, just came in. Welcome, Tony. We are glad to have you here today. I admire your interest in these dull proceedings.

Up on the dias we have the City Clerk, Michael Wooldridge; the Deputy Building Commissioner, Michael Gartenberg; John Maupin, the city attorney.

1 And Mr. Pona, James Pona, the consultant of the Ladue  
2 Zoning Board of the City of Ladue.

3 All right. The first thing that I have got  
4 to do procedurally, is advise in both docket Nos. 1140  
5 and 1141, the Zoning Code of the City of Ladue, that's  
6 Ordinance 1175, which will be used by the board as a  
7 basis for reaching our decision in one of these zoning  
8 appeal cases, will be marked as Exhibit A and included  
9 in the record of both docket numbers.

10 As part of the process that we will hear  
11 this afternoon, I want to explain how the board works.  
12 The appellant in each appeal will first be given an  
13 opportunity to present reasons why he or she feels a  
14 variance is warranted based on practical difficulty or  
15 undue hardship. Reasons of economic consideration or  
16 self-inflicted hardship will not be considered by the  
17 board. The board may have questions of each  
18 appellant. Following that, any member of the audience  
19 who wishes to address the case, will be heard. And  
20 the portion of each public comment or hearing for each  
21 public comment will be closed, and the board will,  
22 right here in open forum, discuss the matter among  
23 ourselves and may ask additional questions of the city  
24 staff or appellant.

25 After the discussion, I will ask if any

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1 member of the board wishes to propose a motion to  
2 approve the requested variance. If such a motion is  
3 proposed and seconded, the board will vote on that  
4 motion. Otherwise, I will ask the board to simply  
5 vote on whether the required variance should be  
6 granted.

7 Finally, four out of five members of the  
8 board must vote in the affirmative to approve the  
9 variance, and so it takes almost a unanimous vote.

10 The members of the board have visited both  
11 sites for which the appellants are seeking a variance  
12 this afternoon, and so we know what the site looks  
13 like. The appellants do not have to waste their time  
14 describing the physical characteristics of the site to  
15 us.

16 Now, I open the hearing in the first case,  
17 which is Docket No. 1140 concerning a hot tub which  
18 violates Section V, C, (1)(a) and (b) of Ordinance  
19 1175. And, Mr. Gartenberg, will you just explain the  
20 violations of the ordinance so we know what we are  
21 talking about?

MR. GARTENBERG: Yes, sir, I would. This  
22 is an instance where, apparently, an accessory  
23 structure has been constructed in the required side  
24 yard of the property. It is a 10-foot required side  
25

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1 yard, and I think the improvement comes within  
2 approximately four feet of the side property line.

3 CHAIRMAN WALCH: Within four feet of from  
4 property line?

5 MR. GARTENBERG: Yes, sir.

6 CHAIRMAN WALCH: All right. Any questions  
7 of Mr. Gartenberg? Hearing none --

8 MR. GOEBEL: I have one question.

9 CHAIRMAN WALCH: Please go ahead.

10 MR. GOEBEL: Mike, the drawing refers to a  
11 13-foot side yard building line. Is that erroneous?

12 Is it a 10-foot setback requirement? Both the side  
13 yards are indicated that way.

14 MR. GARTENBERG: It would be 13 feet. It's  
15 10 -- at the building line.

16 MR. GOEBEL: All right. Thank you.

17 CHAIRMAN WALCH: All right.

18 MR. GARTENBERG: Excuse me. That would be  
19 consistent with the 13-foot setback that extends  
20 approximately nine feet into it, leaving approximately  
21 four feet from the property line.

22 CHAIRMAN WALCH: So is the setback line,  
23 Mr. Gartenberg, really 13 feet --

24 MR. GARTENBERG: Yes, sir.

25 CHAIRMAN WALCH: -- or 10 feet? Thank you.

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1 I have to now introduce some documents, which will be  
2 part of the record in this particular appeal.

3 The first is Exhibit B, which is the public  
4 notice of this hearing. The second is the denial  
5 letter from Mr. Gartenberg, except I don't believe  
6 there is -- I think the only denial letter is the one  
7 in the previous case denying the same request for a  
8 variance; is that correct, Mr. Gartenberg?

9 MR. GARTENBERG: Correct.

10 CHAIRMAN WALCH: That will be marked as  
11 Exhibit C in this reference. It's being denied for  
12 the same reason it was previously denied.

13 The Exhibit D is the list of residents to  
14 whom the notice of public hearing has been sent, and  
15 as we are required to by statute. The appellant's  
16 letter requesting a variance dated April 30, 2013, and  
17 any other letters in support or opposition of request  
18 for variance will be marked as Exhibit E. Are there  
19 any other letters, Mr. Wooldridge?

20 MR. WOOLDRIDGE: No, there are not.

21 MS. FORSHAW: Excuse me. I see that  
22 Mr. King's letter attached to our packets refers to --  
23 refers to letters attached, one from a doctor, and one  
24 from, I think, the next-door neighbor, but I don't see  
25 those letters in the packet.

8

1 MR. KING: I have them.  
2 CHAIRMAN WALCH: You are planning on  
3 introducing them during your presentation. All right.  
4 Thank you. Thank you, Liza. So the letters that we  
5 have from Mr. King will be marked as Exhibit E. I  
6 believe those are the only letters that will be marked  
7 at this time. There could be other letters introduced  
8 by the appellant later. Finally, the entire file  
9 pertaining to the application, including any  
10 memorandum of the staff of consultants, the Zoning  
11 Board of Adjustment of the City of Ladue will be  
12 marked as Exhibit F.  
13 And I think that takes care of all of the  
14 exhibits that need to be introduced. So at this time  
15 I will ask the appellant, or anyone else who wants to  
16 speak on behalf of the appellant, to come forward,  
17 give your name to the court reporter, and she will  
18 swear you in.  
19 (Whereupon all persons testifying were duly  
20 sworn.)  
21 CHAIRMAN WALCH: Thank you. I think you  
22 could save us some time as we go through this  
23 proceeding today that we have all the swearing in that  
24 we can do. Okay, Mr. King.  
25 MR. KING: Chairman and members of the

board, my name is John King. I'm an attorney. I'm  
2 here today representing Melissa and John Losos, who  
3 are the owners of the home on North Price that is the  
4 subject of this petition for a variance.  
5 First, I would like for Mr. Losos, or  
6 Jonathan, to explain -- he took several pictures --  
7 and to explain to you what those pictures are and to  
8 show you the spa.  
9 MR. LOSOS: I will hand them out.  
10 The first two maps are overhead views of  
11 Google maps, showing where the inground spa is. It's  
12 marked by this yellow arrow, that little, round --  
13 dark circle there, which is on the north edge of our  
14 property, I think. So it borders the Daibers.  
15 Just to give you a sense of where it is,  
16 you will notice our property is surrounded by  
17 vegetation on all sides. If you flip to the third  
18 photograph, that's labelled No. 3, just to show you  
19 how isolated the spa is. That's a view looking at it  
20 from the satellite. You can see it's completely  
21 surround by a fence and bamboo. In fact, the spa is  
22 completely invisible to any of our neighbors.  
23 For example, on the fourth photograph, this  
24 is looking south from the spa, and to show you the  
25 view is obstructed on that side by our stairs and then

1 by vegetation. So no one to our south can see the  
2 spa.  
3 The fifth photograph is from the bottom of  
4 our property on the west, and just showing you how far  
5 away the spa is behind the bamboo in the center of the  
6 photograph. So, again, no one from our west can see  
7 the outside of our property. I don't think you have  
8 the right document.  
9 MS. FORSHAW: This doesn't appear --  
10 MR. LOSOS: The point of these photographs  
11 is simply that no one can see this that's not on our  
12 property. It's shielded by vegetation.  
13 The sixth photograph is just to show you  
14 what it looked like while the spa was being built.  
15 This shelter was up entirely for two winters. And the  
16 point here is that this spa was very obviously under  
17 construction, and the visitors to our property, the  
18 city inspectors, were quite aware this was going on  
19 during the entire building process.  
20 Finally, the other document I handed out,  
21 are just photographs taken this weekend, showing how  
22 overgrown or how sheltered by vegetation. Again, the  
23 point is, this spa cannot be seen by anyone outside of  
24 our property. It in no way affects anyone other than  
25 ourselves.

1 MR. KING: Also, Melissa was really the one  
2 that started this some two or three years ago and did  
3 all of the overseeing of the work.  
4 Melissa, I would like you to tell them how  
5 long it took and about Charlie being out there so  
6 long.  
7 MRS. LOSOS: I want to say it took a year  
8 and a half, almost two years to build the spa. And a  
9 lot of construction happened since then. I don't know  
10 if we have any pictures of the stairs. Some of you  
11 were just there. But Charlie and many other people  
12 were out there on the property. In fact, Charlie  
13 loved our property, and often he was constantly  
14 bringing members of the town to come over and see the  
15 property. And he was there sort of showing it off  
16 regularly.  
17 CHAIRMAN WALCH: For the benefit of the  
18 record, you might want to explain who Charlie is.  
19 MRS. LOSOS: Charlie -- thank you -- he was  
20 the city inspector for a while.  
21 MR. KING: He was there on the property?  
22 MRS. LOSOS: At all time.  
23 MR. KING: I mean, he was there at least  
24 two or three or sometimes four times a week?  
25 MRS. LOSOS: Yes.

1 MR. KING: And he would come over after  
2 hours and spend time with the workers?  
3 MRS. LOSOS: Yes.  
4 MR. KING: Can you tell me what he said to  
5 you when he found out this was into the setback area?  
6 MRS. LOSOS: He just -- he knew that we  
7 were trying to get the property ready for a Botanical  
8 Garden tour. He just kept saying, Keep going, we'll  
9 get permits later. He just kept encouraging us to get  
10 it finished as quickly as we could get finished so we  
11 could have the tour.  
12 MR. LOSOS: We didn't find out until after  
13 it was completed that it was over the variance.  
14 MRS. LOSOS: I didn't have the idea.  
15 Nobody seemed to have a clue that --  
16 CHAIRMAN WALCH: Did you have a general  
17 contractor?  
18 MR. KING: He is here.  
19 MRS. LOSOS: The pool guy. There was a man  
20 who built the regular swimming pool on the property  
21 who also built this.  
22 CHAIRMAN WALCH: Did he tell you anything  
23 about a need for a building permit?  
24 MRS. LOSOS: He told me we didn't -- from  
25 the first spa. So I assumed he was correct.

MR. KING: And Dale Anthon was there and  
2 was also sort of watching everything by the workers.  
3 Dale, I would like you to tell the board  
4 how that spa was built and what's in there and then  
5 tie that into the drainage system.  
6 MR. ANTHON: From the beginning of this  
7 property, it started from the creek, channeling the  
8 creek, fixing that.  
9 CHAIRMAN WALCH: How do you fit into this  
10 jigsaw?  
11 MR. ANTHON: I set all the boulders that  
12 you saw. And then my job is to get people, working  
13 with the rest of the people to do certain settings in  
14 the project: the hot tub, the wood decks, things like  
15 that. My job was also to make sure the materials were  
16 there when the guys were there and all of that.  
17 CHAIRMAN WALCH: So were you functioning  
18 like a general contractor?  
19 MR. ANTHON: Somewhat.  
20 MR. KING: How many tons of gravel did you  
21 put --  
22 MR. ANTHON: She had drainage issues on the  
23 property, and so there is about 20 tons of gravel  
24 underneath that hot tub. Then we put two parallel  
25 percolation drains on both sides of the property that

1 release down in the creek, and we tied that gravel  
2 down in these main drains that both areas run into so  
3 water could seep out. There is really no standing  
4 water on that property at all to this day.  
5 MRS. LOSOS: The reason we put so much  
6 gravel, is we didn't want it to flood the creek,  
7 because there is so much problem with the creek. So  
8 we overdid these drainage systems with a lot of gravel  
9 so the water would go very slowly and not erode away  
10 into the creek, trying to be cautious and not destroy  
11 the creek bed, make things worse.  
12 MR. ANTHON: There is approximately 110  
13 tons of gravel, 220 tons of gravel going in those  
14 percolation drains.  
15 MR. KING: And during the period of time  
16 that you were building this spa, all during that  
17 period of time you were bringing in the gravel first,  
18 and how long did that take?  
19 MR. ANTHON: The whole process took about a  
20 year and a half from the inception of digging out and  
21 putting the gravel, setting the boulders, and then the  
22 iron work, and then the concrete work.  
23 MR. KING: And during that time was Charlie  
24 there?  
25 MR. ANTHON: Charlie came. I saw Charlie

1 off and on. Almost everyone that came through  
2 there -- I've known Charlie for many years and Dennis  
3 Bible. Everybody that I always worked with at Ladue  
4 was there at some point or another.  
5 MR. KING: And did Charlie ever tell you  
6 anything about it being over the line?  
7 MR. ANTHON: No.  
8 MR. KING: And he saw it and looked at it?  
9 MR. ANTHON: I assume he did see it. It  
10 would have been hard to miss.  
11 CHAIRMAN WALCH: Are you a builder?  
12 MR. ANTHON: I'm a landscaper.  
13 CHAIRMAN WALCH: You are a landscaper. Are  
14 you aware that there are certain things you have to  
15 get a building permit, regardless of whether you need  
16 a variance or not?  
17 MR. ANTHON: Like I said, I wasn't the  
18 builder of the hot tub.  
19 CHAIRMAN WALCH: My question is really  
20 fairly simple. Maybe you know the answer or maybe  
21 not. It's a yes or no answer.  
22 MR. ANTHON: I'm sorry.  
23 CHAIRMAN WALCH: Was anybody in this  
24 project -- when it started, was anybody in this  
25 project aware that you had to have a building permit

1 from the building department from the City of Ladue?  
2 MRS. LOSOS: No.  
3 MR. LOSOS: We were informed by the builder  
4 we did not need one.  
5 CHAIRMAN WALCH: Did anyone from the City  
6 of Ladue ever inform you of that?  
7 MR. LOSOS: Told us that. We got permits  
8 for everything else we did, but we were never told  
9 there was an issue with this.  
10 CHAIRMAN WALCH: With the hot tub?  
11 MR. LOSOS: Yes.  
12 MRS. LOSOS: The rest of it, the deck got  
13 started and that we didn't have -- because I didn't  
14 think they were tight enough and needed a permit, and  
15 later we were in the middle of building it. Go ahead  
16 and keep going but get a permit, in which we did. And  
17 everyone was really gracious about helping us through  
18 it. We were in a hurry to get it to the show.  
19 Everybody was great. Okay, get it done. We had  
20 people working together to get the permits together.  
21 MR. ANTHON: The Botanical Garden show was  
22 our deadline, obviously. We really worked up to the  
23 hour before it started. We were under the gun.  
24 MRS. LOSOS: There were other things we  
25 were getting permits for, but nobody ever said a word

on that. There were people that walk around and say  
2 you need a permit for this, this, and this, and if you  
3 are going to do this, you need a permit for that, but  
4 that was never mentioned.  
5 MR. KING: Melissa, I have a letter from  
6 the doctor here. Can you explain why the doctor has  
7 this hot tub?  
8 MRS. LOSOS: Well, I have an autoimmune  
9 disorder that I get -- my muscles will stiffen up, and  
10 my joints stiffen up. So heat really helps me. So I  
11 wanted the hot tub originally for that, and because of  
12 the yard work. But the heat from the hot tub  
13 originally is what it was for.  
14 MR. KING: Here is the letter from the  
15 doctor.  
16 CHAIRMAN WALCH: Is that in your packet?  
17 MR. KING: It's supposed to be.  
18 CHAIRMAN WALCH: Yeah. I think. Is this  
19 it? No.  
20 MR. KING: Also, here is a letter from our  
21 neighbors to the north, the Daibers, who are in favor.  
22 And they are the ones that are four feet from it.  
23 Here is a letter from John McFarland, who is at 245  
24 North Price. He is in favor. And here is a letter  
25 from Scott Walter. And Scott lives at 2 Almont Acres,

1 and he is in favor.  
2 CHAIRMAN WALCH: You can mark them  
3 either -- it's your choice -- as a group exhibit.  
4 That will be Exhibit G.  
5 MR. KING: And these pictures will be  
6 marked as a group as Exhibit H.  
7 CHAIRMAN WALCH: Exhibit H, the pictures.  
8 Why don't you give that to the court reporter.  
9 Do you want to pass the letters around?  
10 MR. KING: Sure.  
11 CHAIRMAN WALCH: Do you want to take time  
12 to look at the letters?  
13 MS. FORSHAW: Just a minute to pass the  
14 letters around.  
15 MR. KING: I would like to explain to you  
16 that we also proceeded when I came to see you the  
17 first time when I thought we might be able to work  
18 this out by adjusting the boundaries of the two  
19 houses, one to the north and one to the south. Both  
20 of those I met with, we worked everything out with the  
21 Daibers. And after we made the adjustment, the  
22 boundary adjustment, we found that we created a  
23 variance with his house, the Daibers' house. So with  
24 the ordinance, we were not allowed to do that. And so  
25 we withdrew that and proceeded with the new variance

1 request, requesting that we be allowed to have the spa  
2 at this location.  
3 And the spa and the drainage, they get  
4 drainage from all around their neighbors. And so what  
5 they have done is to create a drainage system that now  
6 works after fixing behind their house and some of the  
7 other houses into the creek. If you have any  
8 questions, we are here to answer them.  
9 MR. SCHLAFLY: Was there a master landscape  
10 architect design for this project?  
11 MRS. LOSOS: I never had it.  
12 MR. SCHLAFLY: Did you engage a plan? Did  
13 it get to an architectural plan?  
14 MRS. LOSOS: No. We just pointed, like  
15 let's put drains here.  
16 CHAIRMAN WALCH: Do you know the date,  
17 Mr. King, of the prior hearing on this matter?  
18 MR. LOSOS: It was last July.  
19 CHAIRMAN WALCH: Last July?  
20 MR. LOSOS: Yes.  
21 CHAIRMAN WALCH: July of 2012?  
22 MR. LOSOS: Yes.  
23 CHAIRMAN WALCH: Thank you. I will address  
24 this to all involved. Is there anything changed since  
25 July of 2012, other than fact that the hot tub is

1 still there?  
 2 MR. KING: No. What we think has changed,  
 3 is there is new evidence that we have presented with  
 4 regard to --  
 5 CHAIRMAN WALCH: Primarily Charlie.  
 6 MR. KING: Mr. Seidman (phonetic) was on  
 7 site at all times, or quite a bit of the time, and  
 8 didn't tell us about it. And when he did tell us  
 9 about it, he said to continue finishing up everything,  
 10 that the variance would not be a big deal, and so  
 11 that's what the Lososes did.  
 12 Also, I think what's new is the creation of  
 13 the drainage system through the hot tub and through  
 14 the drains that are located on either side of the  
 15 yard, that it considerably slowed down all of the  
 16 water, a real good job of keeping the water from  
 17 damaging the creek that is located to the west.  
 18 MRS. LOSOS: They were done all before.  
 19 Physically done. The only thing that's physically  
 20 changed since July, is there is more vegetation around  
 21 it.  
 22 MR. LOSOS: The other thing is, we have  
 23 explored every other possible option to make this  
 24 conform with Ladue city ordinances, and there is no  
 25 way we can do that. We have worked extensively with

21

Ladue City Hall.  
 2 CHAIRMAN WALCH: I heard Mr. King explain  
 3 that, trying to swap some land with the neighbor.  
 4 MR. KING: We have done everything we could  
 5 to figure this out.  
 6 CHAIRMAN WALCH: All right. Is there any  
 7 other questions by a member of the board?  
 8 Hearing none, I'm going to ask if -- I  
 9 believe there are. Mr. Gartenberg, did you say  
 10 something?  
 11 MR. GARTENBERG: I think there is a  
 12 gentleman who wishes to testify.  
 13 CHAIRMAN WALCH: I know that. I'm getting  
 14 ready to ask for comments. I thought I heard somebody  
 15 else up there. Thank you.  
 16 Is there any member of the public now who  
 17 wishes to speak? And I believe two were sworn in  
 18 earlier, and so you may proceed. If there are any  
 19 besides the two that were sworn in, please come  
 20 forward at this time.  
 21 Hearing and seeing none, you may proceed,  
 22 sir.  
 23 MR. CORTOPASSI: Sandy Cortopassi. I'm the  
 24 neighbor that adjoins her yard. Clarify something for  
 25 me. After the last meeting, I was under the

22

1 impression that this was a newly-constructed tub  
 2 without a permit and without a variance and it was to  
 3 be removed.  
 4 CHAIRMAN WALCH: Removal is not the  
 5 responsibility of this board. That's up to the City  
 6 of Ladue. But, otherwise, your understanding is  
 7 correct. The variance was denied and there was no  
 8 permit.  
 9 MR. CORTOPASSI: It had not been removed.  
 10 She referred to the water flow, the gravel. My yard  
 11 abuts the back yard. Since this whole construction  
 12 started and this hot tub, get a good rain, I get two  
 13 to three inches of standing water in my back yard  
 14 around my pool area where it's not useful. I get a  
 15 fresh flow of mud. I've got to get out there and  
 16 clean it up again.  
 17 She referred to the bamboo barrier or  
 18 whatever. That bamboo is now encroached ten to 15  
 19 feet into my yard. It's a weekly chore to go out and  
 20 cut the bamboo. You can actually watch it grow. I'm  
 21 serious. You can watch it grow, especially in these  
 22 wet conditions. Every Saturday or Sunday I have to go  
 23 out and cut bamboo. I sack it up and haul it off. It  
 24 started in the back of her yard. It has been nothing  
 25 but a nightmare living there for two and a half years,

23

1 listening to the noise, the pollution, smell of diesel  
 2 smoke from the Bobcat and the constant noise. We just  
 3 don't need any more. That permit should be denied,  
 4 that thing hauled out of there, and let us live in  
 5 peace.  
 6 MR. KING: Did you hear any noise today?  
 7 MR. CORTOPASSI: Hum?  
 8 MR. KING: There is no noise today?  
 9 MR. CORTOPASSI: I haven't been there  
 10 today.  
 11 MR. KING: I mean the last couple of  
 12 months.  
 13 MR. CORTOPASSI: There was something, but  
 14 not as bad as it was. Not as bad as it was. Not as  
 15 bad as the tailgates banging on the back of the dump  
 16 trucks.  
 17 MR. KING: But there is nothing like that  
 18 kind of noise today?  
 19 MR. CORTOPASSI: I haven't heard that.  
 20 MR. KING: You haven't heard any noise from  
 21 the pool?  
 22 MR. CORTOPASSI: Yes, some. The water  
 23 flows terrible right out in my pool area, and it's  
 24 that deep.  
 25 MR. KING: Where does it come from?

24

1 MR. CORTOPASSI: It comes from her back  
2 yard. That's all I have to say. The permit should be  
3 denied.  
4 CHAIRMAN WALCH: We understand your point,  
5 sir. Let me ask you one question before you sit down.  
6 Before this project started, this re-landscaping, how  
7 was the water flow in your yard?  
8 MR. CORTOPASSI: No problem at all. It  
9 went right in the creek. Now the creek is getting  
10 choked up with bamboo. I don't know what is going to  
11 happen now. You wouldn't be able to walk up that  
12 creek in a few months. The bamboo is so thick, it's  
13 unbelievable. I'm ready to take a tape measure from  
14 her yard to my yard to measure how far that bamboo is  
15 in my yard.  
16 CHAIRMAN WALCH: Let me just -- I  
17 appreciate your concern about bamboo and appreciate  
18 your appreciation about the landscape. But this board  
19 has absolutely no jurisdiction to deal with bamboo.  
20 MR. CORTOPASSI: It was mentioned as a  
21 shield for the hot tub.  
22 MR. KING: If you wish, we will remove it.  
23 We will do it for you if you want us to.  
24 MR. CORTOPASSI: Do what?  
25 MR. KING: Remove the bamboo.

1 MR. CORTOPASSI: Every week.  
2 MR. KING: Okay. We'll check with you  
3 every week.  
4 MR. CORTOPASSI: I still won't agree to  
5 have that hot tub though.  
6 CHAIRMAN WALCH: I think there was another  
7 witness that wanted to come forward.  
8 MS. MERRITT: I am Diane Merritt. I am  
9 living on Buckhammon, No. 3, next to Mr. Cortopassi,  
10 uphill from Mr. Cortopassi. The property that we live  
11 on is built into a hill. The top of the street is  
12 Price Road, and it has a natural grade down to the  
13 creek. It has been that way since it was a farm, I  
14 assume.  
15 When we bought our home, the Losos family  
16 did not live there. It was an older home that was  
17 demolished, a house was built. And when Melissa and  
18 Jonathan moved in, landscaping efforts were made. I  
19 understand Melissa is very involved in landscaping. I  
20 respect that. Unfortunately, the choice of bamboo is  
21 a non-natural, invasive species. So living with my  
22 entire property, my north property line is -- most of  
23 it is along the line of the Losos family, and so the  
24 bamboo invades my yard also. I understand that is  
25 nothing that your committee can do anything about. I

1 also understand the City of Ladue has no ruling on  
2 whether invasive species should be used as a barrier.  
3 CHAIRMAN WALCH: I have no idea whether  
4 that's true or not.  
5 MS. MERRITT: I know that Melissa and  
6 Jonathan have made attempts on their side of the  
7 property to block the bamboo from going beyond a  
8 certain direction, but no such attempts were made on  
9 my side of the property. So the drainage system with  
10 the boulders goes along my property line. Changing  
11 the grade of the land, I do not have the problem Sandy  
12 has with water runoff until we get to the very lowest  
13 part of the yard. And I can't say it's any different  
14 than what it used to be. But it's the bamboo that is  
15 killing me.  
16 I also think if I wanted to build a hot  
17 tub, I would need to have a permit first. It would  
18 have to be in accordance with the rules of the City of  
19 Ladue. It's my understanding that if there was  
20 building on property behind me and it didn't have a  
21 permit, I find that difficult to overlook. And  
22 according to the Board of Adjustment's rules,  
23 self-inflicted hardship shall not be deemed a  
24 practical difficulty or unnecessary hardship. And so  
25 I don't understand why a variance is needed for this

1 hot tub.  
2 I would like to show you the type of bamboo  
3 roots I removed from my property last weekend. And  
4 because of my own arthritis, I had to have some boys  
5 come over and do it. I also would like to show you  
6 how the bamboo is growing over the utility poles. And  
7 if it breaks off from wind and snow, it kind of just  
8 hangs there. I don't think it improves the look of  
9 the land there.  
10 I realize I'm talking about bamboo. But I  
11 think -- it may be a barrier here, but on my side of  
12 the property, it's an eyesore, and it's a lot of work  
13 to pull those roots out. If you don't get the  
14 roots -- if you just pull them off at the ground --  
15 CHAIRMAN WALCH: Would you like these to be  
16 marked as exhibits?  
17 MS. MERRITT: Certainly. You may have  
18 them.  
19 CHAIRMAN WALCH: Would you hand them to the  
20 court reporter.  
21 MS. MERRITT: I certainly will.  
22 CHAIRMAN WALCH: And why don't you mark  
23 these -- we are up to I, I believe. Mark those as  
24 Exhibit I.  
25 MS. MERRITT: I previously sent information

1 to the City of Ladue with documentation. I have been  
2 in communication with Jonathan and Melissa about this  
3 issue. We try to remain cordial because we are back  
4 yard neighbors. But if I wanted to build something, I  
5 would get a permit first.  
6  
7 CHAIRMAN WALCH: Thank you.  
8 Mr. Wooldridge, do you know anything at all -- before  
9 I close the public hearing portion of this meeting, do  
10 you know anything at all about these allegations  
11 concerning Charlie?  
12 MR. WOOLDRIDGE: No. As far as I know --  
13 and Charlie has been retired now for two years. He  
14 retired in 2011. To the best of my knowledge, he  
15 performed his duties professionally and diligently. I  
16 am not aware that he was spending an inordinate amount  
17 of time at this location, either by himself or others.  
18 I will tell you that we initially got  
19 involved in this project, as a city, when we received  
20 complaints from the neighbors and the project, I  
21 believe, it started without a permit. And then we had  
22 him over there on numerous occasions, because the work  
23 was being done outside the scope of permits.  
24 The last hearing we had a year ago, it was  
25 not only the spa but also a set of stairs that they  
had to have a variance for that were already built.

And I believe those were done without a permit.  
2 CHAIRMAN WALCH: And I believe we granted  
3 relief on those.  
4 MR. WOOLDRIDGE: On the stairs, yes.  
5 CHAIRMAN WALCH: Because of the lack of  
6 access.  
7 MR. WOOLDRIDGE: Correct.  
8 MR. GOEBEL: There's a question here in the  
9 first part of the from, the very last sentence, the  
10 question whether the spa was a structure under the  
11 zoning ordinance of Ladue and does it require a  
12 10-foot setback. Has that been replied to, or do we  
13 have a commentary received from the administration  
14 about that?  
15 CHAIRMAN WALCH: You might want to address  
16 your question to Mr. Maupin, the city attorney. I  
17 believe the ordinance -- I will add this first  
18 ordinance clearly specifies swimming pools. And I  
19 don't -- to me, a hot tub -- an inground hot tub is a  
20 small inground swimming pool.  
21 MR. GOEBEL: I would have the same feeling.  
22 CHAIRMAN WALCH: But I would ask Mr. Maupin  
23 because he is the city attorney.  
24 MR. MAUPIN: I believe the spa is covered  
25 as a structure. I don't know if it's specifically

1 listed "spa." Certainly it is inferred from the list,  
2 not to include list, it is clearly a structure.  
3 MR. KING: What is the City's definition of  
4 structure?  
5 CHAIRMAN WALCH: It's right here.  
6 MR. MAUPIN: Anything located on or above  
7 the ground or anything specifically enumerated herein,  
8 the use of which requires permanent location or which,  
9 though movable, is used for a purpose, which usually  
10 and customarily involves permanent location on or  
11 above the ground, including but without limiting the  
12 generality of the foregoing, advertising signs,  
13 billboards, fences, parking spaces, driveways,  
14 sidewalks, poster panels, tennis courts, pergolas,  
15 swimming pools, playground equipment, tree houses,  
16 retaining walls, and structures for the housing of  
17 animals or fowl. Regulation mailboxes shall not be  
18 considered structures as herein defined.  
19 Now, I believe that by listing the swimming  
20 pool as an example not limiting it to the swimming  
21 pool, but I mean the indication is the inground spa is  
22 considered a structure.  
23 MR. GOEBEL: Understood. Thank you.  
24 CHAIRMAN WALCH: Very well. Any other  
25 questions of the board before I close the public

comment portions of this meeting?  
2 Therefore I will declare the public comment  
3 portion of this meeting closed, and we will discuss  
4 this matter amongst ourselves and try to come to an  
5 equitable resolution. I will put it that way.  
6 Whether it is, is a different question.  
7 I will make a couple of general comments.  
8 To me, this is the very most unfortunate application  
9 of the principal, that it's the duty of every citizen  
10 to know the law. And here this project was clearly  
11 started without a building permit. Now, what Charlie  
12 did or didn't say to these people is unfortunate, but  
13 Charlie was not in charge of issuing building permits.  
14 And citizens are supposed to know that they have got a  
15 duty to come down and get a building permit before  
16 they start a project. Had they done that, they would  
17 have found out that this violated the side yard, and  
18 they wouldn't have gone to all of this expense of  
19 putting in the swimming pool.  
20 So now they are -- at least in my opinion,  
21 they are in the position of going right to the teeth  
22 of the ordinance. We won't do two things. We won't  
23 consider a self-inflicted hardship, nor will we let  
24 matters of economic consideration.  
25 Having said that, I don't have any idea --

1 we are not in charge of enforcement. I don't have any  
2 idea of what the City of Ladue would do, anything to  
3 enforce the removal of this pool or this hot tub, but  
4 that's not my department. Do you want to say  
5 something, Mr. King?

6 MR. KING: Yes, sir. Could I say that the  
7 only testimony we have here today on Charlie are from  
8 the people who took an oath to tell you the truth.  
9 And I think what they have said about Charlie is the  
10 truth and that he was on site and did know that this  
11 spa was being built, and at no time did he say they  
12 should have a permit.

13 CHAIRMAN WALCH: And you may have an  
14 interesting lawsuit and testimony of the building  
15 inspector binding the building department of the city  
16 for whom he worked or statements. I haven't  
17 researched that. I don't have the slightest bit of  
18 information on that. But we are sitting here as the  
19 Zoning Board of Adjustment. We have to look at this  
20 in a fairly narrow way. Those are my comments. Does  
21 anybody else on the board want to weigh in?

22 MR. GOEBEL: Well, you know, I think the  
23 photographs that have been shared today are very  
24 helpful. I'm looking at this photograph, which shows  
25 the spa area with the natural rock. But I'm also

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noticing the waterfall, which I recall from our site  
2 visit earlier, is right here on the left side. I  
3 guess I would point out to my colleagues that the  
4 waterfall looks quite a bit like the same stone-type  
5 structures that are used here for the spa.

6 I also notice that the black wall and pump  
7 and the filter are in that setback. And according to  
8 the definition, that's all part of the swimming pool,  
9 and it's also part of the noncompliance, in spite of  
10 the fact that this drawing indicates that it's a spa.  
11 It's that wall and it's also pumps and filters.

12 MR. KING: That's subject to the variance.

13 MR. GOEBEL: I just want to point out there  
14 are some other things. The other thing I noticed that  
15 is helpful in this photograph of the construction,  
16 which shows that during the time of construction, part  
17 of this was covered over. And I'm assuming this was  
18 when they were doing something under the enclosure.

19 But here again, you are seeing some of the  
20 rock structures, which are just part of the landscape  
21 structures. So if the person is out there looking,  
22 not looking at a set of drawings, you wouldn't know  
23 what is part of the pool, in terms of its rock and its  
24 waterfall and the landscape structures. There is even  
25 stone on the deck.

34

1 To distinguish it from being part of the  
2 spa, it had its own filter system way off on the side,  
3 it might not be apparent to someone looking at the  
4 project, because there are so many components that  
5 look similar: the stone on the deck, the stone around  
6 the spa, the stone around the waterfall.

7 So I can see where it would not be clear  
8 for somebody if you are not looking for that, what is  
9 really what's out there, except that it's landscaped.  
10 Is this on the property as well?

11 MRS. LOSOS: I'm sorry. What did you ask?

12 MR. GOEBEL: Is that on the property as  
13 well?

14 MRS. LOSOS: Yes.

15 MR. GOEBEL: But it's not over by the spa.

16 MRS. LOSOS: I would like to say about  
17 things you just talked about; the tent wasn't on at  
18 all times. It was only up during heavy rains and  
19 snow. So it took over a year -- actually, a year and  
20 a half -- to put the whole thing in. And so it was  
21 only up some time. And the stones were put in way  
22 before -- long before the hot tub was put in. And the  
23 waterfall was put in before we even bought the house.

24 MR. GOEBEL: I'm just saying it all  
25 looks -- you know, there is a lot going on there. It

35

1 is not just an obvious spa. There are a lot of other  
2 things as well.

3 MRS. LOSOS: Yes. That's true.

4 MR. GOEBEL: The thing I was curious about  
5 too, is, I don't see any railings around the spa or  
6 into the pool. Have those been removed at some point?

7 MRS. LOSOS: Railings for?

8 MR. GOEBEL: Safety railings to go down in  
9 the pool, like medical-type grips and handrails and  
10 that sort of thing.

11 MRS. LOSOS: Pool was there when we bought  
12 the home.

13 MR. GOEBEL: Yeah.

14 MRS. LOSOS: Then the hot tub -- step in  
15 the hot tub off the deck that surrounds it. There's  
16 like boulders that come all the way around it. So we  
17 use the boulders to go down.

18 MR. GOEBEL: I see.

19 MRS. LOSOS: Because it's high, you know.

20 MR. GOEBEL: Okay.

21 CHAIRMAN WALCH: Any other comments or  
22 questions, Fred?

23 MR. GOEBEL: No, I don't.

24 CHAIRMAN WALCH: Does anybody else?

25 MS. FORSHAW: I would point out that this

36

1 is a very long and narrow lot, which arguably creates  
2 a hardship for putting things close to the side  
3 boundary, and I think it is significant that this hot  
4 tub is extremely well-screened from the neighbors and  
5 the nearest neighbors endorse it.

6 CHAIRMAN WALCH: It seems to me like we  
7 have a 50/50 vote. Two on one side in favor and two  
8 on the other side in favor. I don't know how much  
9 weight we give that, but I think it's a matter of  
10 fact. Anybody else got a comment?

11 MS. FORSHAW: No, I'm finished.

12 CHAIRMAN WALCH: Any further comment from  
13 David or John?

14 MR. SHILLINGTON: No. Thank you.

15 CHAIRMAN WALCH: Well, then I will ask does  
16 anybody want to have the temperance to come forward  
17 and make a motion with respect to this application for  
18 a variance?

19 MS. FORSHAW: I will make a motion.

20 Mr. Chairman, I move that on the basis of  
21 the evidence presented, we find that practical  
22 difficulty exists and that the decision of the  
23 building official is reversed and a variance granted  
24 as requested on the site plan dated May 28, 2012, with  
25 the condition that the hot tub remain screened from

37

the adjoining neighbors, though without specification  
2 as to the type of screen.

3 CHAIRMAN WALCH: Is there a second to that  
4 motion?

5 MR. SHILLINGTON: Second.

6 CHAIRMAN WALCH: The motion has been made  
7 and seconded. Is there any further discussion? How  
8 do you vote?

9 MR. GOEBEL: Yes.

10 MS. FORSHAW: Yes.

11 CHAIRMAN WALCH: No.

12 MR. SCHLAFLY: Yes.

13 MR. SHILLINGTON: Yes.

14 CHAIRMAN WALCH: You got it passed,  
15 Mr. King, four to one.

16 MR. KING: Thank you.

17 (Hearing concluded 4:56 p.m.)  
18  
19  
20  
21

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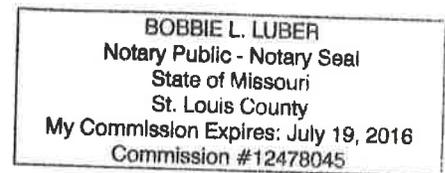
1 CERTIFICATE OF REPORTER

2  
3  
4 I, Bobbie L. Luber, Registered Professional  
5 Reporter, Certified Court Reporter, and Notary Public  
6 within and for the State of Missouri, do hereby  
7 certify that the meeting aforementioned was held on  
8 the time and in the place previously described.  
9

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

12  
13  
14 

15 Bobbie L. Luber, RPR, CCR #621  
16  
17



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