

DOCKET 1144

DATE OF HEARING	July 1, 2013
NAME	Will Haines
DESCRIPTION OF PROPERTY	18 Dromara Road
CAUSE FOR APPEAL	Relief from the decision of the Building Official for a fence which violates Section IV, C, (1), (a) of Zoning Ordinance 1175.
RULING OF THE BOARD	After a discussion of the facts presented, the Board reversed the decision of the Building Official and granted a variance because of a practical difficulty. The approval was based on the site plan submitted with the building application dated May 13, 2013.

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
Monday, July 1, 2013

DOCKET 1144
18 Dromara Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, July 1, 2013, at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman
Ms. Robbye Toft
Ms. Liza Forshaw
Ms. Elizabeth Panke
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 1144**

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 Will Haines, 18 Dromara Road, St. Louis, MO 63124, requesting relief from the ruling of the Building Official who declined to issue a permit for a fence which violates Section IV, C, (1), (a) of Zoning Ordinance 1175.

The hearing will be held at 4:00 p.m. on Monday, July 1, 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:)
)
WILL HAINES) Docket No. 1144
18 DROMARA ROAD)
LADUE, MISSOURI 63124)

Monday, July 1, 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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3 ZONING BOARD OF ADJUSTMENT  
4 CITY OF LADUE  
5 LADUE, MISSOURI  
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9 IN THE MATTER OF: )  
10 )  
11 WILL HAINES ) Docket No. 1144  
12 18 DROMARA ROAD )  
13 LADUE, MISSOURI 63124 )  
14  
15 Monday, July 1, 2013  
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2 ZONING BOARD OF ADJUSTMENT  
3 CITY OF LADUE  
4 LADUE, MISSOURI  
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8 IN THE MATTER OF: )  
9 )  
10 WILL HAINES ) Docket No. 1144  
11 18 DROMARA ROAD )  
12 LADUE, MISSOURI 63124 )  
13  
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15 BE IT REMEMBERED that on the 1st day of  
16 July, 2013, hearing was held before the Zoning Board  
17 of Adjustment of the City of Ladue, Missouri, at Ladue  
18 City Hall, 9345 Clayton Road, in the City of Ladue  
19 State of Missouri 63124, regarding the above-entitled  
20 matter before Bobbie L. Lubber, Certified Court  
21 Reporter, Registered Professional Reporter, Certified  
22 Shorthand Reporter, a Notary Public within and for the  
23 State of Missouri, and the following proceedings were  
24 had.  
25

1 A P P E A R A N C E S:  
2

3 BOARD MEMBERS:

- 4 Mr. Stanley Walch, Chairman  
5 Ms. Liza Forshaw  
6 Ms. Elizabeth Panke  
7 Mr. John Shillington  
8 Ms. Robbye Toft  
9

10 Also Present:

- 11 Mr. Michael Wooldridge, City Clerk  
12 Mr. Michael W. Gartenberg, Deputy Building  
13 Commissioner  
14  
15 Nancy Spewak, Mayor  
16 Mr. Anthony Bommarito, Former Mayor  
17 Mr. Will Haines, Appellant  
18  
19

20 Court Reporter:

- 21 Bobbie L. Lubber  
22 Registered Professional Reporter #9209  
23 Missouri CCR #621  
24 Illinois CSR #084.004673  
25 Bobbie Lubber, 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 previously called  
3 to order at 4:00 p.m.)  
4 CHAIRMAN WALCH: Okay. The next case is  
5 Docket Number 1144, which is the appeal of Will Haines  
6 at 18 Dromara Road, requesting relief from the ruling  
7 of the building commissioner who declined to issue a  
8 permit for a fence which violates Section IV, C, (1),  
9 (a) of Zoning Ordinance 1175.

10 Mr. Gartenberg, will you explain the reason  
11 or reasons these plans were disapproved so the  
12 audience and members of this board have a clear  
13 understanding of the issues?

14 MR. GARTENBERG: Yes, sir, I would. The  
15 proposed improvement was a fence that was actually  
16 being proposed in the front yard of the property.  
17 There is a paper street which exists, and that being  
18 the case it would be a defined front yard. A maximum  
19 fence height in that defined front yard would be 42  
20 inches, which being proposed was actually exceeding 42  
21 inches in that front yard.

22 CHAIRMAN WALCH: When you use the term  
23 "paper road", will you tell us what that means?

24 MR. GARTENBERG: Sure. It's a platted  
25 street. There is a right for a pavement to be put in

1 at that location. Over the years the pavement --  
2 although the property is platted for that improvement  
3 for that street, the street has never been  
4 constructed. So if we were to look at a map or a plat  
of the area, you would see a dedicated right-of-way.  
6 But if you would drive out to the area you would see  
7 that there is no pavement in that right-of-way.

8 CHAIRMAN WALCH: Is that a subdivision plat  
9 that's recorded that you are referring to?

10 MR. GARTENBERG: Yes, sir.

11 CHAIRMAN WALCH: And does that street go  
12 anyplace?

13 MR. GARTENBERG: Well, if it did, it would  
14 connect with Dromara and go on a couple hundred feet  
15 and basically go to the back of some other properties  
16 of a different neighborhood.

17 If the pavement were put in it would be a  
18 short dead-end street, and not provide access to any  
19 properties which don't really have access.

20 CHAIRMAN WALCH: I presume, like most --  
21 these are private streets we are talking about, are  
22 they not?

23 MR. GARTENBERG: Correct.

24 CHAIRMAN WALCH: I presume, like most  
25 private streets, the adjacent property owners own to

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the middle of the street, but it's the right of the  
2 developer who has long since finished the subdivision  
3 to put the road there if he chose to do so?

4 MR. GARTENBERG: Well, if it were vacated  
5 that would be the case. But this is a dedicated  
6 right-of-way. The ownership of that is in essence  
7 with the subdivision.

8 CHAIRMAN WALCH: Really. Okay. I'm not  
9 sure about that, but I will accept it for the time  
10 being.

11 Any other questions of Mr. Gartenberg  
12 before I move on?

13 MS. PANKE: Yes. The drawing we have, the  
14 hashed area is the actual paving of Dromara Road, and  
15 the paper road is actually twice the size of that, and  
16 so there is even more space there.

17 MS. TOFT: The right-of-way, I think.

18 MS. PANKE: The right-of-way is much wider  
19 than the actual street. So there is even a lot more  
20 green space that will be left because that's not their  
21 property; right? Their property ends quite a bit --

MR. GARTENBERG: Well, the street would  
23 need to be within the dedicated right-of-way.

24 MS. PANKE: That's the center line of the  
25 road. Okay. Got it.

6

1 MR. GARTENBERG: If I can try to answer the  
2 question. You can actually see -- I think this is the  
3 drawing you were referring to; is that right?

4 MS. PANKE: Yeah.

5 MR. GARTENBERG: In this area where the  
6 right-of-way exists, here is the pavement, the  
7 existing pavement, which is within the right-of-way,  
8 which is the way it should be.

9 MS. PANKE: Okay.

10 CHAIRMAN WALCH: Any other questions of  
11 Mr. Gartenberg? All right. Now, to get the exhibits  
12 that need to be part of this record put in the record.

13 First, Exhibit B will be the public notice  
14 of this hearing which was published and also mailed to  
15 nearby residents.

16 Exhibit C will be the denial letter from  
17 Mr. Gartenberg dated June 14th, 2013.

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

20 Exhibit E will be the appellant's letter  
21 requesting a variance dated June 6, 2013. And any  
22 other -- and one other letter of support for this  
23 request, and both letters will be marked Exhibit E.

24 Are those the only two letters, Mr. Wooldridge?

25 MR. WOOLDRIDGE: I'm assuming that when you

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1 talk about the letter of support, you are talking  
2 about the June 19th letter from Art Bond?

3 CHAIRMAN WALCH: Yes.

4 MR. WOOLDRIDGE: Okay. That's the only  
5 letter.

6 CHAIRMAN WALCH: All right. Both of those  
7 will be marked Exhibit C.

8 Since this was not in our original packets  
9 I'm going to read the letter from Art Bond, which we  
10 received today, for the record.

11 Dear Chairman Walch: I am writing in  
12 support of my neighbor Will Haines, who is petitioning  
13 for a variance to permit him to build a fence along  
14 his eastern side yard perimeter at 18 Dromara Road. I  
15 would have spoken at the hearing, but will be out of  
16 town. I am Will's adjacent neighbor along the eastern  
17 edge of his property. He has discussed his desire to  
18 erect a fence along his eastern property boundary and  
19 he has shared the site plan showing the location of  
20 this fence.

21 Both of our properties are separated by a  
22 vacated paper street -- it says the street has been  
23 vacated -- that was once an access easement to allow  
24 our neighborhood to access the once active commuter  
25 trolley that went from points west in Ladue, into

8

1 downtown Clayton. This access has long since been  
2 vacated and the adjacent properties have received the  
3 vacated trolley right-of-way.

4 So that answers the question that I asked  
5 you earlier, Mr. Gartenberg.

6 Will's two young children often play with  
7 their friends in this side of the yard and I certainly  
8 understand the desire to keep that area contained. I  
9 believe that this is exactly the type of situation  
10 that the Zoning Board of Adjustments is in place to  
11 address.

12 I hope that the Zoning Board agrees that  
13 Will's petition is reasonable and appropriate. Most  
14 Sincerely, Art Bond.

15 Finally, Exhibit F will be the entire file  
16 pertaining to this application, including any  
17 memorandum from the staff and consultants to this  
18 board or the City of Ladue.

19 With that, I believe I'm ready for the  
20 appellant or anyone else who wants to speak on behalf  
21 of the appellant to come forward and get sworn in and  
22 give your name to the court reporter.

23 MR. GARTENBERG: Mr. Chairman, before we do  
24 that I want to clarify something as a point of fact.

25 If this property were vacated -- if this

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right-of-way were vacated this matter wouldn't be  
2 before the board today. If it were vacated, ownership  
3 would have transferred to the adjacent property  
4 owners. The information which the city has in its  
5 record, and the county has provided to the city,  
6 reflect there still being a dedicated right-of-way  
7 there.

8 CHAIRMAN WALCH: We will proceed under that  
9 assumption, although I would assume Mr. Bond, who is a  
10 member of the City Council and former member of this  
11 board, knows what he is talking about when he uses the  
12 term "vacated".

13 It won't be the first time public records  
14 have been in error, if that's the case here. But we  
15 will take this request on the assumption that the  
16 street is not vacated.

17 MS. TOFT: And I will point out, Mr. Bond  
18 is an architect and not an attorney.

19 CHAIRMAN WALCH: So is Mr. Gartenberg for  
20 that matter.

21 MR. GARTENBERG: I will stick to the  
22 engineering.

23 MS. FORSHAW: I think it is hard for us to  
24 know the precise ownership situation with that former  
25 street. But I'm not sure it matters.

10

1 CHAIRMAN WALCH: I'm not sure it matters  
2 either. That's why I suggest we will take it with the  
3 assumption it's not on so we don't have to go digging  
4 around archaic records to find something that might  
5 cost much more than it's worth.

6 With that long colloquy out of the way,  
7 would you please step forward, sir, and give your name  
8 to the court reporter.

9 (At this time Mr. Will Haines was sworn in  
10 by the court reporter.)

11 MR. HAINES: Thank you for the opportunity  
12 to present to you. It sounds like you have most of  
13 the specifics here.

14 CHAIRMAN WALCH: Just for the record, you  
15 are Will Haines?

16 MR. HAINES: Yes. Thank you.

17 The fence that exists there now is within  
18 the footprint of the previous owner. I apologize,  
19 this is a little bit outdated, but there is actually a  
20 pool here. Obviously we need to enclose that area  
21 within the pool with an appropriate fence, a 5 foot  
22 fence or greater than 42 inches, I believe.

23 Existing now along this fence line is just  
24 a bunch of shrubbery, et cetera. We have this whole  
25 side yard that there is really no -- you can come out

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1 the front yard and access it. There is a screen door  
2 here, but it is built within a screened door area.  
3 There is a ton of shrubbery here. The whole point of  
4 it is just to try to maximize this unused portion of  
5 our yard for the kids to play in. Our intent is to  
6 put some pavers down, clear out some of this  
7 shrubbery, get rid of this fence, and allow egress  
8 from the pool area off this deck into this nice grassy  
9 area, again for the kids to play in.

10 You have heard the issue, obviously right  
11 here exists that road. On paper, that is. There is  
12 again large concrete -- what do they call them,  
13 surface drains that were put in. There was a large  
14 sewer separation project. MSD came in, put in these  
15 large concrete things. So it's again further, I  
16 think, rationale that there will never really be a  
17 street. And of course it ends at -- this neighborhood  
18 back here is Black Creek, and there is a fence here.

19 Again, that's the situation with the road  
20 itself. And our -- again, our rationale is just  
21 simply to be able to use this space a little bit more  
22 for the kids to get out there and play, and allow a  
23 better flow off the pool and the patio area.

24 MS. TOFT: When we were at the site visit  
25 there was plant material, it looks like there were

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1 viburnum and some other things. It looked as if it  
2 was probably on your property but is that on your  
3 property?

4 MR. HAINES: Yes. If you are looking from  
the street down, there is like a row of trees, and  
5 there are nicer -- I'm not sure what those are called,  
6 they are about as tall as me, green, there is about  
7 six of them, those are on my property.

8 MS. TOFT: Is your proposal to put the  
9 fence on your side of those plant materials, or on the  
10 far side of the plant materials?

11 MR. HAINES: The one at the very end would  
12 be -- we would probably have to remove it, because it  
13 would go right through it because they are sort of  
14 staggered if you look down that line. That one is set  
15 back closer to the property line. My intent is to err  
16 on the side of caution and keep the fence not abutting  
17 the property line but actually a foot or two into my  
18 property just so there is no issue with property  
19 lines, et cetera.

20 MS. TOFT: I'm not worried that you would  
21 put the fence on the property, but would there be any  
22 plant material, not that the abandoned roadway is  
23 Mr. Bond's front yard, would there be any plant  
24 material that would sort of, shall we say, erase the  
25

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fence from Mr. Bond's perspective, or would all the  
2 plant materials be on your side of the fence?

3 MR. HAINES: You mean the existing plant  
4 material?

5 MS. TOFT: The existing plant material.

6 MR. HAINES: With the exception of one that  
7 might be removed. None of the others would be  
8 contained within that fence.

9 MS. TOFT: Which side of the plants, would  
10 the fence be on, your side or Mr. Bond's side?

11 MR. HAINES: Which side of the fence would  
12 the plants be on?

13 MS. TOFT: Or whichever side the fence be  
14 on?

15 MR. HAINES: Those plants are all in here.  
16 With the exception of one.

17 Here is the side of the house. All those  
18 plants you saw were out here. And there is one here  
19 that might be in that corner that might have to be  
20 removed, because the way I was looking at it, this  
21 fence here would probably cut right in the middle of  
it, and then all the others would be over here.

22 MS. TOFT: Are there any plants -- from  
23 where your fence would begin to the back of your lot,  
24 are there any plants that would disguise and soften  
25

14

1 the fence from Mr. Bond's perspective?

2 MR. HAINES: No. There is one tree here  
3 but it's a small tree.

4 MR. GARTENBERG: Just for clarification.  
5 The packet contains four photographs on two sheets of  
6 paper. And the second of those sheets, photographs  
7 numbers 3 and 4, speak to this issue pretty directly,  
8 especially the last one.

9 MS. TOFT: I don't see numbers on my  
10 photographs. Can you help me with which ones you are  
11 referencing?

12 MR. GARTENBERG: The first page having the  
13 first two photographs. The second page having the  
14 third and fourth photographs.

15 MS. TOFT: Okay. The ones with the  
16 black --

17 MR. GARTENBERG: Yes. I think those will  
18 speak to the issue you are discussing.

19 MS. TOFT: So the plants are all to the  
20 front of where the fence would be?

21 MR. HAINES: Right. This very last one  
22 here is debatable because the fence might come here.  
23 This is hard to draw three dimensional on here. This  
24 one here. That's the single tree I was referring to.

25 MS. TOFT: Got it. Thank you. That

15

1 picture is really is worth a thousand words.

2 MR. HAINES: Thank you for bringing that to  
3 our attention. I had forgotten those were in there.

4 MS. PANKE: I have a few questions.

5 MR. HAINES: Sure.

6 MS. PANKE: How high would be the fence be?

7 MR. HAINES: It's a 60-inch fence. It's  
8 five feet.

9 MS. PANKE: What kind of fence is it going  
10 to be?

11 MR. HAINES: I listed that. I'm sorry, I  
12 don't have a picture of that.

13 MR. GARTENBERG: Here is a picture.

14 MR. HAINES: That's right. I provided that  
15 in the original application.

16 MR. GARTENBERG: Now no more words.

17 MR. HAINES: That was in the original  
18 application that I provided and not my paperwork for  
19 the variance.

20 MS. TOFT: May we mark this as an exhibit?

21 MR. GARTENBERG: Sure. I have got another  
22 copy.

23 CHAIRMAN WALCH: We will have the court  
24 reporter mark that as Exhibit G.

25 MS. PANKE: It appears you are not going to

16

1 bring the new fence marked in red here on our plan,  
2 it's going to be set back from the front corner of the  
3 house?  
4 MR. HAINES: Correct.  
5 MS. PANKE: Is that literal, 5 feet or  
6 something?  
7 MR. HAINES: From that corner there is a  
8 window, it will actually probably be set back more to  
9 the back of the house from that. It won't -- right  
10 about where that 6 is. Is that a 26? Right about  
11 where that 6 is there is a door. A couple feet  
12 actually towards the front of the house from that  
13 door.  
14 CHAIRMAN WALCH: I have one question just  
15 so if anybody ever wants to read this immortal record  
16 they will have some idea of what Exhibit G is talking  
17 about. Which of these three fences? There are three  
18 fences.  
19 MR. HAINES: It's this one, the Genesis.  
20 And what is not shown there is the decorative finial.  
21 Every other post will have like a fleur-de-lis finial  
22 on top.  
23 CHAIRMAN WALCH: I see. Do you all want to  
24 take a look at the fence? It's the Genesis, the  
25 bottom one.

17

1 MS. PANKE: You mentioned getting  
2 permission from Art Bond and the Strasbergs  
3 (phonetic).  
4 MR. HAINES: The Strasbergs live across the  
5 street from here. I talked with them simply because  
6 they would be looking towards the front of my house.  
7 They would look towards the front. And she had no  
8 reservations.  
9 Actually, I think that was in there as  
10 well, approval from the neighborhood association  
11 board, Board of Trustees, for this as well.  
12 MS. PANKE: I'm sorry, I'm still going to  
13 ask about the height of the fence. The issue is not  
14 that we are too close to the property line, or  
15 anything like that. The issue is the height because  
16 it's literally in the front yard, but when it comes  
17 around to the front of Dromara, it's also in the front  
18 yard.  
19 MR. HAINES: No, it's not the front yard.  
20 MR. GARTENBERG: It is the front yard.  
21 MR. HAINES: All of this here is the front  
22 yard.  
23 MS. PANKE: We are asking for a variance on  
24 6 feet, and back there it can be 6 feet.  
25 MS. TOFT: Mike, do you want to explain?

18

1 MS. PANKE: Maybe this is a moot point.  
2 The variance needs to be applied to this section of  
3 fence, and this section of fence, but not to that  
4 section of fence.  
5 MR. GARTENBERG: No, that is not correct.  
6 That drawing actually shows a front yard. My point  
7 has been that Dromara on the left side of that piece  
8 of paper still exists as a vacated right-of-way. As a  
9 matter of fact, the applicant has provided a survey  
10 dated 1991 showing that Dromara was there.  
11 I have been here at the city since 1994. I  
12 don't remember anything vacating the right-of-way. I  
13 think that indicates there is a right-of-way that  
14 exists.  
15 So, that being the case, going back 50 feet  
16 to the right on that drawing is the required front  
17 yard. In that area the fence height, this kind of  
18 open style fence is limited to 42 inches.  
19 MS. PANKE: But because it's within the  
20 building setback line on this side we are okay, he is  
21 okay there, this little section right there?  
22 MR. GARTENBERG: Actually, the Council  
23 recently amended the zoning code. Any fence in the  
24 front yard, whether it's required or actual, would be  
25 limited to that 42 inches. So that little bit to the

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1 right of the building setback line, there you go,  
2 that's subject to this as well. So really that entire  
3 red area.  
4 MS. PANKE: And what about that back there?  
5 MR. GARTENBERG: The same, that's the front  
6 yard from Dromara.  
7 MS. PANKE: I thought that was the backyard  
8 back there.  
9 MR. GARTENBERG: There is a 50-foot  
10 setback.  
11 MS. PANKE: It's still in the front. Okay.  
12 Got it.  
13 MR. GARTENBERG: The issue here, that  
14 portion of Dromara is not being used for purposes of  
15 the pavement.  
16 MR. SHILLINGTON: That's the paper street.  
17 MR. GARTENBERG: That's the paper street.  
18 If there were no dedicated right-of-way this would not  
19 be an issue before you.  
20 CHAIRMAN WALCH: If Mr. Gartenberg didn't  
21 think this had not been vacated, as Mr. Bond says,  
22 then it's still front yard. Now, if it's been vacated  
23 then there is no front yard.  
24 MR. GARTENBERG: If it's been vacated this  
25 is a moot point.

20

1 CHAIRMAN WALCH: And no variance needed.  
 2 MS. PANKE: How high is this?  
 3 MR. HAINES: That's the 60 inches.  
 4 CHAIRMAN WALCH: And I take it that's going  
 to match the --  
 6 MR. HAINES: Yes, it's the exact same  
 7 thing.  
 8 MS. TOFT: So that everything on the not  
 9 pretend Dromara side is front yard. And the entire  
 10 fence is from the house to the paper Dromara Road, and  
 11 thus the whole fence would be in a required front --  
 12 MR. GARTENBERG: Front yard, not required.  
 13 MS. TOFT: Pardon me. Front yard.  
 14 CHAIRMAN WALCH: Not this section in green,  
 15 which is a mistake here.  
 16 MR. SHILLINGTON: As I understand, Mike,  
 17 there wouldn't be an issue at all if this was in fact  
 18 dedicated back to the property owners?  
 19 MR. GARTENBERG: It could be vacated. The  
 20 subdivision trustees of Dromara could give up the  
 21 rights to it, in which case the property owners on  
 22 either side would have the right to extend their  
 23 property to the center line of that right-of-way.  
 24 We have no information, you know, that  
 25 that's happened. As a matter of fact, recent county

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information that we have looked at is consistent with  
 2 the 1991 survey which shows that the right-of-way does  
 3 still exist.  
 4 MR. HAINES: The only comment from  
 5 neighborhood association trustees was not only did  
 6 they approve it, but they also stated in an email to  
 7 me there is no plan ever to put a road in there.  
 8 MR. SHILLINGTON: They could, as he  
 9 suggested, they could deed it over to the association.  
 10 MR. GARTENBERG: Just for clarity sake,  
 11 they believe they do still have a right-of-way through  
 12 there then.  
 13 MR. HAINES: When I came back after the  
 14 original decision from you all and said to them this  
 15 is platted as a paper street, that's when Hank Sly  
 16 (phonetic) said to me in talking to the rest of the  
 17 trustees, we have no intention of using it as a  
 18 street.  
 19 MR. GARTENBERG: They have the right, they  
 20 just don't want to exercise it.  
 21 MR. HAINES: Of course with the new  
 drainage in the middle of it, it doesn't make sense.  
 23 MR. GARTENBERG: Actually, just so  
 24 everybody understands, I mean, that's where they would  
 25 need to be in that public right-of-way. Those field

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1 nuts (phonetic) could not be on your property unless  
 2 there was an easement granted from MSD to do that.  
 3 MR. HAINES: You can see them here. Here  
 4 is one and here is one.  
 5 MS. TOFT: So this is an abandoned  
 6 right-of-way which has not been formally vacated?  
 7 MR. GARTENBERG: I don't know if it's been  
 8 abandoned at all. It's a right-of-way that exists.  
 9 MS. FORSHAW: We should stop trying to  
 10 figure out the actual legal status. As a practical  
 11 matter it's treated as common ground.  
 12 MR. SHILLINGTON: I agree with that.  
 13 MS. TOFT: And the only reason I'm trying  
 14 to get some definition, I have been around long enough  
 15 that this is not the first request to encroach on a  
 16 paper roadway. If people want to come forward --  
 17 CHAIRMAN WALCH: Mr. Gartenberg, this is  
 18 probably something that is never going to happen  
 19 again, but if whoever handles, and I know it's not  
 20 you, dealing with the public, if they ever come in  
 21 with a situation like this again, it might save  
 22 everybody a lot of time and money instead of coming to  
 23 a hearing here for variance, but just suggest that  
 24 they go back and ask the trustees to file a deed  
 25 vacating the unused street, the paper street as you

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1 call it.  
 2 MS. FORSHAW: It's not clear that they  
 3 would want to do it given that there are sewer  
 4 facilities there as well.  
 5 MS. TOFT: Yeah.  
 6 MS. FORSHAW: I have one more question.  
 7 CHAIRMAN WALCH: But I agree with  
 8 Ms. Forshaw, that we should deal with it as if it's  
 9 not been vacated.  
 10 MS. FORSHAW: The reason you want higher  
 11 than a 42-inch fence is the pool?  
 12 MR. HAINES: Correct.  
 13 CHAIRMAN WALCH: And you want to, I assume,  
 14 match up with the existing fence?  
 15 MR. HAINES: Correct.  
 16 CHAIRMAN WALCH: I suppose you would live  
 17 with 42?  
 18 MR. HAINES: I would love to put a dump  
 19 truckload of rock in that pool sometimes. We are out  
 20 there weekly cleaning it. Better not put that on  
 21 record.  
 22 MS. TOFT: Out of earshot of your children.  
 23 MR. HAINES: Yes.  
 24 CHAIRMAN WALCH: Any further questions?  
 25 MS. TOFT: No, sir.

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1 CHAIRMAN WALCH: I will ask if anybody in  
2 the audience wishes to speak to this case. Hearing  
3 none, unless there is an objection by a member of the  
4 board I'm going to declare the public comment portion  
5 of this meeting closed, and ask who would like to  
6 start our discussion.  
7 MS. FORSHAW: I will.  
8 CHAIRMAN WALCH: You will, Ms. Forshaw.  
9 MS. FORSHAW: I think this case presents a  
10 very appealing argument for a variance.  
11 This owner would have every right to put  
12 the proposed fence on his property were it not for the  
13 existence of this unused paper street which makes --  
14 which, as a very technical matter, gives some second  
15 front yard. And this -- it's clear that this  
16 so-called paper street has not been used for --  
17 CHAIRMAN WALCH: At least since the street  
18 cars quit running.  
19 MS. FORSHAW: Since the street cars, and it  
20 is virtually impossible that it will ever be turned  
21 into a street because there is no place for it to go.  
22 We also have the fact that the most immediately  
23 affected landowners endorse the fence.  
24 So I think the hardship is that the  
25 technical treatment of this lot is having two front

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yards when a secondary front yard which faces the  
2 paper street shouldn't really in a practical sense be  
3 considered a front yard.  
4 MS. TOFT: I would just add one thing, and  
5 that is that in addition to everything that Liza said,  
6 we also have public improvements in the paper street  
7 that would virtually preclude there being any kind of  
8 useful use of the area.  
9 And so I think while there are a number of  
10 paper streets in Ladue, some of them might actually at  
11 one point in time be built on. I don't see with the  
12 public improvements that are made in this area that  
13 there is any likelihood that it would ever become a  
14 street.  
15 MS. FORSHAW: I agree.  
16 MS. PANKE: And I think it's good to be  
17 careful about that, because we have denied people who  
18 are literally on a street that they cannot -- that  
19 they cannot go so far with their fence. So this is  
20 not that case.  
21 MS. TOFT: No. And I would also say, it's  
22 very nice of the property owner to be asking for only  
23 a 5-foot fence as opposed to a 6-foot fence.  
24 I think in this instance, because it's a  
25 very open fence and there is a lot of plant materials

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1 around it, that it would be very -- less obtrusive,  
2 and Mr. Bond has a benefit of a 40-foot cushion from  
3 looking out his window and seeing the fence, and so I  
4 don't see where it would really be offensive to  
5 Mr. Bond, and I don't see there is any precedent in  
6 granting that.  
7 CHAIRMAN WALCH: Any further discussion?  
8 MR. SHILLINGTON: I think the other two  
9 members have said it all.  
10 CHAIRMAN WALCH: I agree with you. Who  
11 would like to make a motion?  
12 MS. FORSHAW: I will.  
13 CHAIRMAN WALCH: Ms. Forshaw.  
14 MS. FORSHAW: Mr. Chairman, I move on the  
15 basis of the evidence presented, we find that  
16 practical difficulty exists and the decision of the  
17 building official is reversed and a variance is  
18 granted as reflected on the site plan, which I think  
19 it's undated.  
20 I don't see a date.  
21 MS. TOFT: I don't either.  
22 MS. FORSHAW: The site plan that was  
23 submitted with the application.  
24 MS. TOFT: I would second that motion.  
25 CHAIRMAN WALCH: Mr. Gartenberg, this is a

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1 question before I call for a vote on this.  
2 Do you have a date stamp or anything that  
3 shows when this site plan was received by the building  
4 department?  
5 MR. GARTENBERG: Yes, I do.  
6 CHAIRMAN WALCH: Will you be able to  
7 identify it, should it ever become necessary to do so,  
8 in terms of permitting this property?  
9 MR. GARTENBERG: For the record, I think we  
10 can refer to it as the site plan received with the  
11 application on May 15th, 2013.  
12 CHAIRMAN WALCH: Thank you. I would  
13 suggest we amend the motion accordingly.  
14 MS. FORSHAW: I accept it.  
15 CHAIRMAN WALCH: Thank you. Is there a  
16 second?  
17 MS. TOFT: Second.  
18 CHAIRMAN WALCH: All right. The motion has  
19 been made as amended and seconded, and I call for a  
20 vote. Ms. Toft, how do you vote?  
21 MS. TOFT: In favor.  
22 CHAIRMAN WALCH: Ms. Forshaw?  
23 MS. FORSHAW: In favor.  
24 CHAIRMAN WALCH: In favor.  
25 MS. PANKE: In favor.

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1 MR. SHILLINGTON: In favor.  
2 CHAIRMAN WALCH: All right. Good luck with  
3 your fence. We appreciate you coming up here today.  
4 MR. HAINES: Thank you all.

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1 CERTIFICATE OF REPORTER

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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

**BOBBIE L. LUBER**  
**Notary Public - Notary Seal**  
**State of Missouri**  
**St. Louis County**  
**My Commission Expires: July 19, 2016**  
**Commission #12478045**

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