

DOCKET 1149

DATE OF HEARING	January 6, 2014
NAME	Andrew Thome
DESCRIPTION OF PROPERTY	23 Danfield Road
CAUSE FOR APPEAL	Relief from the decision of the Building Official for a fence which violates Section IV, A, 4, (a) and IV, G, 1, (d) 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 variance was granted with the following conditions: fence shall be setback at least 25' from the edge of the Danfield Road right-of-way; fence shall be limited to 42"; fence shall be landscaped along the Danfield Road side; The driveway gate shall be limited to a maximum width of 48".

MINUTES OF MEETING
ZONING BOARD OF ADJUSTMENT
Monday, January 6, 2014

DOCKET 1149
23 Danfield Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, January 6, 2014, at City Hall.

The following members of the board were present:

Mr. Stanley Walch, Chairman
Ms. Robbye Toft
Ms. Liza Forshaw
Ms. Laura Long
Mr. Fred Goebel

Also present were: Mayor Nancy Spewak; Mr. Michael Wooldridge, Assistant to the Mayor / City Clerk.

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 1149

. 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 Andrew Thome, 21 Danfield Road, St. Louis, MO 63124, requesting relief from the ruling of the Building Official who declined to issue a permit for a fence and gate at 23 Danfield Road which violates Sections IV, A, 4, (a) and IV, G, 1, (d) of Zoning Ordinance 1175.


The hearing will be held at 4:00 p.m. on Monday, January 6, 2014, 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:)
)
ANDREW THOME) Docket Number 1149
21 DANFIELD ROAD)
LADUE, MISSOURI 63124)

Monday, January 6, 2014

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

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
)  
ANDREW THOME ) Docket Number 1149  
21 DANFIELD ROAD )  
LADUE, MISSOURI 63124 )  
Monday, January 6, 2014

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1 ZONING BOARD OF ADJUSTMENT  
2 CITY OF LADUE  
3 LADUE, MISSOURI  
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8 IN THE MATTER OF: )  
9 )  
10 ANDREW THOME ) Docket Number 1149  
11 21 DANFIELD ROAD )  
12 LADUE, MISSOURI 63124 )  
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15 BE IT REMEMBERED that on the 6th day of  
16 January, 2014, hearing was held before the Zoning  
17 Board of Adjustment of the City of Ladue, Missouri, at  
18 Ladue City Hall, 9345 Clayton Road, in the City of  
19 Ladue State of Missouri 63124, regarding the  
20 above-entitled matter before Bobbie L. Luber,  
21 Certified Court Reporter, Registered Professional  
22 Reporter, Certified Shorthand Reporter, a Notary  
23 Public within and for the State of Missouri, and the  
24 following proceedings were had.  
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1 APPEARANCES:

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COUNCIL MEMBERS:  
Mr. Stanley Walch, Chairman  
Ms. Liza Forshaw  
Mr. Fred Goeble  
Ms. Laura Long  
Ms. Robbye Toft  
  
Also Present:  
Mr. Michael Wooldridge, City Clerk  
Mayor Nancy Spewak  
  
Mr. Andrew Thome, Appellant  
Mr. John Shillington  
Mr. Mark Willard  
  
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

(The Meeting of the Zoning Board of  
Adjustment of the City of Ladue was called to order at  
4:00 p.m.)  
CHAIRMAN WALCH: We have three cases today,  
which is unusual on such a snowy day, but they are  
Docket Numbers 1149, 1151, and 1152. And the  
procedures that I'm talking about will apply to all  
three cases.  
So first I'm glad we have such a good  
attendance today on such a snowy day.  
My name is Stan Walch. And as I explained,  
we have the three cases that I read a minute ago, the  
docket numbers. First, I want to introduce the board  
that is here. On my far right is Fred Goebel. The  
next right is Liza Forshaw. Missing is Robbye Toft.  
And on the far left is Laura Long. Mayor Spewak is  
here. She is out looking for a cell phone number.  
But the code -- first I'm going to  
introduce, and this applies to all three Docket  
Numbers 1149, 1151 and 1152, and that's the Zoning  
Code of the City of Ladue and Ordinance Number 1175 as  
amended. That particular ordinance is the zoning  
ordinance, and it will be used as our basis for  
reaching the decision in two of the three zoning cases  
that are here today. The third one is governed by the

1 fence ordinance, which is part of a different  
2 ordinance.

3 Now, as part of the appeals that we are  
going to hear this afternoon, I want to explain how we  
work. The appellant on each appeal will be given an  
opportunity to present reasons why -- Ms. Toft is on  
her way.

8 The appellant in each appeal will be given  
the opportunity to present reasons why he or she feels  
that a variance is warranted based on practical  
difficulty or undue hardship. Reasons of economic  
consideration and self-inflicted hardship will not be  
considered by the board.

14 The board may have questions of each  
appellant. Following the presentation, any member of  
the audience who wishes to address the case will be  
heard, and I will ask if anybody wants to be heard.  
Then the portion -- the public comment portion of this  
hearing -- of each hearing will be closed, and the  
board will discuss the matter among ourselves, and may  
ask additional questions of the city staff or the  
appellant.

23 After the discussion I will ask if any  
member of the board wants to make a -- propose a  
motion to either approve or reject the requested

1 variance. If a motion is proposed and seconded, the  
2 board will vote on that motion. Otherwise, I will ask  
3 the board to vote on whether the requested variance  
4 should be granted. And this is very important, it  
5 takes four out of five members of the board for the  
6 affirmative vote for the variance to be granted. That  
7 is one of the reasons we are waiting for Ms. Toft,  
8 because we would like to have her present for the  
9 first hearing.

11 Normally then I tell you at this part of  
the juncture in the proceedings that we have done site  
visits earlier this afternoon. Given the weather  
conditions, I would be not telling the truth if I told  
you we did these site visits today. If there is  
anything peculiar about your site that you want to  
explain to us, we welcome the explanation, not having  
taken the opportunity to go out and visit the site at  
sub-zero temperatures today.

19 I think with that we are ready to start the  
20 first proceeding, which is Docket Number 1149. That's  
the petition of Andrew Thome at 21 Danfield Road, and  
he is requesting relief from the ruling of the  
building official who declined to issue a permit for a  
fence that violates Sections IV, A, 4, (a) and IV, G,  
1, (d) of Ordinance 1175.

1 I'm going to introduce several exhibits  
2 which would be part of the record in this particular  
3 appeal.

4 Exhibit B will be the public notice of this  
5 hearing that was published in the newspaper.

6 Exhibit C will be the denial letter from  
7 the deputy building commissioner dated August 19th of  
8 2013, which will be marked as Exhibit C.

9 The list of residents to whom the notice of  
10 public hearing was mailed, will be marked as Exhibit  
11 D.

12 And the appellant's letter requesting a  
13 variance dated October 14th, 2013, and any other  
14 letters in support of or in opposition of the request  
15 for variance will be marked as Exhibit E. Are there  
16 any other letters, Mr. Wooldridge?

17 MR. WOOLDRIDGE: No. Just the one from  
18 Mr. Shillington, which you have in your file.

19 CHAIRMAN WALCH: Yes. We have seen that  
20 one.

21 The final, Exhibit F, will be the -- will  
22 be the memorandum from the staff or the consultants to  
23 the board and the City of Ladue, that will be marked  
24 as Exhibit F. I don't believe there are any such  
25 exhibits.

1 At this point I normally would call on the  
2 deputy building commissioner, but I don't think he is  
3 here today, to give us the reasons this request is  
4 denied. Are you able to do that, Mr. Wooldridge?

5 MR. WOOLDRIDGE: Yes. The building  
6 official turned it down for two reasons. One -- and  
7 they both involve Ordinance 1175. The first one is  
8 Section IV, A, 4,(a), which states that no accessory  
9 building or structure shall be constructed upon a lot  
10 until the construction of the main building has been  
11 actually commenced.

12 In this particular case there is no house  
13 on the lot. There is no intent to put any main  
14 primary structure on it. And the fence is considered  
15 an accessory structure.

16 In addition, under Section IV, G, 1, (d),  
17 gates are not allowed as part of the driveway monument  
18 in this particular situation. They are not on a named  
19 street, main primary road. And in this particular  
20 case they are looking for a lock gate and a driveway  
21 gate, in this situation right up on the road.

22 CHAIRMAN WALCH: So if I follow your  
23 explanation, it's both an issue of the gates and the  
24 right to build the fence itself?

25 MR. WOOLDRIDGE: Correct.

1 CHAIRMAN WALCH: Okay. I think at this  
2 juncture we will just wait for Ms. Toft to get here,  
3 because in fairness to the appellant we shouldn't hear  
anything of substance. She knows all of this  
4 procedure stuff. We will wait until 4:20.

5 Did you talk to her?

6 MAYOR SPEWAK: Mike talked to her. She  
7 missed the email that it was still on, I think,  
8 because City Hall is closed.

9 MR. WOOLDRIDGE: She is on her way.  
10 (An off-the-record discussion was held.)  
11 (At this time Ms. Toft entered the hearing  
12 room.)

13 CHAIRMAN WALCH: We have done all the  
14 formal things, so at this time I'm going to ask the  
15 appellant, or anybody who is going to speak on behalf  
16 of the appellant, to come forward and give your name  
17 to the court reporter, this lady right here, and she  
18 will swear you in. If you think you might speak, it's  
19 a good thing to come forward now.

20 (At this time Mr. Thome, Mr. Shillington,  
21 and Mr. Willard were sworn in by the court reporter.)

22 CHAIRMAN WALCH: The floor is yours. It's  
23 your presentation, however you would like to proceed.

24 MR. THOME: My name is Andy Thome; my wife

1 Julie, our son Harry. There are three other kids that  
2 are not here right now. We live at 21 Danfield, and  
3 we own the lot at 23 Danfield also.

4 We owned the lot prior at 23 and sold it to  
5 someone who was going to develop it, and that ended up  
6 being a boomerang, and we bought it back after he had  
7 clear-cut it and took down a tree and some other  
8 things.

9 CHAIRMAN WALCH: Is 23 right next door to  
10 you?

11 MR. THOME: 23 is right across the street  
12 from us, and it's next door to the Shillingtons and  
13 Mark on either side.

14 We were debating whether or not to sell the  
15 lot again, and we decided that we would enjoy having a  
16 garden, and kind of doing our version of a victory  
17 garden.

18 We talked to the neighbors, and everyone  
19 was in support of that. Then we realized that deer  
20 come to feast on the lot every single day, with today  
being the first exception. I looked for deer tracks,  
21 and there was no deer today. But the deer come to the  
22 lot every day, and they eat. And realizing that you  
23 couldn't grow flowers and vegetables without some type  
24 of fencing, and we looked into all of this and

1 realized without a structure we weren't allowed to  
2 have a fence.

3 Our thought process with the fence was not  
4 to fence the entire lot, but just the middle portion  
5 of the lot to keep the green space on the outer sides  
6 of it, to landscape it, whether it's boxwoods and  
7 greens and trees and things like that. Pretty much  
8 what would be the building plate to have a garden  
9 right there.

10 So that was our goal. And then we  
11 obviously ran into the ordinance, which I believe the  
12 spirit or the intent of the ordinance was not  
13 necessarily for a deer protection or an animal  
14 protection of the garden but rather to keep unsightly  
15 fences in Ladue.

16 We chose iron. We talked about this with  
17 the neighbors. We have letters from the trustee, and  
18 support of it also in terms of talking to as many  
19 neighbors as we could with regard to this whole  
20 process.

21 The one other thing that was mentioned that  
22 I think deserves a little further comment, in terms of  
23 the entrance. We set back the fence -- and we are  
24 willing to set it back however much anyone wants it to  
25 be set back, but it was more from an aesthetic

1 standpoint. And the two openings that are being  
2 discussed are, a, is the gate to go into the garden,  
3 which has an arbor across the top of it. And  
4 obviously we are not set on the arbor, we did it for  
5 aesthetics. And number 2 is there is an old driveway  
6 there, an asphalt driveway. And since the  
7 construction in the neighborhood, and we are part of  
8 that process, and there are other area of houses that  
9 were built -- I will call it upstream.

10 This lot is extremely low, and it gets a  
11 lot muddier today than it did ten years ago. The  
12 driveway was left in. The only reason that we wanted  
13 to put a gate on the driveway is it's the only spot  
14 that stays totally dry without mud, and it allows for  
15 no tracking of vehicles. We are not set on having to  
16 have that gate be -- you know, it would probably be  
17 nice to load dirt through or something like that, but  
18 we are not trying to have that be any type of ornate  
19 situation or draw attention to it. It was just an  
20 access point that's dry, if that makes sense. So I  
21 just want to make sure you didn't think there was a  
22 thoroughfare being devised, access so if you wanted to  
23 get top soil or something like that without tracking  
24 mud out to the street.

25 That was the only -- and once again, any of

1 these things we discussed with the neighborhood to see  
2 if they wanted to support us also.

3 CHAIRMAN WALCH: Would you like to file  
4 those as exhibits in this case?

5 MR. THOME: Sure. I think I have got nine  
6 copies. Do I hand them -- we will hand them to her.

7 MS. TOFT: Do you have nine copies of this  
8 one?

9 MR. THOME: This one I don't have nine  
10 copies of. But Helen was here in December, but we  
11 were going to be out of town. She was going to be  
12 here but she got stuck in her driveway. She sent an  
13 email of support with that also.

14 That is about the extent of it other than  
15 trying to have a nice garden and provide a nice  
16 greenscape to the neighborhood, and put in flowers and  
17 vegetables. That is the basis for this request.

18 MS. TOFT: Do you know of any other  
19 precedence?

20 MR. THOME: I don't know of anybody else  
21 that would buy a lot in Ladue and have a garden. I  
22 don't know if that's an indictment of me or what. But  
23 this is something we think will be a fun thing, and we  
24 think the neighbors are in favor of it.

25 CHAIRMAN WALCH: We racked our brains

1 trying to find a precedence, and couldn't find any  
2 precedence for this particular matter. I do have one  
3 question for you though.

4 Would you be willing, if a variance were  
5 granted here, to condition it upon your agreement to  
6 remove the fence if and when you sell -- put the lot  
7 up for sale?

8 MR. THOME: Absolutely. That would not be  
9 a problem for us in any way, shape, or form. If you  
10 look at it, not only would I agree to it, but it would  
11 be physically impossible to build a house without  
12 taking this fence down. But I would absolutely have  
13 that condition, that would be great.

14 CHAIRMAN WALCH: Any other questions of  
15 Mr. Thome?

16 MR. GOEBEL: Is there a reason the garden  
17 would not be behind your home?

18 MR. THOME: We have a challenging lot. It  
19 is like this.

20 MR. GOEBEL: I see.

21 MR. THOME: So we had to do a huge -- not a  
22 huge, a four-foot retaining wall. And there is  
23 not much -- because we are on a quarter -- on a  
24 radius, the majority of our lot is in the front and  
25 not in the back based on the setbacks. There is no

1 room to put it.

2 MR. GOEBEL: Thank you.

3 MR. THOME: You are welcome. Any other  
4 questions?

5 MR. SHILLINGTON: I would like to  
6 express --

7 CHAIRMAN WALCH: Just a moment,  
8 Mr. Shillington.

9 Will you hand these to the court reporter  
10 and ask her to mark those as Exhibits G and H.

11 Now, Mr. Shillington, I'm sorry.

12 MR. SHILLINGTON: I am somewhat familiar  
13 with Ordinance Number 1175, and I understand where the  
14 deputy building commissioner comes from, but I think  
15 this situation is so unique that I doubt very  
16 seriously the writers of the ordinance even considered  
17 thinking about putting a fence around a vacant lot.  
18 And so I think that.

19 And I think you mentioned the precedence.  
20 I doubt there is one, and I doubt that would come up  
21 again because I think this is so very unusual.

22 In Sections 9 H-3 and 10, both of them  
23 state that the board can grant a variance if practical  
24 difficulties exist. And I can assure you, to have a  
25 garden with practical difficulties, the deer, they are

1 in my backyard, which is right next to this lot of  
2 which we speak. They are there very often. I have  
3 seen them graze in the lot of which we are speaking.  
4 The other day there were several of them in  
5 Mr. Thome's backyard -- front yard, rather. So they  
6 are all over the place.

7 The major thing I want to say again is this  
8 precedence. I know the board worries periodically  
9 about precedence. And I doubt very seriously this  
10 would come up again, and as I said earlier, I don't  
11 think it has come up before. So that's what I would  
12 say. Any questions for me?

13 CHAIRMAN WALCH: No.

14 MR. GOEBEL: I guess I would have one other  
15 question for the applicant. I guess I'm maybe not  
16 understanding the concept of the victory garden. Is  
17 it intended as a community garden with community  
18 planting, or community ownership or sharing of  
19 vegetable produce, or is it intended to be almost like  
20 in some subdivisions we have like a communal piece of  
21 property that is used for anything from a swim club  
22 to -- I mean, is it of that nature?

23 MR. THOME: No. We are responsible for it.  
24 It's for family. Do I believe that neighbors will  
25 benefit if anything actually grows and we can keep the

1 deer away, yes. But we are not trying to have it be a  
 2 CSA or have the neighbors take a plot or something  
 3 like that.  
 4 MR. GOEBEL: It's for the family.  
 MR. THOME: We are planning on being  
 6 responsible for maintenance.  
 7 MR. GOEBEL: Okay. Thank you.  
 8 CHAIRMAN WALCH: Any other presentation?  
 9 Mr. Wood (sic)?  
 10 MR. WILLARD: Willard.  
 11 CHAIRMAN WALCH: I'm sorry.  
 12 MR. WILLARD: Yes. I live on the lot  
 13 adjacent to this lot, and, so, along with John  
 14 Shillington, I'm probably the most directly affected  
 15 by what goes on there. And I just wanted to say that  
 16 I think the Thomes' idea for a garden there is  
 17 inspiring. And I think it could provide a most  
 18 positive addition to a neighborhood.  
 19 And I have no objection to the variances  
 20 that would be required for IV, A, 4 (a) and IV, G and  
 21 IV (d) that would be required for the Thomes to go  
 22 ahead with this, and I hope it would be possible to  
 23 grant them that. Thank you.  
 24 CHAIRMAN WALCH: Thank you. Any other  
 25 questions? Any members of the public who have not

1 been sworn yet wish to speak to this matter? I  
 2 believe not.  
 3 Hearing none, then I'm going to declare the  
 4 public comment portion of this meeting closed and we  
 5 will discuss this matter among ourselves and try to  
 6 arrive at a decision.  
 7 MR. WOOLDRIDGE: Mr. Chairman.  
 8 CHAIRMAN WALCH: Yes.  
 9 MR. WOOLDRIDGE: Just one other thing here.  
 10 In looking at the diagram that was provided by the  
 11 applicant, he has indicated that the fence is four  
 12 feet tall; is that correct?  
 13 MR. THOME: I think it's 44 inches. I  
 14 don't know if it's 44 or 48. I don't know off the top  
 15 of my head.  
 16 MR. WOOLDRIDGE: It shows 48 here is why I  
 17 was asking. The only reason I bring that up is in  
 18 addition to the other two violations of the code, in a  
 19 front yard, which is where this fence will be, at  
 20 least appears to be on the diagram that was submitted,  
 they are restricted to 42 inches. So that will be  
 another variance if you grant this. So it will be the  
 23 three sections.  
 24 MS. TOFT: Would you accomplish your goal  
 25 of keeping the deer out if you dropped the front fence

1 back to 42 inches, do you think?  
 2 MR. THOME: Yes.  
 3 MS. TOFT: I don't know, I mean, if deer --  
 4 I suppose they can jump. Really what you have. Do  
 5 you have a sense?  
 6 MR. THOME: We would try to plant shrubs up  
 7 against the fence to at least provide a hurdle. They  
 8 have to hurdle a little more. People say if you plant  
 9 something in front of the fence that can help the  
 10 situation. But that's not a problem on the height in  
 11 front to make it if that will change our  
 12 accommodation.  
 13 MS. TOFT: The proposed setback on your  
 14 diagram from the property line, I was looking for a  
 15 measurement. Do we have a measurement from the front  
 16 of the lot? Do you have a sense where that -- is it  
 17 right up to the property line?  
 18 MR. THOME: It is absolutely not right up  
 19 to the property line. Can I look at the full drawing?  
 20 CHAIRMAN WALCH: Certainly.  
 21 MS. TOFT: Does anyone else see a  
 22 measurement? I didn't see one.  
 23 CHAIRMAN WALCH: I didn't see one.  
 24 MR. GOEBEL: No.  
 25 MR. THOME: It's set back quite a bit. The

1 road is the dark part. And then the property, the  
 2 fence line is right there. I don't have a ruler or  
 3 scale, but it's at least 20 feet if not more. I think  
 4 its over 20.  
 5 MS. TOFT: There is -- to the left is a  
 6 25.13 measurement.  
 7 MR. THOME: It's at least that.  
 8 MS. TOFT: So at least 25 feet back?  
 9 MR. THOME: Correct.  
 10 CHAIRMAN WALCH: This drawing doesn't  
 11 indicate a particularly large amount of shrubbery, if  
 12 I understand it correctly.  
 13 MR. THOME: There is not a full landscaping  
 14 plan.  
 15 CHAIRMAN WALCH: There is not a full  
 16 landscaping plan. I assume your plan, though, is to  
 17 have -- as far as keeping the deer out would be to  
 18 have shrubbery all the way around?  
 19 MR. THOME: It definitely would be.  
 20 CHAIRMAN WALCH: So the deer would have to  
 21 hurdle more than the fence.  
 22 MS. TOFT: Mr. Wooldridge, is that a  
 23 50-foot front yard setback; is that right?  
 24 MR. WOOLDRIDGE: Pardon me?  
 25 MS. TOFT: This district is a 50-foot front



1 yard setback?

2 MR. WOOLDRIDGE: No. Hang on a minute and

3 I will tell you. Are you talking about front setback?

4 MS. TOFT: Yes. I didn't see what district

5 it was in.

6 MR. WOOLDRIDGE: 50 foot in C district.

7 MS. TOFT: 50 foot setback. So the fence

8 is approximately midway?

9 MR. WOOLDRIDGE: Uh-huh.

10 MS. TOFT: Okay. Thank you.

11 MS. FORSHAW: I wasn't completely following

12 the reasoning for the drive-in gate. I know you said

13 it had to do with drainage, and having a dry spot for

14 a car, but why would a car be going into the garden?

15 MR. THOME: Just to bring dirt. It doesn't

16 need to be a wide gate. It's just that it is asphalt.

17 It is shown on there as an old asphalt drive, and we

18 weren't going to expend the money to dig up the

19 asphalt. And so the only thing that would be good for

20 the asphalt is a staging area, if you wanted to work

21 on something that was dry in the event it was wet. It

22 could be a gate as thin as enough to get a golf cart,

23 or just something to get a wheelbarrow full of dirt

24 thing. I mean, it doesn't need to be ten foot.

25 MS. FORSHAW: How wide is the two gates

1 that you are proposing?

2 MR. THOME: I think the arbor gate, and I'm

3 assuming that's 36 to 40 inches, a single swinging

4 gate. And then the other gate on the asphalt, I don't

5 know what the fence person showed it to be, but I'm

6 comfortable with it being just about anything that we

7 can get through that still utilizes the dry surface.

8 So if it was 8 feet or something.

9 We are trying not have that gate be any

10 different than the normal fencing that is around the

11 entire property so it doesn't look like a gate. If

12 that makes sense. There will be no ornamental to it

13 to bring attention. Kind of like an access gate for

14 lawn equipment or something.

15 CHAIRMAN WALCH: This is a question really

16 more of the conclusion, but do you have any picture,

17 can you visually describe the fencing that you are

18 planning to put in?

19 MR. THOME: I believe there is a picture of

20 it.

21 CHAIRMAN WALCH: There is a picture back

22 here? I'm sorry.

23 MR. THOME: It's a simple black wrought

24 iron.

25 CHAIRMAN WALCH: I assume this comes in a

1 42 inch size as well as 48 inch size.

2 MR. THOME: Yes.

3 CHAIRMAN WALCH: Any other questions? Does

4 anybody want to make a motion?

5 MS. TOFT: Do we have discussion of the

6 board first?

7 CHAIRMAN WALCH: I thought we had that.

8 MS. TOFT: I was trying to remember when we

9 had the house with the huge horse stable. Did we

10 allow fencing, which we would have had to allow

11 fencing, didn't they end up putting horses on the lot

12 before the structure was built?

13 MR. WOOLDRIDGE: Are you talking about the

14 one on Woodlawn?

15 CHAIRMAN WALCH: I missed that hearing, and

16 so I don't know the answer to that.

17 MR. WOOLDRIDGE: Without having to go back,

18 I thought the board moved it back in the landscape.

19 MS. TOFT: Yes. But we did allow the fence

20 prior to the construction of the residence, certainly

21 prior to the completion of the residence. That's the

22 closest precedence.

23 MR. WOOLDRIDGE: In that particular case it

24 was a two-lot subdivision, and it was just a

25 cul-de-sac, and there was no house on the second lot.

1 And, in fact, they ended up buying that property also.

2 But the fence did have to be set back, and I forget

3 how far back. I want to say 20 feet or so.

4 MS. TOFT: And I don't know, Laura, you

5 weren't on the board. Would you remember that, where

6 they had that for a stable?

7 MS. FORSHAW: I was here.

8 MS. TOFT: They fenced any portions, they

9 had quite a fenced area, and they had to move the

10 fence back because it was not on the property, we did

11 allow the fence in the front yard because they needed

12 it. We did have the gate because they were going to

13 use it to corral the horses. There was -- technically

14 a residence was built on that because they had the

15 residence and stable because the primary residence was

16 on the 17 acres on Woodlawn. That's the closest

17 situation I can remember.

18 MS. FORSHAW: That's roughly how I remember

19 it.

20 MS. TOFT: In terms of precedence, I think

21 we did grant several variances to allow them to

22 construct a fence on what was a lot next -- primarily

23 being used for a residence.

24 CHAIRMAN WALCH: I remember the case and

25 some discussion of it but I wasn't here when a

1 decision was made.  
2 MR. GOEBEL: Discussion I think within the  
3 committee would be helpful as well.

4 MS. TOFT: I mean, this is such a unique  
5 situation. The fact that the homeowner is offering to  
6 set it back 25 feet, and to keep it, the fence, at 42  
7 inches, and to landscape around it so it does not be  
8 visible like a guarded lot, I can certainly appreciate  
9 the problem of the deer.

10 MR. GOEBEL: There is deer everywhere in  
11 Ladue. And there were deer in Ladue before the  
12 homeowner bought the property. There are also plenty  
13 of instances where even fawns can clear 42 inches or  
14 48 inches of fence with no problem. To actually have  
15 a fence that retains deer, I'm not sure even a 6-foot  
16 fence would do that, but it would have to certainly be  
17 taller than 48 inches to accomplish that.

18 The other thing, I understand the concern  
19 about precedence. Again we have so many homes in  
20 Ladue, I would venture to say that most of them have  
21 deer at some time of year in the yard. I mean, I can  
22 foresee a situation where we have a number of people  
23 come in and ask for all manner of fencing in a much  
24 disingenuous way. Clearly here there is no home,  
25 there is no intention to build a home on this lot. I

1 believe the family clearly intend to have a garden.  
2 But to have fences like this in the front yard, or to  
3 have people say we allowed it here because of the  
4 deer. The deer are like rainwater on the street.  
5 It's everywhere here in the city during all times of  
6 the year.

7 I'm just concerned that -- I'm afraid it  
8 wouldn't achieve the goal because it's not high  
9 enough, but to have one high enough, it would be a  
10 pretty large fence.

11 The other thing I'm concerned about too is  
12 this is a three-quarter acre lot, and the area  
13 involved here, just by gauging it, it's almost a  
14 quarter, maybe a little bit less than that. That is a  
15 tremendous amount of land to do a garden in. For that  
16 you really need some measure of equipment and, you  
17 know, some work. But if the family is going to do  
18 that, that's fine. But to have this magnitude of  
19 fencing on a free-standing lot, I guess I'm not  
20 prepared to have that be something that we establish  
21 as a reasonable expectation beyond the ordinances. If  
22 someone wants to propose that within the city  
23 ordinances, then I think it needs to be in the context  
24 of that broader zoning ordinance. If they choose to  
25 have an ordinance that addresses deer, or fencing in

1 front yards, I mean, you could fence here along the  
2 property line against the backyards. The limitations  
3 are the ones stated in the denial that stated you  
4 can't put the fence in before the house goes on. But  
5 rather than rewriting zoning ordinances for a  
6 condition, I don't think there is so much of a  
7 variance from the ordinance based on some common and  
8 counter condition. It's really rewriting the  
9 ordinance to address a new set of criteria. I don't  
10 view our committee's commission, our board's  
11 commission as doing that.

12 I think to put a fence like that in the  
13 front yard would not be consistent with my view of  
14 what the fencing is intended to accomplish.

15 MS. TOFT: I think, and perhaps  
16 Mr. Wooldridge, is it not the case that with a 42-inch  
17 fence, 50 percent back, if there were a house built  
18 there, that would be permitted; am I mistaken? I  
19 thought --

20 MR. GOEBEL: You could fence the whole back  
21 yard.

22 MR. WOOLDRIDGE: You could have a fence  
23 that is 42 inches -- I'm sorry, 42 inches if it's 40  
24 percent open in the front yard.

25 MS. TOFT: And it could go all the way to

1 the property line.

2 MR. WOOLDRIDGE: And it could go to the  
3 property line.

4 MS. TOFT: So the only issue here is there  
5 is not a structure on it.

6 MR. WOOLDRIDGE: But also they couldn't  
7 have a gate with it. But they could put a fence up if  
8 there was a house there, and it could be on the  
9 property line or 6 inches back.

10 MR. THOME: Excuse me, Chairman, am I  
11 allowed to make one more comment or not?

12 CHAIRMAN WALCH: Certainly.

13 MR. THOME: The only thing I would ask that  
14 you look at on the site plan is the reason we chose  
15 where we chose for this is we are taking advantage of  
16 a 7 foot rock wall that's on the property that you can  
17 see towards the back of it. So the deer in the back  
18 have to scale over 10 feet to get onto this. So we  
19 were trying to take advantage of the landscape that  
20 already exists at the site, which is -- and in terms  
21 of the whole area, it is a very manageable area that  
22 we are requesting to fence within the whole  
23 three-quarters. There is a lot of grassy area in the  
24 back behind the wall and over to the sides. So one of  
25 the reasons we asked for it in this manner is to have

1 as much green space and landscaping on the sides of  
2 it. This is like the flat part of the whole. But  
3 that back line shows a wall that exists, which is a  
4 very pretty, aesthetically pleasing, that we were  
5 trying to leave. And I know you can't really see that  
6 with that on it, but that was the logic that existed  
7 regarding trying to leave that wall and fence it in  
8 the one area.

9 CHAIRMAN WALCH: I can't see the wall. Can  
10 you?

11 MS. TOFT: That dotted line.

12 CHAIRMAN WALCH: That dotted line is the  
13 wall? Okay.

14 MS. TOFT: It actually runs a little behind  
15 this concrete block. Right there. My comment, it  
16 seems as if this could all be done if a structure were  
17 built on it.

18 MR. GOEBEL: Right.

19 MS. TOFT: I guess I don't see what the  
20 harm is for the purpose of a garden in making the lot  
21 attractive, you know.

22 CHAIRMAN WALCH: That's the reason I asked  
23 Mr. Thome, and I appreciated his answer very much,  
24 that he would be willing to condition it upon a  
25 commitment to remove the fence if the property were up

1 for sale.

2 To me that kind of narrowed the issue to  
3 the exception being there is not going to be a house  
4 on the lot. It seems a rather harsh result to say  
5 it's not usable as a garden.

6 MS. FORSHAW: I'm a little confused from  
7 the drawing. Of course we haven't been able to review  
8 the site, but it shows a house on the lot; right?

9 What is this house shown on the lot? There isn't  
10 supposed to be a house on the lot; right?

11 MR. THOME: It's over where the house was.  
12 This is the building plate where the house was. It's  
13 absolutely gone. This is a beautiful stone wall that  
14 goes all the way from here all the way around.

15 MS. FORSHAW: Okay.

16 MR. THOME: So the fence height on this  
17 wall is of no concern. So it's practically protecting  
18 the front side. That's just the overlay where the old  
19 house was. When the other person bought the lot they  
20 cut almost every tree there was along here.

21 MS. LONG: If I may, so the record is  
22 clear, you are gesturing on the diagram in our packet.  
23 Can you give us an estimate of how much distance that  
24 is, that wall that you are describing?

25 MR. THOME: This wall from here over to

1 here?

2 MS. LONG: Right. This is the rock wall,  
3 correct?

4 MR. THOME: It's the rock wall. It's the  
5 whole back -- in terms of length, I would estimate it  
6 to be the entire length of the back. Although it  
7 doesn't go over all the way here, it goes on this  
8 side. So it's roughly that same distance, whatever  
9 this dimension is.

10 It's a very large -- it goes all the way  
11 from here all the way to the back.

12 MS. LONG: So on the exhibit, again so the  
13 record is clear, on the exhibit you are describing it  
14 as -- would that be the north side?

15 MR. THOME: This would be west, and this  
16 would be north.

17 MS. LONG: All right. So, from the north  
18 side almost all the way back?

19 MR. THOME: Correct. And it would be as  
20 tall as me in some parts, and then it would taper  
21 down.

22 MS. LONG: And how tall are you?

23 MR. THOME: 6'4".

24 MS. LONG: And it would taper down to?

25 MR. THOME: It feathers down to nothing.

1 It's pretty much grade here, grade here. And then the  
2 lot. This is a huge drainage between Mark's house,  
3 and this is a big -- it's where all the storm water  
4 flows from the neighborhood into the creek.

5 MS. LONG: Thank you.

6 MR. THOME: You are welcome.

7 MS. FORSHAW: I guess I see this case as  
8 having very little precedential value because it's  
9 such a rare situation to devote a lot to a garden with  
10 no building on it as long as the variance is  
11 appropriately limited, so long as this lot is used for  
12 a garden and has no building on it.

13 MS. LONG: I guess what I would say, too, I  
14 was concerned, again being new to the board, as far as  
15 precedence, I certainly don't want people coming in  
16 and saying, as Mr. Goebel said, I want a fence because  
17 of the deer. That would be almost universal in Ladue  
18 or the county.

19 And what I think the ordinance does do, not  
20 what it doesn't do but what it does do is it's pretty  
21 restricting on what gates are allowed with respect to  
22 what gates are there. So this would be a bad phrase,  
23 but openness. Because that is my biggest concern.

24 MS. TOFT: I think the biggest problem that  
25 I would see would be the gate issue. And by granting

1 the equivalent of a gate here, are we going to leave  
2 ourselves vulnerable every time someone comes in and  
3 wants a gate across a driveway? I want to make sure  
4 whatever gate we allow, if we allow a gate, would not  
5 be the size that would be in the front of our face  
6 because we get how many gate requests -- we used to.

7 CHAIRMAN WALCH: Used to, before they  
8 amended the ordinance.

9 MS. TOFT: That was a much regular issue  
10 before us, people wanting a gate across their  
11 driveways. I just want to make sure that we craft it  
12 in a way that it won't be used against us in the  
13 future by people who want to have a fortress. That  
14 would be my concern.

15 CHAIRMAN WALCH: I do want the record to be  
16 clear, because maybe I misunderstood Mr. Thome. I  
17 thought you said that you would be willing to proceed  
18 without the driveway gate.

19 MR. THOME: I would be willing to proceed  
20 without it, but it would be really helpful to have  
21 some type of gate access on there, that once again it  
22 would be -- it wouldn't be any automatic door opener  
23 or anything else. It would just be more of an access  
24 gateway of whatever size. Even if it was four feet, I  
25 would be happy with something to get access on a wet

1 day when you are not going on the dirt.

2 MS. FORSHAW: And you said the gate, that  
3 gate could be a swinging gate. It's not visually  
4 obvious as a gate?

5 MR. THOME: Correct. In other words, we  
6 have a fence in our backyard right now because we have  
7 a pool, and the lawn access gate, the one side is  
8 fixed and then you have to go open both sides and you  
9 really can't tell the difference between that and the  
10 normal. We would be pleased with anything like that.

11 CHAIRMAN WALCH: My neighbor has got one of  
12 those gates -- one of those fences, which looks  
13 exactly like you are building. He has got a gate big  
14 enough to get a riding mower in there, but you can't  
15 hardly tell it's a gate. He was able to do that  
16 without a variance because it's in his backyard.

17 All right. Any further discussion? I  
18 think we have fairly well discussed this issue. If  
19 not, does anybody want to venture to make a motion?

20 MS. TOFT: Mr. Chairman, I would be willing  
to attempt to craft a motion.

21 Mr. Chairman, I would move on the basis of  
22 the evidence presented we find that practical  
23 difficulties exist, and that the decision of the  
24 building official should be reversed and the variance  
25

1 granted with the following stipulation: That the  
2 fence in the front yard be at least 25 -- set back at  
3 least 25 feet from the property line. That it be no  
4 more than 42 inches in height. That there be  
5 landscaping in front of the front yard fence. And  
6 that gate, if there is a gate across the existing  
7 driveway, that it be no more than 48 inches in width  
8 and be designed so as to appear not to be a gate but  
9 to be a part of the section of fencing. And with the  
10 final stipulation that should the homeowners sell the  
11 lot, that the fencing, the front yard fencing would be  
12 removed.

13 MS. LONG: Second.

14 CHAIRMAN WALCH: I think it would be most  
15 helpful if the court reporter would type that motion  
16 up for us so we have -- both we and the deputy  
17 building commissioner have a clear record of the  
18 conditions Ms. Toft stated. I thought Ms. Toft stated  
19 the conditions fairly well.

20 Any further discussion on this motion? If  
21 not, I'm going to ask the board how they vote.

22 MS. TOFT: Mr. Chairman, Mr. Wooldridge  
23 just made a point. That if the lot would be sold or  
24 if a home would to be built on it, that the front  
25 fencing section would be removed, if I might amend my

1 motion and it would be seconded.

2 MS. LONG: Yes.

3 CHAIRMAN WALCH: All right. Do you accept  
4 that amendment?

5 MS. LONG: Yes.

6 CHAIRMAN WALCH: Any further discussion?  
7 Hearing none, I'm going to call for the vote. How do  
8 you vote, Mr. Goebel?

9 MR. GOEBEL: No.

10 CHAIRMAN WALCH: How do you vote,  
11 Ms. Forshaw?

12 MS. FORSHAW: In favor.

13 CHAIRMAN WALCH: In favor.

14 MS. TOFT: In favor.

15 MS. LONG: In favor.

16 CHAIRMAN WALCH: All right. You have a  
17 four to one fence.

18 I will ask you, Mr. Wooldridge, if you  
19 would, I think it would be helpful if you had a copy  
20 of all of the conditions that Ms. Toft stated for the  
21 record. Would you be good enough to mail him just  
22 that portion of the transcript?

23 MR. WOOLDRIDGE: He will get a letter  
24 tomorrow morning from me with all those details.

25 CHAIRMAN WALCH: Okay. Maybe, Court

1 Reporter, be sure you got them all down.  
 2 MS. TOFT: Good luck. Enjoy your garden.  
 3 MR. THOME: Thank you.  
 4 MR. WOOLDRIDGE: I think we are missing one  
 of our applicants.  
 6 CHAIRMAN WALCH: Next is Docket Number  
 7 1151. And I take it, Mr. Hurst on Warson Road, is  
 8 missing. No one is here on that.  
 9 (At this time the hearing continued with  
 10 Docket Number 1151.)

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CERTIFICATE OF REPORTER

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I, Bobbie L. Luber, 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. Luber, RPR, CCR #621

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