

**City of Leawood  
Board of Zoning Appeals Minutes  
January 24, 2018 – 5:30 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive  
Leawood, KS 66211**

**CALL TO ORDER/ROLL CALL:**

Chairman Clawson: I'd like to call to order the January 24, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

**MEMBERS PRESENT:** Munson, Dunn, Dr. Peppes, Clawson, Hawk, Bussing, and Farrington

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Thompson, and Knight

**APPROVAL OF MINUTES:** Approval of the minutes from the December 20, 2017 Board of Zoning Appeals meeting

**A motion to approve the minutes from the December, 2017 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

**OLD BUSINESS:**

Case 30-2017 – CANCELED BY STAFF

Case 36-2017 – Probuilt Patio Enclosures; Tom Maynard/Owner – Request for a variance to the rear yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 5009 W. 112<sup>th</sup> Terrace – **CONTINUED TO THE FEBRUARY 28, 2018 BOARD OF ZONING APPEALS MEETING.**

Chairman Clawson: We have two cases of Old Business. Case 30-2017 has been canceled by staff due to the applicant not responding to requests by staff.

Mr. Thompson: That is correct.

Chairman Clawson: Our first case tonight, then, is in New Business.

**NEW BUSINESS:**

Case 01-2018 – Gina Keohan/Owner – Request for an exception to the front yard build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2024 W. 84<sup>th</sup> Terrace.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a covered entryway on the front of the home. The project would extend 5' to the south and be 8'4" wide for a total of 50.4 square feet. This project does qualify for an exception because it meets all the criteria.

Chairman Clawson: Are there any questions for staff? Is the applicant here?

**Applicant Presentation:**

Gina Keohan, 2024 W. 84<sup>th</sup> Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Keohan: I just want to put a covered porch entryway on my ranch home in Old Leawood. I'd like coverage for guests to come.

Chairman Clawson: Questions for the applicant? As staff noted, this follows all the rules and requirements as an exception in terms of square footage and level it protrudes into the setback. Is there anyone here who wishes to speak for or against this application? Do we have a motion?

**A motion to approve Case 01-2018 – Gina Keohan/Owner – Request for an exception to the front yard build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2024 W. 84<sup>th</sup> Terrace – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Case 02-2018 – Deon Cross; James Engle Custom Homes/Owner – Request for a variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8904 Cherokee Lane.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to increase the grade on the north side of the home to be able to keep a stone wall and driveway that was installed. A variance of 4.9' will be necessary.

Chairman Clawson: Can you refresh our memories of what is allowable without a variance?

Mr. Thompson: They're allowed to increase it 1' or less. They don't need board action for that. Anything above that does need a variance. There is no exception allowance for a change in grade.

Chairman Clawson: Questions for staff?

Dr. Peppes: This is 4.9', and we allow 1'?

Mr. Thompson: It is actually a little more than 4.9', but we give them the 1'.

Mr. Munson: Where is the top of the slope, and where is the bottom of the slope?

Mr. Thompson: The gate on the picture shows where the increase is.

Mr. Munson: How does that affect the adjacent property?

Mr. Thompson: It's going to affect it greatly, I think, as far as drainage. It creates a pinch point for the water that would be rushing through there during a heavy rain.

Mr. Munson: What is the reason for what I call a dam – the black stakes that come running down.

Mr. Thompson: That's a silt fence for erosion control during construction, so whenever the ground is bare and we do get rain, all that soil doesn't wash onto adjacent property.

Mr. Munson: Is this arrangement on the applicant's property?

Mr. Thompson: It is on the applicant's property.

Chairman Clawson: I'm guessing the second silt fence on the right is probably close to the property line.

Mr. Thompson: It is going to be very close.

Ms. Farrington: Was the grade change already made and the retaining wall already built, and now they're asking for the variance after?

Mr. Thompson: That is correct. It was not on the original plan and actually wasn't discovered until the inspector went out to do the inspection. The home was not built per the approved plan.

Ms. Farrington: And the driveway as well.

Mr. Thompson: The driveway is okay; it is just the portion of the driveway that is supported by the wall.

Mr. Munson: Is it kind of like a turnout over that wall? Is that the way it functions?

Mr. Thompson: Correct.

Ms. Farrington: Was the grade built up to make the driveway?

Mr. Thompson: Yes, it was. The grade was increased to support the new turnaround for the third-car garage on the front of the home.

Ms. Farrington: Was that part of the approved plan?

Mr. Thompson: The third-car garage was on the original plan, but the additional driveway was not. The concrete that you see that forms that little shark-fin shape was not approved.

Ms. Farrington: What was on the original plans?

Mr. Thompson: A straight driveway right up to the garage.

Ms. Farrington: Was there still a steep grade at that point?

Mr. Thompson: Yes, but it was within the allowance of the 1'. It is just the extra portion that is not.

Chairman Clawson: The edge of the new house is very similar to where the existing house was.

Mr. Thompson: I believe it was. It meets all the side yard setbacks.

Chairman Clawson: Other questions for staff? Is the applicant here?

**Applicant Presentation:**

Ben Tarwater; James Engle Custom Homes, 11909 W. 131<sup>st</sup> Street, and Deon Cross, 5121 SW Royal Turn Point, Lee's Summit, MO, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Tarwater: We did build the wall. We did not get a variance prior to building the wall. That is true, and that is our fault; however, we did not increase the amount of water that goes to the lot downhill from us. We actually decreased it and had a watershed study done to confirm that. We did do the turnout so it would be easier to back out of there and make it easier for the person who eventually lives in the home to leave. We did have the Plot Plan from the original permit that shows we can be approximately 954', and we are at 958.0'. We are 4' above where we approximately should have been; however, where we built the wall, we actually reduce the amount of water that goes from our lot to the other one. I have the studies I can provide to you as well. Part of the reason for doing this was so we could reduce the amount of water we were shedding onto the house downhill. The house that was there previously had a lot of water put on it. It felt like this was the right thing to do. Not knowing the code is certainly our fault, but did we do what was best practice for the lot? We felt so.

Chairman Clawson: Who did your hydraulic analysis?

Mr. Tarwater: Robert Wessell, Professional Engineer.

Chairman Clawson: Did he seal it?

Mr. Tarwater: Yes, there's a seal on it.

Mr. Hawk: When you made the modifications, was there any concern about revisiting the city since you already had an approved plan?

Mr. Tarwater: To be quite honest, we build in mostly traditional, new home subdivisions. Things like this are done quite commonly, so we just moved right past it. We didn't intentionally break the code; we just didn't take the time to find out what the code stated. We didn't do anything with malice; we just didn't pay attention to everything we agreed to when we pulled the permit.

Chairman Clawson: Questions for the applicant? I want to make a comment. We've seen cases before where an applicant has requested grade change. We had a case about 3-4 years ago. The requested change was about 1.5'. It was eventually approved by this board. A couple of years after that, in a large rainstorm, the next-door neighbor had water in her house. I think as a board, we need to look at these issues very carefully when it involves drainage and raising the grade. It's important because it can have bigger impacts than one might expect.

Mr. Tarwater: I'd like to explain something. I think there is a misconception of us raising the grade versus the point of the wall being higher. I think there's a difference between the two. Per the Plot Plan, we're well within the 1'. The water would run in front of the neighbor's house. The area of concern is at the top of the wall. Anything that runs off downhill toward the neighbor is actually less than if we were to gradually slope toward the home. That is why the watershed study shows that we actually put less on her property than we were before or the house before us. None of the water from the 4.9' is going over to the neighbor's home. It is diverted around the home, away from the home downhill.

Chairman Clawson: I would be concerned about water coming from behind the house down between the houses.

Mr. Tarwater: That water is diverted toward the back of the houses already.

Chairman Clawson: The elevations on the Plot Plan show that the grade is decreasing from the back to the front, so water is flowing toward the street.

Mr. Tarwater: This is another example of how the water would be less than it would be if it were going to come from the driveway. The dirt would be shedding toward the home

downhill had we not done this wall. It shows that we're putting less water on the lot downhill from us.

Chairman Clawson: Other questions? Can you show the Quad Map?

Mr. Tarwater: *(displays picture)*

Chairman Clawson: I think the board would like to see what the drainage is like in that area. That shows the contours in the general vicinity of the home. It shows how the water is draining. In general, the water is draining to the north and the east. The concern is if there is water coming down from behind the house and flowing down between the houses. Your bump-out is creating a pinch point that is forcing the water onto the neighbor. That's the concern.

Mr. Tarwater: If you look at the Plot Plans from the original and after, the water is going down and around. The water would have done the same thing, but it would have been done with greater force had the grade been raised to where the original Plot Plan showed it to be. The rock wall is almost in line with the house downhill from us. It has lessened any amount of water that could go toward the home. It has diverted it to the front and back more so than what it was before.

Mr. Dunn: I assume you've reviewed the criteria the variance needs to meet to be approved by this board.

Mr. Tarwater: Yes.

Mr. Dunn: The first one reads, "The variance request arises from such a condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action or inaction of the property owner or applicant." We're here to apply the law. We're not here to say if we think it's a good idea or not. What makes this unique?

Mr. Tarwater: If for no other reason, we're trying to blend existing homes while allowing new homes to be constructed. Certainly, the way homes are constructed along with your codes and other zoning issues have changed since these original homes are there. Those have changed because the practices we use today are supposed to be better. The methods we use to divert water, which were proven to be a benefit to the home downhill from us, based on the watershed study, are a benefit to not only the home that is currently there but to any home that would be there in the future. It is unique in the respect that we're trying to blend the current home with an existing home. If we were to build this in a new home subdivision, we would have put the driveway on the high side of the lot, which is what is preferred in today's construction methods. We had to leave it on the low side of the lot because that is what the city dictates when we're trying to put a new home on an existing lot for aesthetics and to save trees. The uniqueness is because we're blending something new with old. When doing this and trying to use new practices but changing nothing else, it could actually be made worse for the person downhill from

us than if we had done what we did. Shame on us, obviously, for doing what we did without knowing the amounts allowed to change the grade. Again, I think if you look at the visual of the wall, you'll see that we're not necessarily changing the grade; we're changing the point of a fixed object (the top of the retaining wall) versus the slope of the yard.

Ms. Farrington: When you submitted the original plan, it was for just a straight driveway without the additional. You made a change without getting approval, and whether you're in a new or old subdivision, you need to resubmit plans to the board. That would fall on your company to follow protocol and do that. When that change was made, it changed the need for this variance to occur. Your original plan met the grade. The picture shows the grade was there. Our question has been why is that unique? It is more of a want versus a need.

Mr. Tarwater: I would disagree from the respect that we have decreased the potential for us to give the person downhill a problem. That, in itself, is unique because it is crystal clear that a lot of water would come from the house if we didn't change anything.

Ms. Farrington: We haven't seen your engineer's plan; it hasn't been submitted to us.

Mr. Tarwater: We have the watershed study.

Chairman Clawson: In addition, what was the square footage of the original house and the new house?

Mr. Tarwater: I don't have information about the original house. The new home is around 2,800 square feet. One of the differences that is also mentioned in the watershed study is that the original house also had a pool, which increases runoff. Ours does not. While we may have increased the footprint and overall square footage, we have more grass than was there before, too.

Chairman Clawson: Are there other questions for the applicant? Thank you.

Mr. Bussing: If we were to assume this request for a variance was denied, what is the next step?

Mr. Thompson: They would have to remove the additional concrete portion of the driveway and the rock wall. We would let them increase it 1', but everything else would have to be 1' or less.

Chairman Clawson: Is there anyone here who wishes to speak for or against this application?

Debbie Gudenfauf, 8900 Cherokee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Gudenkauf: I'm the house down below. You asked about the other house. Mine is 1,800 square feet on the top, and the other house was smaller than mine. This house takes up more of the lot. There is more roof space. I think it looks like it's higher, but apparently, it's still somewhat within it. I did have flooding in my basement and a lot of landscape destroyed with the rains this summer after that house started going in. As far as the aesthetic value of the rock wall, I think it looks kind of cool. My concern is the storm drainage and if this is going to make it worse. I am a social worker. I have no idea what a watershed study is or what engineering pinch points are. I trust that you'll make the best decision to help protect my property value because I've already seen damage. At this point, they've said they're going to fix it for me. I just put in \$4,000. That lot was damp on the front, so that would be the southeast corner of the lot. I had just put in a French drain running from the front of the house to the back of the house to try to address that.

Chairman Clawson: Between the two houses?

Ms. Gudenkauf: On my side, yes, I put in a French drain from the street area back to a dry creek bed in the back. That looked like it was going to help, and I just finished doing a bunch of landscaping when the rains came. That silt fence breeched three times. I've got a couple large areas where grass isn't growing now. It washed away a bunch of mulch. I've got water in my basement that went almost 1/3 of the way across my house. I hope that you'll really take a serious look at what is the best. Will the rock wall help? If so, great; if not, we need to figure out adequate drainage to keep the water from going right down into my house.

Chairman Clawson: Had you had water in your basement previously?

Ms. Gudenkauf: I've been there two years. It hopped the foundation and came in through whatever that steel beam is that runs down the house. It came in there and came down. I have one little crack toward the foundation that had a little bit of dampness, but I had not had any water prior to that occurring.

Chairman Clawson: Questions from the board? Thank you. Anyone else wish to speak for or against this application? This is a variance, and we need to evaluate the five factors. To support a motion for approval, we have to vote in the affirmative on all five. The first is Uniqueness.

Mr. Dunn: With all due respect, I don't see it. It appears to be a classic case where the change has been necessitated by the desire to have the extra turnout on the driveway. I don't see how it is unique. I'm sorry; I wish I could. Like I said, I'm not here to say what I think is a good or bad idea. I'm here to say if I think the criterion has been met.

**Uniqueness criterion not satisfied with a unanimous vote of 0-6. Opposed: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Munson: We heard from the adjacent property owner, so there is an issue here.

**Rights of Adjacent Property Owners not satisfied with a unanimous vote of 0-6. Opposed: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Dr. Peppes: As I've said many times before, I believe the hardship has been brought on by the applicant. If the variance wasn't passed, he could still move forward with the house and the driveway, just not with the part that is requested.

Mr. Hawk: I think we need to always support the city's recommendations, and they had an approved plan that ended up being violated for whatever reason.

**Hardship criterion not satisfied with a unanimous vote of 0-6. Opposed: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare.

**Public Safety and General Welfare criterion not satisfied with a unanimous vote of 0-6. Opposed: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: I agree with staff that is hasn't been met.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-6. Opposed: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

**A motion to deny Case 02-2018 – Deon Cross; James Engle Custom Homes/Owner – Request for a variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8904 Cherokee Lane – was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Case 03-2018 – John Wind/Piper-Wind Architects; KMM Family Trust/Owner – Request for a variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9241 High Drive.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner is in the process of a teardown/rebuild. This includes a pool and cabana in the rear yard. The calculated rear yard setback is 264.5', and per the plan, the cabana encroaches a calculated rear yard setback 81'.

Chairman Clawson: Are there any questions for staff? With all due respect, I don't think I've ever seen a setback that big before.

Mr. Thompson: Normally, they're 35'. This is such a long, narrow lot that it does skew the rear build line.

Chairman Clawson: Questions for staff?

Mr. Bussing: What is the rationale for that? What is the calculation?

Mr. Thompson: It is just the bulk regulations.

Mr. Bussing: The rear yard setback virtually cuts that lot in half.

Mr. Thompson: To be honest, I don't know why.

Chairman Clawson: Does it have to do with utilities?

Mr. Thompson: No, that's the way it is on all lots over the 150' depth per the bulk regulations. They deeper the lot, the more the rear yard setback is going to be.

Chairman Clawson: Questions for staff? Is the applicant here?

**Applicant Presentation:**

Paul Miller, 9241 High Drive, and John Wind, Piper Wind Architects, 2121 Central, Suite 143, Kansas City Missouri, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Miller: This was really driven by wastewater running through the rear of the property. Even a small addition to the home would require moving the wastewater line. By moving that line much at all, we were going to encroach upon what is estimated to be a 150-year-old tree on the property. We moved that line as far east as we possibly could to mitigate any damage to that huge tree. That tree is paramount to the property and the neighborhood. Moving the sewer line back that far pushed the proposed pool back, which then pushed the proposed pool house back. In fact, by moving the wastewater line to the extent that we did to save the tree, we are now incurring the cost of moving the waste line not only on our property but also on the property to the south of us by agreement. That tree drove much of our design. We worked with Continental Consulting Engineers and the neighbor to the south to make sure we were saving that tree. Thus, everything got pushed back as a result of a legacy tree.

Mr. Munson: Who established the original wastewater easement line? Is that the county?

Mr. Miller: Johnson County Wastewater.

Mr. Munson: Who pushed it back?

Mr. Miller: We just received approval from Johnson County Wastewater to do it at our expense. We have not turned dirt yet. It was quite a lengthy process to move the sewer line.

Mr. Munson: Is this a covered line that runs down through there?

Mr. Miller: Yes; it's a covered sewer line.

Chairman Clawson: On the plot plan you provided, is that the proposed sewer line?

Mr. Wind: Yes.

Chairman Clawson: It ran behind the house.

Mr. Wind: Yes, which is very unusual.

Chairman Clawson: The house is bigger, so you're moving it back.

Mr. Miller: Yes; currently, the sewer line sits about 3' off the back deck of the house that is currently there. It is encroaching on the easements. Since that was put in, the required width of easements has increased.

Chairman Clawson: To 10'?

Mr. Wind: No, to 30'. It's a factor of the depth of the sewer line and the angle repose.

Chairman Clawson: How deep is it?

Mr. Wind: 20'.

Mr. Dunn: You're talking about how close it is to the house. Was the placement of the sewer line being that close originally driven by this tree?

Mr. Miller: I have no idea because I didn't own the property. We understand it was replaced approximately 20 years ago when they did the changeover from wastewater to it.

Mr. Dunn: They were all stacked in my street.

Chairman Clawson: Where is the tree?

Mr. Wind: It is a large oak tree with a big canopy. The goal is to get the new sewer line outside of the dripline of the canopy.

Chairman Clawson: As you know, this is a variance. Uniqueness is a factor we have to consider. Could you address that?

Mr. Miller: If we come any farther west of where it is proposed, we're in danger of killing that tree. If I were to move it west and closer to the tree, I wouldn't have the additional expense of going to the neighbor's yard for the sewer line. Uniqueness is that the tree is massive. It would take 4-5 of us with our arms locked to go around that tree.

Chairman Clawson: Does the rear setback include a pool?

Mr. Thompson: The pool can encroach the setback; it's just the structures that are above grade, which is the cabana.

Ms. Farrington: The movement of the wastewater line requires a 20' easement. Based on their placement, it also affects where they locate the pool and cabana. That is what makes it unique as well.

Mr. Thompson: Also, they have this huge rear yard setback. For such a large lot, they have a small area.

Chairman Clawson: This is due to the average. The lot is unique because it's really long.

Mr. Miller: It is probably one of the longer lots in Old Leawood.

Mr. Dunn: It is only not unique because of that block, really. There are other lots on that block that are similar but nowhere else in Old Leawood.

Mr. Miller: In our writeup, you will see that nothing to the north or south of us has anything outside the variance. I think there is a current shed on the property outside the variance, but I think it came in afterward. With tearing down the house, it goes away. We have an aerial of the neighborhood, and there are several properties that have covered structures outside the variance as well. I don't know if they got variances or not.

Chairman Clawson: Outbuildings of some type?

Mr. Miller: Yes, and one goes all the way to the very east edge of the property, so it is way outside the variance.

Chairman Clawson: What is behind you that faces State Line?

Mr. Miller: There is a very deep row of evergreens and a house to the east of us that is right on State Line. I have spoken with the neighbors to the east, west, north, and south, and they did not have issues with this structure or the other variance we are requesting.

Chairman Clawson: This property drops off pretty fast to the east.

Mr. Wind: There is about a 32' grade change from the street to the back property line east to west.

Mr. Miller: It is 24' from the back edge of the property to the southeast corner.

Mr. Munson: Are the lines that show the elevation what currently exist, or is that the proposal?

Mr. Miller: That is our proposal in the next variance that we are going to discuss.

Chairman Clawson: The next one is grade change.

Mr. Miller: Yes, sir.

Mr. Wind: We haven't built anything yet. I'm not here to ask for forgiveness; I'm asking permission.

Chairman Clawson: Are there other questions by the board for the applicant?

Mr. Munson: Mr. Chairman, I personally feel they meet the Uniqueness criterion just because of the nature of what they have to put up with to do anything.

Chairman Clawson: All the letters went out?

Mr. Thompson: Yes, the letters went out. I've had no correspondence whatsoever, either good or bad.

Chairman Clawson: We'll now see if anyone wishes to speak for or against the proposal if there are no other questions.

Harry Hover, 9247 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hover: I live in the house just south of the one we're talking about. I have no problem with it whatsoever. I wanted to compliment Paul and his wife and the engineer. They've been really upfront with me and everything. I had some questions, and they were all answered. I don't have any problem with that going through there at all. They are huge lots.

Chairman Clawson: Any questions? Thank you. Does anyone else wish to speak for or against? In that case, we have to evaluate this application for a variance by going through the five factors. If we vote in the affirmative on all five factors, we will support a motion for approval. The first is Uniqueness.

Mr. Dunn: I agree with Mr. Munson's earlier comments. I think it has been met. There are a lot of unique factors about that area of the city. Quite frankly, that tree is enough to convince me that it is a unique condition they have to deal with.

**Uniqueness criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners. Letters have been mailed out with no calls or complaints?

Mr. Thompson: That is correct.

Mr. Munson: We had an affirmative.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Dr. Peppes: I'd like to speak up about Hardship. This is one example that meets the criterion. We have case after case, and it's hard to ever find one that meets it, but with the tree and the wastewater line, it is met.

**Hardship criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: No effect.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I tend to agree with staff in their statements in the report that with this being such a big lot and not a traditional neighborhood in Leawood, the extreme distances and setbacks create a situation that is not negatively affecting the spirit and intent of the Leawood Development Ordinance.

Mr. Dunn: It would have a much more negative affect on Spirit and Intent if that tree were taken down.

**Spirit and Intent criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

**A motion to approve Case 03-2018 – John Wind/Piper-Wind Architects; KMM Family Trust/Owner – Request for a variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9241 High Drive – was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Mr. Bussing: As a side note, I'm wondering if this is an example that the Board of Zoning Appeals could identify for staff as indicating, perhaps, a City Council review of the bulk setback restrictions. This restriction is ludicrous; although, it is a law, so that makes it enforceable.

Mr. Thompson: I will mention it to the Director of Planning.

Chairman Clawson: How many lots have a similar setback to this?

Mr. Thompson: Probably more than you think because we have some large plots still out south. In that neighborhood alone, I bet there are 10.

Chairman Clawson: I think it would be appropriate to raise that issue with City Council.

Case 04-2018 – John Wind/Piper-Wind Architects; KMM Family Trust/Owner – Request for a variance to the rear setback in accordance with the LDO, Section 16-4-1.2(A) in an R-1 District for property commonly known as 9241 High Drive.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner is in the process of a teardown/rebuild. This includes a pool and another recreation area. As indicated by the map, fill is needed starting at the rear of the home, extending approximately 320', ranging all the way up to 7' in depth.

Chairman Clawson: That's a lot of fill.

Mr. Munson: Will this fill be compacted? Will the swimming pool be placed on the fill?

Mr. Thompson: A portion of it will.

Mr. Munson: How does the city handle something like that?

Mr. Thompson: I would assume it would be compacted if they want a quality pool to be constructed.

Chairman Clawson: Other questions for staff?

Dr. Peppes: We allow 1', and we're looking at 7'?

Mr. Thompson: That is correct. The variance at the highest point would be 6'.

Ms. Farrington: This says that it extends 320' out. What is the width of the area they want to fill? I'm trying to see what the grade change is over the 7'.

Mr. Thompson: At its deepest, it's probably going to be within 30'. It is going to be within 30' of the south property line. It's a pretty good distance on the north side. You can see on the graph that, at its closest, it's still going to be 1'-2' at the north property line. The actual footage, I would have to say it is approximately 15'-18' on the north side.

Chairman Clawson: Other comments or questions? Would the applicant wish to speak?

**Applicant Presentation:**

Paul Miller, 9241 High Drive, John Wind, 2121 Central, Suite 143, Kansas City, Missouri, and Brett Haugland with Continental Engineers, 9000 State Line Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Miller: I'll probably let Brett do most of the talking because he has worked on this conceptually. The grade is not all coming up 7'; in fact, one spot dips down a little bit. I'll anticipate the question of Uniqueness. Again, it's a very large lot, and we've already addressed the issue of preserving a tree. It is just the placement of the pool and the grade from the house to the pool could be severe if we did not bring in the fill. To prevent a huge slope from the house down to the pool, we decided it would be better to try to bring up a portion. When we started this process, my father was in a wheelchair. He has since passed away. My mother occasionally has to use a walker. That, in conjunction with my 80-year-old in-laws creates a need for a gradual grade as opposed to a retaining wall and steps. We are trying to transition from the house to the pool deck that allows accessibility. The function was to raise that portion of the property. On the south side, we have met with Mr. Hover and gone over the plan. We will be putting in drainage to mitigate any excess drainage from the house to it and driving it all to the southeast corner of the property, where a water collection pit will be engineered. This would eliminate water issues with any of the surrounding properties, regardless of how far those houses are from our back property line. We have put a lot of thought into this, and we recognize there is an area with a substantial amount of fill. We believe it is in the spirit and intent of the requirements. We are working to mitigate all the issues with water from the house and drainage off the property. Again, everything was driven by the tree issue. At some point, there will be a big slope down to the pool that we have to raise up a little bit.

Mr. Haugland: I can answer any questions. We can solve drainage problems. Leawood has a good ordinance in place. We can't let more water run onto our neighbor than runs now. That's what we do. We'll anticipate drain lines that catch downspouts. Any water

that drains to the south to Mr. Hover's property, we can catch. We're confident about the water. His problem is he has a sloping lot that is very deep. A pool needs a flat area, so we either need to cut into the slope, fill the slope, or do a combination. Because of his concerns with access, we felt this was the best option. We did a grading plan but not a stormwater study, which was referred to as a watershed study earlier. We will have to do that and submit that to the city to prove that we are not adversely impacting water runoff to neighbors' yards. The issue here is the grade change and what you will allow to get this pool since it needs to be flat.

Mr. Munson: Where will the pool be built based on the slope?

Mr. Haugland: (*Shows on plan*)

Mr. Munson: I have a concern because when I lived on the Missouri side, I had a neighbor put in a substantial pool on fill. One day, I saw the pool was tilted down. How do you take that into account?

Mr. Haugland: We have a Geotech engineer already involved. Terracon has come out and has done borings. They will be onsite just like when we put the sanitary sewer in. We have to have controlled fills, so the moisture content, soil, backfill, lift thickness, and compaction all has to be documented.

Mr. Munson: Sounds like you have everything covered.

Mr. Haugland: For fill, we do.

Chairman Clawson: I'm guessing the existing drainage has sheets of water.

Mr. Haugland: It all goes down to the southeast corner, and it will still go down to the southeast corner when we are finished, but we are going to intercept it and put in a detention pond.

Chairman Clawson: What is there now?

Mr. Miller: Where we would put a collection, it has nothing but 30 years of leaves.

Chairman Clawson: There is no stormwater sewer?

Ms. Farrington: Can I ask a question with regard to the fill document? Are the red lines and circles your drainage?

Mr. Haugland: That is the concept now for drainage to collect to downspout system. The circles would represent inlets where we would intercept water as it goes down in a swale.

Ms. Farrington: All the red lines are all the pipes underneath.

Mr. Haugland: Yes, and at the end is a square that is a location for a detention facility that we're required to install to make sure we don't release water.

Chairman Clawson: How big are you anticipating that would be?

Mr. Haugland: We haven't size it yet, but it might be approximately 20'x30'.

Chairman Clawson: How deep?

Mr. Haugland: 5'. It may not be a big void like a tank, but a lot of times, we'll do a granular fill of aggregate, and there are voids in aggregate. We can use 40% of the aggregate as voids. There is an area of volume, and 40% of that volume can be used for storage. We would have to figure that based on the 10- and 100-year storm.

Mr. Dunn: You mean that 100-year storm we get every 2-3 years now?

Mr. Haugland: That's right.

Mr. Dunn: May I just clarify my thinking on this? I want to point out what I'm sure you all have seen. On Page 4 of this document, we have a fairly extensive written response to the criteria, which we don't get in a lot of these cases. I appreciate that. As I understand it, the Uniqueness from your standpoint is beginning with the size and shape of this lot, which is fairly unique to begin with. It is also the slope that goes back. To address the factor that always hangs up Dr. Peppes, you're saying that those two factors that make the lot unique, the homeowner will have a whole lot of space that he really can't make use of unless you can make changes like this. Is that accurate?

Chairman Clawson: The stormwater is what we have the most concern about probably and that adjacent properties aren't affected negatively by any fill.

Mr. Haugland: We understand that. We have done a number of homes in Leawood, just not any that have come in front of this board. We do work with Public Works quite a bit on those issues. We understand the requirements.

Chairman Clawson: Would you have to submit a hydraulic analysis report to the city?

Mr. Haugland: We'll prepare a storm drain study. We'll look at the areas that drain off the property now, what the flow is, what is proposed, how we'll intercept, and how we will detain the water. We will have to prepare that. We haven't yet because we will start with a grading plan, identify where the storm lines are going, and then do that.

Mr. Wind: If it helps, I'll interject. We've had Continental Engineers involved in the property for over 8 months, dealing with the movement of the wastewater pipe and then in all of the studies of water and grading and meeting with the neighbor to the south who would be impacted on any of these. This has been a long process. By the time we got here, we put a lot of time, money, energy, and effort into this to make sure we had

answers to the questions. This is, as you can see, a very detailed schedule of what we're trying to do. We're not taking any of this lightly at all.

Mr. Dunn: May I restate my understanding of this and see if it is accurate as well? As I understand this, if we approve this, they still can't do it unless they satisfy you that the stormwater plan they put in place to deal with this is going to ensure that there is no greater runoff on the neighbors' property than there is now.

Mr. Thompson: Correct; they would have to submit their plan to Public Works, and the City Engineer would have to evaluate that plan and evaluate the plan. If there are any changes to be made, they would suggest and enforce the changes.

Mr. Dunn: The standard is no greater runoff onto the neighbors' property than current exists.

Mr. Thompson: Correct.

Chairman Clawson: Other questions for the applicants? Thank you. Is there anyone here who wishes to speak for or against this application?

Harry Hover, 9247 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hover: All I can say about these guys is they've been real upfront with me and had me in the loop the whole time. I couldn't ask for any better. They've been really good to me. I don't think any of the other neighbors are going to complain about the house, either.

Mr. Bussing: Mr. Miller, you picked the best engineering firm in the city. Plus, they're home grown right here in Leawood.

*Inaudible comments*

Chairman Clawson: Again, this a variance, and we have to go through the five factors and vote on each one. The first is Uniqueness.

Mr. Munson: It's the same situation as the previous case. I feel it definitely meets the situation.

**Uniqueness criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners. It appears that the design will ensure that the adjacent property owners are not affected.

Mr. Thompson: Correct.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Mr. Munson: Staff points out it can be done with a lesser rise, but the applicant indicates there are other factors on why they want to do it the way they want to do it. I feel it has been met.

**Hardship criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: I don't see a problem.

Dr. Peppes: I feel satisfied that it has been met.

Chairman Clawson: The future submittals they will have to make to ensure the drainage situations are properly designed will remedy that.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: It seems to fit the neighborhood pretty good, so it meets that criterion.

Mr. Hawk: I would like to compliment the applicant for their thoroughness in addressing the factors.

Mr. Dunn: I second that compliment.

**Spirit and Intent criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

**A motion to approve Case 04-2018 – John Wind/Piper-Wind Architects; KMM Family Trust/Owner – Request for a variance to the rear setback in accordance with the LDO, Section 16-4-1.2(A) in an R-1 District for property commonly known as 9241 High Drive – was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.**

*MEETING ADJOURNED.*