

**City of Leawood  
Board of Zoning Appeals Minutes  
February 28, 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 February 28, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

**MEMBERS PRESENT:** Munson, Clawson, Hawk, Bussing, and Farrington

**MEMBERS ABSENT:** Dunn, Dr. Peppes.

**STAFF PRESENT:** Thompson, and Knight

**APPROVAL OF MINUTES:** Approval of the minutes from the January 24, 2018 Board of Zoning Appeals meeting

**A motion to approve the minutes from the January 24, 2018 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

**OLD BUSINESS:**

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.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to construct an attached screened-in porch on the rear of the home. The property has a platted 30' rear setback. Per the plan, the addition will be placed 25' from the rear property line, resulting in a 5' encroachment.

Chairman Clawson: Are there any questions for staff by the board?

**Applicant Presentation:**

Tom Maynard, 5009 W. 112<sup>th</sup> Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Maynard: I wasn't able to be at the December meeting, and evidently, you couldn't find out what you needed to know from the builder representative. I hope you found out what you needed for that.

Chairman Clawson: As I recall, there was no one here at the last meeting.

Mr. Thompson: Not in January, but in December, he showed up. We asked if they were willing to make the width of the deck wider to give them the same square footage so that it didn't stick out into the side yard. He was unable to make that decision.

Chairman Clawson: Have you got information or a drawing?

Chairman Clawson: We have a package that staff provided us. It basically shows that the proposal is for extending the patio 5' into the rear property line. Is that correct?

Mr. Maynard: I don't think that is correct. You see on the drawing of the survey that it is 40'5" or 40.5', and we are extending 12' back. It's actually about 1.5' and will still be 28.5' from the back property line.

Chairman Clawson: That's measured from where?

Mr. Maynard: From the back of the house.

Mr. Munson: How much do you encroach the back yard?

Mr. Maynard: About 1.5'

Mr. Munson: Can that be verified by staff?

Mr. Thompson: Not without a survey. He would have to know exactly where his property line. We're going by the dimensions and figures given to us by the contractor. Those are the ones we are going to use.

Mr. Maynard: You know it's 40.5'. You have a survey right here. I can show you our drawing that shows it 12' back from the house. You just have to subtract that from 40.5'. You get 28.5'.

Chairman Clawson: The back of the house from the property line is 40'5" or 40.5'?

Mr. Maynard: Different parts of this drawing show .5, and others show an underlined 5. I don't know what they're using. I can show you the back of the house. The guy who was here in December had not even seen the house. He was just part of their company. He wasn't able to explain the whole reasoning. The whole thing was set up because we have seven windows across the back of the house. We have been working on this since we moved in almost five years ago. We tried to put a gazebo out there. We tried to put a porch in, but we don't want to cover any of the windows up. Otherwise, we could put it right on top of the deck. The builders suggested a location that is 10' wide from the window over to the deck. If we come out 12', we could have a 12'x10' section with a

little piece that is 4'x6', which is not very useful and would just be where the door comes in off the deck.

Chairman Clawson: One of the sheets you provided in the packet shows the plan. You might want to put that up.

Ms. Farrington: There is one with an elevation.

Mr. Maynard: *(puts up drawing)*

Chairman Clawson: That shows the 10' across the bottom and 12' from the edge of the house to the edge of the enclosure. Based on those dimensions, you would be 1.5'.

Mr. Thompson: If he knows exactly where his property line is in the back. The Plot Plan is just a drawing; it is not a survey. It is not sealed, either.

Mr. Munson: Do we need a survey in order to make a determination?

Mr. Maynard: When the house was originally built, there was a lot of gravel around the house. There's also gravel in the back. If you measure from the gravel in the back, which would have been the back property line, you get 40.5'. It also lines up with the fence.

Mr. Thompson: Again, the 40.5' was probably measured by the contractor because he's the one who supplied all the documentation for the case.

Chairman Clawson: We need to act on this as though it were a 5' encroachment. Is that right?

Mr. Maynard: I don't think so.

Mr. Thompson: I believe so because, without a stamped survey, we are only going by the figures they provided us.

Mr. Hawk: Can we approve it based on completion and verification of the survey?

Mr. Thompson: I guess you could if it meets the five criteria. Whether it's 1' or 5', it still has to meet the five criteria.

Mr. Maynard: The reason they're providing you with 25' is because that's what I told them. That's where I made the mistake earlier when we were looking at a gazebo on the other side and we were looking at a porch on the other side. They said it would fit inside of 25', and when they came to the meeting, they found out it was 30'. I physically measured the 40.5' this morning, and it is written on the survey, also. There's a fence that lines up with the back property line, so I know I was marking it from the right spot in the back. We're talking about 1.5' foot.

Ms. Farrington: The existing deck is shown on the plan, and on the Plot Plan, the existing deck is shown by 12'x25', so the 25' depth is there with the 30'. I'm assuming the deck was built with the home.

Mr. Maynard: I don't think it was.

Ms. Farrington: The deck complies with the 30' setback. The new structure that is proposed, going from where the deck hits the house, if it went 25' out, would stop where the deck stops. What happens is the little bump-out to the small area where the door opens into it encroaches into it. The designer has taken the 25' and has gone off the farther depth. If you do the difference, it is about 4'. If you take 4' from the 30', that is where you get the difference. Originally, if it was taken at a 25' depth like your deck and was in the same plane, it would meet the 30' setback. What is happening is the depth is going from the bump-out, so it is encroaching by 5'.

Mr. Maynard: The back yard is a different distance from that bump-out, and who knows where they measured this 30'? If it was measured from the east end of the deck, it could be only 30'. In the middle of the back yard, the property line slants and moves toward the north.

Ms. Farrington: There is a 4' difference. If you take the depth from the end of the 4' and extend out, that is where you are encroaching into the setback line.

Mr. Maynard: We're taking the 4' and extending 12' more, so 16' from the same distance from where the deck extends. The deck is 12'; you're right, but it's extended from a different part.

Chairman Clawson: Without a survey, we don't know what the actual encroachment would be. We think it's somewhere between 1.5' and 5'. Is that right?

Mr. Thompson: Correct.

Chairman Clawson: This is a variance any way you look at it. With a variance, we have to look at the 5 factors. We have to satisfy all 5 criteria. Can you address those?

Mr. Maynard: Hardship is difficult to address, but if you look at the overall situation, I'm nowhere close to any neighbors. They have received a letter prior to the December meeting, and I've discussed it with the one on the east and the two in the back. Neither one of them care about it. There's also a lot of shrubbery and stuff back there anyway, so you can't see it. It's a minor thing as far as I'm concerned. The reason I want to do it where I'm doing it is because I don't want to cover up any windows. With all of your other restrictions, a gazebo is a maximum of 64 square feet, which would be worthless, considering how much I would have to spend on it. That is my hardship. There is no real hardship there. If it's a serious problem, we'll just have to make it smaller. Then I would want to get a survey because I don't want to make it 4' smaller. I think it is 40.5'. I could make it 2' smaller. My builder tells me that they'll have to submit a new plan to you and

charge me another \$2,000 for that. The fact that it's only 100' smaller won't knock off more than about \$500. That's a hardship.

Chairman Clawson: Is your lot unique in your subdivision?

Mr. Maynard: Not the lot, no. I've got hardly anybody behind me. That's what I like about it. We have all those windows, and we don't have anybody behind us.

Mr. Munson: Uniqueness means there's no other property around where you are that are like yours in area or size.

Mr. Maynard: The lots are bigger than my lot.

Chairman Clawson: I think we understand the situation. Are there any other questions for the applicant by the board? Thank you. You may take a seat, and I'll ask if there is anyone here who wishes to speak for or against this application. Okay, there is no one. This is a variance, so we need to look at the 5 factors. We will discuss each factor separately and vote on them. We have to vote in the affirmative on all 5 factors before we can support a motion. The first factor is Uniqueness.

Mr. Munson: I don't think it meets the test.

Chairman Clawson: The size of the lot is commensurate with other lots in the area.

**Uniqueness criterion not satisfied with a unanimous vote of 0-4. Opposed: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. All the notices have been sent out?

Mr. Thompson: Yes, and no one has contacted the city.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Ms. Farrington: Although there is a personal hardship, there really isn't a hardship because it can still be constructed. The owner talked about this being seen in December. The builder should have known or at least looked up what the rear setback rules were. That is something that you, the owner, can go back and address, but the hardship doesn't fall upon the city. That is something that the builder or the designer should have known because those are the rules they have to abide by. It may not be ideal to take the width and go wider versus deeper, but it can be constructed that way.

**Hardship criterion not satisfied with a unanimous vote of 0-4. Opposed: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: It won't impact it from what we've seen.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: Staff's comments indicate that to allow construction on an already cramped lot would not preserve the character of the neighborhood.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-4. For: Munson, Hawk, Farrington, and Bussing.**

**A motion to deny 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 – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Mr. Maynard: Since it didn't pass a couple other things that you want covered, moving it back 2' or within the lines is still not going to pass those things, so you're basically saying I can't get permission to build it there.

Mr. Thompson: If he moves it back out of the rear setback, he can get a permit without board action.

Mr. Maynard: One of them said it was crowding up the neighborhood and the lot was too small, and the other time, you said the lot was the same as all the other lots.

Ms. Farrington: If you add width and change the depth, you can build what you want to build within the setback line. You just have to discuss that with the designer.

Mr. Maynard: Can I just cut it back 2'?

Ms. Farrington: As long as it is in the 30' setback, and our recommendation would be to get a survey done as well.

Mr. Maynard: All right; thank you.

**NEW BUSINESS:**

Case 05-2018 – A to Z-Man Construction; John & Mary Farkas/Owners – Request for a variance to the side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 10419 High Drive.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a screened-in porch on the southeast side of the home. The home was originally constructed 8' from the south property line. The addition would extend 24' to the east but does have a fireplace that encroaches the side yard setback 2', which would place the addition 6' from the south property line.

Chairman Clawson: This is an R-1 District, so this would typically require a 15' side yard setback.

Mr. Thompson: Yes, sir.

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

**Applicant Presentation:**

Nathan Zirkel, owner of A to Z-Man Construction, 12409 Olive Street, Kansas City, MO, and John Farkas, 10419 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Zirkel: The homeowner's property is the same as most of the other properties within the neighborhood. The majority of them sit within the 15' setback rule for the side yards. The only properties that really don't are the corner lots in most of that neighborhood. They're all within anywhere from 6'-12' roughly. That was just going through Johnson County GIS and doing a measurement survey on my own. The homeowner is also willing to move the fireplace and make it smaller to stay within the current setback of the home.

Chairman Clawson: This house was built in '66, right?

Mr. Zirkel: Yes, sir.

Chairman Clawson: Questions for the applicant? Thank you. When this house was built, what did the LDO require?

Mr. Thompson: I would have to go back to the 1966 LDO to give you that correct answer.

Chairman Clawson: Even in North Leawood, 10' is fairly typical.

Mr. Thompson: This is definitely not the norm.

Mr. Bussing: Wade, if the homeowner wants to move the fireplace such that it is within the 8' setback, he doesn't need to be here, does he?

Mr. Thompson: Yes, he would. Even if he were at the 10' mark from the side property line, he would still need an exception. Anything less than 10' requires a variance.

Chairman Clawson: The Plot Plan I have was very poor. Do you have a better copy?

Mr. Thompson: It is not really a Plot Plan; it is an aerial off of AIMS (*Puts photo on overhead*).

Ms. Farrington: On the Architectural Plan, it shows a Crawl Space Plan. It shows the bump-out for the fireplace. Are you staying in line with the existing house except the bump-out of the fireplace? You're saying you would bring the fireplace within that and keep it all in line with the existing house if need be?

Mr. Zirkel: Yes.

Ms. Farrington: That still keeps it at 8', which would require a variance.

Mr. Thompson: That is correct.

Ms. Farrington: If we were to approve this based on it being in line with the house, since it was submitted with the 2' bump-out, could any variance be built there, or would it have to be a minimum of 8' versus 6'? The homeowner is saying they will pull the fireplace within the extension of the existing building line. That is not what was submitted.

Mr. Thompson: Correct; they would be asking for an 8' variance as opposed to a 6' variance.

Chairman Clawson: In other words, no construction would occur past the existing build line.

Mr. Thompson: As long as they can do that, then it would remain 8'.

Ms. Farrington: But if we were to approve the variance, can it be specified at the 8' versus what was being submitted at 6'?

Mr. Thompson: Yes.

Ms. Farrington: I would ask the homeowner, then, if that is your wish.

Mr. Farkas: I'll do whatever needs to be done. The reason I can't do the 15' is because of an egress of the bedroom window. We have to have one egress window, and I cannot egress onto a screened-in porch. I can't move it to the 15' line. My request is to leave it

like it is. We were going to pour a foundation to make it look like it was part of the house originally. The roofline will be done aesthetically, also. I'm trying to make it as nice as I can. If I move it back to the 15' like the new codes show, then second bedroom won't have any egress.

Mr. Thompson: Per the plan, it doesn't look like moving the fireplace inside would affect egress. He should be able to go straight off the existing wall at 8', and the fireplace would just have to be inside the screened-in porch as opposed to outside.

Chairman Clawson: Again, this is a variance, and we have to address the five factors. Could you address Uniqueness and Hardship?

Mr. Zirkel: I would say the uniqueness is due to the property lines of the neighborhood. Trying to construct an addition to make it aesthetically pleasing and conforming to the other houses in the neighborhood would be unique.

Chairman Clawson: What about Hardship?

Mr. Zirkel: That's always a hard one. It's going to create a hardship if we construct it to the current codes because we would run into the egress problem with the window. It is not going to aesthetically fit within that house.

Mr. Munson: What could be constructed if all the rules are obeyed? What can you construct now?

Mr. Zirkel: It would just fall right in the middle of the back, and they've already done extensive patio work. A large portion of that would have to be removed.

Chairman Clawson: Other questions? Thank you. Is there anyone here who wishes to speak for or against this application? We have to go through the five factors like we did previously. The first is Uniqueness.

Mr. Bussing: I have a procedural question to the point Ms. Farrington brought up. If we don't approve the 2' bump-out, they're willing to build it in line with the existing structure. I'm not interested in having them come back again to get a variance there. What is the process for addressing the 2' bump-out while, at the same time, addressing not bumping it out and keeping the build line intact.

Chairman Clawson: I think that could be done in a motion.

Mr. Thompson: Correct.

Chairman Clawson: If we go through the five factors and determine it meets them all, we can make a motion for approval of construction of the project to the 8' build line but not to exceed it. Would that suffice?

Mr. Thompson: Yes, that would work.

Chairman Clawson: Let's go through the five factors. The first is Uniqueness.

Mr. Bussing: I would agree with the builder that the 8' build line makes it unique.

Ms. Farrington: I agree. The Plot Plan, though rudimentary, shows an 8' build line on one side and 9' on another, and it is an irregular shape.

Mr. Hawk: We're so much more restrictive now than we were in 1966.

**Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. Notices have been sent out?

Mr. Thompson: Yes, sir.

Mr. Munson: It says that neighbors have stated that, while they do not share a property line with this property owner, all setbacks shall be met.

Mr. Thompson: That call came from one of the neighbors who was not able to attend the meeting.

Mr. Munson: That particular neighbor does not share a property line with the owner?

Mr. Thompson: That is correct. They live across the street.

Ms. Farrington: The other thing I would like to point out is, if these homes were built in the '60s, there are probably quite a few properties that don't meet the 15' setback. The neighbors would have the same situations, probably.

Mr. Thompson: That is correct. The house that is directly north is going to have the same situation if they ever want to add on.

**Rights of Adjacent Property Owners criterion with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Mr. Bussing: This is always a hard one, Dr. Peppes notwithstanding. The nature of this house with the egress requirements that the city has practically prohibits the location of the addition anywhere else along the back. It can't be extended to the east. It would appear to me from the cursory review we've done with the documents that the hardship is that this addition just can't be built with any meaningful size. If it not built with an

appropriate size, it won't fit with the building. I believe there's a hardship if we impose the strict requirements of the LDO.

**Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Staff comment is that approval of the request could have negative effects for the neighbor to the south. Have you heard from the neighbor to the south?

Mr. Thompson: I have not.

Mr. Hawk: It says that it could. It doesn't say that it would.

Mr. Thompson: The house to the south sits on a corner lot, and his back of his home would look directly into the new addition. It's going to stick out relatively far into the rear yard. That's what that was based on.

Chairman Clawson: This comment could have been made in reference to the 2' bump-out for the fireplace, right?

Mr. Thompson: Correct.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I think the builder and the homeowner are making a good-faith attempt to try to make sure that this particular addition fits with the character of the home and the neighborhood, as well as other existing structures.

**Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: I would ask whoever makes the motion addresses the fact that the 2' bump-out is not going to be permitted.

**A motion to approve Case 05-2018 – A to Z-Man Construction; John & Mary Farkas/Owners – Request for a variance to the side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 10419 High Drive – based on the consideration that the side setback will not exceed the maximum of 8' – was made by Farrington; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Case 06-2018 – Troy Moore/Madi Mali Homes; John & Keri Tarantino – 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 9239 Lee Boulevard.  
**WITHDRAWN BY APPLICANT**

Case 07-2018 – Troy Moore/Madi Mali Homes; John & Keri Tarantino/Owners – Request for an Appeal of Administrative Decision in accordance with the LDO, Section 16-4-5.3(E)(5) in an R-1 District for property commonly known as 9239 Lee Boulevard.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners are in the planning phase of a teardown/rebuild. The current design includes a single driveway that exceeds a parking pad and provides access to the two garages that are located on the north and south sides of the home. The applicant is requesting the parking pad be defined as a driveway.

Mr. Bussing: What is the difference between the copy on our dais and the original?

Mr. Thompson: I just added the square footage of the pad at the bottom.

Chairman Clawson: In general, a request for appeal of an administrative decision is what in this case?

Mr. Thompson: We consider this to be a parking pad, and we do not believe it fits the definition of a driveway.

Chairman Clawson: Given your opinion, a variance would be required.

Mr. Thompson: Correct.

Chairman Clawson: But the applicant doesn't agree.

Mr. Thompson: Correct. He wants the parking pad to be considered a driveway, and we do not feel it meets the definition of a driveway.

Mr. Hawk: What is the difference between a parking pad and a driveway?

Mr. Thompson: Mainly size. A driveway is not to be more than 35' wide. This is wider in both directions.

Mr. Farrington: Could you put the plan on the overhead so that we can see the area being discussed?

Mr. Thompson: *(Puts plan on the overhead)*

Chairman Clawson: You're saying the parking areas are too wide.

Mr. Thompson: Correct. Specifically, the pad in front of the art piece that is shown on the drawing. That pad is 32'x56', so it is almost 1,800 square feet. It is right where the 75' build line goes through.

Ms. Farrington: The two widths that go to the driveways as well?

Mr. Thompson: That's fine.

Ms. Farrington: It's really just the lower part of the U.

Mr. Thompson: That is correct. The portion that connects to the house is okay. It is the portion in front of the garages that is not.

Chairman Clawson: It would be staff's opinion that, to have that, a variance would be required.

Mr. Thompson: Correct.

Ms. Farrington: If this were to be denied, they could revise and resubmit with a smaller depth, correct?

Mr. Thompson: Yes.

Chairman Clawson: Other questions for staff?

Ms. Farrington: Does the other plot plan that shows a U-shaped drive require a variance?

Mr. Thompson: It would meet the criteria.

Chairman Clawson: It would be an alternative.

Mr. Thompson: It was submitted by the applicant.

Ms. Farrington: Is this the other side of the home, or is this an alternative?

Mr. Thompson: It is still the front of the home.

Ms. Farrington: So, it is one or the other.

Mr. Thompson: Correct.

**Applicant Presentation:**

Troy Moore, Madi Mali Homes, 8625 College Boulevard, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Moore: Thank you for seeing us this evening. We believe that this doesn't meet the ordinance and should not be considered a parking pad. For the nature of the house itself, the garage doors face in toward one another. Therefore, there has to be some sort of motor court area in order to access the garages.

Chairman Clawson: The doors are on the inside.

Mr. Moore: Yes. We really just have three objectives when talking about the driveway configuration. First of all, the house is very symmetrical. From an architectural standpoint, we feel it really presents itself much better from Lee Boulevard with a straight, single-lane entrance onto the property, leading down to the motor court where the garages face one another. There is no other way to access the garages without having at least driving lanes to each side. Our landscaper thought that the grassy area in the middle of the courtyard area really broke up the impervious surface. It gave us an opportunity to add some green space, some landscaping, and whatnot. The homeowners are both here. Obviously, they're going to have people over to their house. A circle drive is not our goal. It is to show that when they have guests, the automobiles will be parked virtually on the neighbors' property line. By doing what we are proposing, it allows us to create a landscape buffer between the driveway lane and the adjacent properties on each side, which is also very appealing. I would think that a neighbor would prefer that over having rows of cars parked along both the north and south property lines. The flowering dogwoods provide a nice berm and a landscaping buffer between the adjacent neighbors. Our third objective in doing it our proposed way is less square footage. It is less square footage of impervious surface, which is obviously a cost savings to our homeowner. I'll take any further questions you might have.

Mr. Munson: What is the distance from Lee Boulevard to the garage?

Mr. Moore: I know that's on the Plot Plan.

Mr. Thompson: It looks like it's about 120' at its closest. It's a little farther on the south side.

Ms. Farrington: Have you looked at different ways to achieve the symmetrical look while limiting the depth and keeping within the width of a driveway?

Mr. Moore: I feel like our driveway lanes do meet normal driveway requirements. There has to be some sort of transition period for a car to make that turn there.

Ms. Farrington: I have an alternative suggestion that keeps your design intent while meeting the criteria (*refers to drawing*)

Mr. Moore: It just doesn't square it off.

Ms. Farrington: Staff and the city are concerned that if you provide a pad, it is a parking area, which is not what is wanted. If it truly is a driveway, you can construct a driveway and achieve what you want to achieve.

Mr. Moore: Sure. I thought the ordinance read that a parking pad was considered anything separate from their square footage requirements on how large a parking pad can be and that it is separate from the driveway. I guess we're just thinking that there is no way to access the garage without driving on this proposed pathway.

Ms. Farrington: But there is.

Chairman Clawson: Even with a modification like that, I'm not sure it would technically fall in the purview of the LDO.

Mr. Thompson: Without speaking to the building official, I would say as long as it met the measurements, it would be approvable at the front counter without having BZA action. As long as it is 35' or less, it is fine.

Chairman Clawson: I would probably just put a linear cutoff on it from where the driveway meets and then taper it, rounded a little.

Ms. Farrington: The rounded part was to allow a vehicle to maneuver. Not having your measurements, you may not meet what a true driveway is to get a car around there. I get that you're trying to keep it symmetrical and you don't like the curves, but that's just an aesthetic decision and not a requirement to accomplish the same purpose. The other proposal has curves.

Chairman Clawson: Where does that leave us? As a board, we have to either agree with the applicant or agree with the staff on their determination.

Mr. Thompson: That is correct.

Mr. Moore: I think our position is that people are inevitably going to park on your driveway regardless. It is not a secondary pad structure that is in addition to the driveway. We feel this is an integral part. We are trying to not only present the house architecturally beautifully from Lee Boulevard but also get those people that are parking in their driveway away from the property line. We would create a beautiful landscape buffer on both sides to where it's not causing hardship or an eyesore to the neighbors when they want to have someone over.

Ms. Farrington: The guideline states that it is within the front yard and in excess of 400 square feet. What we are trying to determine is the size of the first area that you determined went over the 400 square feet.

Mr. Thompson: Correct.

Ms. Farrington: According to our guidelines, it exceeds the 400 square feet, and you're asking for a variance. We have to determine whether it is fine to exceed that.

Mr. Moore: I think the ordinance says that it is a parking pad other than the driveway and not considered part of the driveway. To me, that would be a secondary pad on the side to park a boat on or overflow parking.

Chairman Clawson: Could we recommend that the applicant modify the size and shape of his design and reduce the square footage so the building official could agree with it to try to come up with a compromise.

Mr. Thompson: Yes, and if there was no compromise, they would have to seek a variance.

Chairman Clawson: Who would like to take a shot at this motion?

Ms. Farrington: I understand your point of view when you say that it is something other than a residential driveway. In this situation, the driveway is split into two, which is by choice. It is a beautiful design and symmetry is great; however, it exceeds the 400 square feet. That is what we're looking at. It can be non-symmetrical and have one side and meet the requirements. We have constraints we have to consider.

Mr. Moore: I totally respect that. I think that was the reason for showing you the circle drive proposal because that is actually 200 square feet larger on the property. This proposal is 5,303 square feet of concrete. Our proposal is almost 300 square feet less than that. I'm struggling to figure out why we would approve a circle drive that has more square feet of impervious surface.

Ms. Farrington: What could be argued as well is it could not be symmetrical and you could have one and still meet the requirement.

Mr. Thompson: It's not the total square footage of impervious material; it is the size of the pad.

Chairman Clawson: What is the size of the rectangular portion?

Mr. Moore: I don't have that figure. I didn't know that is what we were debating.

Chairman Clawson: As a board, we could remand it back to the building official and you could make some slight adjustments to reduce the square footage to approach the limits in the LDO.

Mr. Moore: Just for clarification, we are talking about the rectangle, and as long as it is less than 400 square feet, you can approve it?

Mr. Thompson: The 400 square feet and the 35' width. The design that Ms. Farrington put up there shaved off some of the square footage. It was thinner, but as long as it didn't exceed 35', it would be fine.

Chairman Clawson: How long is the driveway?

Mr. Thompson: It is a minimum of 16' in case someone parks on one side to allow for passing. What we have proposed is 18' wide, which is not beyond a normal driveway width.

Mr. Munson: It appears that the curved suggestion makes a lot of sense for everybody.

Chairman Clawson: The applicant is willing to work and try to come up with a compromise?

Mr. Moore: Absolutely, but I also have to work for my client and want to make sure it meets their design desires and fits with the architectural detailing of the home.

Chairman Clawson: If it doesn't and you have to have a compromise, you come back to us for a variance.

Mr. Thompson: Correct.

Chairman Clawson: We need to make a motion on this.

**A motion to deny Case 07-2018 – Troy Moore/Madi Mali Homes; John & Keri Tarantino/Owners – Request for an Appeal of Administrative Decision in accordance with the LDO, Section 16-4-5.3(E)(5) in an R-1 District for property commonly known as 9239 Lee Boulevard – was made by Farrington; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: You'll be notified officially in writing by the city. You can still look at modifications and discuss with building officials.

Mr. Thompson: Correct. As long as they come at or less than 35', I don't know why it could not be approved.

Case 08-2018 – Troy Moore/Madi Mali Homes; John & Keri Tarantino/Owners – Request for a variance to the rear setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9239 Lee Boulevard.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners want to construct a freestanding fireplace in the rear yard. As shown on the plan, the fireplace will be on the east end of the pool. Due to the lot's calculated rear yard setback of approximately 379 feet, the fireplace will encroach the rear setback 42' but will still be 344' from the rear property line. The LDO allows a fireplace to encroach the rear setback 5'. A variance of 37' is being requested.

Mr. Munson: What is the distance from the back of the yard now?

Mr. Thompson: The rear setback is 379'. The fireplace would encroach 42' but still be 344' from the rear property line.

Ms. Farrington: Is this very similar to the one we had last month where the depth was super deep?

Mr. Thompson: Yes.

Mr. Munson: Same area?

Mr. Thompson: They were all on Lee Boulevard.

Chairman Clawson: Other questions for staff? Please give us your name and address again.

**Applicant Presentation:**

Troy Moore, Madi Mali Homes, 8625 College Boulevard, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Moore: I was hoping Wade could provide some insight on what you all did last week, but we are working with a narrow lot that is incredibly deep. We feel our fireplace being 344' from rear property line is an issue.

Chairman Clawson: Is this the same property?

Mr. Thompson: Yes.

Ms. Farrington: It's a different owner.

Mr. Thompson: It's the same property as the previous case.

Ms. Farrington: Oh, tonight, yes. It's different than last month.

Mr. Moore: Just by the nature of the lot, we feel that 344' from the fireplace to the rear property line is more than ample to not impose any hardship on any neighbor. Also, we can see a utility line easement through there. We're in the process of moving overhead power lines with KCP&L and burying them underground. We also are dealing with their easement that runs north and south through the property line, therefore, not allowing us to

put the fireplace any closer. There is an inground pool behind the home running east and west. Based on the pool size and patio location, the most ideal and natural spot to put the fireplace is where it's located.

Chairman Clawson: Questions for the applicant? Would you like to address Uniqueness?

Mr. Moore: It's a subjective term, but I just think it is a unique 2-acre lot. We are fighting an underground KCP&L easement, which does force us to move it back farther. It's just a unique situation. It's a deep lot. The back property line is fully treed, 344' away.

Chairman Clawson: The power line easement is right behind the proposed fireplace?

Mr. Moore: It is the dashed line running north and south.

Chairman Clawson: What about Hardship?

Mr. Moore: If we were required to meet the requirements, the fireplace would be in the middle of the swimming pool. That is not ideal. The house is kind of a horseshoe shape with the garages out front. There is also a horseshoe shape on the back side. We're really creating this courtyard experience with the pool, which doesn't allow us to flip it 90 degrees and run it north and south. From the front door, there is a wall of windows, so you can see straight through to the back yard. It is a beautiful lot. The ability to sort of create a barrier between the pool and the entertainment zone from the rear yard is desirable by our client.

Mr. Munson: This is the same property with the driveway issue. It appears you're going to have a lot of people parking there to come to those pool parties.

Mr. Moore: Yes.

Ms. Farrington: I see where the fireplace is highlighted. What is the horseshoe area to the opposite side of the pool?

Mr. Moore: This is an inground firepit.

Ms. Farrington: Could you reverse those and have the inground firepit where the fireplace is and have the built structure above, or would that still not meet the requirements?

Mr. Thompson: It would.

Mr. Moore: I think the issue is that we have 22' of glass out of the great room, and so I'm not sure they would want to impede that with a structure. They wouldn't be able to see the pool from inside the home.

Chairman Clawson: How tall is the proposed fireplace?

Mr. Moore: It is approximately 9' overall.

Ms. Farrington: The easement is just there; you can build within the building setback line.

Mr. Thompson: Correct.

Ms. Farrington: I understand it would impede the view. There is also east and west. If you go on either side of the pool, you could keep your symmetry and have the other direction as well and meet the setback.

Mr. Thompson: Correct.

Chairman Clawson: This setback line is based on adjacent properties?

Mr. Thompson: No, it's the calculation based on the depth of this particular lot. If the neighbors ever want to build anything in the rear yard, they will have the same issue as far as calculated rear setback. Matter of fact, the next case is the same thing.

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

Mr. Thompson: Just so you know, I have not heard from any of the neighbors. You may not get anybody speaking against it.

Chairman Clawson: Thank you. Again, this is a variance, so we have to go through the five factors. The first is Uniqueness.

Mr. Bussing: I would argue that since they have a power easement that runs across the middle of the property, it is unique.

Mr. Hawk: We also don't see many 2+acre lots.

Mr. Munson: I'd just like to point out that the last thing staff said was that the variance clearly arises from the property owner wanting an entertainment area. Is that a bad thing?

Mr. Thompson: No, as long as you can justify it in the criteria.

Mr. Munson: Why would that be an issue?

Mr. Thompson: Because they could reverse it, as Ms. Farrington pointed out.

**Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners. No calls, no complaints.

Mr. Thompson: Correct.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Ms. Farrington: Although I think the design is beautifully aesthetic, it can be achieved in another manner. I think the hardship is brought upon by the homeowners themselves. The easement is there; however, there is plenty of area within the build line and other locations the fireplace could be constructed. I have a hard time seeing that this hardship is valid.

Mr. Bussing: I believe there is a hardship brought on by the city's rather obtuse definition of rear yard build line in a lot that is 600' deep and 344' of it are inaccessible to the homeowner to build on. For the life of me, I don't understand how we come up with that calculation. I believe that calculation produces a hardship on the property owner because it renders half of his property unbuildable.

**Hardship criterion satisfied with a vote of 3-1. For: Munson, Hawk, and Bussing. Opposed: Farrington.**

Chairman Clawson: Public Safety and General Welfare. Shouldn't affect it.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: I think it meets that.

**Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

**A motion to approve Case 08-2018 – Troy Moore/Madi Mali Homes; John & Keri Tarantino/Owners – Request for a variance to the rear setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9239 Lee Boulevard – was made by Bussing; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Case 09-2018 – Gerald W. Janssen/Elswood Smith Carlson Architects, P.A.; Shawn & Lindsey Welch/Owners – 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 8411 Lee Boulevard.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners want to raze the existing structure and construct a new home. The lot has a calculated rear yard setback of 169'. To meet the required front yard average, a variance is being requested to place the home behind the calculated rear yard setback. They are requesting a variance to replace the rear yard setback at 30'.

Chairman Clawson: The calculated front yard is based on adjacent properties?

Mr. Thompson: Correct; the front yard average is averaged by the two adjacent properties.

Chairman Clawson: It's pushed back pretty far, and there's not much room for the house.

Mr. Thompson: There is no room.

Mr. Bussing: The rear yard setback is in front of the front yard setback. Again, this obtuse calculation we make is an issue.

Chairman Clawson: Is that considered a hardship?

Mr. Thompson: Definitely.

Chairman Clawson: Questions for staff? Please give us your name and address.

**Applicant Presentation:**

Gerald Janssen, Elswood Smith Carlson Architects, 7133 W. 95<sup>th</sup> Street, Overland Park, appeared before the Board of Zoning appeals and made the following comments:

Mr. Janssen: He's explained the situation. We know the closest we can be in the rear yard setback is 30', and we want to honor that. We are asking for an average rear yard setback of 60'. I know there is some angle to the lot that we can use the average rear yard setback. As you can see on the Site Plan, the closest that it would be is 31.16', but the average setback would be 60'. When we first went through the calculations, we scratched our heads and went over it several times, trying to figure out what to do.

Mr. Thompson: I don't know that we need much of a presentation on this case. With the creek in the front yard, the easement in the front yard, and the two homes pushed all the way to the back of the lot on the north and south, I don't know why we can't go right to the five criteria.

Chairman Clawson: I tend to agree unless the board has questions they just have to have answered. Thank you. Is there anyone here who wishes to speak for or against this application?

Mark Serma, 8520 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Serma: 8511 is basically my back yard. I'd like to applaud them for tearing that place down. The only reason I even came is I didn't know what the plans are, and 30' from the back of the house to our back yard is fantastic. Nice to meet you.

Chairman Clawson: Anyone else who wishes to speak?

*Inaudible comments*

Rick Williams, 8517 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Williams: I've been a resident there for 38 years. I'm supportive. At first, I had the wrong house picked out from the mailing. I thought it was the little green one that is already almost up against the fence that I can see from my window. This helps explain. I have no questions. An average of 60' is better than 30', which is what everybody else is. The house next to me recently seems like they expanded up to the blue moon and back. I'm all in favor.

Chairman Clawson: We have to go through the five factors. Uniqueness.

Mr. Bussing: I'm not sure how many lots we have in Leawood where the rear yard setback is in front of the front yard setback, so I think this is unique.

**Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners. Cards went out?

Mr. Thompson: All the mailings were done, and there were no comments.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Mr. Bussing: As staff has indicated, if the request was denied, the rebuild would not be possible, making the lot unbuildable.

Chairman Clawson: This is the definition.

**Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Won't affect it.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Hawk: It's a definite improvement for the neighborhood.

Chairman Clawson: Staff indicates they feel the criterion has been met.

**Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

**A motion to approve Case 09-2018 – Gerald W. Janssen/Elswood Smith Carlson Architects, P.A.; Shawn & Lindsey Welch/Owners – 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 8411 Lee Boulevard – was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Bussing, and Farrington.**

*MEETING ADJOURNED.*