

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

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

MEMBERS ABSENT: Dunn

STAFF PRESENT: Thompson, and Knight

APPROVAL OF MINUTES: Approval of the minutes from the February 28, 2018 Board of Zoning Appeals meeting

A motion to approve the minutes from the February 28, 2018 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: We have a number of cases tonight, both exceptions and variances. As such, I would ask that the applicants please limit your remarks to about five minutes so we can get through the agenda in a reasonable amount of time.

NEW BUSINESS:

Case 10-2018 – Tamara & Aaron Lorenzen/Owners – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 10400 Cherokee Lane.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remove an existing 4' tall galvanized chain link fence and replace it with a 6' tall fence. The fence is being requested to contain the family dog that can clear the 4' fence. The new fence will be steel but have the appearance of wrought iron.

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

Applicant Presentation:

Tamara and Aaron Lorenzen, 10400 Cherokee Lane, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Lorenzen: We have adopted two new dogs. They are Siberian Huskies. We were told by the rescue organization that one of them can jump a 4' fence but cannot jump a 6' fence. We have spoken with all our neighbors that adjoin our fence about this. They have all said that they have no issue with it. We are proposing an ornamental metal fence that looks like wrought iron. It doesn't adversely impact any of the sight lines. We can still talk with our neighbors, so it doesn't isolate us. We stand for any questions.

Mr. Hawk: Do you have a picture of what the fence will look like?

Mrs. Lorenzen: I do. (*Refers to photo on overhead*) There are two fences. One is just north of 103rd Street just across from Brookwood. There is another on Lee Boulevard that is near 104th Terrace.

Chairman Clawson: Are there questions for the applicant?

Dr. Peppes: I believe this is the north side of the yard, where there is an existing 4' wood fence. Your fence will go right up against the 4' fence?

Mrs. Lorenzen: It is actually a style with wood posts and top rails with galvanized mesh. The property just to the north has a south fence line that is closer to 3.5' tall. It is a mix of materials. It is the property to the north of them that has the 6' privacy fence. We actually will be removing that fence and replacing it with this fence.

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

Mary Perrigon, 8209 Cherokee Circle, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Perrigon: Part of our back yard backs up to the neighbor here. I have no problem with the fence. I just would like to know if it will replace every existing fence. I think that has been answered. I want to make sure the partial section of our back yard that is currently a chain link fence would be replaced and not added to with another fence.

Mrs. Lorenzen: If I may interject, 8209 was not on the list that we were given, so are you on a different case? There are three fence exceptions tonight.

Ms. Perrigon: *Inaudible comments*

Chairman Clawson: Is there anyone else who wishes to speak? Do we have a motion?

A motion to approve Case 10-2018 – Tamara & Aaron Lorenzen/Owners – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1

District for property commonly known as 10400 Cherokee Lane – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 11-2018 – Josh & Abigail Fink/Owners – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 8208 Ensley Lane.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose their rear yard with a 6’ tall privacy fence. The fence is being requested to provide security for the children and pets after an incident with a dog that jumped the fence, attacked, and killed the family cat.

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

Applicant Presentation:

Josh Fink, 8208 Ensley Lane, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Fink: My neighbor to the south has a dog that jumped the fence and killed our family cat on our patio. Luckily, my 3-year-old and 20-month-old were sleeping. My wife had to broom the dog off and held the cat as she died. The neighbors to our northwest have three dogs that are rescue dogs, and they have also jumped our fence. There is a 4’ chain link fence that borders our property with approximately five neighbors. The proposed fence would replace the chain link fence with a 6’ typical wood privacy fence.

Chairman Clawson: Questions for the applicant? You’re proposing a wood fence?

Mr. Fink: Correct.

Mr. Hawk: Do you have pictures of the proposed fence?

Mr. Fink: I don’t. It’s a traditional privacy picket fence.

Mr. Thompson: I’m assuming cedar.

Mr. Fink: Yes, cedar.

Dr. Peppes: There are five properties that fence will abut. A letter in our packet was from a neighbor across the street. Wade, have we had any other letters?

Mr. Thompson: No other correspondence whatsoever.

Dr. Peppes: Would you say that everyone else is in agreement?

Mr. Fink: Our neighbors to the north have agreed to it. I have not talked to the neighbor whose dog jumped the fence. I was going to wait until I had approval \ to discuss that.

Chairman Clawson: Would your proposed fence take the place of any existing fence?

Mr. Fink: Yes, assuming that all the neighbors agree to let us take it out.

Chairman Clawson: What if they don't agree?

Mr. Fink: We could either come in on our property line if approved, or I'd have to come back.

Chairman Clawson: Would that be permitted?

Mr. Thompson: It would be permitted. It would just be hard to maintain that small piece of property between the two fences.

Ms. Farrington: Where you abut to the other five properties, is there fencing in all locations?

Mr. Fink: Yes.

Ms. Farrington: Is it all chain link?

Mr. Fink: On the north side is a 4' wood picket fence.

Ms. Farrington: That is the side you have approval from?

Mr. Fink: Yes.

Ms. Farrington: It is the 4' picket fence?

Mr. Fink: Yes.

Mr. Hawk: Wade, can you give us a little more insight on how this is handled? I appreciate the concern, but down the road, we'll have lots of people who will have dogs next to them. Is this something that we'll need to address or think about? Is this an isolated example?

Mr. Thompson: Anytime there are dogs, there will be the possibility of them jumping the fence. It happens quite frequently. Very rarely does this happen that they actually attack a neighboring animal. Animal Control responds to these calls every day.

Chairman Clawson: Other questions for the applicant? Is there anyone here who wishes to speak for or against this application? Do we have a motion?

A motion to approve Case 11-2018 – Josh & Abigail Fink/Owners – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 8208 Ensley Lane – was made by Farrington; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 12-2018 – Rick Oddo/Owner – Request for a variance to the front yard build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3747 W. 117th Terrace.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to tie in to existing fences that extend beyond his front build line. The fences in question were constructed by the neighbors, and due to their placement, they are not considered to be in the neighbors' front yards. The fence the applicant would like to construct would match the existing fences and connect to an existing gate at the entryway of the drive.

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

Applicant Presentation:

Rick Oddo, 2801 W. 112th Street, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Oddo: This is a unique site (*Refers to plan*) I want to keep the kids from Nativity. They would be allowed to put the fence up. I have an email from Nativity stating that they don't object to me putting the fence up along the property line. I want to tie into the front gate. This is at the bottom of the cul-de-sac. Someone built the gates. We just want to tie the fence in, take it across about 15' to the posts. We want to do the same thing on the other side. We want to come in behind the trees. I sit behind someone else's back yard. I'm tying in to the back of their back yard, where it is my front yard. It is very unique down at the bottom of that cul-de-sac. I don't see that happening very often.

Chairman Clawson: Your front yard is where?

Mr. Oddo: I'm facing their back yard. Their fence line comes around the curve and down. I will tie in a few feet behind the property line so I don't cut down the trees. There are three redbuds there. I want to come in about 8' behind my property line of the curb so I can preserve them. The neighbors in the back don't mind at all. I also have an email from the homes association that they don't mind.

Chairman Clawson: Where is 117th Terrace?

Mr. Oddo: (*Refers to plan*) 117th Terrace is the cul-de-sac, and I sit at the bottom of it.

Chairman Clawson: Where is the house to the east?

Mr. Oddo: It is on Mohawk.

Chairman Clawson: That is their back yard?

Mr. Oddo: Yes, so I am facing their back yard and want to add 10'-12' to tie in with the gate. Nativity could do the fence without an issue, but I can't do it because it is in front of my house. Nativity currently has a fence down 117th Terrace. I have brought the fence line to where I legally can. I'm asking to tie in and take it to the pillar. It's a big retaining wall. I want to tie in to the back side, go down the rock retaining wall, and come over to the property line. The kids are mainly back there during football and basketball games. They aren't there during school, but they are there on weekends. I just want to keep the kids out.

Mr. Munson: What type of fence will it be?

Mr. Oddo: On the side of Nativity, I would carry the steel fence 5' all the way up on it. On the side of my neighbor, we would match their fence. I am trying to match with the neighborhood. I talked to the HOA, and that's what they wanted. I am happy to do that. I always assumed it would be allowed since someone built those gates. I'll take the gates down and then put them back up when I'm done with construction. I'm just trying to close in those few little feet.

Ms. Farrington: Can you explain the driveway that extends to the neighboring property that might explain a little more about those gates and why that was constructed to begin with?

Mr. Oddo: I have no idea. I just know I have to share a drive with my neighbor to my north, and he, of course, agrees with wanting to close it off. He is very seclusive.

Ms. Farrington: Can you put the AIMS map up again? (*Map is placed on overhead*) The only way the property to the north is accessed is through a shared drive on your property. That was existing when you purchased the property?

Mr. Oddo: Yes.

Chairman Clawson: Does your neighbor to the north use that driveway?

Mr. Oddo: Yes; it is his only driveway. He is the one who built the gates and fence 15 years ago. He didn't have the right to fence in the front, but he always wanted to, and I do, too.

Mr. Munson: It's interesting that a land-locked lot would be approved by the city, but it was.

Mr. Oddo: There are several lots in that neighborhood that are land-locked or have shared access.

Mr. Munson: Is that by Eskie?

Mr. Oddo: It is by Moffitt. Eskie has Tomahawk to the north. In conclusion, I have a very unique lot at the bottom of a cul-de-sac, facing back yards. It is so secluded that it would be nice to be able to close it off like we want.

Chairman Clawson: This is a variance, so we have to look at the 5 factors. I think we can make a good case for Uniqueness, but what about Hardship?

Mr. Oddo: The kids keep running in from Nativity to play. It would be nice to close it off. I'm not going to sit here and say it is a hardship, but why have a gated entry if it is not closed off? It was always the intent of that to be done, especially since I'm next to a school.

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

Rusty Smith, 11704 Mohawk Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Smith: I have a question about the fence that would connect my back fence with the pillar. Does that proposed piece of fencing run on my property?

Mr. Oddo: I'm tying in to the fence behind the three redbuds. I thought it would be better to come in behind the trees to save them. It is all on my property. Your fence is on the property line. I'm just tying in to it.

Mr. Smith: That's all I was wondering about.

Mr. Oddo: I'm going to match the fence you have so it blends in. Because it's behind the trees, you probably won't even see it.

Chairman Clawson: Is there anyone else who wishes to speak for or against this application? Since this is a variance, we have to evaluate the 5 factors separately. We have to vote in the affirmative on all 5 factors in order to support a motion for approval. The first is Uniqueness.

Dr. Peppes: As we saw from the plans and the way the plots are with the houses that are there, even though there may be another one of these in Hazelwood, this isn't common in the City of Leawood.

Uniqueness criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. Everyone was notified?

Mr. Thompson: Correct.

Mr. Hawk: We had one neighbor here to confirm that they feel that it has been satisfied.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Hardship.

Dr. Peppes: I think it has been met because safety should supersede anything. In order to keep his property safe from the school behind him, this variance is necessary.

Ms. Farrington: I would like to add on. I agree that there is a hardship. It seems that the property had a gate with the intent that things would be enclosed. With it being adjacent to a school, and with a steep retaining wall, the fence is necessary to preserve the original intent and continue with the design and safety of the children.

Hardship criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: It improves that factor.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I think it has been met. The proposed design ties in to an existing open fence that is not a privacy fence, which is what most of the guidelines were set for. I think it has been met.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: We voted in the affirmative for all 5 factors and can support a motion for approval.

A motion to approve Case 12-2018 – Rick Oddo/Owner – Request for a variance to the front yard build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3747 W. 117th Terrace – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 13-2018 – Rick Oddo/Owner – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 3747 W. 117th Terrace.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: This is the same report as the previous case. It is for the 5' section of fence so he can match the existing fence.

Chairman Clawson: I don't know that we need to beat this one to death. Do you have any comments?

Mr. Munson: If it is appropriate, I would just move for approval.

Chairman Clawson: Before we do that, is there anyone here who wishes to speak for or against this application? If not, I will entertain a motion.

A motion to approve Case 13-2018 – Rick Oddo/Owner – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 3747 W. 117th Terrace – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 14-2018 – Larson Building Company; Michael & Stacie Scifres/Owners – Request for a variance to the calculated rear yard build line in accordance with the LDO, Section 16-2.5.3(D) in an R-1 District for property commonly known as 9135 Lee Blvd.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: This is one of Mr. Bussing's favorite variances. The property owners would like to raze the original home that was constructed in 1949 and build a new home. The existing structure is considered legal, nonconforming. Once the home is razed, the lot would be unbuildable due to the average front yard build line and a calculated rear build line. Per the plan, the home would still be approximately 164' from the rear property line.

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

Applicant Presentation:

Jim Kiely, Chief of Operations for Larson Building Company, 10346 State Line Road, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kiely: We have some clients we are designing a house for on this property. We discovered that where the house has to be placed as an average of the properties on each side is pushed back quite significantly. The rear setback requirement is actually farther forward from the front, so it would make it completely unbuildable. That is why we are requesting the variance.

Chairman Clawson: Wade, can you put up a plan view?

(Plan placed on the overhead)

Chairman Clawson: Questions for the applicant? We've seen cases like this recently.

Dr. Peppes: Let me make sure I understand. It is because of the sanitary sewer easement and the creek?

Mr. Thompson: Those are in the front. Back in 1949 when the homes were built, they were all built toward the back of the property. It has such an extreme front yard average because of that. It actually places the front yard average behind the calculated rear build line.

Mr. Bussing: The proposed structure would basically sit in the same footprint as the existing structure?

Mr. Kiely: No, sir; it has to be moved back per the LDO requirement. It has to be moved back the average of the two properties, which is substantial at 20'-30'.

Chairman Clawson: Would the proposed house have the front yard build line consistent with the average of the two?

Mr. Kiely: Yes.

Chairman Clawson: But it has to be moved back.

Mr. Kiely: It has to be moved back substantially to do that. It pushes it so far into the slope of the back yard that it is causing a grade change problem as well, which we will speak to next. We have done a drainage study on the property. I have Harold Phelps here to speak to the drainage study.

Ms. Farrington: What we are looking at is just the rear build line?

Mr. Thompson: Correct. This will allow him to build behind the rear build line. In this case, it is more important to meet the front yard average so that the house isn't placed way in front of the other two homes.

Chairman Clawson: The rear yard build line is less of a concern.

Mr. Thompson: That is the variance you're discussing now.

Ms. Farrington: As I look at this application, I see that that house will be 164' from the rear build line, so there is still a significant distance.

Mr. Thompson: Yes, ma'am. A normal rear build line in an R-1 district is 30'.

Mr. Bussing: There is no provision in the code for building it on the existing location?

Mr. Thompson: No, sir.

Mr. Bussing: These structures have been there since 1949. I think the neighbors are used to seeing some structure in that location. There is no provision to allow that?

Mr. Thompson: No, sir.

Chairman Clawson: This is a variance. Uniqueness and Hardship are the ones we have the most trouble with. I think Hardship is pretty clear-cut. There are a few lots there that are like this, but can you address Uniqueness?

Mr. Kiely: It is unique in that there is a creek that runs through the front yard. That causes the houses to be pushed back so far to begin with. I see that as being very unique. There is also a sewer that runs in the front yard that the house has to be behind.

Lance Larson, 8416 Ensley Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Larson: The property is unique in many, many ways. There may be 5-6 properties up and down Lee Boulevard and maybe 3-4 more on High Drive that are this size of lot. The LDO calculation simply doesn't work in this case. The rear yard setback, following the LDO's arithmetic, would be in front of the front yard setback. This makes the lot truly unbuildable. This is the real reason for the variance. It is very similar to the last 2-3 that we have seen occur over the last 2-3 meetings where the exact same situation was presented.

Chairman Clawson: Is there anyone here who wishes to speak for or against this application? We'll go through the 5 factors and vote individually on each factor. To support a motion for approval, we have to vote in the affirmative on all of them. The first is Uniqueness.

Mr. Bussing: For the reasons stated by staff, this meets the Uniqueness criterion.

Uniqueness criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. All the cards went out? Everyone was notified?

Mr. Thompson: Yes, sir. I have one correspondence from the homeowner at 9201 who said that he has been in discussion with Jim Kiely and is in favor of the request for approval.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Hardship.

Dr. Peppes: I think it has been met. Mr. Larsen pointed out that he wouldn't be able to build a house because the rear property line would be in front of the front property line. We need to make that right.

Hardship criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Improving this won't affect any of those issues.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met because the comments were made about pushing the house back so that the front build line is the average of the other homes. That is what we would like to see. In doing so, it pushes it back, so the rear build line is going to be affected. I think by making the front right, it leads to Spirit and Intent.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: We have voted in the affirmative on all 5 factors; therefore, we can support a motion for approval.

A motion to approve Case 14-2018 – Larson Building Company; Michael & Stacie Scifres/Owners – Request for a variance to the calculated rear yard build line in

accordance with the LDO, Section 16-2.5.3(D) in an R-1 District for property commonly known as 9135 Lee Blvd – was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 15-2018- Larson Building Company; Michael & Stacie Scifres/Owners – Request for a variance to the maximum allowable grade change for a lot in accordance with the LDO, Section 16-2-4.3(G) in an R-1 District for property commonly known as 9135 Lee Blvd.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to raze the original structure constructed in 1949 and build a new home. A variance to increase the maximum allowable grade change will not exceed 1.5’ per the applicant.

Chairman Clawson: Does the board have questions for staff?

Dr. Peppes: Doesn’t the ordinance say that we will allow anything under 1’?

Mr. Thompson: Yes, anything less than 12” is allowed.

Dr. Peppes: This is just 6” over.

Mr. Thompson: Yes.

Chairman Clawson: Other questions for staff? I’m assuming that the grade increases behind the building. They push it back into the hill. I’m presuming that’s the issue. You don’t have the back of the house buried, right?

Jim Kiely, Larson Building Company, 10346 State Line Road, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kiely: Because we are pushing it back into the hillside, we have to grade a swale around the back of the property. We are actually cutting grade back there. It is more than the allowable grade change to get the swale so the water comes around the property and drains properly. We’ve done a drainage study. Harold Phelps from Phelps Engineering can speak to that if you need him to speak to the drainage and how it is affected around both sides of the property.

Chairman Clawson: Drainage is a major concern.

Mr. Kiely: It is a major concern. That is why we did the study and proved that it works.

Chairman Clawson: We've seen cases in Leawood where grade changes had very adverse effects on adjacent properties.

Mr. Kiely: Yes, sir.

Chairman Clawson: Questions for the applicant? I think it would be a good idea for Mr. Phelps to present his drainage study.

Mr. Thompson: Just to let you know, this same neighbor, Ken Jolfey, of 9201, had a concern as well.

Harold Phelps, 1270 North Winchester, Olathe, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Phelps: We have done a drainage study, and as Jim pointed out, in 1949, the building code didn't exactly require the same requirements we have today. Today, we are required to have a 6" grade below top of foundation at the back of the house and then drop another 6" below that 10' out from the house. Many of the houses in Leawood, from my experience, don't have that good, positive drainage around the houses where the drainage comes toward the house. In effect, this house does not, either, so we're actually making an improvement by that. By pushing the house farther back to meet the front building requirement, we are moving the house farther into the hills. We do have the cut behind the back of the house. (*shows plan*) The areas that are highlighted in red are the grades that will be exceeded by more than 1'. Most of that is specifically behind the building or the house itself. On the front, we will be right in front of the driveway. We are trying to make a more suitable driveway access into the driveway itself. We have looked at the storm drainage and have submitted a Storm Drainage Report to the city. We have an increase in runoff of about 1%, but we went from a 17% impervious area to an 18% impervious area. The public storm sewer systems are designed for 35% impervious area in a standard residential district. We are increasing the impervious area, but the storm drainage system should be adequate. Even at that, we are adding an infiltration trench to accommodate the additional runoff. We looked at the runoff and impacts we're having on adjacent neighbors, which is the significant concern. The neighbor to the south specifically drains to our property, so we will not have an impact on his property whatsoever. The neighbor to the north has seen our plan and has written a letter, as pointed out, in favor of the plan. We are building a small wall for supporting the elevated driveway. It will be immediately adjacent to an existing wall, but there is still adequate room for the drainage to come around the house and go between those two walls. Other than that, we are matching the grades on both property lines and not increasing the drainage on either property.

Chairman Clawson: Does the neighbor on the north have a wall?

Mr. Phelps: They do.

Chairman Clawson: There is drainage coming down between that wall and the proposed wall.

Mr. Phelps: That is correct. Our wall is about a 2' wall at the location.

Chairman Clawson: How much water comes down through there?

Mr. Phelps: I haven't done an exact calculation as far as the amount of water coming through. We have talked about the possibility of being able to round the corner, creating a little more space between them.

Mr. Munson: It would seem that you would have water being forced through a narrow opening which could cause erosion on the property.

Mr. Phelps: I think we're looking at a sodded condition. We will obviously sod so we won't have bare soil. Where we do have a constriction there, it is not significantly different than what we have in a present condition with the driveway adjacent to that. I don't feel it is an issue. If we do have an issue, we would be looking at some type of stabilization in that area. I really don't expect much of an issue there.

Ms. Farrington: You stated there are infiltration drains. Can you show where those will be?

Mr. Phelps: (*refers to map*) We're looking at an infiltration trench in the front yard. The downspouts will drain to it in the front yard and then discharge with a popup drain farther down in the front yard.

Chairman Clawson: The areas you have highlighted indicate a grade change greater than 1' but less than 1.5'?

Mr. Phelps: We have a few areas that exceed 1.5'.

Chairman Clawson: That's not what your application says.

Mr. Phelps: At the back of the house, we are probably around 2.5'.

Chairman Clawson: The variance is to increase the maximum allowable grade change to not exceed 1.5'. Can you speak to that?

Mr. Kiely: When I applied for this, I said it exceeded 1' by no more than 1.5'.

Ms. Farrington: That would be handwritten on your form, which we should have on your packet.

Mr. Kiely: That is correct.

Mr. Larson: To be clear, we're requesting a variance of 1.5' additionally because it can be changed up to 1'.

Ms. Farrington: That would be 2.5' then.

Mr. Larson: It is a total of 2.5'.

Chairman Clawson: I read this that you were going to change the grade no more than 1.5'. That needs to be clear in this application. Wade, how did you read it?

Mr. Thompson: I read it that it was no more than 1.5' or an additional 6".

Mr. Bussing: You're reporting the increase in impervious area is 1% overall.

Mr. Phelps: That is correct.

Mr. Bussing: It is still roughly half of what is required.

Mr. Phelps: Absolutely. I would also like to point out that our top of foundation is just about the same as what it was before. We're holding the top of foundation about where it was to match the existing houses next to us. When we do that and push the house back, it is really where we get into the grade changes at the back of the house.

Chairman Clawson: Are there other questions? For the folks from Larson, I would like their assessment on how the analysis of the 5 factors would address Uniqueness and Hardship. You could build that house without a grade change.

Mr. Kiely: I don't think we can build that house without a grade change and follow the LDO's rules on placement on the front of the house. Pushing it back is causing the issue. It is such a rise in the back of the property. Pushing it back into this hillside has created this issue.

Chairman Clawson: You basically had to raise it up.

Mr. Kiely: The floor is not changing more than what is allowed. Would you like me to speak to the criteria?

Chairman Clawson: Maybe address Uniqueness and Hardship.

Mr. Kiely: Uniqueness would be the same as the previous case. The creek runs through the front yard, and the existing home was built into a steep hillside. If pushed back on the lot to drain properly, it will exceed the 1' rule by no more than 1.5'.

Mr. Larson: I might also add that it is extremely unique that a footprint of an existing home would be forced to move back so much. In order for this home to line up and meet the average setback of the homes on either side, it would have to move back significantly,

causing the existing home to have the same relief with regard to the grade change rule. That is compounding the problem or the necessity, ultimately driving the uniqueness.

Chairman Clawson: Wade, could you show the plan again and point out where the back of the existing house is? I want to get an idea of how much it is pushing back into the hill and the elevation difference. It is probably around 2'-3'. What is the elevation on the back of the house? Is it 918'?

Mr. Kiely: That is correct.

Chairman Clawson: What is it at the back of the existing house? I'm guessing it's about 914'.

Ms. Farrington: It looks like it is 914', so about 4'.

Chairman Clawson: When you push the house back, the grade comes up about 4'.

Mr. Larson: That is correct.

Mr. Kiely: We are asking for 2.5', which exceeds the allowable grade change by 1.5'.

Ms. Farrington: Staff mentioned one neighbor. Which neighbor is it?

Mr. Thompson: It would be 9201, which is the south side.

Ms. Farrington: What was the neighbor's concern?

Mr. Thompson: He wanted to know how it would affect his drainage. I think Mr. Phelps has spoken about that.

Ms. Farrington: Is the rock landscaping existing?

Mr. Kiely: Yes. He has built over onto our client's property with that. He discovered that when I met with him.

Chairman Clawson: As you said, though, the water is really coming down from his hill.

Mr. Larson: Yes.

Ms. Farrington: Is that the only neighbor that had a concern?

Mr. Thompson: He is the only one who has contacted us.

Mr. Kiely: He had a concern. He wanted to make sure it worked. I met with him for probably an hour and talked through any concerns he had. He couldn't be here but just wanted to make sure that it worked. That was his main concern.

Mr. Thompson: That is correct.

Chairman Clawson: The primary concern is on the north side where it pinches down, frankly.

Mr. Kiely: I think you're correct that it is more of an issue than the south side. Mr. Phelps spoke to that.

Chairman Clawson: If you had to, you could put an open drain there.

Mr. Kiely: We could do that.

Mr. Munson: What is the width of that narrow opening? How narrow is it?

Ms. Farrington: Are you speaking about the north side?

Mr. Munson: Yes.

Mr. Larson: There is a choke point, and they are looking for the width.

Chairman Clawson: I'm guessing it is 3'-4'.

Mr. Phelps: The code requires a 2' setback for our wall. Their wall is probably not 2', but it is probably about a 3' separation between the walls.

Mr. Munson: When God pours a bucket of water on Leawood, funny things happen.

Mr. Bussing: Water still doesn't run uphill. That elevation is higher.

Chairman Clawson: There is going to be water coming down through there, no doubt about it.

Mr. Bussing: It is going to be moving right to left and then down.

Mr. Munson: Where is the highest elevation on this particular drawing?

Mr. Phelps: The highest elevation is in the back corner of the lot.

Mr. Munson: According to the picture, it is draining toward the house, through the narrow opening.

Mr. Phelps: Yes, it will. The water would come toward the house with a high point at the back of the house. It will drain around both ways around the house. We would agree to take the sharp edge off and round the corner to create a little more room.

Mr. Larson: It would drastically improve the ability for the water to migrate because it is opening it wide, funneling it through, and then opening it up again. I think that's a great idea.

Chairman Clawson: That is definitely a pinch point there. Are there other questions for the applicant? Thank you. Again, this is a variance, so we have to go through the 5 factors. The first is Uniqueness.

Ms. Farrington: We talked about this in the last case as well that having the creek in the front creates a unique situation.

Uniqueness criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. Everyone has been notified?

Mr. Thompson: That's correct.

Mr. Hawk: There were some concerns that have been addressed.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Hardship.

Mr. Bussing: I think the LDO has created this hardship by forcing the house 20 feet back into the hillside. Even though the Staff Report says it could be built, the house that could fit on that property without affecting the grade change would probably not be consistent with the homes along Lee Boulevard.

Hardship criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: I think that if this is approved, the drainage study has proved that Public Safety and General Welfare has been met.

Public Safety and General Welfare criterion has been satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been satisfied by meeting the front yard setback. Pushing the house back has created this problem, but the end result puts the front where it needs to be.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

A motion to approve Case 15-2018- Larson Building Company; Michael & Stacie Scifres/Owners – Request for a variance to the maximum allowable grade change for a lot in accordance with the LDO, Section 16-2-4.3(G) in an R-1 District for property commonly known as 9135 Lee Blvd – was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Mr. Bussing: I'd like to thank Mr. Kiely and Mr. Larson for recognizing that the key concern on this type of variance for the city is the drainage issue. I appreciate you taking the time and spending your client's money to have Mr. Phelps do his study. It is very helpful to us during these discussions.

Chairman Clawson: Frankly, I don't think we would approve a variance like this without a drainage study.

Case 16-2018 – Larson Building Company/Owner – Request for a variance to the required side yard setback (east) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2512 W. 91st Street.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner is in the process of what was considered a remodel, which was granted exceptions 4/26/2017 to the side yard setbacks in order to complete the project. The foundation was found to be inadequate for the design, and a new foundation has been recommended by the engineers. The existing foundation is considered legal, nonconforming, but once the foundation is removed, the exceptions that have been granted no longer apply. Therefore, a variance for 5' is required for the new foundation to be constructed at the 10' mark.

Chairman Clawson: Questions for staff?

Dr. Peppes: In other words, it's going to go in the same place that was legal, nonconforming.

Mr. Thompson: Yes, sir.

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

Applicant Presentation:

Lance Larson, Larson Building Company, 8416 Ensley Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Larson: I think Wade did a nice job of illustrating the issue that we have. It was originally a renovation with city-stamped, approved plans. One of the things that is important to us is design. Another is structural integrity. Ultimately, we want energy efficiency, too. We want our homes to be good and solid, wonderful homes for generations to come. Ultimately when we started the renovation, we began our demolition and found that we had some foundation walls that had additional issues beyond what we originally knew. We made significant efforts to make foundation repairs. We spent well over \$20,000 fully excavating, waterproofing, steel bracing, and installing piers. I just didn't feel 100% comfortable with the home because the walls weren't perfect. We asked Apex Engineers to come out and look at the foundation. They strongly recommended foundation replacement. That is why we are here. Even the after spending all the time, energy, and effort making repairs, the foundation that is there is not adequate for the new structure.

Chairman Clawson: The existing foundations were cast-in-place concrete?

Mr. Larson: Yes, sir.

Chairman Clawson: You're not tearing down the house; you're just renovating?

Mr. Larson: We were not originally. Now, we probably are. The engineer is recommending a full foundation replacement, and the only way I know how to do replace a foundation is to relieve what is above it.

Chairman Clawson: If you end up replacing the entire foundation, why can't you meet the LDO setback requirements?

Mr. Larson: That's a good question. The home and the lot itself is unique in a number of ways. One is that it tapers dramatically as it goes to the back. That is partially why this lot was built with a 10' side yard setback to begin with. If we were to taper it an additional 5' on each side, we would have a plan that could no longer be utilized. This plan was approved. We spent probably \$35,000 engineering the plan to find out that the foundation ultimately would not allow for it. We are currently at a 65' width, which really only allows a fairly standard home from the garage over. It is only a 2-car garage, so it is already very narrow at 65'. If we had to meet the 15' side yard setback on each side, we would ultimately have a 55' wide home. We can't change the width of a 2-car garage. Quite frankly, I don't believe I could build a home that is 55' wide and sell it for what I need to sell it for. Additionally, we would be in a similar situation with the grade change as the grade rises to the rear. On this home, if we narrow the house and make it deeper, we would have a 5' grade change issue, and I don't think I could sell the home.

Chairman Clawson: It looks like the adjacent houses to the east are 12'. On the other side, is it 14'?

Mr. Larson: The home to the west is a rebuild that was done some time ago. It wouldn't meet the requirements of the HOA today. From the side yard setback point, they are just under 15'. That may just be an issue with the survey itself. It's 14.9'.

Chairman Clawson: Has everyone been notified?

Mr. Thompson: Yes, sir. The feedback we have received has all been in favor of the plan. Some of the feedback is in your packet. I did get a few after I put the packet together, and they were all in favor.

Ms. Farrington: When this was originally approved by the city, since it was an existing property, the side setback was at 10' as an exception. Now that it has to be completely rebuilt, it is a variance, but the location is still at the same location that it originally was.

Mr. Larson: The foundation replacement would not change the footprint of the approved exception in any way.

Mr. Thompson: He'll be using the same plan that has already been submitted and approved.

Chairman Clawson: The same plan and design?

Mr. Larson: Yes, sir. The only difference would be that if we're going to put in a new foundation, where the old plan had a crawl space on the backside, we would make that additional foundation.

Chairman Clawson: Other questions for the applicant? Is there anyone here who wishes to speak for or against this application? We have to analyze this as a variance and go through the 5 factors. The first is Uniqueness. I'm sure there are properties somewhat similar to this, but the point you made about the taper and the current width is germane to the discussion.

Dr. Peppes: Also, in a redesign, pushing the house back creates more problems with the grade change. In order to do the 15' side yard setback, the redesign goes farther back and creates a grade change problem as opposed to this situation where we don't have that.

Uniqueness criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. Letters of support were included.

Mr. Thompson: Correct.

Mr. Bussing: This wasn't the case when we first heard it. One of the neighbors had concerns about drainage.

Mr. Bussing: Not this one.

Mr. Larson: I might add that I think the majority of folks that we mailed notice to send letters of support for this. You received 9-10?

Mr. Thompson: There were several.

Mr. Larson: I think we mailed 14.

Chairman Clawson: The adjacent owners are in support?

Mr. Thompson: Yes.

Mr. Larson: All of them were on the mailing list. All of the folks that replied with a letter of support are the folks who are impacted by the adjacent property owner rule.

Rights of Adjacent Property Owner criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Hardship. I can see your point about the width. I think it would be hard to build that house.

Ms. Farrington: Originally, this was to be a rebuild, and redoing the whole foundation added significant cost to the owner. That is why they're in here, so there is a hardship that was unforeseen.

Hardship criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Public Safety and General Welfare.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Spirit and Intent.

Mr. Hawk: One of the letters from the neighbors indicated they were very pleased with the progress and what the new home might look like to the neighborhood.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

A motion to approve Case 16-2018 – Larson Building Company/Owner – Request for a variance to the required side yard setback (east) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2512 W. 91st

Street – was made by Farrington; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 17-2018 – Larson Building Company/Owner – Request for a variance to the required side yard setback (west) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2512 W. 91st Street.

Chairman Clawson: The next case is exactly the same as this one except the other side of the lot.

Mr. Thompson: Exactly.

Chairman Clawson: I think we can abbreviate this discussion by referring this case – 17-2018 – to the previous case. All the criteria will be the same. I'm sure the votes will be the same. Therefore, I would support a motion for this case without going through the 5 factors.

Mr. Munson: You want to waive the 5 factors.

Chairman Clawson: Correct.

Ms. Knight: Rather than waive them, you could just adopt the findings in the vote of the previous case.

A motion to adopt the findings and the vote of Case 16-2018 was made by Bussing. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 17-2018 – Larson Building Company/Owner – Request for a variance to the required side yard setback (west) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2512 W. 91st Street – was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Bussing, and Farrington.

MEETING ADJOURNED.