

**City of Leawood
Board of Zoning Appeals Minutes
April 25, 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 April 25, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

MEMBERS PRESENT: Dunn, Clawson, Hawk, Bussing, and Farrington

MEMBERS ABSENT: Munson, Dr. Peppes

STAFF PRESENT: Thompson, Roberts, and Knight

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

A motion to approve the minutes from the March 28, 2018 Board of Zoning Appeals meeting was made by Hawk; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Chairman Clawson: We have a number of cases tonight. I would like you to try to keep your discussion down to 2 minutes. Wade, I would appreciate it if you could be the timekeeper. Our first case tonight is in New Business.

NEW BUSINESS:

Case 18-2018 Christopher Mathews/Owner - Request for a variance to the requirement for the lowest floor elevation to be 2 feet above the base flood elevation in accordance with the LDO, Section 16-2-8.2(G) 2)a in an R-1 District for property commonly known as 10525 Pawnee Lane.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition to the home that includes a garage, covered porch, and a bathroom. The current elevation is 843.6'. The city requires any new construction to be 2' above base flood elevation or 845.6'. The homeowner is requesting a variance to build at the current elevation of 843.6', which would be level with the current structure.

Chairman Clawson: Are there questions for staff?

Mr. Hawk: *Inaudible comments*

David Roberts, Public Works Special Project Engineer, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Roberts: During the time I've been here, the new development has been 2' above the base flood elevation for improvements in an existing flood area. There was a period approximately 2008-2010 when it was only 1' above the base flood elevation. Then, due to a change in the LDO, it went back to 2' above base flood elevation. It has always been something more than the base flood elevation.

Chairman Clawson: Are you talking about the 100-year flood elevation?

Mr. Roberts: Yes, the 1% storm for that particular location.

Mr. Hawk: Is this property in the floodplain?

Mr. Roberts: It is what we classify as the city floodplain. It had been in the FEMA floodplain for the 1991 and 2002 FEMA floodplain maps. In the 2009 map, it was taken out of the FEMA floodplain, and this area was lowered 2'. There was a complete, citywide remapping of the floodplain in 2009. This particular area just got missed by the consultant, by Johnson County Public works, which was the lead agency, and by FEMA. They dropped a portion of this area north of I-435 from the FEMA floodplain in the 2009 remapping. However, the ordinance in the LDO permits the city engineer to identify city floodplains. There was a section in the LDO for the city floodplain. The requirements read basically the same as the FEMA floodplain. This area has been identified as subject to flooding. The ground elevation and the area of this house is 840-842. I can bring some displays up to show that. This area should have been included in the floodplain, but it was dropped for some reason.

Chairman Clawson: You think that was an error?

Mr. Roberts: Yes, and we have photographs of this area last summer, and it was flooded. It was flooded in 1982 and 1985 from the house north of this address that shows the water essentially almost up to the top of the fences in the back yards. This area has flooded and continues to flood. The area between Mission Farms and Lee Boulevard has five cul-de-sacs, and that area just got dropped from FEMA's floodplain but still continues to flood. There are two sources of flooding: backup from Indian Creek and an undetermined flooding from the water overland from the north. There is a study that has been contracted to identify the flooding risk in this area and to determine if there might be possible projects that could take this area out of the floodplain.

Mr. Hawk: Lenders would not loan people in a flood area unless they bought flood insurance. Would this particular property be required to buy flood insurance?

Mr. Roberts: If they look this area up in the current FEMA map that is enforced, it will not appear as being in the floodplain. They would likely not be required to have flood insurance. The requirement of flood insurance is subject to the lender's criteria. Usually, lenders use the FEMA map in their determination, but they could do their own risk assessment if they wanted to.

Chairman Clawson: The next FEMA update will occur when?

Mr. Roberts: There is not one scheduled. They are typically done on an 8-10-year schedule. The last one was 2009. The watershed studies and mapping actually started between 2002 and 2006 across the city. Each of the 4 major watersheds was mapped separately. They ran all those forward and redid the whole county for all of the cities. There will be another one coming, but it is not scheduled at this point.

Mr. Bussing: Do you know if the flooding in 2017 at this location was due to backup, water runoff from the north, or a combination of the two?

Mr. Roberts: I don't know which was the cause, but there was flooding in both the July and August storms that got up into the cul-de-sac areas in front of the houses.

Chairman Clawson: Is that due to water backing up through the box culvert?

Mr. Roberts: That's our best guess as the primary cause. Indian Creek certainly did get high enough to back up through that culvert and flood this area. Both storms set record highs on the gauges for Mission Road and 103rd Street just past State Line on the Missouri side.

Chairman Clawson: Other questions? Is the applicant here?

Applicant Presentation:

Chris Matthews, 10515 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Matthews: (*handed out information*) I appreciate all the time and energy you folks give to matters like these. I'm a third-generation Leawood resident. I'm a commercial real estate lender. I'm a licensed real estate agent. Residential real estate is my passion to a certain degree, and I put a lot of that passion into my own home. I bought the house in 2010 when it was not in a floodplain. Had it been in a floodplain, I likely would not have purchased it. I have lived there for 8 years. I think it is important that I tell you that in the 8 years that I've lived there, there has been no flooding on the main floor. The house is 45 years old. Even at the record level of rain that came in 2017, the house has never taken water on. It did take water in the basement, but in the proposed improvements, there is no additional basement. All of the proposed improvements would have been unaffected by the rain events of 2017. Essentially, this is a garage and a covered porch. The flooding would have had no effect on it. When we made the design, we did it after the flood. I've got a fantastic plan. Wes Welch is my architect. He did an incredible drawing. He's

known for doing some of the best work in Old Leawood. We took into consideration the flooding because I wasn't ready to put money back into my basement. I had a really nice basement finish. The opportunity to expand on the main floor was what seemed to be the safer option for me to reinvest my insurance proceeds into the value of the home. With that being said, it is my understanding there are 5 criteria, including Uniqueness. There are 15 lots. The obvious thing that makes my house unique is it is low enough to be subject to this 845.6' requirement. It is probably the only house subject to that. The other thing that is unique is out of the 15 lots on Pawnee Lane, each has 4 sides on it and a house centered perfectly in the middle of the lot. My lot has 5 sides, so it is unique. The home is not centered on the lot. It is very far off to the side. In terms of Uniqueness, it is a 5-sided lot with a house that is not centered in a floodplain. I've highlighted what I'm calling the speculative value of the lot. When I purchased the home, there were approximately 17 trees in there. I spent 3 years, with risk of injury to self, clearing the lot so I could have a clean palette with which to envision my home. There are other things that make it unique, but I will stop at that. It would be things like the lot being bigger than the other lots, the lot being against the highway, the proposed house with a 4-car garage being unprecedented in the southern part of Leawood Estates.

The second item I've heard is difficult is Hardship. There's a lot to go around when you live by the highway. There are trucks flying through the wall, highway noise, and potential water. There are certain hardships intrinsically when the basement floods and everything is lost. I bought a home that wasn't in a flood zone because of an "error," and now I'm at risk of having my property stigmatized with this flood zone classification, which is not going to do anything for the economic value of my home other than potentially hurt it. It is a double whammy of hardship when the home that is most affected by the storms is also the home that is most penalized by the new city flood zone. I've put \$10,000 into the design process. If this is denied, I would not be able to exploit the speculative value in the lot. To me, this is paramount because you cannot purchase a home with the kind of functional utility I'm proposing to build in Leawood or even southern Johnson County for anywhere close to what I have in it plus what I can build it for. If denied, the home as it sits will not meet my functional living requirements so that I can have enjoyment of the home. I need more space. A 2-car garage is not enough to hold everything I have. I'd like to protect things from hail. I'd like to get things as raised up as the main floor is now. I want to be able to enjoy the scenic beauty of my lot by building an outdoor living area, which would be completely unaffected by any water. The risk is in the home that already sits there. I can't do anything about the 1,610 square feet. I already have private flood insurance, but if I'm forced into flood insurance, the proposed would be covered as well. It's not like I'm going to be uninsured. I have neighbors here. I don't know if they want to speak, but I don't know that anyone objects to it. I don't think that there will be any public safety hazard. I know that's one of your other criteria. If I'm not mistaken, the final criterion is the spirit of the ordinance. I have the purpose of the Leawood Building Ordinance. It says things like this: "Promote the health, safety, and general welfare for maintaining a high-quality living environment, to maintain the aesthetics of development and redevelopment, to conserve property value, and to promote orderly, economic growth." That's what I'm all about. That sums up everything this project is, and I believe it is to my neighbors in my community as well. I love being a Leawood resident. I love trying to improve my home to a Leawood standard. It is not as

easy down by the highway as it is in other places in Leawood. I'll leave it at that. I appreciate your time listening to me.

Chairman Clawson: Are there questions for the applicant?

Mr. Bussing: Why not raise it 2' and keep it out of the floodplain?

Mr. Matthews: The classic, Leawood-style ranch is the design I've gone for. There's a very specific roofline, a very specific aesthetic I'm looking for. Building half of the house at one level and the other half 2' higher totally ruins the aesthetic of the home, and it does not change the fact that the 1,610 square feet that I already live in is where all of the risk in this project is. It's not in a covered porch and a new garage. It's in the house I live in now.

Ms. Farrington: You said you purchased the home in 2010, and at that time, it was not deemed in a FEMA floodplain. However, when you purchased the home, you got flood insurance.

Mr. Matthews: No; I bought my flood insurance subsequent to the 2017 flood events. My basement flooded, and that is when I purchased my flood insurance.

Ms. Farrington: You also stated you were taking your insurance money.

Mr. Matthews: I had a normal homeowners policy which was generous and covered the damage. It was not flood insurance.

Ms. Farrington: Prior to FEMA pulling it out of the floodplain, it was originally in the floodplain?

Mr. Thompson: It was, and then they took it out.

Ms. Farrington: Would that have been carried with a deed?

Mr. Thompson: I don't know that.

Chairman Clawson: I'm guessing they would look at the current FEMA map as it has been updated. I looked at the FEMA map, and it clearly shows the floodplain at the southern edge of the freeway embankment. Are there other questions? Is there anyone here who wishes to speak for or against this application?

Wes Welch, Welch and Associates, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Welch: Chris covered most of the important things. Obviously, we took a look at all of this before we designed the project. It was not in the FEMA floodplain, so there were no issues that we saw going into this. Of course, we were certainly aware that the water.

The basement was flooded, but it came in through the window wells at the south end of his house. He got no water on the first floor. Part of this project was that it is basically designed as a dam at the end of the house to keep the water away from the basement wall. In response to your question about why we don't build it up 2' higher, it didn't make a lot of sense. At that time, we didn't know it needed to be up there. We could pull it up 2', but it doesn't make a whole lot of sense to keep that one little bit of the house out of the floodplain. If the water gets to the point that it's going to flood the first floor anyway, then it's a worthless project to start with. The point of the matter is that Chris has been there for 10 years and has never had any issues of getting water up high enough to get into the first floor. The house was built at the level it is. We can't just jack it up and raise it. Chris is willing to deal with this, but the project in part was to try to contain some of that and to keep water out of the basement. We do have the garage opening that we have to consider. It has to be at the same level as the rest of the house in order to make any sense. It's got to be architecturally correct in terms of the aesthetics. It's got to work to try to help the flooding situation we have with the basement. The lot is plenty big. It's not an issue of lot coverage or drainage. It's just simply a matter of that culvert there, I think. When we get 8" of rain in a night, we're going to get water in there. Hopefully, this will keep the water out of the basement and won't hurt anything. That's the point. We're kind of stuck between a point on this where it's in the city floodplain and not the FEMA floodplain, which is another sense of Uniqueness. What is he going to do? He doesn't want to go back and refinish the basement because there is that chance of water, although, he hadn't had water in the basement for years before last year. In order to be able to get the space he wants, now he's got to look to go up on that first-floor level. It's not in the floodplain as far as FEMA is concerned. It is with the city, and I understand that. He's stuck between a rock and a hard place. His insurance will cover it if he does have any water issues, but hopefully, this will keep that from happening.

Mr. Bussing: Does the city incur any liability if we approve this variance?

Ms. Knight: No. He is requesting it, and you don't bind the city by any action you take in terms of legal liability.

Chairman Clawson: Does the city have flood mapping on the website?

Mr. Thompson: They could just go to AIMS. That's where I get it from.

Chairman Clawson: I looked it up, and I saw where the limits of the floodplain were, but then, it showed an area that included the applicant's house as Type AE or something that means that it's in a special flood designation. It's not really in the floodplain.

Mr. Roberts: I'm not sure with regard to the specific map. The current map just shows the area as Y. In the FEMA map, it would be zoned X. City floodplain is 1 of 3 categories of areas. In many FEMA maps, there is an area upstream, and they do a flood study and then arbitrarily cut off the top square mile of the stream segments. In that area, they call it a future floodplain. That area is classified as floodplain since it has been mapped and the 1% storm has been determined for that area. If FEMA doesn't include it, that is one area

in the city floodplain. There are studies done for other stream segments, and we determined elevation similar to what goes through with FEMA. We used those elevations from those flood studies to determine that. The third area is areas of known problems. In this case, it's an area that showed up in 3 previous flood maps as flooded. In the last map, it was not included, but by looking at the ground elevations and flood profiles for Indian Creek being higher than the ground in this area and knowing there are pathways, namely multiple box culverts that cross underneath the interstate that allow the water from Indian Creek to back up into this area, we have identified it as city floodplain. We do have a map of this area that shows delineation of that. That is on the floodplain. If someone applies for a permit, we would just pick that up and bring it to the applicant's attention that this is where we are with it and what the requirements would be per the flood ordinances. Basically, we follow the FEMA guidelines, whether it's city floodplain or FEMA floodplain for proposed improvements. That was done in our recommendations to the applicant for their improvements. Do you want to see the exhibits?

Chairman Clawson: I don't think we need to.

Wes Kautzi, 10521 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kautzi: I have a couple factoids from my perspective. We bought our home in May, 1980. In that period of time, the only time I've ever seen a drop of water in that basement was last July. We've had water in and around. We'll reaffirm that when we bought the home in 1980, it was not in a floodplain; subsequent to that, it was. I believe it had something to do with the construction of Mission Farms, but it was subsequently taken out of the floodplain. Again, in that period of time, that house has had at least 5 owners. Chris has done a magnificent job in terms of cleaning out, as he alluded to earlier. The home is completely different than what it used to be. All I can do is attest to the fact that he truly has a sincere interest in not only improving the neighborhood but also the value of his property. Thank you.

Chairman Clawson: Does anyone else wish to speak for or against this application? If not, we need to evaluate the 5 factors. To support a motion for approval, we have to vote in the affirmative on all 5 factors. The first is Uniqueness.

Mr. Dunn: I'm struggling with that. I usually struggle with it, and I'm looking for feedback from my fellow members about what they see with respect to Uniqueness. I have a world of sympathy for Mr. Matthews. He presents a great plan. If this were just up to me to say if it's a good idea or not, there is no question I would say it's a good idea. The problem I've got is my job here is to apply the law to the application. As I have understood the legal factor of Uniqueness defined before, the fact that you have a corner lot in a particular development doesn't make it unique because there are a lot of lots like that throughout Leawood. Is that what my fellow members understand? Is there something I'm missing here with regard to Uniqueness? I'm not seeing the legal requirement for Uniqueness that I think I've been led to understand is what we need to meet.

Mr. Hawk: This lot is larger than other lots on the street. The shape and configuration is different than the other lots.

Mr. Dunn: That makes it unique? I'm just asking.

Chairman Clawson: There are several lots in the area that probably have the same issue, relative to the floodplain.

Ms. Knight: I'm not on the board, so you have to make the decision, but Uniqueness under the statute has to do with a zoning decision and whether or not the property can be developed. Is the property unique to where it cannot be developed by the owner? If you ask me, I don't see it as unique, either. There are other similarly situated lots. It might be a little bigger and have more sides, but I don't see it. I think the applicant mentioned the number of garages. The actual structures on the property have nothing to do with Uniqueness; it has to do with the lay of the land.

Mr. Dunn: And Uniqueness has nothing to do with the particular plan we're looking at. It has to do with whether the features of the lot are unique. Is that correct?

Ms. Knight: Yes, and it is similar in meeting Hardship because is the applicant unable to develop the property? There are other requirements he has to meet to build this. It might be more expensive, but that is not Hardship. It has to do with the ability to develop the property.

Mr. Dunn: I do see the logic to the argument that forcing somebody to build an addition 2' higher than the existing structure doesn't make a lot of logical sense. I'm trying to make sure that those who are listening to this and my fellow members understand that I am struggling with this because, while it makes perfect sense to say to go ahead and do it, I don't see that it meets the legal requirement. I'm just verbalizing that so that everybody understands what is going through my fevered brain at the moment.

Ms. Knight: It is worth noting that the 5 requirements that you have to vote on are in the Kansas statute. These aren't city requirements that we made up for this board.

Chairman Clawson: Are there other comments?

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

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

Mr. Thompson: Yes, sir. Any letters are in the packet, and you had the people tonight who showed up in support.

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

Chairman Clawson: Hardship.

Ms. Farrington: I think this is a hard one to look at. If you look at the applicant wanting to build the addition he wants, you can't look at the financial hardship of that exact plan. It can be built a different way and meet the requirements at 2' above. I agree with my fellow member that it doesn't make sense to build it 2' higher, but that is the situation we're given. To abide by the law cost-wise, there is not much difference. Knowing that you had these requirements was something that should have been researched before the design was done. Unfortunately, we can't take that as Hardship, either.

Mr. Dunn: I concur with the struggle. Once again, I have a great deal of sympathy. I appreciate all the efforts he has made to bring this home into accordance with standards. I'm a long-time Leawood resident as well, and I understand the importance of that. My role on this board is limited to applying the law to the facts as they exist. I hear the Hardship being caused by the floodplain and not the application of the ordinance. That's an awful bit of news, but I'm struggling again as to whether it meets the legal requirements.

Mr. Hawk: The only thing I could see is we have different definitions of flood zone. That changes some of the dynamics to me.

Chairman Clawson: Although, we think it is not in the floodplain because of a mistake by whoever did the hydraulic analysis.

Mr. Hawk: We don't know that it's a mistake because it's been off and on several times.

Chairman Clawson: You really don't know, but it could be. Other discussion?

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

Chairman Clawson: Pubic Safety and General Welfare. Any discussion? This one usually doesn't come up too often in our analysis; although, it kind of strikes me as concerning that we would approve something that is likely in a floodplain.

Mr. Dunn: I would just say at this point that all the time I've spent on the SMAC Council working as a member of City Council, the one thing I learned is that people will apply for government money for just about anything. They were getting to the point with SMAC money that they were giving it out to houses that weren't in the floodplain. While that's not a particular government responsibility, the reason for that always was that they let them build, so the city or county should take responsibility for purchasing it because it's in a floodplain and they can't sell it. I don't know if that even would apply with this situation, but it has happened, and it will continue to happen.

Chairman Clawson: Other discussion about Public Safety and General Welfare?

Public Safety and General Welfare criterion satisfied with a unanimous vote of 3-1. For: Hawk, Bussing, and Farrington. Opposed: Dunn.

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I struggle with this one, too, very much like Uniqueness. We have a very hard task because we have to abide by the rules and statutes. We also recognize you are trying to do something to better your property. It is a beautiful design. Yet, we still have to fulfill our role in maintaining that statute with the properties around. If we were to approve something like this, it would change the Spirit and Intent of what the laws are trying to do.

Mr. Dunn: My answer is a definite yes and no. It does and it doesn't.

Ms. Farrington: We see both sides of it, and yet our role is to hold up the statutes and laws.

Spirit and Intent criterion satisfied with a vote of 3-1. For: Hawk, Farrington, and Bussing. Opposed: Dunn.

Chairman Clawson: We have voted in the affirmative on 3 out of the 5 factors; therefore, we can only support a motion for denial.

A motion to deny Case 18-2018 Christopher Mathews/Owner - Request for a variance to the requirement for the lowest elevation to be 2 feet above the base flood elevation in accordance with the LDO, Section 16-2-8.2(G) 2)a in an R-1 District for property commonly known as 10525 Pawnee Lane – was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 19-2018 Sharon & Joe Lambert/Owners - **CONTINUED TO 5-23-18** Request for a variance to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(F) 2 in an R-1 District for property commonly known as 11214 Rosewood Street.

Case 20-2018 Anthony Lewis/Owner - Request for a variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 12009 Overbrook Road.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 6' tall privacy fence that would enclose the rear yard. The fence would tie in to existing fences that belong to the neighbors, both of which have received board approval.

Chairman Clawson: This is a property that backs up to State Line.

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there questions for staff?

Mr. Dunn: There's a hand-drawn picture in the packet. Is that accurate?

Mr. Thompson: It is fairly accurate. It was provided by the applicant.

Mr. Dunn: I have one more question. If it's not granted, where would that fence have to go?

Mr. Thompson: It would have to meet the 30' setback, so probably about 10'-15' farther to the west.

Chairman Clawson: Other questions? Is the applicant here?

Applicant Presentation:

Tony Lewis, 12009 Overbrook Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lewis: My wife, daughter, and I just moved to Leawood from Springfield, Missouri about 6 months ago. When we first got here, we lived in an apartment right next to Top Golf. We were thrilled to actually find a house in February, especially in Leawood. We did our research on the school systems in the city, and we felt like we got a really good deal on our house. It is a newer remodel, and as you can tell, there was no fence there. That was definitely our first primary addition to the house. Luckily, I had a good neighbor who is here tonight. She said I needed to go through this process to get it done. That brings us here. I have pictures. (*places pictures on overhead*). The neighbor went through this process last year and got approval for both the variance and the height exception. It is a 6' privacy fence to my south. The second picture is my neighbor to the north, and all I want to do is match the border along State Line. What is unique is that I don't have a fence along State Line Road. We're talking about the variance first, and then we'll get to the height exception. I think they play into one another. Having a 4' fence doesn't aesthetically match my neighbors' fences, and my daughter will scale that fence pretty easily. I think there is a safety concern for me. Also, there is a noise factor. I'm sure you know that State Line Road has a lot of noise at night. We knew what we were getting into, but I think a fence definitely would help with that sound barrier. Those trees are not in the greatest condition. The trees don't serve as a good buffer. If I had to start with the 5 factors, I've stated that it is unique being on State Line. Does it affect the rights of adjacent property owners? I would say no because they have the same fence as

what I'm trying to construct. Will it cause a hardship? I would say yes because I would live in fear that my daughter would scale a fence pretty easily. For one, I need to have a fence. Secondly, the height will put my mind at ease when she's playing in the back yard. Will it adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare? It will not to the best of my knowledge. Will granting the variance oppose the general intent of the development ordinance? I would say it would not to the best of my knowledge. I really don't have anything to add besides that. I'm just trying to get a fence in the yard. Aesthetically, the 4 neighbors to the south have 6' fences as do the neighbors to the north. I'm not trying to do anything different. I'm trying to match what I have going on around me. I'd open it up to you for questions.

Mr. Hawk: I assume your fence would match pretty well what the other fences look like. I know there's a big space there. Would your fence look similar?

Mr. Lewis: My fence would look like the fence of the neighbor to the north. It is a basic 6' cedar privacy fence. They would meet. I would not leave any gaps. I spoke with the fence company. They have a way to test the lines. I don't think I would have to go survey or anything like that. I wouldn't be encroaching on anyone's property.

Mr. Dunn: I'm looking at the hand-drawn picture, and it shows that both the neighbor to the north and south have 6' fences along the back of their property, and both have it between your yards?

Mr. Lewis: The legend shows the existing fences. The circles are what I would add.

Mr. Dunn: What I'm asking is if both of your neighbors have existing fences that run not just north and south but also east and west.

Mr. Lewis: That is correct. They are also 6' tall.

Mr. Dunn: Wade, it appears that the properties to the north and south were both granted variances to put these in at this location and also to put 6' fences on the side yards. Do we have any knowledge of why that was done?

Mr. Thompson: The board felt they met the criteria for approval.

Chairman Clawson: Uniqueness is the issue here, frankly.

Ms. Farrington: What we're trying to vote on now is the setback. Do you know the approximate distance from your property to State Line Road?

Mr. Lewis: I'd have to say 15' to the actual road. There's a fence line, pine trees that are owned by the HOA. There would be a little green space, a sidewalk green space. I would say no more than 25'.

Chairman Clawson: It looks like it's more than that.

Mr. Lewis: Yeah, I think the map is misleading. I did the markings on the map but didn't draw it. It could maybe lead you to the middle of State Line Road.

Mr. Dunn: It still looks like a healthy amount of land.

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

Mary LaNoue, 12011 Overbrook Road, appeared before the Board of Zoning Appeals and made the following comments:

Ms. LaNoue: I'm on the south side. I can throw a rock across State Line, and I'm a bad throw. That's how close State Line is. Then, we have motorcycles racing up State Line. There's going to be a bad accident one day. He needs a fence. Then, in the Leawood bylaws, there is something that allows exceptions when you live off a road that busy.

Chairman Clawson: This is a through lot, so that's what makes it a variance.

Ms. LaNoue: I know mine was, too. At this point, I don't think you would allow us to put our driveway out on State Line.

Chairman Clawson: No. What year was your variance granted?

Mr. Thompson: 2014, and the other neighbor at 12005 was in 2011.

Ms. LaNoue: It had to be 2 years ago because the builder is my husband now, and we weren't dating in 2014.

Chairman Clawson: Thank you. Is there anyone else? This is a variance, so we have to evaluate the 5 factors. The first is Uniqueness.

Ms. Farrington: I'd like to speak about Uniqueness. I run down this road quite a bit. I know where this property is, and there is actually a slope from the cedar down to the sidewalk as well. I think there is Uniqueness in the layout of the land and the topography as well as it being on a busy road.

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

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

Mr. Thompson: Yes, sir. No calls or complaints.

Mr. Hawk: One resident was here in support.

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

Chairman Clawson: Hardship. Staff notes that having to meet the 30' build line would pull it in much closer to the house.

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

Chairman Clawson: Public Safety and General Welfare. Staff comments that it shouldn't be affected by the approval of this variance.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: What we like to do in these through lots is to keep the openness and the character of the neighborhood. This being on a busy street and the neighbors around them already having it enclosed at the build line as well as the trees make it so there is no open visual. It meets Spirit and Intent according to the neighborhood that's there.

Mr. Dunn: My way of putting it is there's no other character to maintain the Spirit and Intent of at this point.

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

A motion to approve Case 20-2018 Anthony Lewis/Owner - Request for a variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 12009 Overbrook Road – was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 21-2018 Anthony Lewis/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 12009 Overbrook Road.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: Now that the variance for placement has passed, the applicant would like to enclose the rear yard with a 6' tall privacy fence. The fence would tie into the fences to the north and south of his home.

Chairman Clawson: Comments for staff? Mr. Lewis, would you like to speak for your case?

Applicant Presentation:

Tony Lewis, 12900 Overbrook Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lewis: I think I mentioned the lot from the variance as to why I would want a 6' fence, but I would add that my dogs could also leap over a shorter fence. They are wiener dogs that I inherited, but I know they could get out. I know my neighbor had the same problem with their larger dogs. I would add that to my child welfare concern.

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

Mary LaNoue, 12011 Overbrook Road, appeared before the Board of Zoning Appeals and made the following comments:

Ms. LaNoue: I recommend it.

A motion to approve Case 21-2018 Anthony Lewis/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 12009 Overbrook Road – was made by Dunn; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 22-2019 Andrew Chapman/Owner - Request for a variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 14429 Windsor.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new 4' tall steel fence that will have the appearance of wrought iron. There are currently 2 fences in place that were required by the city for fall barriers. At its closest point on the southeast property line, the fence would be 8'6" from the property line.

Mr. Dunn: Wade, tell me about the requirement that the city initially put on it.

Mr. Thompson: He's got 2 raised walls, and the city requires that whenever there is a possibility that someone could drive off the driveway. We require the fences be in place for fall barriers where we usually do not allow fences.

Mr. Dunn: Is it toward the house or toward the property line?

Mr. Thompson: Below the blue line, you can see a white line. That's the limestone of the wall. Then, on down below, there's a limestone wall. He has 2 limestone walls that are probably 30"-40" tall.

Ms. Farrington: The driveway is situated on the side of the house?

Mr. Thompson: Yes, and the front faces the west, which would be Windsor.

Chairman Clawson: It's mainly the one fence, right?

Mr. Thompson: Correct; they would remove the fence closest to the home and construct a new one.

Chairman Clawson: In back and along the property line, that would be okay.

Mr. Thompson: That would be okay.

Ms. Farrington: The existing blue fence is closer to the side property than the one they're proposing?

Mr. Thompson: That is correct.

Ms. Farrington: We're looking at a variance of 6'6".

Mr. Thompson: It is a 4' fence, and the variance is for the placement.

Chairman Clawson: The blue fence is a nonconforming fence?

Mr. Thompson: That's one of the ones we require for a fall barrier, so the red line in the picture would take its place.

Mr. Hawk: Since it's already approved, why are we talking about it?

Mr. Thompson: He wants to remove the blue one and construct the red one.

Mr. Dunn: Is the blue one legal?

Mr. Thompson: Yes, because we require it.

Ms. Farrington: You still would require a fence on that.

Mr. Thompson: Exactly because he's going to remove an existing fence. It's legal, nonconforming. They will not issue a permit until he gets board approval for the new fence.

Mr. Hawk: We're replacing an approved fence.

Mr. Thompson: Not really. They're moving an approved fence.

Chairman Clawson: Perhaps we better let the applicant provide this information.

Applicant Presentation

Andrew Chapman, 14429 Windsor, appeared before the Board of Zoning Appeals and made the following comments.

Mr. Chapman: The measurement on that one is 13.6' You were mentioning 8'6", which is accurate. I'll start with a couple of pictures if I may. There is a 4' fence on top of the retaining wall now. You might remember this lot from October 25th. I wasn't able to be here because it was my daughter's first birthday. She is now 18 months old, and I'd like her to be able to play in the back yard without running up that fence. Obviously, I want a fence there.

Chairman Clawson: That's the fence you're going to take out?

Mr. Chapman: That's the fence that I'm going to take out but another one is going to be in its place. It's going to be slightly offset. I've got a couple other pictures I can use to explain that.

Ms. Farrington: This was the stairs that we approved in the fall, correct?

Mr. Thompson: Yes, ma'am.

Ms. Farrington: They were both on the driveway side. The limestone ledge is an existing ledge, so the requirement for the city is the fence because of the height.

Mr. Thompson: The height of the wall, yes.

Mr. Hawk: You are concerned about the safety of your daughter. Have you considered a 6' fence?

Mr. Chapman: I did not. I had a fence contractor tell me that a 3' fence would be acceptable on that exterior retaining wall that goes around the front of the property.

Mr. Hawk: I was thinking about the safety of your daughter. A 4' fence might not be enough to contain her.

Mr. Chapman: It might not be. I don't anticipate not ever having eyes on her, but this would allow us to multitask a little bit when we're in the back yard with her.

Chairman Clawson: (*Referring to plan*) Is this the fence you're going to replace?

Mr. Chapman: That's the fence I'm going to replace. It's the blue line. You can see where it comes out to the angle and then bends back. That post where it starts to bend back would basically be in the same place. The metal post on the deck is where I would attach it to on the deck. It's shown in that other diagram. It will take a slightly different angle. That's just so it meets the deck in an aesthetically pleasing way. I'll show you the last picture. It is the rough estimate of where I would have to put the fence to conform with the setback. You can see that it's fairly well into my yard and doesn't match up with the deck very well. In addition to the height variations on the property which is the reason for the retaining wall, 145th Street curves into the back of my yard. From the back of the house, it gets worse as you move to the back part of the property.

Chairman Clawson: Is that correct? He could move the new fence back?

Mr. Thompson: Yes, he could move it 30' from the property line, which would place it hitting the stairs of the deck.

Chairman Clawson: He can take out the existing fence, but the city requires him to have a fence there.

Mr. Thompson: Correct.

Chairman Clawson: Sounds like a Catch 22 to me.

Mr. Chapman: A couple of other things in addition. I don't know if it's in the packet, but the HOA has approved it. My neighbor to the east will have a less obstructed view. I think that's all I've got.

Chairman Clawson: Questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? This is a variance, and we have to go through the 5 factors. The first is Uniqueness.

Ms. Farrington: Since this is a property that we have looked at before, we've dealt with the fact that it is unique. It sits on a corner lot. The driveway sits on the side. Also, the city requires the fence due to the fall and height of the contour. There is a significant grade change on that side.

Mr. Dunn: I would agree that the simple elevation change and multiple retaining walls tends to make this unique.

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

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

Mr. Thompson: Everyone has been notified, and I do have the memo from Steeplechase. I didn't have it when you received your packets. They are aware of the variance, and they support approval.

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

Chairman Clawson: Hardship.

Mr. Dunn: I honestly don't know what he could do if we didn't approve. He has to put some sort of fence back.

Mr. Thompson: He would just have to leave it the way it is.

Mr. Bussing: The city has placed a burden on the property, though, regardless of where the fence is.

Mr. Thompson: We do require the fall barriers, yes.

Chairman Clawson: Let me propose a hypothetical situation. Let's say he had a wood fence and the wood fence was falling down. He'd have to have a variance to put the fence back up.

Mr. Thompson: He can maintain the fence. If he tore down the whole fence to replace it, he would have to come back for a variance. If he replaced the panels as needed, he could do that without a variance.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes it shouldn't be affected.

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

Chairman Clawson: Spirit and Intent.

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

A motion to approve Case 22-2019 Andrew Chapman/Owner - Request for a variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 14429 Windsor – was made by Dunn; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 23-2018 Kimberly Katz/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 8432 High Dr.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remove a 50+-year-old chain link fence and enclose the rear yard with a 6' tall cedar privacy fence.

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

Applicant Presentation:

Kimberly Katz, 8432 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Katz: My husband and I purchased the home about 2006. We have 3 children, including a couple school-age kids and a toddler. Like I said, we were trying to replace a very old chain link fence. A couple of things that spurred this was there has been quite a bit of flooding in front of the creek in front of our house. There tends to be lots of water that fills up quickly. I'd like to be able to have just a little bit more safety for the children going from the back yard to the front yard. I think the 6' fence would provide that peace of mind. Also, we have 85th Terrace and Lee Boulevard very close to our house as well. Just with the traffic, it would be a little more private in our back yard. That's all I really had.

Chairman Clawson: Are there any questions for the applicant?

Ms. Katz: I have one more addition. In the time we've been there, we have invested substantial amounts of money. We want to stay and keep our kids safe. This is one more improvement we want to make on the property.

Chairman Clawson: So, right now, you have chain link all around it?

Ms. Katz: Is it your fence, or is it shared with neighbors?

Ms. Katz: It's probably shared. We all have shared fence at this point.

Mr. Thompson: The good side has some fabric on it.

Ms. Katz: It has leaves growing on top of it. There's no fabric.

Mr. Thompson: It didn't appear to be a normal chain link. It appeared to have a good side that faces out. We assumed it wasn't their fence.

Mr. Hawk: You're talking about taking down a shared fence? Would your neighbors approve of this being your fence, then?

Ms. Katz: I believe so. We would have to get verbal contact with them, but we wanted to get the permit first before we went through that whole process. We've talked to a couple of them, and they've been agreeable.

Ms. Farrington: Is the fence on your property?

Mr. Thompson: It's on the property line.

Ms. Farrington: Is it owned by you?

Mr. Thompson: We believe it is, yes.

Chairman Clawson: There's typically a good side of the fence and a less aesthetically pleasing side. The good side would be toward their neighbors.

Ms. Katz: I forgot this earlier. Some new neighbors moved in a couple months ago. They have 2 150+ pound dogs that are massive. I think they could easily jump over that fence as it is now.

Mr. Dunn: Your property is currently surrounded by the same chain link, which is approximately 4'?

Ms. Thompson: Correct.

Mr. Dunn: In the surrounding neighborhood, are there any other 6' fences?

Mr. Thompson: I don't recall.

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

Case 23-2018 Kimberly Katz/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 8432 High Dr. – was made by Farrington; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 24-2018 Mark & Kathy Mason/Owners - Request for a variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 12312 Pawnee Lane.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 4' tall fence along the rear property line that would be in line with the current fences to the east and west.

Chairman Clawson: So, the back would border 123rd.

Mr. Thompson: Yes, sir.

Mr. Bussing: Fences on the east and west were approved with a variance?

Mr. Thompson: Yes, sir.

Mr. Hawk: Will this fence line up with the neighbors' fences?

Mr. Thompson: Yes, sir.

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

Applicant Presentation:

Mark Mason, 12312 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Mason: First of all, I need the fence because the property is a little unique. I back up to 123rd. I have a huge hill that goes down rather quickly right into 123rd. I have 4 grandchildren who live just a few blocks over, and 3 of them are toddling all over the place. We need the fence for the safety. We also have a new puppy. Both of my neighbors have fences, as Wade mentioned. To keep it aesthetically pleasing, I wanted to line up with them. There are fences to the north and south along both sides of me. I already have spoken with them. I'll tie into their fence. It's a standard 4' spaced picket fence.

Chairman Clawson: Normally, what would be the setback?

Mr. Thompson: It's 30' on this home as well from the rear property line.

Mr. Dunn: The existing fences are about how far?

Mr. Mason: I've actually measured both of them at 10'. In fact, from my house to the west, there are a whole bunch of fences that are all at that same distance. I'll line up with all of them.

Chairman Clawson: Your house sits back a little farther from the one on the west.

Mr. Mason: A little bit from them.

Mr. Hawk: Does he need a variance for the 4' fence?

Mr. Thompson: He's getting a variance for the placement. He doesn't need a fence height exception.

Chairman Clawson: It would be 30' from his property line.

Mr. Thompson: Correct.

Mr. Mason: It would butt right up to my house.

Chairman Clawson: Are there other questions? Is anyone here who wishes to speak for or against this application? Again, this is a variance, so we have to go through the 5 factors. The first is Uniqueness.

Mr. Bussing: I think it is unique because of the topography of the back yard and the drastic slope toward 123rd Street. It is a through lot, which we have traditionally applied some generosity to with regard to rear yard setbacks. The fact that it adjoins a very busy 123rd Street makes it unique.

Chairman Clawson: It looks like the applicant has trees in the back yard that could be affected if the fence requirement was upheld.

Mr. Dunn: I agree with the comments already made.

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

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

Mr. Thompson: Correct. No calls or complaints.

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

Chairman Clawson: Hardship.

Mr. Bussing: If the applicant was required to meet the ordinance, it would effectively diminish his use of his back yard.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Hawk: *Inaudible comments*

Mr. Dunn: I agree.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: I don't see anything in this that would cause me to believe the proposal violates the general Spirit and Intent of the Leawood Development Ordinance any more than anything else in that area.

Mr. Hawk: *Inaudible comments*

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

A motion to approve Case 24-2018 Mark & Kathy Mason/Owners - Request for a variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 12312 Pawnee Lane – was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

Case 25-2018 Dana Blay; James Kinyon/Owner - Request for a variance to the 15 foot height restriction for an accessory structure in accordance with the LDO, Section 16-4-1.2(C) 1 in an R-1 District for property commonly known as 2327 W. 95th Street.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant is in the process of constructing an architecturally attached structure that is connected to the house by a breezeway. A permit has been issued for the project that includes a roofline that meets the ordinance. A request for a steeper roofline that matches the existing home is being requested. The requested roofline would make the height of the new structure 19'10", for a 4'10" variance.

Chairman Clawson: This 15' requirement is for an accessory structure.

Mr. Thompson: Yes, sir.

Mr. Bussing: What determines an accessory structure?

Mr. Thompson: It is a garage. It is an accessory that is hooked onto the house. If it were an addition for bedrooms, the roof would be allowed.

Chairman Clawson: If it didn't have the breezeway, he wouldn't need the variance.

Mr. Thompson: Correct.

Mr. Dunn: Do you have an AIMS map on this property?

Mr. Thompson: *(Places map on the overhead)*

Ms. Farrington: Is the height 15' maximum?

Mr. Thompson: Correct.

Ms. Farrington: The current design that they're trying to get approved?

Mr. Thompson: The current design is under 15'. The plan we approved is less than 15'. They already started construction, but then they wanted it to match with a higher roofline.

Ms. Farrington: They're trying to get approval for a variance to exceed the 15', and it could be any height if we approve it?

Mr. Thompson: No, they can't exceed 32' for a new home.

Ms. Farrington: But if we do approve above 15', they could go up to that.

Mr. Thompson: It would be the 19'10".

Mr. Dunn: Our approval would be specific to the proposed change in the plan?

Mr. Thompson: Correct.

Mr. Bussing: If this house and the architecturally attached structure were being built as a new house, would it require a variance?

Mr. Thompson: Yes, only because it is an architecturally attached structure.

Mr. Bussing: If the whole structure were being constructed now?

Mr. Thompson: It would still be required. If the breezeway wasn't there, it would be a part of the house and not an architecturally attached design.

Chairman Clawson: If it didn't have the breezeway, it would be a detached structure, which wouldn't be allowed by the ordinance.

Mr. Thompson: Yes, but if the breezeway were enclosed, it would be a different story.

Mr. Dunn: What would be different if the breezeway were enclosed?

Mr. Thompson: It would be part of the home.

Mr. Dunn: It would be allowed?

Mr. Thompson: Yes.

Ms. Farrington: It would be an addition. Is there a floor plan with this?

Mr. Dunn: While you're looking, was the original home built on bearings?

Mr. Thompson: No because the home is not an architecturally attached structure. The roof height only applies to the architecturally attached structure.

Mr. Dunn: That's why we wouldn't be talking if it were enclosed. Thank you.

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

Ms. Farrington: Is there an architectural floor plan that shows ground level? If this is a garage, is there an attic space where a second story could be above?

Mr. Thompson: All I have are elevations? I don't have a floor plan for the garage.

Chairman Clawson: But it could have a second story?

Mr. Thompson: They could go back and put one in, yes. That's the reason we have this rule.

Mr. Dunn: You're going to have to give me more explanation on that. We have the rule because we don't want someone putting a bedroom above the garage?

Mr. Thompson: Not just a bedroom. They don't want someone building a garage apartment that they're going to rent out. It's going to have its own entrance. If it were a part of the house, it would be a single entry. They could put a garage apartment above it and rent it out.

Chairman Clawson: Are we all clear? Okay, we're ready for you.

Applicant Presentation:

Dana Blay, architect, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Blay: The owner is also here. This is kind of a weird requirement that I've never seen before in 30 years of practicing architecture. We have a 10/12 pitch roof. The existing house has a 15/12 pitch roof, which is really unusual and unique to a lot of homes in Leawood. I was shocked about this 15' requirement. I guess it's because it's

auxiliary accessory building. I guess what you're saying is if the breezeway were enclosed, it wouldn't be an accessory building anymore?

Mr. Dunn: Most garages are attached to the house. This has a breezeway.

Mr. Blay: But the zoning code says 15' maximum for a garage.

Mr. Dunn: I'm not arguing with you. You just asked what makes this unique. What makes this unique is most garages are built as part of the house. This was built as attached to a breezeway.

Chairman Clawson: I'm guessing if the breezeway were enclosed, you wouldn't be here right now.

Mr. Thompson: Correct.

Mr. Dunn: The garage as designed is at 5/12 pitch, which really is flat-looking. It doesn't really match the existing house. My client has lived out of the country for many years in South Africa. He's used to breezes and natural ventilation. That's why he wanted to have this breezeway instead of being enclosed. It's a feel of the house the way the patios and outdoor areas are flowing from the living room space. That, in itself, is rather unique. As far as uniqueness to this code, I guess it's a matter of trying to match the existing house so that it wouldn't look like an eyesore compared to the rest of the house. Being 5/12 pitch, it's very flat-looking. That was the idea of why we wanted to go higher. There's no plans to put any kind of apartment or any kind of bedroom unit above there. Frankly, with the attachment of the breezeway, the roof is shorter. You couldn't even walk through it if we opened it up. That's not the intent of increasing the height of the slope. It is mainly to make the appearance similar to the existing house.

Mr. Bussing: Is plumbing being stubbed out there?

Mr. Blay: There is no plumbing. As far as construction goes, the garage itself has not been started framing-wise; we just have the concrete footings in.

Chairman Clawson: It's just on a slab?

Mr. Blay: It's on a slab, yes.

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

Jim Kinyon, 2327 W. 95th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kinyon: We don't live there right now. We purchased the home a year and a half ago. We live at 10242 W. 96th Terrace, Overland Park. We purchased the home, and it

was very rundown. It was basically a one-owner home since 1956. It was a drug house, according to the stories of the neighbors. Lots of police calls came in. We basically had to gut it. The structure is beautiful. We wanted to maintain it. For one reason or another, we're still trying to build it after a year and a half. We're investing over \$200,000 in the home, so we're making a substantial investment in the neighborhood. With this garage, it is a beautiful existing roof. The roof will look terrible if the variance is not approved. If I had known that, I never would have undertaken the project because it's not going to look good. It's on a large lot, over an acre. I didn't know what the 15' requirement is for, but it doesn't obstruct any views of the neighbors. This garage would be straight back from the house, and the closest neighbor has one adjacent to it coming straight back. It's not going to block any views on either side. As far as I know, the neighbors support it. The ones I've talked to are just delighted to have some construction going on in the neighborhood. That's where we're coming from. We hope to build something beautiful for the neighborhood.

David Vickers, 9519 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Vickers: Our property abuts the back yard of the subject property. We are basically south and west of the home. From our patio and kitchen, we have a straight-line view to this building project. I'm curious; is there a rendering of what this new roofline would look like on the garage? We are impacted by that. The property immediately adjacent east, as the homeowner indicated, also has a new added garage that we see that everyone calls the chicken coop. That's what it looks like. We have two of these unusual structures that do impact us. I think very little of this roofline would be seen from the street. The house seems to block most of it from 95th Street.

Chairman Clawson: Your house is where?

Mr. Vickers: (*shows on the map*) We are on Lee Boulevard. Our yard doglegs behind theirs. From our patio, we see it. I don't know that we're particularly opposed to this, but it does impact what we see and how we see it. That looks like a massive amount of roof. I'm curious if we know the roofing material. The home has a cedar roof. I don't know if the new construction of this garage and the breezeway would be cedar or composite. I think that would be of interest to us. Maybe it all has to be cedar; I don't know. We definitely have a straight-line view of this long, ongoing construction project. We'd love to see it come to conclusion at some point. We do have a concern. It may not have an apartment in it now, but who's to say that the next owner wouldn't want to put an apartment out there or do something like that? That's also a concern with that added density adjacent to us. I appreciate seeing the rendering. With having 2 unusual garages in our back yard, I'm not a huge fan. Thank you very much for your consideration.

Mr. Dunn: That just raised an issue with me. As I've understood this, if the breezeway were enclosed, the roof pitch could be mirrored with the existing structure.

Mr. Thompson: Yes, or if the garage was slid over and butted up against the home.

Mr. Dunn: That would be because it would be considered part of the house and not an accessory structure. And if it's considered part of the house, the square footage would go into the calculations for what would be allowed in that area. I guess my simple question is if this were enclosed and this were being built as a part of the house rather than an accessory structure, would they have a problem with the square footages that they would be looking at?

Mr. Thompson: No, the lot is almost 1 acre, so it would fit.

Chairman Clawson: Referring to the previous gentleman, you received notice?

Mr. Vickers: Yes.

Ms. Farrington: I want to discuss the whole idea of the breezeway. I understand that the homeowner and contractor want to keep an openness; however, a breezeway is another entrance or a form of an entry. This is an accessory structure; however, if it was enclosed, could it be another entry point? Yes, if they put another door there, but it wouldn't be an accessory; it would be an addition. There's a fine line here between what we're looking at and what the homeowner and contractor can achieve there. It comes down to the aesthetics of what the breezeway is trying to achieve. We don't have a floor plan here to know what's on the back side. Is it a complete breezeway all the way through? All I see is a front entrance on the elevation. It's the only description of what we have here, so it's hard to determine. That's why I keep asking for an architectural floor plan.

Chairman Clawson: Does the architect have a plan?

Ms. Farrington: A site plan is a roof plan. It doesn't show a section through so you know exactly if the breezeway is open on both sides or enclosed on one side.

Mr. Blay: *Inaudible comments*

Mr. Thompson: The breezeway goes all the way through and is an entryway to a patio out back.

Ms. Farrington: We don't have that. Can you put it up? (*plan put on overhead*)

Chairman Clawson: Is there a door?

Ms. Farrington: Is there a roof over that area?

Mr. Blay: (*Referring to plan*) This area is the only area that is roofed.

Mr. Thompson: The lines I drew are the walkway through the breezeway out to the patio.

Mr. Blay: (*points out roof on plan*) This is kind of surprising to me because if there was a screened-in porch, would it be considered a house?

Chairman Clawson: I think it would be considered an addition.

Mr. Blay: If it's a screened-in porch, it's a breezeway screened-in porch and kills two birds with one stone. I just thought it was a garage, period. The way it was explained to me is any garage cannot be higher than 15'.

Chairman Clawson: I don't think that's the case.

Mr. Blay: I thought that was ridiculous because I see houses all the time that are higher than that. What I think may be a moot point coming here is I learned something tonight in that if this is a screened-in area, we would be able to have the roof 15/12. It wouldn't be an issue.

Mr. Dunn: I would caution you to check with staff on any conclusion you're drawing based on the conversation tonight.

Mr. Blay: That's why I usually go to the building department even before I do anything. This is how it was explained to me. I'm sorry if I sound like a fool.

Mr. Dunn: We're sorry if it was explained poorly to you.

Chairman Clawson: Are there other questions? Anybody else here who wishes to speak for or against this?

David Vickers, 9519 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Vickers: This is a question for the architect. What is the roofing material for the garage?

Mr. Blay: The roofing material is going to be composite. It will be reroofed, and we're adding another story. It will be all torn out on that back side where the new addition is going.

Mr. Vickers: Is the current garage going away?

Mr. Blay: The current garage is becoming an office and utility room and bathroom and laundry. There's a rendering I did with the little roof, and then I did one with a higher roof. You can see the difference.

Mr. Vickers: Does the high roof match the roofline?

Mr. Blay: It matches the old garage.

Mr. Dunn: Is the drop in height in the picture due to the depth of the new structure? It looks like the new roof is several feet shorter than the existing roof.

Mr. Blay: It's because the breezeway area has a smaller roofline than the garage.

Mr. Dunn: The pitch would be the same; the height would not be the same.

Mr. Blay: Exactly.

Chairman Clawson: If no one else wishes to speak, we're ready to evaluate the 5 factors. Uniqueness.

Mr. Dunn: As with the first case we saw tonight, while I understand the logic and sympathize with how we ended up at this point, I am having a hard time figuring out how this property is unique under the terms of the statute we have to apply. If anybody sees it, I wish they would tell me. The only thing unique is the existing pitch of the roof.

Ms. Farrington: In the previous case, it was explained to us that it is the property itself and not the structure.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: The letters went out. We had one neighbor speak here who has adjacent property.

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

Chairman Clawson: Hardship.

Ms. Farrington: This one is hard because I know you've spent time doing the design, and there is a fine line between it being okay and us having to follow our rules and statutes. The fact that it's an accessory structure and the way it's designed with the breezeway versus it being an addition any other way makes it so you can find a solution to meet your needs and achieve what you're looking for. Where we have to abide by the statutes, we are trying to prevent accessory structures within the City of Leawood that would be utilized in a different capacity than what you are intending.

Chairman Clawson: I agree. In this case, there are alternative solutions.

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

Chairman Clawson: Public Safety and General Welfare. Probably not a factor in this case.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I don't think that this design has anything against the Spirit and Intent. I might want to address the homeowner that was opposed to the addition of these garages. Unfortunately, it becomes a visual impact from your property. Although we can understand that, the laws that we have to abide by and uphold allow people to have additions or accessory structures with a breezeway with a certain height requirement. When we look at those things, we try to fall within a guideline of what the City of Leawood allows. These are larger properties in Northern Leawood, so there is adequate space that they can be built. Even though it may impact people's sight aesthetically with the site, it still doesn't go against the Spirit and Intent.

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

A motion to deny Case 25-2018 Dana Blay; James Kinyon/Owner - Request for a variance to the 15 foot height restriction for an accessory structure in accordance with the LDO, Section 16-4-1.2(C) 1 in an R-1 District for property commonly known as 2327 W. 95th Street – was made by Dunn; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Bussing, and Farrington.

MEETING ADJOURNED.