

**City of Leawood  
Board of Zoning Appeals Minutes  
May 23, 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 May 23, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

**MEMBERS PRESENT:** Munson, Dunn, Dr. Peppes, Clawson

**MEMBERS ABSENT:** Hawk, Farrington, Bussing

**STAFF PRESENT:** Thompson, Knight, Torrez

**APPROVAL OF MINUTES:** Approval of the minutes from the April 25, 2018 Board of Zoning Appeals meeting

**A motion to approve the minutes from the Board of Zoning April 25, 2018 Board of Zoning Appeals meeting was made by Dunn; seconded by Dr. Peppes Motion carried with a unanimous vote of 3-0. For: Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: We have five cases tonight: three variances and two exceptions. I would ask the applicants to try to keep their remarks to five minutes if possible. Everyone who wishes to speak for or against the applications will be given an opportunity. Our first case tonight is in Old Business.

**OLD BUSINESS:**

Case 19-2018 – Sharon & Joe Lambert / Owners – 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.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: Due to a recent fire in December, 2017, the homeowners would like to construct a new home on a lot that exceeds what is permitted by the LDO. The request is to construct a home that is 6,154 square feet or 67% bigger than what is allowed if it were a teardown and rebuild.

Chairman Clawson: This lot was a bare lot.

Mr. Thompson: It is now. The fire was a total loss.

Chairman Clawson: If it wasn't, they would be able to build how big of a home?

Mr. Thompson: They could build 3,688 square feet. Since it was destroyed by fire, the LDO allows them to reconstruct the home, but it has to be done following the way it was before. That home exceeded what is permitted by 1,840 square feet, I believe. The original home was 5,528 square feet.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: They could build 5,528 because that is what was there?

Mr. Thompson: Yes, sir.

Dr. Peppes: Even though 3,688 is how the formulas worked for the amount of space that's in?

Mr. Thompson: That's correct.

Mr. Munson: Staff remarks indicate that the fire caused the request for the rebuild. I have a question for our counsel. Does the fact that it was destroyed by fire or any other manner affect the way the property is evaluated in terms of the LDO and its requirements?

Ms. Knight: Wade might know that even better than I would, but in terms of your review of the variance factors, it wouldn't change that. There are different rules for teardowns/rebuilds than there are for replacements in certain regards. Wade might know how that impacts this case.

Mr. Thompson: That's correct. That's the only reason they're allowed to build a home that exceeds by 1,840 square feet. If it were a teardown/rebuild, they would have to either build a 3,688 sq. ft. home or go before the board.

Chairman Clawson: Other questions? Is the applicant here?

**Applicant Presentation:**

Joe Lambert, 11214 Rosewood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lambert: We had a fire on the 31<sup>st</sup> of December, the coldest day of the year. We had a fire going in the fireplace. I built the house 25 years ago and put a wood roof on, which was the code at the time. I put a better roof on. It had never leaked one drop its entire lifespan. I'm watching TV. An ember gets through the spark arrester in the fireplace. The fireplace had only been burning for about an hour, and I noticed a piece of felt paper coming down and landing on my patio. I told my son to go look at the roof because there was no wind. He ran outside and saw a fire on the roof. In ten minutes, the entire roof was completely gone. Had it happened at 10:00 at night, my three grandkids and I would

not have made it. I'm 60 years old. I built the house when I was 32. At the time with my four kids, we needed a 2-story house. I'm in the construction industry in heating and air conditioning here in Leawood. My knees are getting to a point where I'm going to probably have to have knee surgeries. That's why I wanted a story and a half with a master bedroom on the first floor. My wife has been wanting to move quite a while because she has issues with her knees. We tried to design a master bedroom on the first floor with Scott Bigford's firm. By the time we got done, to build a master bedroom that was usable, our family room went from 24'x16' to 12'x16'. That's why we've been redrawing plans, trying to get something that would work. My daughter is buying a house three blocks away from me. My three grandkids walk to my house. I love where we live. It's the best subdivision in Leawood. I've got it set up so my daughter can come take care of me and my wife when we get in our 80s hopefully. That was the plan from the very beginning. That's why I'm asking for the variance. I want to stay here.

Chairman Clawson: Are there questions for the application? When we evaluate a variance, we have to look at the five factors. Typically, the ones that are the hardest for us to evaluate are Uniqueness and Hardship. Could you address those?

Mr. Lambert: The Uniqueness, I believe, is the fire. That doesn't happen very often, especially to take a house completely out. The fact that we do back up to commercial property is a factor as well. When we built the house 25 years ago, there was nothing there but woods. We were told it would be pushed back farther. We literally have a trash dumpster in our back yard that they empty every day at 4:00 in the morning. That's okay. We've got great neighbors that want us to be there. We want to be there. I'm hoping it's enough.

Chairman Clawson: Hardship?

Mr. Lambert: If I had to move to a different house, I wouldn't be able to build a house on another lot because I'd have to go spend probably \$300,000 to tear a house down somewhere because I really want to build it myself. I've built four houses. Every house that my family has lived in, I've personally built myself. I would literally have to go spend over double. If I push the house in, I might be able to sell it for \$150,000 maybe. I'll have to go spend \$300,000. It's a burden on having to pay more for a lot.

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

Tana Guthrie, 11228 Rosewood, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Guthrie: I live three doors down. They're awesome neighbors. Our kids grew up together. They're now fine young men. I'm also a real estate agent for Better Homes and Gardens. Our neighborhood is fantastic. They house they will build with the architect they have and the builder will be prime. It helps the entire neighborhood. It is going to lift it up. I don't think going a little bit bigger hurts. We went smaller. Our house is 2,800

square feet, so we're on the low side. I'm glad he's building up because I think it improves all of the home values in the neighborhood. As the prices go up, we pay more taxes right here in Leawood, so it's kind of a win for everybody. Thank you.

Chairman Clawson: Is there anyone else?

Joey Menino, 11213 Rosewood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Menino: I'm speaking for my father, who lives directly across the street. We've been neighbors for 25 years. Compared to the house that is proposed to be built, it is actually pretty much the same square footage. We are completely for the new build. Hopefully, we'll continue being neighbors.

Sara Carson, 5016 W. 114<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Carson: I am the daughter he spoke about. One of the decisions we made when we decided to look for a home was to reside in the same neighborhood. We have three young boys that spend several nights over with grandma and grandpa. My children were in the home at the time of the fire. My oldest struggles with fires to this day. He doesn't like to be in confined spaces. The idea of being in a ranch home is something that would probably not be beneficial for him. Ultimately, we chose where we chose to live for the benefit of being near them. There's huge benefit in my son being able to walk two streets over and being able to see them. I would just like to speak for them being able to build the home that would best suit the needs of their situation and future situations with being able to have multiple grandchildren stay in the residence all at one time. Thank you.

Chairman Clawson: Does anyone else wish to speak? If not, this is a variance. We have to evaluate the five factors as a board. We will discuss each one, and we will vote individually on each factor. We have to vote in the affirmative on each of the five factors to support a motion for approval. The first factor is Uniqueness.

Dr. Peppes: I feel bad about the house burning down, but we have to look at what the LDO is. This property is just like all the other properties in that neighborhood. They have a certain square footage that must be followed. I'm not sure I can see anything that would make this property unique. In other words, I can't support Uniqueness.

Mr. Munson: I agree with that position wholeheartedly. I feel empathy for their situation, but that's not what we evaluate. We evaluate if it fits the LDO on the basis of these criteria.

Mr. Dunn: This is another one of these cases that causes me great consternation because I understand everything Mr. Lambert has presented. As a person who is over 60 myself, I understand the desire to build a house on that basis, but I don't see Uniqueness.

**Uniqueness criterion not satisfied with a unanimous vote of 0-4. Opposed: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Rights of Adjacent Property Owners. All the cards went out.

Mr. Thompson: Correct, and there were a few letters that I included in the packet of support.

Mr. Munson: The only thing I would think about is that the house seems unusually large for that neighborhood, but it doesn't seem to bother at least the folks who spoke up. Apparently, it's not an issue for them. Don't know if it's an issue for any of us or not.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Hardship.

Mr. Dunn: Once again, we're talking about legal hardship and not personal hardship. It's a difficult thing. I haven't been on this board as long as my fellow members have. I struggle with this every time. We're here to apply legal factors, not to apply, quite honestly, our common sense in some cases. We're here to apply the law. The law tells me that the only hardship is a very personal one and not one that is unique to the property or design.

Mr. Munson: And not one that is imposed by the city. It is self-imposed.

**Hardship criterion not satisfied with a unanimous vote of 0-4. Opposed: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Public Safety and General Welfare. Staff noted that it has no effect.

Mr. Dunn: I agree with staff.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: I think it would be opposed to the general spirit of the LDO because it is so much larger than it is now.

Dr. Peppes: I agree.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-4. Opposed: Clawson, Munson, Dunn, and Dr. Peppes.**

**A motion to deny Case 19-2018 – Sharon & Joe Lambert / Owners – Request for a variance to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(F) in an R-1 District for property commonly known as 11214 Rosewood Street – was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

**NEW BUSINESS:**

Case 26-2018 – Sharon and Joe Lambert / Owners – Request for a variance to the maximum allowable height limit for a structure in accordance with the LDO, Section 16-2-5.3(E) in an R-1 District for property commonly known as 11214 Rosewood Street.

**Staff Presentation**

Wade Thompson made the following presentation:

Mr. Thompson: Due to a recent fire in December, 2017, the homeowners would like to construct a new home on the lot that exceeds what is permitted by the LDO. The request is to construct a home that is 35’9” tall and needs a variance for 5’9”. The ordinance permits the structure to be built back to the original height of 36’11” if it followed the original roofline. This plan will actually be shorter than the previous home but still exceeds the 30’ limit.

Chairman Clawson: Are there questions for staff?

Mr. Dunn: I’m just a bit confused, Wade. Because of the fire, they could exceed the square footage, but because of the fire, they can’t build back to the same height?

Mr. Thompson: Actually, they could if they followed the same roofline. In your packet, you’ll see a drawing of the home, and you’ll also see what is permitted in the red, which is the building envelope. The green line is what they want to build. The two wings that are marked in yellow will increase the amount of encroachment or the amount that protrudes. Those are the only sections that need the variance.

Chairman Clawson: The existing house was legal, nonconforming?

Mr. Thompson: Yes, sir. And if they follow the same roofline, it’s permitted only because it burned down.

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

**Applicant Presentation:**

Joe Lambert, 11214 Rosewood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lambert: Is this a moot point?

Dr. Peppes: That was my questions.

Mr. Lambert: The easiest thing for me to do is probably go back and build the exact same house. Is that what you're telling me?

Ms. Knight: Because this was submitted based on those particular plans and the first case was denied and you can't use those plans, I would think one option would be to withdraw and come back if you need to. The other option would be the board could consider it, assuming you want to build with the same roofline with a smaller house.

Mr. Lambert: I thought he said I could build the exact same house that burned down.

Ms. Knight: You can.

Mr. Lambert: My point is right; this is a moot point with the other plan.

Mr. Dunn: I think you're probably right.

Chairman Clawson: He could withdraw the case, then?

Ms. Knight: Yes, do you want to withdraw this case from consideration?

Mr. Lambert: Is that the thing to do? I'm asking. This is your game. I don't know what you guys want me to do. I've spent thousands of dollars here trying to come up with what I'm supposed to do. I haven't been able to get what I'm supposed to do from anybody here. I've had my architect here, trying to figure out what we can and can't do. I've just thrown thousands of dollars away for five months.

Mr. Munson: Did you ever meet with staff?

Mr. Lambert: Yes, sir.

Mr. Munson: What did they tell you?

Mr. Lambert: They couldn't tell me exactly what I could do.

Mr. Munson: But they could tell you what you couldn't do. I'd like to have Doug and then come up for just a second if I could.

Scott Bigford, architect, 8600 W. 110<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Bigford: One thing I'd like to point out about the LDO is we design houses like this all the time on new, vacant lots. They have different rules. On a new house, on an undeveloped lot, the height limitation is 35'. The LDO says if we're replacing a house, it has to be 30'. The design we came up with is actually not as tall as the old house that burned, but it's not as low as the 30'.

Chairman Clawson: Is that right, Wade?

Mr. Thompson: That is correct.

Mr. Bigford: Also, the square footage is not limited on a new lot. If we were to build a new house in Highlands Creek, Sienna, Tuscany Reserve, any of those places we design houses in all the time, we don't have a square footage requirement. We have an open space requirement but not the square footage requirement. The LDO only requires that on replacing a house.

Mr. Torrez: A new lot that has never been developed has just the open space requirements.

Mr. Bigford: We wouldn't be here if it was just an undeveloped lot. These rules were written for North Leawood. I understand the intent because those houses are low ranches, and I understand we don't want to overwhelm them, but this is in a more modern, southern part of Leawood. I don't see where these new LDO rules really apply.

Mr. Torrez: It would be considered a teardown/rebuild. The LDO would allow them, in case of a fire like this, to rebuild the footprint as it existed to the same height and same square footage. In this case, they wanted to add the 600-some square feet. At that point, it's a teardown/rebuild. It is beyond the scope of rebuilding exactly what was there.

Mr. Bigford: However, the intent of the LDO is to be in keeping with the neighborhood. We're not in North Leawood among a bunch of ranches. That's how these rules were written. You're going to find this before yourselves again and again as the remodeling and teardowns are farther and farther south among larger houses. Most of the houses south of I-435 don't meet any of these rules. I've designed a lot of them.

Mr. Munson: We're going to have to wait for our City Council to amend the LDO.

Dr. Peppes: We're not here tonight to discuss the LDO and how to change it. These are the laws we have to follow. I was back in the time when these were discussed, and the reasoning behind it is that these aren't empty spaces. The neighborhood is developed. It just so happens a house burned down, so we're not dealing with Tuscany Reserve on a corner of it that has 20 lots that have not been built. That's a lot different than a neighborhood that has 20 houses, and 19 are there already, and this one has been there for 35 years and something happened. You've got structure around you that you have to deal with. I agree with the LDO and the way it is. Maybe you don't. Until City Council changes it, they're the rules we have to go by.

Mr. Bigford: I agree that the houses should be in keeping with what is around them, but farther south, the houses are different than the houses up north, which is what instigated the LDO rules.



Mr. Munson: But the LDO is written for the entire city of Leawood. It doesn't differentiate between that neighborhood versus that neighborhood.

Mr. Bigford: That's the problem.

Mr. Munson: There's nothing we can do about that at this time. Run for City Council and see what you can do.

Mr. Dunn: I've never seen a case presented here for a variance or an exception that was frivolous, that was based entirely on nonsense. There are always good reasons that people request what they request. The job we have as the Zoning Board is simply to apply the law we have. It's not to say whether we agree with the law in this instant case or not. If it were, then we'd have a real wide variety of structures in various places around the city. I'm sorry. I understand the reasons you want to do this, Mr. Lambert. As I said before, I can put myself in your shoes very easily, but I don't have the power to change the law. I'm here to make sure the law is applied.

Mr. Lambert: If I don't tear the house down and add onto it, I can't even figure out if I can add on to the house or not. I've spent money five years ago having Scott design something we can add on to the house. I can't get from anybody to tell me whether I can even do that, take the house down to the foundation and add on to the foundation so I could put the right square footage and put the first floor in. I can't get anything from anybody.

Chairman Clawson: Shouldn't staff be able to answer those questions?

Mr. Thompson: Yes, and if he brings the plan in, he can meet with the plans examiner, and he can tell him what he can and cannot do.

Chairman Clawson: Before us is your request for a variance to the maximum allowable height. We can continue on, or you can withdraw.

Mr. Lambert: What benefit is it either way? I'm just asking because I don't know what you're wanting me to do. What do you recommend for me to do?

Chairman Clawson: I can't really make a recommendation. That's a personal decision for you, unfortunately.

Mr. Lambert: This is not good. I'd hate to have to run my business like this. This is a horrible way to run a business. I guess I'll withdraw. I don't know what else to do.

Chairman Clawson: Do we have to vote on it? It's on the record that the applicant wishes to withdraw the case.

Mr. Thompson: Yes, sir.

Mr. Lambert: If I tear the house completely down and sell the lot, now somebody will be held to the same standards I was held to?

Mr. Torrez: At some point, they couldn't even build to the existing square footage that got burned down. That expires after a period of time. They might be subject to even less square footage to be built, like 3,688.

Mr. Lambert: There's your hardship. The lot is worth less.

Chairman Clawson: So, you have decided to withdraw the case?

Mr. Lambert: I guess.

Chairman Clawson: For the record, Mr. Lambert has decided to withdraw Case 26-2018.

Case 27-2018 – John & Sara Sweeney / Owners – Request for a variance to the platted build line for the placement of a deck in accordance with the LDO, Section 16-2-5.7(D) in an RP-4 District for property commonly known as 5217 W. 116<sup>th</sup> Street.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to rebuild an existing deck and expand 5' toward the rear property line. Due to being considered a through lot, it essentially has two front yards. The property has a 30' platted build line and will need a variance of 5' to build the deck as planned.

Chairman Clawson: Could you refresh our memory of what an RP-4 District consists of?

Mr. Torrez: RP-4 would revert now to RP-2. Since this is a through lot, it would have two front setbacks by our LDO. The front setback on an RP-2 is 30', which is the same as the platted build line.

Dr. Peppes: Was that the same thing as when it was an RP-4 with having front setbacks both in front and back?

Mr. Torrez: I couldn't tell you. RP-4 had a platted rear setback of 30', but whether or not the definition of a through lot was included back then, I don't know. The RP-4 requirements say a rear setback would be 30' back when it was originally zoned.

Chairman Clawson: Aren't there allowances given to decks, though?

Dr. Peppes: That was my question. Don't we give a 5' allowance to a deck?

Mr. Thompson: We do in a rear yard but not in a front yard. This is a through lot, so it's a front yard.

Dr. Peppes: We deal with it every time a through lot comes before the BZA just because of this thing. Is this something City Council is taking care of according to the memo in our packet?

Mr. Thompson: As far as I know, it is not being looked at by Council at this time.

Mr. Munson: Has it been given to them?

Dr. Peppes: Haven't we had a conversation like what we're having now about through lots?

Mr. Thompson: We have brought it up to the director, but it has to go through Planning Commission and then on to City Council.

Mr. Torrez: On a platted build line, you are allowed to encroach 5' on a zoning district setback, but the platted build line would still overrule the setback provisions.

Chairman Clawson: Does the platted build line include decks?

Mr. Torrez: Yes, anything.

Chairman Clawson: What about a patio?

Mr. Torrez: I don't know if a patio at ground level would be considered a structure. It would include fences.

Mr. Munson: Does it have to be at least 6” off the ground to be considered a structure?

Mr. Torrez: Not necessarily.

Chairman Clawson: Other questions? Is the applicant here?

**Applicant Presentation:**

John Sweeney, 5217 W. 116<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Sweeney: I’m here with my wife Sarah. I’ll try to stay as close to the five minutes as possible, but I do have some comments. Did you receive the exhibits?

Chairman Clawson: Yes.

Mr. Sweeney: I will probably need to see AIMS, too, if you can pull that up. I’ll just address the five conditions for you. In terms of Uniqueness, I think we’re unique in three ways. The deck is very small for all the homes in our area. I know it was the original builder 25 years ago, but I only have 7’ decks. It’s 17’ wide and 7’ deep. It’s very tight. Once you put furniture on there, it becomes a very difficult situation to get more than 3-4 people. My wife and I entertain a lot with our family on birthdays and holidays. It’s become unmanageable to even use the deck in any way other than me standing out there alone barbecuing. I will note that Sara is a residential real estate agent. One of the issues she faces with her clients is people really want functional outdoor living space now. Without an ability to expand the deck even just a little like we’re asking for puts us at an economic disadvantage with the value of the house. Someone else is going to look at it and have the same conclusions we have. Interestingly, when we were looking at the house, our next-door neighbor to the east got a building permit and constructed a deck 10’ beyond where our deck is now. They’re essentially at 20’ from the property line, which is the fence line.

Chairman Clawson: How long ago was that constructed?

Mr. Sweeney: I think it was in the 7- or 8-year time frame.

Mr. Thompson: The permit was issued in ’07.

Chairman Clawson: Was there a variance?

Mr. Thompson: There was not, but there are some issues with that. It was issued to reconstruct the deck that was there, and it wasn’t reconstructed as it was shown on the plan.

Mr. Munson: You mean they cheated?

Mr. Thompson: If you want to say it that way, yes.

Mr. Sweeney: Another point on Uniqueness is we're directly across the street from Park Place. Our back yard faces Park Place. When the subdivision was approved 25 years ago, Park Place did not exist. Now, it's been constructed, and we have 6-story buildings right behind us across Town Center Drive, which is a major thoroughfare carrying a lot of traffic. I think that, in an of itself, is very unique to have a high-density zoning district so close. I think there are only two in Leawood of that density. That alone makes it unique.

Mr. Munson: You're noting that you're across from a high rise and a commercial district. Why do you want to expand your deck? So you can see it better or what?

Mr. Sweeney: No, just to have more space out there. There's a picture.

Mr. Munson: I was looking at a picture of your deck, and I would say it looks cozy.

Mr. Sweeney: Cozy for some; probably not for us. I'll address the through lot as being unique. I don't believe a lot of properties are through lots, and because of it being a through lot, we are now, by some technicality, prohibited from taking advantage of a 5' encroachment into the rear yard setback that everybody else in the city is allowed to do. Wade is correct that I received an email that we have two front yards and not a back yard. I just find that interesting.

Mr. Munson: That's because you have streets on both sides. That's what makes it a through lot.

Mr. Sweeney: I'm learning the issue of through lots. As far as granting the second item and affecting property owners, I have a letter from the property owners on both sides of me. I actually sent them to Wade within the last 2-3 days. They are supporting the deck expansion. We also have formal approval from the Edgewood Homes Association. We also have a letter from the president of Edgewood supporting it. I'll move on to Hardship. I really think there is a lot of conflicting information out there regarding what really is a setback. Staff is saying it's 30', but there is a lot of evidence that it was intended to be 20'. Last Halloween, my wife called up because we started talking about doing the deck. Her notes from that day include 20' setback, so we designed the deck. Somebody at the city thought it was a 20' setback when she called. Of course, I mentioned the neighbors to the east being 10' out beyond where we would be. If we were granted the 5' expansion, they would still be 5' beyond us. There is also the resolution from 25 years ago when Edgewood was approved. There's actually a stipulation for a 20' setback. I understand the technicality and that it was platted with a 30' lot. I understand that. On the AIMS matter, I'm not sure why Jeff and Melanie did it this way 25 years ago, but apparently, the property line is the fence line. Edgewood Homes Association takes care of all the property from the fence line all the way to Town Center Drive. Right in the middle of that is a sidewalk, so in theory, they would have normally had what we call a tract of land. We have several tracts of land in Edgewood now with the pool, the park, and detention. This landscaped and irrigated area outside the fence line but before the sidewalk is 11'.

That probably should have been a tract of land and part of where the setback perhaps should have been.

Mr. Munson: Are you talking about common ownership owned by the whole subdivision?

Mr. Sweeney: Probably. And they could have given it to the property owner, but since Edgewood has been maintaining it, I assume it would have been a tract of land. That's exactly what Park Place did across the street. If you pull it up on AIMS, you'd see my lot go to the fence line and then right-of-way just beyond the sidewalk at Park Place, which is a common tract for them, and then there's the building property line. I have developed properties in Leawood. I'm in commercial real estate. That was always a common occurrence. I don't know what happened 25 years ago as to why there wasn't a tract of land there, but that was the case. Not only is the through lot unique, but I also think it is a hardship. The fourth condition is a no; it doesn't affect general welfare. It will help us with an aging property. We want to spend money. It will increase the value of our property but at a cost to us. I think it will continue to benefit the homeowners in Edgewood. The fifth item speaks to spirit of the development. I see it as Leawood wants quality development and functionality of residences. The deck improvement, for such a small item, only does positive things for the subdivision and adjacent property owners. I don't know if you care to ask any questions about the pictures I provided.

Mr. Munson: They're very nice pictures.

Mr. Sweeney: Thank you. That's my presentation.

Chairman Clawson: Your existing deck is roughly 30' from the property line.

Mr. Sweeney: Correct.

Chairman Clawson: It's an elevated deck.

Mr. Sweeney: It is elevated. It's a walkout, so this is above the walkout.

Chairman Clawson: Are there questions?

Mr. Munson: I have a comment. Through lots, we see a lot, and there are a lot of them in the city. They're not few. It doesn't really meet the case of being unique. But, the LDO requiring the front yard and rear yard requirements on through lots, to me, is onerous and make the situation unique each time someone wants to do something with the property. Having said that, I think the criterion is maybe not met to the letter of the law, but taking into account what the LDO causes on the property is a separate issue. I can support this at this time.

Chairman Clawson: Wade, can we see the subdivision map again?

Mr. Thompson: Do you want the AIMS picture that's on your screen?

Chairman Clawson: No, I want the one that shows the subdivision. Mr. Sweeney's property is which one?

Mr. Thompson: They are Lot 5.

Chairman Clawson: Basically, 1-8 are through lots, or at least 1-5 are.

Mr. Thompson: I would say 1-9.

Mr. Munson: Lot 8 has double frontage on it, so it would be a through lot.

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there other questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? If not, we have to evaluate the five factors. The first is Uniqueness.

Dr. Peppes: Uniqueness, I want to agree with what Mr. Munson said. I believe they have met this criterion with it being the through lot. Even though there are a lot of them in Leawood, not a lot of them are across the street from Park Place.

**Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No complaints, and several neighbors agree.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Hardship.

Mr. Munson: That's a tougher one, but with the city promoting or allowing the Park Place development to take place, as Mr. Sweeney pointed out, with a high rise across the street, the Hardship is due to Mr. Sweeney's wanting to build a bigger deck, but I think an equal amount has been placed on the property outside of him doing what he wants to do by the action the city has taken.

Dr. Peppes: You feel it has been met.

Mr. Munson: I do.

Dr. Peppes: I feel the same way, but being a through lot and making the back yard a front yard is still a problem for me. The neighbors across the street are through lots, but the others can use the 5' extension because it's a back yard and not a front yard.

Mr. Dunn: I'm deferring to my more knowledgeable members on through lots. I don't have the experience with through lots that they do.

**Hardship criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: As long as his guests stay sober, it will be okay.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met because the 5' extension wouldn't be considered someplace else in the neighborhood other than the through lot.

**Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

**A motion to approve Case 27-2018 – John & Sara Sweeney / Owners – Request for a variance to the platted build line for the placement of a deck in accordance with the LDO, Section 16-2-5.7(D) in an RP-4 District for property commonly known as 5217 W. 116<sup>th</sup> Street – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Mr. Munson: I would like to ask Mr. Sweeney to approach the dais. Mr. Sweeney, I drive by the development frequently, and I notice that the bottom parts of that wrought iron fence happen to be bent. Would you have your homeowners association take care of that?

Mr. Sweeney: I will tell them. Thank you very much.

Case 28-2018 – Brian Sulley / 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 8004 Manor Road.

**Staff Report:**

Wade Thompson made the following presentation:



Mr. Thompson: The applicant would like to complete the enclosure of the rear yard with a 5' tall wooden privacy fence. The home at 8009 Manor Road has a pool and a 5' fence, which would be on the southeastern property line.

Chairman Clawson: Shouldn't the homeowner with a pool have a 6' fence?

Mr. Thompson: He can have a 6' fence; he is required to have at least a 4' fence.

Dr. Peppes: He has a 5' fence.

Mr. Thompson: Yes, sir.

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

**Applicant Presentation:**

Brian Sulley, 4321 W. 54<sup>th</sup> Street, Roeland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Sulley: I'm building the home at 8005 Manor Road. The reasons for the exception are fairly straightforward. As Wade mentioned, we feel it will provide some continuity with the 5' fence to the south property. Also, looking at some point in the future to put in a pool and/or hot tub, so this would allow us to stay within the allowable range for that. It is only 12" higher than the otherwise allowable limit. It provides the opportunity to have that without having to tear down and rebuild a higher fence at that time. Those are the main structural/property-related reasons. Then personally, we also have a dog who is fast and can get a head of steam if there is a squirrel or chipmunk in the area. A 5' fence is enough to keep him in.

Chairman Clawson: Is there a fence there now?

Mr. Sulley: There's not. It's a teardown/rebuild. There had been a fence prior, so as part of building the new home, we'll be building a fence there.

Chairman Clawson: What kind of fence are you proposing?

Mr. Sulley: Wood privacy.

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

**A motion to approve Case 28-2018 – Brian Sulley / 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 8004 Manor Road – was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Case 29-2018 – Chris Burge; Shoaib Chatta / 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 4802 W. 147<sup>th</sup> Street.

**Staff Report:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 5’ tall ornamental fence made of steel. There is a considerable elevation change from front to back of approximately 10’. This property shares a property line with a home at 14604 Sherwood to the rear that has a pool and a 5’ tall fence.

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

**Applicant Presentation:**

Chris Burge, Burge Fence, 6770 W. 152<sup>nd</sup> Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Burge: I’m representing the applicant. He is going to build a house, and the house will include a pool. He wants to fence where the diagram is shown. He has two back lines because it’s a cul de sac lot. He wants to finish off both back lines during the construction process of his house. After the house and pool are completed, he’ll finish with a 5’ fence. It is a black ornamental steel fence similar to the neighbor behind him.

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

**A motion to approve Case 29-2018 – Chris Burge; Shoaib Chatta / 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 4802 W. 147<sup>th</sup> Street – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

Mr. Munson: Mr. Burge, is Sunny Burge still alive?

Mr. Burge: Yes.

Mr. Munson: Where’s he living?

Mr. Burge: Chilicothe, Missouri.

Mr. Munson: I went to college with him. Tell him Bud Man said hi.

**Acceptance of the Leawood Board of Zoning Appeals Bylaws.**

Chairman Clawson: Do we have to approve these every year?

Mr. Thompson: Yes, sir.

Mr. Dunn: Is the red part the change?

Ms. Knight: No, that was approved the last time we did it, so I gave Wade a fixed copy. The date on the last page in the packet was incorrect, too, so the copy he is handing out right now is correct. There are no changes from previous years. The bylaws do say that you'll adopt them every May.

Chairman Clawson: Do we have a motion to approve the bylaws?

**A motion to approve the Board of Zoning Appeals bylaws was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Clawson, Munson, Dunn, and Dr. Peppes.**

*MEETING ADJOURNED.*