

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

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

MEMBERS ABSENT: None

STAFF PRESENT: Thompson, Knight,

APPROVAL OF MINUTES: Approval of the minutes from the June 27, 2018 Board of Zoning Appeals meeting

A motion to approve the minutes from the Board of Zoning June 27, 2018 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: Our first case tonight is in Old Business. It is Case 32-2018 and has been withdrawn, so we will move on to New Business.

OLD BUSINESS:

Case 32-2018 John Peterson/Polsinelli; Lynn O'Connell Trust/Owner - Request for a variance to the maximum allowable grade change on a lot in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 2615 W. 98th Street. - **WITHDRAWN**

NEW BUSINESS:

Case 35-2018 Dr. Robert Menees/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 10304 Howe Drive.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to rebuild an existing 6' tall wooden privacy fence. The applicant feels the hot tub in the back yard poses a danger to the children in the neighborhood.

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

Applicant Presentation:

Dr. Robert Menees, 10304 Howe Drive, appeared before the Board of Zoning Appeals and read the following summary:

Dr. Menees: All I want to do is rebuild the fences on the sides of my back yard just as they are now because of a carpenter ant infestation. My neighbor to the south has a full swimming pool and is allowed a 6' fence, I understand, because of that. My neighbor to the north has small children, who we fear will climb over a 4' fence easily in a year or so and possibly drown in my hot tub. You have signed and notarized statements from both neighbors, wishing that a 6' fence be created between our properties for safety reasons. I don't want to throw my neighbor to the north under the bus, but in Egypt, they have a very different concept of what a yard should look like. I have supporting pictures so you can see why I don't want to see his back yard. I have been his neighbor for 12 years, and the pictures show exactly what it has looked like for that time. To protect his children and maintain the beauty of my yard, I ask that you allow me to rebuild my 6' fence just as it is now. I have pictures I can show if that would be interesting.

Chairman Clawson: Go ahead.

Dr. Menees: (*Shows pictures*) I'm interested in safety and in maintaining the beauty of my property.

Chairman Clawson: Are there any 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 35-2018 Dr. Robert Menees/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 10304 Howe Drive – was made by Hawk; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 36-2018 L/M Homes; Nate Ney/Owner - Request for an exception to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2821 W. 91st Street.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition on the rear of the home. The structure was originally place 11' 1" from the property line. The new addition

has a 4'6" jog inward from the property line and extends 26.6' and will be 11.7' from the property line. It will move away from the property line. It will be farther away than the existing structure.

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

Applicant Presentation:

Nate Ney, 2821 W. 91st Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Ney: I have copies of our exception form. Do you have those in your possession?

Chairman Clawson: We do.

Mr. Ney: I'm going to read from that. The quaint Cape Cod style is what originally attracted us to the house. Our architecturally engineered plans are tailored to preserve the style and integrity of the original home built in 1952. At the time, it was built within current guidelines. The house sits on a unique pie-shaped property with the house at the widest area, closest to the street. The current structure is set back by 11'1", and the proposed addition will be set back by 11'7", consistent with the existing side build line, which was confirmed by the Director of Planning. It is not encroaching any farther than the original structure. We don't believe an exception will adversely impact surrounding properties. It will help surrounding property values. It will keep the character of the original structure. It will not change or block views from our neighbors. It is keeping with the current lines of the house. Additionally, both of our neighbors to the side of us will be tearing down and rebuilding, so I believe we will then have wider gaps between the houses. I'm happy to address any questions.

Chairman Clawson: Are there 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 36-2018 L/M Homes; Nate Ney/Owner - Request for an exception to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2821 W. 91st Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 37-2018 John and Ann Brendle/Owners - Request for a variance to the front build line for the placement of a fence in accordance with the LDO 16-4-9.3(A) in an R-1 District for property commonly known as 14103 Pawnee Lane.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 4' tall metal fence. The fence shown on the map would be placed 22' from the property line and encroach the 30' build line by 8'.

Chairman Clawson: Are there questions for staff? The rear yard already has a fence. Is that correct?

Mr. Thompson: No, sir. It has a very thick tree line. Right now, there is no fence.

Chairman Clawson: They're proposing a fence to be brought in from the rear property line.

Mr. Thompson: It is going to be the north side of the property because this is considered a corner lot. It basically has two front yards.

Chairman Clawson: I'm talking about the south side that's pulled in from the property line.

Mr. Thompson: Correct.

Mr. Munson: Does the tree cover make that part of the back lot unusable? What is the circumstance there?

Mr. Thompson: I would say the trees have just been left to go natural to create a privacy barrier.

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

Applicant Presentation:

John and Ann Brendle, 14103 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Brendle: We just moved a whole six blocks to this new area.

Mrs. Brendle: We put a lot of pictures in the packet. We put the fence in along the back of the yard. We already put ¾ of the fence line in. Our property line goes to the back of the fence. The fence line goes directly between the trees. We put a temporary fence for the 41' section.

Mr. Brendle: We want to come out another section of the fence and come out to the rear of the house.

Mrs. Brendle: When we bought this house, our two priorities were floor plan because we wanted a master bedroom on the main floor and a yard for our two dogs. When we bought this house, the agents told us we could put a fence anywhere we wanted. We thought we would buy the house because it has a big back yard and a big side yard. We

started renovations on the house, and when we had the fence man come out, he said we were on a corner lot and therefore needed 41' and just to the corner of the house. This cut off a huge piece of what we intended to put inside the fence. That's why we are asking for the variance. (*shows picture*) The picture shows where the fence would line up relative to the landscaping.

Chairman Clawson: The temporary fence is on the build line?

Mr. Thompson: Yes, that picture shows the temporary fence is where a fence can legally be.

Mr. Brendle: The black line shows where we would like to put it.

Mrs. Brendle: The fence is not visible from Pawnee and 141st. It doesn't block the line of sight. The HOA president looked at it and said that the HOA would have no opposition because it doesn't block any line of sight at all.

Mr. Munson: What will be the composition of the metal fence?

Mrs. Brendle: It's metal and see-through.

Mr. Munson: Is it chain link or something else?

Mrs. Brendle: The chain link is the temporary fence. It will be iron. From the driveway down 141st, the fence is not visible because of the trees. This doesn't interfere with anything.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. Have you looked at those and thought about how it would apply to your case?

Mrs. Brendle: The main thing was the hardship. When we found out that we couldn't put the fence in and we had already started renovating, it became a financial hardship because we really thought about trying to put our house back on the market because we wanted a big yard for our two dogs. There was no way we could get enough money out of our house a month after moving in with all the renovations we had already started. That is a financial hardship to me. We have totally renovated our entire house.

Chairman Clawson: Are there other questions for the applicant? Has everyone been notified?

Mr. Thompson: Yes, sir. No calls or contact whatsoever.

Mr. Brendle: We actually had someone in favor.

Chairman Clawson: Any questions? Thank you. Is anyone here who wishes to speak for or against this application? This is a variance request, and we have to evaluate the five factors as a board. Uniqueness is the first factor.

Dr. Peppes: I've gone on record time and time again with through lots, but this isn't a through lot. It is a corner lot, but it is well stated that it is only the side that is there. This happens on every corner in Leawood. I don't feel that it has been met.

Chairman Clawson: Other comments?

Mr. Bussing: Do I understand that there is discussion of reviewing this particular ordinance?

Mr. Thompson: Not this ordinance.

Chairman Clawson: Other questions or discussion?

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

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

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

Chairman Clawson: Hardship.

Dr. Peppes: Even though we agree that it is a financial hardship, it has been brought on by the applicant. Again, the stories about the real estate agents are a shame, but an ordinance is an ordinance. I feel it has not been met.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial of this request should not affect it. Other comments?

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I feel it has been satisfied just because the trees cover the line of sight.

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

A motion to deny Case 37-2018 John and Ann Brendle/Owners - Request for a variance to the front build line for the placement of a fence in accordance with the LDO 16-4-9.3(A) in an R-1 District for property commonly known as 14103 Pawnee Lane – was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 38-2018 Kenneth Byrd/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 15301 Wenonga Street.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 5’ tall fence. This is a corner lot, but the fence will meet all build line requirements.

Mr. Hawk: What is the material of the fence?

Mr. Thompson: I believe it is metal wrought iron in appearance.

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

Applicant Presentation:

Kenneth Byrd, 15301 Wenonga Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Byrd: We moved in about three weeks ago. It is my wife and I, along with three young kids. It will be a wrought iron style fence, likely steel. It will be black in color. The fence will be built on all the setbacks from the street. We are on a corner lot, and that is my main concern and the reason I am looking for the height exception. On the north lot, our back yard is up against a street. I have three children that are 5, 3, and 1, and my main concern is for safety. I’m in Hills of Ironhorse. It is certainly a safe neighborhood, but things happen. It is 2018, and I am just looking to protect my children as much as possible. I would be looking for an increase in 1’ for height. For aesthetics, it probably doesn’t change a lot, but from a safety standpoint, it takes the fence to a height that does a lot more to keep away intruders and the like. One other thing to point out is the HOA is partly in Overland Park. It is a small HOA with 83 homes. They have certainly seen their share of 5’ fences. There is also a lake in the neighborhood, and all of those homes have at least a 5’ fence backing up against the lake. That is all I have for my case.

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

A motion to approve Case 38-2018 Kenneth Byrd/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 15301 Wenonga Street – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 39-2018 Quigley Custom Homes, LLC; Jeff & Jennifer Burroughs/Owners - Request for an exception 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 3512 W. 93rd Street.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to raze the original home and construct a new one. The lot allows a home to be constructed that is 4,141 square feet. Per the plan, the new home will be 4,864 square feet for a 17% overage.

Chairman Clawson: Did we have new documents?

Mr. Thompson: New material was just submitted, including a couple letters from the HOA and from other residents in the area. You will also find a new plan. They have reduced the size a little bit. It will still qualify for the exception.

Chairman Clawson: Was the correspondence in favor?

Mr. Thompson: No.

Chairman Clawson: What did the HOA say?

Mr. Thompson: I don't know if they have reviewed the new plan. I believe there is someone here to speak on behalf of them. The original email indicated they were not in favor of passing the exception.

Ms. Farrington: The application talks about the existing structure that was razed not meeting the side setbacks. Is the new structure complying with those?

Mr. Thompson: The new structure will comply with everything except the maximum allowable square footage.

Chairman Clawson: The HOA talked about a variance as opposed to an exception.

Mr. Thompson: I think that was just mistaken wording.

Mr. Dunn: It appears that this is a 2-story structure. As I recall from prior discussions, square footage is living space?

Mr. Thompson: Yes, sir.

Mr. Dunn: As with many of these, the reason we got the increased square footage is they plan to build out the upper level completely and not use any of it as attic space.

Mr. Thompson: That is sometimes correct, yes.

Mr. Dunn: Essentially, I'm asking if this is a situation in which they could use exactly the same plans and reduce the amount of space on the second floor if we deny this.

Mr. Thompson: That would be possible. The roofline could really stay the same.

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

Applicant Presentation:

Dan Quigley, Quigley Custom Homes, 9109 Fontana, Prairie Village, KS, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Quigley: Thank you for hearing us tonight. I have Jeff Burroughs with me if anyone has questions for him. It was our earnest intent to meet all of the Leawood Development Ordinance Requirements when we designed the home, but we were looking for a way to create enough space for his family of six. That really pushed us to design more space upstairs. We sought to comply with all the setback requirements, and I believe we have met all of the ordinance requirements, save the square footage, which we hope we can meet with this exception. We hope everyone agrees it is a reasonable thing to do. We have met with the representatives of the Leawood Homes Association twice and explained our interest in the first plan. As a result of our first meeting, we designed some changes to make the plan more suitable to the Leawood Homes Association requirements, which have a stricter requirement regarding elevation and height relative to side lines to soften the impact. I wanted to be on record to say we made an effort to do that. We meet their 1-3 relationship of height as opposed to the city's requirement. The structure has a lower roofline today than when we first drew it. We also lowered upstairs walls. We brought the roof down and hipped it to create what would be a more gentle side elevation to the neighbors. We did other numerous things to try to get our footprint down so that we could meet the Leawood HOA requirement that no more than 20% of the lot is the house's footprint. We stand for any questions.

Chairman Clawson: In our packet, it says that the new home would be 4,864. Is that still correct?

Mr. Quigley: I believe it's a little less than that. Based on our revisions, we are now down to about 4,806 square feet. We brought in two of the bedrooms on the east and west end 1' to get offsets in the walls to create a more gentle offset in the wall going up on both sides. We reduced our upstairs square footage some.

Chairman Clawson: It is about 16% now instead of 17%.

Mr. Quigley: Correct. There are a number of new homes on this street. I'm sure this committee is well aware. They are similar in spatial mass to this plan. In fact, there is one about four doors to the east on this street. There are two more to the east of Cure of Ars property that have this same character. It appears to me that we are trying to blend in with existing homes and also with some of the newer homes. That is our intent.

Mr. Hawk: You made a concentrated effort to reduce the number of square feet. Is there a chance you might find something in your packet that might reduce it even further without changing the complete character?

Mr. Quigley: There is always a chance we could make an incremental step. We hope to come out of this meeting with either your approval for the exception or a recommendation. Mr. Burroughs could answer questions as well. If we were to make it under the standard rule, we would have to eliminate a bedroom and maybe some of our hall space, which would make it difficult to meet the needs of the family. We don't want the four boys to have to beat up on each other.

Chairman Clawson: Where is the garage?

Mr. Quigley: (*Shows elevation*) The straight-on view of the house shows the side-entry garage on the left side.

Chairman Clawson: Are there other questions? This is an exception, so it falls below the 20% rule.

Mr. Thompson: Yes, sir.

Chairman Clawson: Thank you very much. Is there anyone here who wishes to speak for or against this application?

Ms. Farrington: I have a quick question. Is this a custom-designed home or a modified plan?

Mr. Quigley: This is a brand new custom design from scratch.

Chairman Clawson: Thank you. Is there anyone here that wishes to speak for or against this application?

JoLynn Hobbs, Leawood Homes Association President, 8309 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Hobbs: All the Leawood HOA board members are elected by our residents, and we serve solely at their request. Our residents are our main focus when we review things. On this particular property, the architect did a thorough review. The architect was also in

receipt of two written objections via email, which we forwarded to Wade Thompson. Hopefully you have those. The number one concern of our residents is the amount of teardowns in our neighborhood and, of course, the vast size of the new builds. Most of the contacts, whether it's in-person, email, phone calls, are focused on this issue. Knowing that is a huge concern for our residents, when we look at these properties, we try to factor that in. I just wanted to share a few concerns of ours with you tonight. Our architect is here with me tonight as well as the head of our Architectural Review Committee. We estimated that the original size of the home currently was 2,141, including the garage. For ease, I rounded that up to 2,200 square feet. The proposed new build is over 4,800 feet. It is twice the size of the original structure that was previously at this location. The size is definitely a concern. The second issue is that this exception request is not as a result of the owners. This particular property is not on an irregular-shaped lot. There are no creeks or waterways. There are no steep grades or anything like that, that would have merit. It is a relatively flat, rectangular-shaped lot. We just wanted to point that out. In closing, our position is that this project, as designed, exceeds the city's total maximum square footage based on the lot size. The sheer size of this home is totally out of scale with the adjacent homes in the neighborhood, and therefore, we are asking that the extra square footage being requested on this exception be denied. I would ask that you accept our email and our appearance here this evening as our formal objection. We respectfully request that the BZA deny the exception request. I wanted to take a moment to thank all the members of the BZA committee for all your contributions and service to the community. It is very much appreciated. Thank you for the opportunity to share our concerns.

Mr. Munson: Could you typify the type of architecture that is prevalent in your neighborhood in terms of size of houses, height, and number of garage doors?

Ms. Hobbs: We have a mix. We have historic homes. There are a lot of Cape Cods. Some of the original homes still have one-car garages. Then we have a mix of new construction up to three-car garages. Most of the homes, with the exception of a few contemporary or modern homes, would fall in the traditional category.

Mr. Munson: Does the area have a Historic Building designation?

Ms. Hobbs: We don't. We have historic designations by the city, but it's not legally enforceable. I also have our architect and ARC head if you have any other questions. Thank you so much for your time.

Chairman Clawson: The way square footage is calculated is total footprint of the first floor, second floor, and garage. Is that correct?

Mr. Thompson: Correct.

Chairman Clawson: Finished basements aren't considered.

Mr. Thompson: That is correct.

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

Dr. Jeff Burroughs, 3526 W. 100th Terrace, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Burroughs: My wife and I are the current homeowners of this property. We do have four growing boys. We attend Cure of Ars Parish as well as the school. We were in the Air Force for 11 years before coming back home in 2016. The big thing for us is looking for our forever home and to be a part of Leawood and this community. We started a dental practice here locally and plan on being in this area for a long time as well as contributing to the community. In terms of the house itself, we are trying to follow the Leawood Homes Association, which is more restrictive than the Leawood standards. From there, we are really trying to maximize the space inside the house as much as we can. That's where that exception to the overall square footage is coming from. You can understand this is not a ranch house with two garage stalls, which is evidenced as far as the house we are razing. Our house was built in the 1950s and hasn't been updated since. That was part of the reason we are razing rather than redesigning the current home. We're asking for the exception. As it is right now, we are trying to reduce the square footage and work with the HOA. Hopefully, with additional meetings with them, if we don't meet their more restrictive guidelines, we could at least go through and have the exception approved by this panel to go through, and if we continue to reduce the overall size, we could still come in above that 4,150 square footage.

Chairman Clawson: Thank you.

Mr. Quigley: I'd like to respond with a few comments. We want to respectfully work with the HOA, and we have by evidence that we sent them the plan ahead of the requirement of the city. We met with them twice. We are interested in abiding and working with them to reach a compromise. By the same token, we realize that our goals are not necessarily the same as theirs, and we have to compromise. We are happy to do that, but we are still asking for you to consider this exception and to allow us to work with the association to give us a little more room to design with. I wanted to clarify that no historical designation is on this property. There was an HOA designation on the north end of Leawood but not in this area.

Mr. Munson: The requirements the HOA puts in would not necessarily be enforceable by the city in any event.

Mr. Quigley: No, but at any rate, I also want to add that Mr. Burroughs had a neighborhood meeting just to further introduce this idea over the weekend. He invited neighbors on that street and close by. He did not receive any objection from those immediate homeowners. If there is a negative party, I would ask the HOA to bring that to us, and we'll try to address it. I have not heard anything negative since we began this and notified everyone within 200 feet.

Mr. Bussing: Ms. Hobbs, I don't get up into that part of Leawood very often, but I do drive down 93rd Street. I'm aware, as Mr. Quigley indicated, that a few homes have been razed and rebuilt. Is it your observation that this home is materially larger than those others that have been recently built?

Ms. Hobbs: The new builds in general are much larger than the originals.

Mr. Bussing: There is no question about that.

Ms. Hobbs: Yes, and I want to be clear that there are two issues going on here. There is the exception that is governed by the city, which is what we are discussing tonight, and then there is our HOA ARC process. What we are addressing tonight is the excess on the square footage from the city perspective. Then our HOA ARC process is separate. Our ARC board will make sure that size, style, products used, etc. all meet the HOA guidelines.

Mr. Bussing: And you do realize we are not an architectural review committee.

Ms. Hobbs: Correct.

Dr. Peppes: Mr. Quigley mentioned that they had another plan before you. That plan was reviewed by you, and these are still the same comments with the change?

Ms. Hobbs: They have made revisions, and we appreciate Mr. Quigley working with the HOA; however, it is our position that the home's square footage is still too large according to city LDO restrictions. We wanted to address that tonight. We will continue to work with Mr. Quigley and his clients within the Leawood HOA ARC guidelines.

Mr. Hawk: The current plan as submitted is approximately 17% above the existing product. Could you tell us what percentage would be acceptable?

Ms. Hobbs: One moment, and I'll review with my ARC board.

Chris Ashley, 9307 Mohawk Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Ashley: I live essentially around the corner. In reference to your earlier question about if this is larger than the recent new builds, I would say yes because I reviewed one of the two, and it did not require a variance. I know it was under the allowable square footage. That is on Mohawk Lane. There is another on 93rd that I don't remember coming before the BZA. We would like to see this home come in at the limit. I don't know that I can say 2% or 2.5%. We would like to see the city's total held moving forward. I think this is going to set a precedent for these builders. They watch each other, and as soon as one does something, the others are going to try to push the envelope as well.

Ms. Farrington: This calculation is based on the square footage of the lot itself. What is allowable per the LDO? When the HOA is referencing the other property, it was based off the lot it was on. This lot could be smaller than the lot that he is describing, but if the formula is set to scale.

Mr. Ashley: Those lots are very comparable in area.

Ms. Farrington: We do have to look at this case itself because it is based off the square footage of this lot. We can't really compare it to another house and its lot because its size is going to be formulated based on that.

Mr. Thompson: That is correct.

Ms. Farrington: This is 17% over; whereas, those met the lot sizes. It could be the exact same square footage but with different lot sizes.

Mr. Ashley: I've lived there 25 years. Most of those lots are very comparable.

Chairman Clawson: When this portion of the LDO was approved, this was an issue. They had the foresight to realize this could come up quite a bit. In their wisdom, they decreed that this could be an exception as opposed to a variance, which is much harder to justify. Wade, do you know the background of this requirement?

Mr. Thompson: I don't. It all came from all the teardowns up north. They wanted to allow the new homes to be built that were bigger than the traditional ranch houses. Most of them were built on large lots. This original home was 1,631 square feet. They were trying to protect the other residents from a massive house being built between two ranch houses.

Chairman Clawson: But they decided to make it an exception so that it would be somewhat easier to approve.

Mr. Thompson: Correct. They wanted redevelopment, of course. A lot of the people building new homes today want more than the traditional 3,000.

Mr. Dunn: I don't know the exact reasons for it, but if I had to guess, I would say that the 20% was based on the notion that anything 20% or less as far as square footage increase would probably not have a major impact on the exterior structure. The structure being built would probably be pretty much the same with or without the extra 20%. I think that is in there to allow people to add extra square footage without really changing the footprint of the building. That would be my guess.

Ms. Hobbs: I spoke with Councilwoman Deb Filla today to get a little bit of history because she was talking to me about the updated ordinance. It was updated to deal with the new construction requests going on in our neighborhood. That would be the city's

response to being proactive with the new builds but also protecting the existing residents. We use the term “McMansions” in our neighborhood.

Mr. Dunn: I’ve live in Old Leawood my entire time in Leawood, and I understand the concern. I don’t use the terms “McMansion” because, frankly, I honor people’s right to do with their property what they can within the rules. The fact is that the rights people have in Old Leawood are to build extremely larger structures than what currently exist because most of those pieces of property had little houses on big lots. Rightly so, people are coming back to Old Leawood and seeing they can pay the same for the amount of ground as they could out in Mission Farms and build what they want. I have the same concerns about it matching the neighborhood. Quite frankly, I don’t know how the two interests mesh up.

Ms. Hobbs: It’s a challenge. Again, we appreciate the opportunity to talk with you about our concerns.

Chairman Clawson: This is an issue in every neighborhood. I live in Leawood Estates, and we have the same issue with large lots and a lot of ranch houses. People come in, buy the lot, tear down the house, and build a 6,000 sq. ft. house. That’s the way it is. If the lot is big enough and it falls within the requirements of the LDO, it’s permissible. I understand. Is there anyone else who wishes to speak for or against this application? Do we have a motion?

A motion to approve Case 39-2018 Quigley Custom Homes, LLC; Jeff & Jennifer Burroughs/Owners - Request for an exception 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 3512 W. 93rd Street – was made by Munson; seconded by Bussing. Motion carried with a vote of 4-2. For: Munson, Dr. Peppes, Hawk, and Bussing. Opposed: Dunn and Farrington.

Mr. Dunn: May I say a couple words to explain my vote? We deal with this issue all the time. The rules we operate under say specifically that the proposed size of the rebuild or remodeled dwelling shall reflect the character of the other surrounding dwellings in the neighborhood. I don’t think this does, and that’s why I voted against it. I do realize that it’s almost a meaningless effort because almost the same structure could be built with less square footage in it. I realize the dilemma. I don’t know what the answer is for it, but it specifically asked me to decide whether it reflects the character of the neighborhood. I have to say it doesn’t.

Ms. Farrington: I would like to agree with him on that. That’s where I had trouble as well. There’s a formula put in place for the maximum square footage for the lot size. I think that’s something that needs to be looked at if you buy a certain property and have the opportunity to buy other properties.

Chairman Clawson: On the other hand, their architect could redesign this to meet the LDO requirement and would probably still have the same general look and size; that's true.

Mr. Munson: It's a dilemma.

Mr. Dunn: Ms. Hobbs, I think most of us on this BZA have been on an HOA board at one time or another. You guys do outstanding work. It's a thankless job. Thank you and your group for coming tonight and keeping Leawood a nice place to live.

Case 40-2018 LeLand Hicks/Bonny Tierney/Owners - Request for a variance to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8017 High Drive.

Staff Report:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition to the home. The home was constructed 8.5' from the south property line. The new addition would extend off the existing structure and match the current encroachment of 6.5'.

Mr. Dunn: To clarify, 8.5' from the south property line is a 6.5' encroachment?

Mr. Thompson: Yes; they are required to have a 15' side yard setback now.

Chairman Clawson: The existing house is 8.5' from the property line and was constructed that way. Theoretically, their new addition would have to meet the 15' setback.

Mr. Thompson: Yes; this home was constructed in 1941.

Ms. Farrington: Why is this considered a variance versus an exception?

Mr. Thompson: It is less than 10'. It has to be at least 10' away to qualify as an exception.

Ms. Farrington: We had a similar case earlier tonight.

Mr. Thompson: Yes, but it was more than 11' away.

Dr. Peppes: Isn't this legal, nonconforming, but since it's 6.5' and not more than 10', it has to become a variance?

Mr. Thompson: The only reason this is coming before you is they want to make an addition. If it stood another 1,000 years, it could be legal nonconforming. It's only because they're making the addition.

Chairman Clawson: It's just that the addition doesn't meet the exception requirements. Therefore, it is less than 10', so they would conceivably have to meet the 15' side yard setback.

Mr. Thompson: They could build on to the rear of the home. It would just have to jog in 6.5'.

Chairman Clawson: Other questions for staff?

Mr. Dunn: If the current home was 10' from the property line, we would require them to go straight back with an exception.

Mr. Thompson: Yes, sir.

Dr. Peppes: And that's legal, nonconforming at 10'.

Mr. Thompson: Yes, sir.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

LeLand Hicks, 8017 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hicks: I'm here with my wife Bonnie. I was hoping for my dilemma to be a lot less bad than the last one. It sounds like it's not going to be that case. I want to give a brief history of the house. My wife Bonnie has lived in the house for 19 years. She also lived in the adjacent house for 4 years before falling in love with this house. This has been about a 12-month process for us to try to do everything we want to do while taking the HOA's items into consideration. I know they don't affect this decision here. We're on our third architect because one of our biggest concerns was keeping the street and curb appeal that we have. Like Wade has mentioned, it's a 1941 home. It is a stone structure. It is absolutely beautiful. We had five things we worked hard to try to address with the addition. One was curb appeal. We also wanted to maintain as much of the back yard as we could. We have a beautiful patio. Both of our neighbors have well-maintained back yards. We didn't want to encroach our development on them much. We wanted to create a first-floor master. This is not a flip for us; it is our house until we retire and long after. We currently have a second-story master and two small spare bedrooms downstairs. The floor plan takes advantage of using those two in addition to this addition. We priced out several different options and several different floor plans, but three things really prevented us from doing that. The garage, main floor, and entry are all on the north side. The plumbing corridor and structural stairwell for both the basement and the second story is right in the middle of the home. It really put us in a position where the only place we could put an addition on and create a master was on the south elevation, which is the nonconforming property line elevation. The fourth issue that creates some economic

hardship around this is there is only one way we can go with our service relocation. Our power from KCP&L is mounted directly on the back of our building. We have to move it to the south elevation. The fifth item that we want to be cognizant of is we have stone that is 75 years old. We are harvesting that and reusing that as opposed to putting lap siding or inexpensive material. We are going to a grand expense for that.

Mr. Dunn: Where are you harvesting that from?

Mr. Hicks: Off the existing portion of the building. We have harvested a portion off the back to fill in the old front door, and then we're taking it off and moving it back around the glass openings.

Mr. Dunn: Thank you. I just didn't understand the teardown part.

Mr. Hicks: Again, not to mix the two boards and working with the HOA, I can tell you that the HOA ARC had an issue with a continuous wall that exceeds 27' without some type of relief or transition. One of the things that we're willing to do is to step it back 18" to make our new addition start 10' from the existing property line. I don't know if that makes this an exception. Currently, the way it's drawn and what we're asking for is to continue that elevation on at 8.5'.

Chairman Clawson: The fact that the existing house is now within 10' still wouldn't be an exception if it jogs in.

Mr. Thompson: I agree. The way I read the LDO, if the house was at 10', it wouldn't qualify.

Ms. Farrington: It says it's constructed 8.5' from the property line. Does that mean they're 1.5' off the existing build line? If they jogged it in 1.5', would it be an exception rather than a variance?

Mr. Thompson: I don't think so because the original structure needed to be at 10'.

Mr. Hicks: The other item I wanted to mention is our neighbors to the south should have a letter in your packet. We have not only complied with our neighbors on the HOA application, but there has been zero response. Our neighbors to the south actually wrote a letter.

Chairman Clawson: With a variance, we have to evaluate the five factors. We usually have trouble with Uniqueness and Hardship. We're not preventing you from adding on. If this is denied, you can still build, but you have to meet the requirements of the LDO. You'd have to move it back 15' and then base your design off that. Would you address those issues?

Mr. Hicks: I think the hardship is how we currently have designed it. Hardship for us is maintaining and managing our existing patio and our back yard and having the ability to

utilize the existing improvements that we've already made back there. We would be eliminating all of those. The other thing that we're trying to create with this plan is a 16' glass opening that allows our kitchen and living quarters to look out back to the back yard. All of that would be eliminated by reworking the plan and not being able to grow the south property line as is or close to as is.

Chairman Clawson: What about Uniqueness? It's one of the older houses in Leawood. There are other houses like that but not too many.

Mr. Hicks: As a matter of fact, I think there are a couple on High Drive that are very similar. They've had to add and harvest off from their existing side if they add a side structure.

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

Mr. Dunn: As you alluded to, I think any home built in Leawood in 1941 is unique by definition. The fact that it was built that close to the build line is something they couldn't have possibly known about at the time. I'm satisfied that this is unique.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: There is one letter included in your packet in support of the request and no calls or complaints.

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

Chairman Clawson: Hardship.

Mr. Dunn: Anybody who has been involved with any remodeling project that requires twists and turns of the structure that is adjoining the original structure knows the problems that are generated by that or could be generated by that. I am satisfied that requiring them to build this addition 6.5' farther in than the existing structure could create unanticipated hardships with the maintenance of the property.

Mr. Hawk: We've spent quite a bit of time talking about the old and new neighborhoods. I think this reflects what we would like to do and like to see: improvements in old neighborhoods if at all possible.

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

Chairman Clawson: Public Safety and General Welfare. As staff said, approval of this request shouldn't have any effect on this criterion.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I would argue that this homeowner is making every effort to try to maintain the spirit of this very unique neighborhood in Old Leawood. They've gone to extraordinary effort to do so.

Mr. Dunn: I agree.

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

A motion to approve Case 40-2018 LeLand Hicks/Bonny Tierney/Owners - Request for a variance to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8017 High Drive – was made by Farrington; seconded by Bussing. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

MEETING ADJOURNED.