

**City of Leawood  
Board of Zoning Appeals Minutes  
October 24, 2018 – 5:30 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive  
Leawood, KS 66211**

**CALL TO ORDER/ROLL CALL:**

*In Chairman Clawson's absence, Vice-Chairman Mel Hawk served as Chairman.*

Chairman Hawk: I'd like to call to order the October 24, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Clawson

**STAFF PRESENT:** Thompson and Knight

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

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

Chairman Hawk: We have just one case this evening.

**NEW BUSINESS:**

Case 48-2018 Michael Hillyard/Owner **\*\*CONTINUED\*\*** Request for a variance to the front build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16 of the LDO in an R-1 District for property commonly known as 3900 W 142nd Drive.

Case 49-2018 Michael Hillyard/Owner **\*\*CONTINUED\*\*** 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 3900 W. 142nd Drive.

Case 51-2018 Ambassador Const. Co., Keith Eymann, Tim & Ellen Murphy/Owners **VARIANCE \*\*WITHDRAWN\*\*** Request for a variance to the maximum allowable grade change on a lot in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property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 3521 W. 87th St.

Case 50-2018 Abby & Douglas Albers/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9535 Manor Road.

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners installed a 6' tall privacy fence along their rear property line. The application states an existing fence was replaced, but the only permit the city has was for a 4' tall privacy fence.

Chairman Hawk: Are there questions for staff?

Comm. Munson: We got a communication handed to us as we sat down from a neighbor, pointing out that all the destruction and construction is done. How does that fit with this request?

Mr. Thompson: The only way they can keep a 6' fence is if you approve a 6' exception.

Mr. Munson: And if we didn't approve it, they would have to go to a 4' fence?

Mr. Thompson: Yes, sir.

Chairman Hawk: Are there any other questions for staff? We'll hear from the applicant.

**Applicant Presentation:**

Doug Albers, 9535 Manor Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Albers: We purchased the home about two years ago. The existing home had a pool that was in bad shape and a fence that was in bad shape. When we began construction, we began with the house. Toward the end, we got to landscaping and talked to the neighbor directly behind us, Doug Hardy. The fence actually belonged to him. I asked if he would mind if I got the trees that had fallen through the fence out if I could also repair the fence in the areas needing to be replaced, not knowing about the 4' requirement and the fact that there is no pool there any longer. We had an agreement between the two neighbors that said we would put the fence back up. We put it back the way we found it, which was at 6'. He had no issues with that and was happy to have a new fence. We went on our way with the construction. We are requesting an exception at 6'. No other neighbors had reported issues with the variance. It's a nice, new fence that should last a long time.

Chairman Hawk: Is the fence along the entire rear property line?

Mr. Albers: It is not. I'm guessing it is 12'-15' on the north side of that property that touches another neighbor's yard. It's a mix of chain link and wood frame. The fence we replaced touched up against where the existing fence is. That's the only other fence I'm

aware of, unless there's another section on the south end of the fence line, but I don't think there is; I think it is just on the north side.

Ms. Farrington: The existing fence that was removed was 6', and it was because they had a pool there?

Mr. Albers: Correct.

Ms. Farrington: When I look at the documents we were given, I see that a permit was pulled for a 4' fence in '97, and the pool was permitted in '99. That fence was not built until probably the pool was put in place with a 6' section, I'm assuming.

Mr. Thompson: Yes, but I still don't have a permit for that 6' fence; I only have a permit for the 4' fence.

Ms. Farrington: There was a pool in place, so it was per code at the time.

Mr. Thompson: Correct.

Dr. Peppes: The permit that was pulled for the 4' fence was while the pool was there?

Mr. Thompson: More than likely, it was before. Actually, this residence only has a permit for a 4' fence. If he is saying the neighbor behind was the rightful owner of the fence, it could explain why the good side faced his house.

Mr. Albers: I don't know that for certain. That was my guess based on the way the fence was facing.

Dr. Peppes: There wasn't a permit pulled for any fence that was just placed.

Mr. Thompson: There was a permit pulled for a 4' fence at his residence.

Ms. Farrington: But it was a 6' fence that was pulled down, so if it belonged to the neighbor behind you, it was built by him probably after the pool was put in place. When you build a fence, they would have had to come pull a permit, correct?

Mr. Thompson: And he would have had to get a fence height exception because he didn't have a pool.

Ms. Farrington: But since that's not the lot we're looking at in the case, we don't have that documentation.

Mr. Thompson: Yes, ma'am.

Chairman Hawk: If the fence hadn't been torn down, he wouldn't be here.

Mr. Thompson: That is correct.

Mr. Albers: If we had left it with the trees in the middle of it and left it alone, there wouldn't be an issue.

Dr. Peppes: Should he have pulled a permit before he put up any kind of fence back there?

Mr. Thompson: Any type, yes.

Dr. Peppes: If a permit was pulled, it would have been issued for a 4' fence to be placed back there unless he came before us, and now, we're doing it after the fact.

Mr. Thompson: Correct.

Mr. Albers: The intent was just to repair the damaged sections, but when we got to it, there was so much damage that the guys who were helping me said it needed to be replaced.

Dr. Peppes: But there are three different fences along that back side now: 6' fence, 4' chain link, and 4' box chain link. Then you have chain link on the north side, and 4' on the south side.

Mr. Albers: I don't know about that.

Dr. Peppes: Yours is the only 6' fence along that lot.

Mr. Albers: I think so.

Ms. Farrington: I'm a little confused. The fence was existing and was owned by the neighbor and was 6' and you discussed with your neighbor to remove and replace it, you took the pool out, which took away the requirement to allow a 6' fence. Not knowing the code, it sounds like, you replaced an existing fence. Now, the issue is we have to look at your case, your house, and your lot per the code. Then, we have neighbors that can call in or weigh in. Here, it's the same neighbor that owned the fence, and they don't want a 6' fence, and they prefer it to be a 4' fence. I'm confused that their fence was 6' and has been removed. There's a neighbor disagreeing with the situation.

Mr. Thompson: We're just assuming it was their fence because of the way it faced. It is very possible that the person who lived in his home before built the fence the wrong way around his pool.

Dr. Peppes: Mr. Albers, did you put the fence up yourself, or did you have a fence contractor do it?

Mr. Albers: I had a contractor do it.

Dr. Peppes: Did the fence contractor ask about the permit?

Mr. Albers: He didn't ask me. I had a homebuilder managing that process. I assumed he worked back through the general contractor on that. Were you saying that the neighbor directly behind us, Mr. Hardy, expressed they wanted it to be 4' and not 6'? I had a conversation with him yesterday that was the opposite of that. He was going to go out of town today, and he called me to make sure that he let the city know that, and he wanted me to know that he told you all.

Mr. Munson: Have you seen this letter he sent?

Mr. Albers: I haven't.

Mr. Munson: You might want to make a copy available to him. I think the last paragraph would be what would catch your eye.

Mr. Albers: This is what we discussed yesterday. He was saying if the city had an issue with the fence at all that he suggested a compromise and that it could be tapered down on the sides. He expressed to me that he didn't have a personal issue with it; he was throwing it out as a compromise if the city had issue with the 6' height straight across. He would be amenable to altering sections of the fence rather than the whole fence.

Chairman Hawk: Wade, isn't the question whether the 6' fence is allowed or not, regardless of all these other changes?

Mr. Thompson: Correct, and just so you know, even if you approve a 6' fence, he will still have to go in and add pickets on the other side because the good side must face the neighbor's home. You can't approve a 6' fence with the bad side facing out.

Ms. Farrington: Currently, is the bad side facing in or out?

Mr. Thompson: It is facing out.

Mr. Albers: We just put it back the way we found it.

Mr. Bussing: Are we sure the fence is on his property? I assume we don't have a survey.

Mr. Thompson: I would assume he has the current survey.

Mr. Bussing: I'm just wondering if it's actually on his property. What if the neighbor built it and faced it the way it's facing? He tore it down and replaced it the way it was.

Mr. Thompson: You can't grant an exception for another property.

Chairman Hawk: Any further questions? We may call you back. Is there anyone here who would like to talk for or against the proposal? It appears not.

Dr. Peppes: For an exception, we analyze a couple different things. As I read our criteria, I see that it talks about adjacent property owners, and it also talks about uses and physical characteristics of the adjoining properties. It also talks about proximity to arterial streets to let you know that this particular house is 5-6 houses away from 95<sup>th</sup> Street. That would be probably the biggest street that is close to it. It's not close to any arterial street. As I asked Mr. Albers, he is the only one with a 6' section in the neighborhood. Most of the houses along there have no fences, period. Farther down this particular street has houses with lakes in the back yards, so they all have the open concept. As it comes closer to 95<sup>th</sup>, the lakes are gone. My concern is we have three different types of fences, and most are 4' picket fences. I don't have a problem with the 6' fence, but we do the whole back side of it as a 6' fence because of a reason and not just a particular section because it's not about safety; it's not about keeping animals out, animals in, or kids in. As you can see, I'm having a hard time supporting this.

Mr. Munson: I echo that. It leaves me on the fence about making a decision. Where are we here?

Ms. Farrington: I'm confused. Neighbors usually come and speak in person. We have this letter, and according to the letter, your neighbor is in approval of it being either a 6' or a 4' fence. The only opinion here is they want it tapered between the 4' and the 6' sections so it would look more uniform. The pictures given to us show a section that shows about a 6' drop. We've got a neighbor's opinion about aesthetics going from 6' to 4' and tying in, but we have to rule on whether we accept this because it is typically supposed to be a 4' and not a 6'. It's not like we have the five factors to vote on. It is a little more complicated.

Dr. Peppes: I feel sorry for Mr. Albers because, in all actuality, his contractor misled him. If the contractor is doing stuff in the City of Leawood, he understands he's got to get a permit, period. Everything would have been settled at that time because if a permit was done prior to putting up the fence, we would have known that it maybe wasn't on his property or it needed to be a 4' fence. We wouldn't go through this process.

Chairman Hawk: What are our alternatives? We have a new 6' fence. We have another fence that is less than 6'. We have a real hodge-podge at this point. If we say no, we have a removal of the 6' portion, and we still have a hodge-podge. I guess that leads us to the applicant could inquire about putting up a 4' fence. I think we need some clarification.

Ms. Farrington: The other thing I want to point out, too, is if we do approve this, the homeowner is still going to have to put up another side or turn it around. There is going to be cost and labor to do that because it's facing the wrong direction according to the property in question. If we don't approve this because we're following the code, there is still going to be cost in removing and replacing the 4' fence. This is an exception, not a

variance. We don't have the five factors that lead us to the right answer. An exception is more of a cut-and-dried answer.

Ms. Knight: Mr. Hawk, to address your question, I think the issue before the board is approve or deny a 6' fence. The neighbor's suggestion to taper is not before the board. Does that answer your question?

Chairman Hawk: I think that's it. Our only alternative here is the proposal. Do we approve or deny the 6' fence?

Ms. Knight: Correct, and your issue is not adding pickets to the other side; the city will require them to do that, whether it's 4' or 6'. That's not part of your decision, either. That will have to be done, or they will be cited.

Mr. Bussing: That would assume it's on Mr. Albers's property and not on the neighbor's property.

Ms. Knight: The city is not going to do a survey. It is his fence. He built it; he can be cited. Whether it's on the wrong property would be a civil dispute between the neighbors. If the neighbor doesn't care, which it doesn't sound like he does, it might not ever become an issue as long as that neighbor owns the property. Could it become an issue in the future? It possibly could.

Mr. Bussing: How could the city enforce that? If the fence is on the neighbor's property, how could the city force him to turn the pickets?

Ms. Knight: We don't know where it is, so we don't care.

Chairman Hawk: I think we're to the point where we are ready to have a recommendation to either approve or deny the 6' fence.

**A motion to deny Case 50-2018 Abby & Douglas Albers/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9535 Manor Road – was made by Munson; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Bussing, and Farrington.**

Discuss November Meeting.

Mr. Thompson: We need to discuss November's meeting. It is Wednesday the week of Thanksgiving. I didn't think anyone would want to be here. I was hoping you would want to cancel the meeting on the 21<sup>st</sup> and have a special meeting the 4<sup>th</sup> Wednesday of the month, which is when it usually is. We only have it on the 3<sup>rd</sup> Wednesday of the month for November and December because of the holidays, but just because the way the calendar fell this year, it is the same week of Thanksgiving.

Mr. Munson: What will be the day of the meeting?

Chairman Hawk: Is that going to be past Thanksgiving?

Mr. Thompson: It would be after. Right now, it is the 21<sup>st</sup>, so it is the night before Thanksgiving.

**A motion to cancel the November 21, 2018 meeting of the Board of Zoning Appeals and add a special call for a meeting on November 28, 2018 was made by Munson; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Bussing, and Farrington.**

*MEETING ADJOURNED.*