

**City of Leawood
Board of Zoning Appeals Minutes
November 28, 2018 – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211**

CALL TO ORDER/ROLL CALL:

Chairman Clawson: I'd like to call to order the November 28, 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 October 24, 2018 Board of Zoning Appeals meeting

A motion to approve the minutes from the October 24, 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: We have two cases in Old Business tonight that have been continued until presumably next month.

OLD 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.

Chairman Hawk: Our first case tonight is in New Business.

NEW BUSINESS

CASE 52-2018 Brian Kuhn/Applicant; Ryan Hoshor/Owner - Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9216 Ensley Lane.

Staff Presentation

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to extend the north wall to the west. The home was originally constructed 13.5' from the north property line. The new addition would be placed 14' from the north property line, resulting in a 1' encroachment.

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

Mr. Thompson: I want to inform the board that you'll see a new ordinance that was placed at your position. It was published yesterday, and it approves a change to the exception. This case will go by the new rule, but in your packet, it still has the LDO section from the old exception. Previously, the addition had to be continuous and consistent with the existing build line of the existing structure. They have removed the "continuous and consistent" criteria so there are no questions when there is a jog in the building. Many homes associations didn't like the one continuous wall. Even in this case, there is a 6" jog that makes the new addition farther away.

Mr. Munson: What are we supposed to rule on, then?

Mr. Thompson: You'll go by the new published ordinance.

Applicant Presentation:

Brian Kuhn, builder, appeared before the Board of Zoning Appeals on behalf of Ryan Hoshor, owner, 9216 Ensley Lane and made the following comments:

Mr. Kuhn: As Wade said, we are asking for a 1' side yard setback exception. The existing property has a 13.5' setback, which results in a 1' setback with the exception at 14'.

Chairman Clawson: Could you please put up the Plot Plan and point out where the addition is?

(Plan placed on screen)

Chairman Clawson: Are there any questions for the applicant? It appears that it meets the requirements of the new ordinance.

Mr. Thompson: Correct.

Chairman Clawson: And it is an exception. Are there questions? Thank you. Is there anyone here who wishes to speak for or against this application? Does someone have a motion?

A motion to approve CASE 52-2018 Brian Kuhn/Applicant; Ryan Hoshor/Owner - Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9216 Ensley Lane – 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 53-2018 Larson Building Co/Applicant; Ravi & Priti Singh/Owners - Request for a variance to the platted front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9301 High Drive.

Staff Presentation

Wade Thompson made the following presentation:

Mr. Thompson: The property owners are in the process of a tear-down/rebuild. Due to a platted 75' front build line, they are asking for a variance to construct the new structure at 65.55' from the property line. That figure is the average of the two adjacent properties, which are considered legal, nonconforming.

Chairman Clawson: Was the original build line of this 75'?

Mr. Thompson: Yes, it is a platted build line.

Mr. Dunn: As I recall, Wade, the property to the north was a recent build as well.

Mr. Larson: It was a new build, built within the last few years.

Chairman Clawson: If you want to speak, that's fine, but we need your name and address.

Applicant Presentation

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

Mr. Larson: The original house did not meet the platted build line; it was in front of the 75' platted build line.

Mr. Munson: How far in front was it? It looks like a short distance.

Mr. Larson: We are proposing a build of the new home that is 4' back from the existing home.

Mr. Munson: Is that the red line on the illustration? There is a red line that indicates 75'.

Mr. Larson: I have something that shows it a little bit better with more contrast (*shows plan*). The proposed new home is set at 65.55' back, which is the average of the homes on either side, which are both in front of the 75' build line as well.

Mr. Dunn: Since that one was a recent build, I wondered if this board approved a variance from the build line.

Mr. Larson: I don't know for sure. I was not the builder; however, to get it done, I'm sure you had to.

Chairman Clawson: I think we did.

Mr. Larson: For your information, the home to the south that you're referencing is at 62', which is also a variance to the 75' platted build line. The home to the south that is original construction is set at 69.1'.

Chairman Clawson: I presume that these were set in front of the build line due to the presence of the utilities behind the house.

Mr. Thompson: I agree. His lot even has a sanitary sewer line on the south side of the property.

Mr. Larson: We are pretty tight up on the 10' sanitary sewer easement on the side property line.

Mr. Dunn: It's a nice-looking house, by the way, Mr. Larson.

Mr. Larson: Thank you.

Mr. Munson: You cite the sewer easement as a reason that your situation is unique?

Mr. Larson: Yes, that is one of the reasons.

Mr. Munson: Could you elaborate on that? What makes your lot unique?

Mr. Larson: I think that it makes it unique like it makes the other unique. We have a 75' build line on the front property line, which every house on that side of the street is in violation of. I believe it's been a common occurrence that it has been an exception, even in the original construction. It has been an exception hence in new construction as recently at 5-6 years ago right next door.

Chairman Clawson: If you had to move back 10' to accommodate a 75' front build line, it would squeeze your construction pretty badly.

Mr. Larson: Yes.

Mr. Dunn: I didn't know the reason for this, but I can tell you that what he says is true: every house on that street is probably closer than 75'. I guess that's the reason.

Mr. Munson: I don't get the connection, but that's okay.

Mr. Dunn: I think the connection is that you can't build over the utilities; you can't build on top of the utilities. They'd have to go way back.

Mr. Larson: That wouldn't be allowed, either. We wouldn't be allowed to go beyond the utility easement and build a home in the back yard.

Mr. Dunn: So, you would be limited to a long, narrow house, basically.

Mr. Larson: Yes, which wouldn't function very well.

Mr. Munson: What are the dimensions of your lot?

Mr. Larson: It is 150' by well over 500' deep. It is 1.9 acres. It is one of the top 15 largest lots in Old Leawood.

Chairman Clawson: Are there any more questions for the applicant? This is a variance. Usually, we have problems with Uniqueness and Hardship. I presume all the cards went out to adjacent property owners. Were there any comments?

Mr. Thompson: No one has contacted for or against.

Chairman Clawson: And there is no one in the audience to discuss the case.

Mr. Larson: I forwarded an email from a neighbor that expressed support for the project. We make it a practice of clearly illustrating what the issues are in plain language. I'm not sure if you received it, Wade.

Mr. Thompson: I don't actually have that letter.

Mr. Larson: I have it if the board would like to see it.

Chairman Clawson: Are there any other questions? Then we'll evaluate the five factors. We have to vote in the affirmative on all five factors to support a motion for approval. The first is Uniqueness.

Mr. Munson: I personally have trouble seeing that it is unique.

Dr. Peppes: I have a tendency not to agree with my fellow board member. I feel that with what has happened to the street, even though there are other houses on the street that are similar, the street isn't replicated throughout Leawood like in other cases that we have seen in the past. I think these utilities are really creating a problem, and we have to show some leniency. I feel it has been met.

Ms. Farrington: Is this a two-lane or four-lane street?

Mr. Dunn: It's a broad two-lane street.

Ms. Farrington: I didn't know if it had changed or if it had always been that.

Mr. Dunn: It has always been like that. I want to say that I'm usually one of the toughest sells on Uniqueness, but I know the area well, and I see it. The placement of the utilities on lots this unique size in this area makes it unique in my opinion.

Uniqueness criterion satisfied with a vote of 5-1. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Opposed: Munson.

Chairman Clawson: Rights of Adjacent Property Owners. Wade noted no calls or letters have been received.

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. Bussing: I think strict application of the ordinance would render this lot unbuildable. I think it has been met.

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. Staff notes that neither approval nor denial would affect it.

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. Dunn: I can comment from driving by it every day. It's a very nice-looking house and fits right in with the neighborhood.

Dr. Peppes: I feel it is in alignment with the others, also. The other setbacks are in the same fashion. It doesn't stick out, except for its beauty.

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 53-2018 Larson Building Co/Applicant; Ravi & Priti Singh/Owners - Request for a variance to the platted front build line in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known

as 9301 High Drive – was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

CASE 54-2018 Larson Building Co/Applicant; Ravi & Priti Singh/Owners - 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 9301 High Drive.

Staff Presentation

Wade Thompson made the following presentation:

Mr. Thompson: The property owners are in the process of a tear-down/rebuild. Due to the elevation change (920-907 from north to south), for a front walkway and front entry garage, they will need an increase not to exceed 3' per the builder.

Chairman Clawson: Are there questions for staff?

Mr. Hawk: How does staff monitor this change in elevation?

Mr. Thompson: The plan would be approved, and they will just take their word for it that it is at the listed elevation on the plan.

Chairman Clawson: Shouldn't there be a grading plan?

Mr. Thompson: Yes, sir.

Chairman Clawson: Does staff check it?

Mr. Thompson: Yes, sir.

Chairman Clawson: Do they survey it?

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

Mr. Bussing: The grade change is on the north side of the house?

Mr. Thompson: There is one on the front that would be on the south side of the home, and then on the back.

Applicant Presentation

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

Mr. Larson: The grade falls dramatically from north to south on this property. It literally falls 13'. We have two issues. Our driveway going into the garage at the corner sticks out

of the ground 2'. The new grade is at 917, and where it meets the corner, it is 916. In this particular case is only 1' change.

Chairman Clawson: Where is the top of slab?

Mr. Larson: The top of slab is right at 917. When they worked through it, it ended up being right at the 1' mark. We're probably not looking for one here. Once we had the drainage study done, we were able to get it right at 1'. The one that we need is the one at the front sidewalk. The grade falls away 13'. In order to get a sidewalk to the front door, even though we modified the grade to stay within the guideline, it would be almost impossible to get to the front door without having steps going down and essentially walking in the basement. As we go from north to south, the grade is falling significantly. We end up with just the corner being up out of the ground 3'.

Chairman Clawson: Is the sidewalk flat, or does it drop off, too?

Mr. Larson: It's flat because the floor level of the house needs to stay flat. If it were to fall, we would go away from the floor level of the home.

Chairman Clawson: What is the level of the slab?

Mr. Larson: The sidewalk is 917, and the existing is 914, which is our 3' difference. We're asking for this variance in order to access the front door of the house.

Chairman Clawson: Are you going to have it on a wall?

Mr. Larson: A small retaining wall, yes. We'll make it out of whatever staff proposes.

Ms. Farrington: I have to clarify that the retaining wall would only be 1' because of the grade change around it.

Mr. Larson: The one on the front would be 3' just at the one spot. As it turns the corner, it would taper back into the hillside. At its absolute most, it would be 3'. We'll put a buffer of landscaping so we won't have an issue with safety. To provide ingress and egress into the home, we have to hold it up. As it goes back, the wall dies back into the grade that rises to the north. I'd say that the uniqueness of the lot is probably unparalleled with regard to grade change from north to south on the same property line. I don't know of another lot that has a 13' grade change side to side on the same property.

Mr. Bussing: The property to the south appears to be 69' away.

Mr. Larson: Yes.

Mr. Bussing: There is a driveway separating that house from the property you're working on?

Mr. Larson: Are we going to force more water down the hill?

Mr. Larson: We had a drainage study from Phelps Engineering that is going to make sure that there will be no runoff to any property. We're running it around the side, and there is drainage. These two lots have a low spot between the middle of them, so there is a natural swale. We're forcing water onto our own property. Lot coverage is essentially a non-issue. We are covering about 17% of the lot, and the allowable amount is 35% for impervious.

Mr. Thompson: I do have a copy of that study, and it does say that the proposed conditions will remain significantly under the 35% impervious area threshold; therefore, onsite retention is not required.

Chairman Clawson: Drainage is typically a concern of ours with grade changes.

Mr. Larson: I'm keenly aware of your sensitivity to it.

Chairman Clawson: Show us where your swale is.

Mr. Larson: Our grade changes from 917 to 909. Anything we drain off will get caught in the city-installed drainage because it is the lowest spot.

Chairman Clawson: Is that your property, though?

Mr. Larson: It is.

Chairman Clawson: Is there a waterway there?

Mr. Larson: Yes, there is a waterway, and the neighbors have a raised concrete driveway.

Mr. Bussing: The water is moving southwest, correct?

Mr. Larson: That is correct. When it gets into the drainage, it would run into the drainage into the east. There is a drainage area back by State Line Road. It's a natural drain that exists now. The drain itself is actually improved. The drainage right now is a 13' fall from left to right. It doesn't get any worse than that. We're going to gradually curtail that and turn it around the corner. There's not a drainage issue there now. This drainage study shows that we actually are improving the drainage. We're well within the guidelines of the impervious soil of the lot.

Mr. Thompson: (*Refers to display*) This shows where the driveway is.

Mr. Bussing: What is the structure in the back yard?

Mr. Larson: That is just writing on the paper.

Chairman Clawson: Who performed your drainage study?

Mr. Larson: That would be Phelps Engineering They're one of the best in Kansas City. The grade change we are looking for is pretty small. It is really just maybe an 8'x5' sidewalk. It is simply to allow the ingress and egress to the front door of the property.

Mr. Dunn: You're not changing the grade of the whole property to accommodate the sidewalk is what you're saying.

Mr. Larson: That is correct.

Dr. Peppes: It is really there to support the sidewalk.

Mr. Larson: That is correct. We are keenly aware of the grade change and drainage. We wouldn't ask for it if we felt it would negatively impact it. We certainly wouldn't ask for it if we couldn't prove it would be a non-issue.

Chairman Clawson: The drainage study confirmed that the change you're proposing would not impact adjacent properties.

Mr. Larson: That's exactly right.

Mr. Dunn: Honestly, it's hard to imagine how it could negatively impact adjacent properties where it is situated. The slope one way runs to a swale, and on the other side, the house is a little higher.

Mr. Larson: That is correct. There is a low spot between both.

Chairman Clawson: Are there other questions for the applicant? Thank you. This is a variance, so we have to evaluate the five factors. The first is Uniqueness.

Mr. Dunn: My worthy colleague here was pointing out a thumbnail of a 13' drop, and I think that makes it fairly unique to have to deal with that. As I said, I'm always a hard sell on Uniqueness, but I happen to know this property, and it is one of a kind in that neighborhood as well as a lot of neighborhoods. I don't have a problem with it.

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. Letters were mailed out, and no complaints were received?

Mr. Thompson: Correct.

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. Bussing: I'll take a stab at it. Once again, the hardship is that the sewage line in the back yard puts a severe limitation on the actual buildable space on this lot.

Ms. Farrington: I would agree, and I would like to add to that. If the homeowner and the builder were to build the existing floor plan, there would be no hardship; however, since they're trying to increase the value and bring a new structure to the neighborhood, with the slope on the lot, they have to change the grade unless they put back exactly what they took away, which they won't do in this situation.

Mr. Hawk: The drainage plan is much better than it is currently.

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.

Ms. Farrington: I think it has not been affected because they did the drainage study, and they showed that it will benefit this lot versus the alternative.

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. The intent is to ensure the new projects fit the property in question. It appears that the builder is making a very good attempt to fit the project on the property.

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 54-2018 Larson Building Co/Applicant; Ravi & Priti Singh/Owners - 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 9301 High Drive – 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.

MEETING ADJOURNED.