

**City of Leawood  
Board of Zoning Appeals Minutes  
December 19, 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 December 19, 2018 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Hawk

**STAFF PRESENT:** Thompson, Knight

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

Chairman Clawson: Mr. Munson and I found a couple minor mistakes. We provided those to Wade. It just involved people's names, and you have a corrected copy.

**A motion to approve the corrected minutes from the Board of Zoning November 28, 2018 Board of Zoning Appeals meeting was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: We have a number of cases tonight, so I would ask that the applicants that are presenting cases try to keep the comments down to three minutes so we can get through the meeting in a reasonable amount of time. We have two cases of Old Business that have been continued until, presumably, the next meeting.

Mr. Thompson: Yes, and they will go in the next meeting. I have talked to the property owner, and he has had the survey done, so we know exactly what he's asking for now.

**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 Clawson: The cases before us tonight are in New Business.

Case 55-2018 – Mark Olson/Owner – Request for an exception to the side yard setback (front) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2020 W. 96<sup>th</sup> Street.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remodel the home, which includes an addition to the east side of the home on the front side. The home was originally constructed 10.1' from east property line. The board granted an exception for a 3' encroachment on September 26, 2018. They are now requesting a 4' encroachment to put the new addition 11' from the property line.

Chairman Clawson: And this qualifies for the exception?

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there any questions for staff? These are two different cases. It looks like there is a bump-out, and this case is in front of that; the other case is behind it.

Mr. Thompson: Yes, sir. I really wanted to make it one case, but because of the bump-out, there is such a division that it required a front and a rear exception.

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

**Applicant Presentation:**

Mark Olson, 2020 W. 96<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Olson: We got the exception for 12', and that's basically where the building sits in the front. When we measured the near tile, it's about 4" thick, which encroaches into that agreed-upon 12'. That is why we are back, asking for the 11' there; I want to have the allowance for the veneer. Then, in the back, I had an existing deck, and I thought it would be the same line as the front. It was my misunderstanding. Wade let me know we needed to have another hearing for that, and so we had that drawn into the plans and made it clearer for everybody.

Chairman Clawson: What is that bump-out?

Mr. Olson: That is the fireplace at the current house. The fireplace will be removed because it is pulling away from the house. We've had it inspected by an engineer, and I could leave it, but as it keeps pulling farther and farther away from the house, we've been wondering if we spend this much money remodeling with the fireplace pulling away. The

bump-out could probably not be there when we're done because we're going to get rid of the fireplace. That hasn't been fully determined yet.

Mr. Munson: The cross-hatched area represents the complete construction you're doing, correct? I'm assuming it represents the encroachment.

Mr. Olson: Yes, that's basically the line of the wall that we're adding on to the front kitchen and then the wall of the back porch.

Mr. Thompson: Even if they do remove the fireplace, there will still be a bump-out from the main house because it is 10.1' from the property line. The new additions are going to be 11' from the property line.

Chairman Clawson: This case here is for where the arrow is pointed.

Mr. Olson: In the front and the back because originally, we got the front done at 12', and it needs to be 11' because the veneer is 4", and that puts it at 11'4". Then the back is where the current deck is. The back screened-in porch wasn't drawn on the drawings that we had the previous approval for. When we drew in the drawings of the screened-in porch in the back, that was also included in this as well. I thought, since the deck is currently there, I would be grandfathered in. Well, anytime you build anything, it is supposed to be 15' unless you have a hearing.

Ms. Farrington: Could you put up the map that shows the existing house versus the new construction? (*map placed on overhead*).

Mr. Olson: The hatched portion on the back wasn't there before in the prior agreement. The hatched portion on the front was there, but the 11' was granted at 12'. With the thickness of the veneer, it will be 11'8". The reason I am asking for 11' is I don't know whether we will go with another 1" thick veneer, and I don't want to have to come back to do this again over 1" of veneer.

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

**A motion to approve Case 55-2018 – Mark Olson/Owner – Request for an exception to the side yard setback (front) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2020 W. 96<sup>th</sup> Street – was made by Munson; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

CASE 56-2018 – Mark Olson/Owner – Request for an exception to the side yard setback (rear) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2020 W. 96<sup>th</sup> Street.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remodel the home, which includes an addition on the east rear side of the home. The home was originally constructed 10.1' from the east property line. The board approved an exception for a 3' encroachment on September 26, 2018. They are now requesting a 4' encroachment to place the addition 11' from the east property line.

Chairman Clawson: This is for the area marked #2 on the plan, correct?

Mr. Thompson: Yes, it is the deck.

Chairman Clawson: Are there additional questions for staff? Mr. Olson, do you have any further comments?

Mr. Olson: No, sir.

**A motion to approve CASE 56-2018 – Mark Olson/Owner – Request for an exception to the side yard setback (rear) in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2020 W. 96<sup>th</sup> Street – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

CASE 57-2018 – John Gyllenborg/Builder; Ken & Ellen Paulus/Owners – Request for a variance to the rear build line in accordance with the LDO, Section 16-2-5.3 in an R-1 District for property commonly known as 10412 Howe Lane.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition on the rear of the home that would encroach the rear build line by 8'. Due to a shift in the property line, only the southwest corner of the addition will need the variance. It is the dark black area on the map.

Chairman Clawson: When this house was built, was that the original back property line?

Mr. Thompson: It's hard to say. They are saying it was. In an R-1 district, it is 35'. It's possible it could have been.

Chairman Clawson: You've given the criteria here about the rear setback when it's a deep lot. It gives the formula for calculating that.

Mr. Thompson: Yes, that comes from the building official, but it's spelled out in the LDO.

Chairman Clawson: Are there questions for staff?

Mr. Thompson: I think I said 35'; it's actually 30' for the normal rear setback in R-1 districts.

Chairman Clawson: For this case, the build line is 110' by my calculations. You listed it as 109.55'.

Mr. Thompson: They actually get credit because it's 2' behind the front build line.

Chairman Clawson: Is the applicant here?

**Applicant Presentation:**

John Gyllenborg, Gyllenborg Construction Company, 3701 W. 106<sup>th</sup> Street, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Gyllenborg: I have homeowner Ken Paulus and architect of record Weston Coble with ESC Architects. I'm the original contractor of the home. Mr. Paulus is the original homeowner. I built five of the homes in the Mission Farms subdivision, of which this is one. In 2003 when we started construction, the setbacks were 35'. This mathematical formula to calculate the new rear setback has come about since that time. When Ken Paulus came to us to design this and Weston and I made the contacts, the homes association gave approval for this, and NSPJ, the architects who deal with approval for the Mission Farms subdivision, also signed off on this plan. I submitted for a permit application, and Roland Grigsby contacted me about two weeks later to let me know we had an issue. Weston has been on the forefront of this, working the calculations with staff. I'd like him to address that if you would allow.

Weston Coble, Elswood, Smith, Carlson Architects, 7133 W. 95<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Coble: The original platted setbacks for this were 50' front yard with 15' side yard and 35' rear yard. This home is set at 52', so that was referenced by staff as the additional 2'. When we work our calculations, we get 109.5' for the rear yard setback. In this case, I did some comparing to some of the other neighbors. The neighbor to the south at 10416 Howe is at roughly 95' feet currently.

Chairman Clawson: Do you mean the rear build line?

Mr. Coble: Based off the information I had available from AIMS, the best I could calculate is their house is set at 95', and the house farther south of that is set at 106' from the house to the property line. I didn't have surveys for those. We are asking for 8' in that southeast corner of the screened-porch addition. I believe it totals roughly 80 square feet, and again, we are roughly 110' from the nearest property line, which happens to be Mission Road. The back yard is heavily landscaped. I believe there would be little to no indication to anybody that the house would be encroaching farther back than what it was initially intended to be.

Chairman Clawson: Do we know when this change to the LDO was made?

Mr. Thompson: I think it was 2013.

Mr. Munson: Is this a through lot?

Mr. Thompson: Technically, it would be a through lot, yes.

Mr. Munson: And the front yard setback would be on Mission or on the other street?

Mr. Thompson: It would be on Howe. The back yard backs up to Mission.

Mr. Coble: To clarify, per the zoning, we only need a 30' platted front yard. We have a 50' platted yard. I believe if they knew the intentions were that we would have a 110' rear yard setback, these homes probably would have been moved farther forward to allow for more building area in the back, had they anticipated that the rear yards were going to shift back an additional 70' roughly per home.

Chairman Clawson: Are there other questions? This is a variance, so we have to evaluate the five factors. Uniqueness and Hardship are a couple that we frequently have trouble with. Could you address those, please?

Mr. Coble: The homeowners would like to add a more substantial outdoor living area to the home, as times have changed and people do a lot more outdoor living.

Chairman Clawson: This is an addition, correct?

Mr. Coble: This is a screened-porch addition. I believe we are enclosing a little bit of the existing porch into the home. I don't have the exact numbers in front of me. Then, we're adding on an additional roofed area that would house screened seating and a grill area. This is the only location on the house that we could add on to get that backyard feel into the patio. We had room on the side, but obviously, the side is not where we want to build. The back yard is where we chose to add the addition. It makes logical sense to the house layout, and obviously, it makes sense that we have 125-130 feet to the rear yard setback. In the design, we went through a couple iterations, and this is where we ultimately chose to add our addition.

Mr. Munson: Does the property sit above Mission Road? Is it elevated above Mission Road?

Mr. Thompson: It is, roughly 4'-5'.

Mr. Munson: I'm thinking in terms of what people would see when they are driving down Mission Road.

Mr. Coble: I would say it is almost unnoticeable to the naked eye.

Mr. Gyllenborg: If I may address the other point, this is also an expansion of the existing kitchen and breakfast space. Lifestyles have changed dramatically over the last 12-14 years, and so there is an incorporate expansion into the kitchen and breakfast room as well as the addition of the screened-in porch with some outdoor living space. As far as visibility from Mission Road, if you drove by this property right now, you would not be able to see the back of the house because of the heavy landscaping.

Chairman Clawson: Getting back to the five factors, could you address Hardship?

Mr. Coble: In what capacity?

Chairman Clawson: That is one of the factors we have to address in order to justify a variance.

Mr. Coble: I would say when the homeowners originally envisioned their home on the property, the house was not situated at that time in a way that would allow them to expand in the future. They may have made other choices at that point. I don't know how to phrase this.

Mr. Gyllenborg: There are two factors from my perspective as a contractor. Maybe Mr. Paulus would like to address this. One would be that we tried to incorporate an earlier design that was going to encroach on the side yard setback with the neighbor to the north, and that was deemed unacceptable. The second factor would be that this did not come up to anyone's knowledge on this side of the aisle, if you will, until plans were submitted. Mr. Paulus has considerable expense in survey work, architectural fees, and whatnot at this point. I personally would deem that as a hardship, and I would think he would, too. That's how I would respond to that question.

Mr. Coble: I would also say that he lost a substantial portion of the buildable area on his lot.

Mr. Munson: As a result of the change in regulation?

Mr. Coble: Of the new calculations and zoning.

Ms. Farrington: I'd like to ask a couple questions regarding that. When we look at Hardship, we consider if it could be constructed within the statutes that are set. We realize when it was originally built and designed, there was one setback, and then it changed. Then the homeowner decided to add an addition. You said you considered expanding to the north. When we look at your plan, it shows that you could expand to the north, but you found opposition to the homeowner to the north, and that it why you chose to expand to the west?

Mr. Coble: And the homeowners association.

Ms. Farrington: If we approve this, there has to be some sort of hardship. We're asking what it is.

Chairman Clawson: For example, why couldn't you slide it to the north? It would be almost away from the footprint of the house if you did that.

Mr. Coble: That is correct. Architecturally connecting the two would not be as visually pleasing, for one. The connectivity and flow of traffic between the two spaces would be lost. You're talking about considerable changes to the flow of what the clients are asking for.

Chairman Clawson: The other factor is Uniqueness of the Property. There are other properties in that area that are probably similar size, I would presume.

Mr. Coble: That is correct.

Chairman Clawson: It is a very deep lot. Are there any other questions for the applicant? I think we understand the situation. Is there anyone in the audience who wishes to speak for or against this application?

Ken Paulus, 10412 Howe Lane, appeared before the Board of Zoning appeals and made the following comments:

Mr. Paulus: I have gone to a pretty good expense to berm the back of the property line and putting year-round trees. They have gotten taller and taller that I have really good blockage back there. I have spent a lot of time and effort to make sure that's been done. As far as hardship goes, we looked at a couple different ways. This makes for the best flow and adds to the look of the back of the house. Thank you.

Chairman Clawson: Thank you. Is there anyone else who wishes to speak for or against this? This is a variance, as we indicated earlier. We have to look at the five factors, and we will vote on each one. To support a motion for approval, we have to vote in the affirmative on each of them. The first is Uniqueness of the Property.

Mr. Bussing: I would note that this property seems unique in that the rules of the game have changed since the property owner bought it. The city imposed the change, which it obviously has the authority to do. I don't recall a time since I've been on the BZA where the city has changed the ordinances and it has affected the ability of the homeowner to make changes to the home as I have here.

Mr. Munson: I would concur. I think it's the action of the city that cause the hardship not the individual owner.

Dr. Peppes: This is a through lot, and we've seen numerous cases that have come before us. We see a tremendous number of through lots. It's an issue, and it is usually something

we have to deal with that the setbacks are a problem. It has to be addressed. I think that is also a reason it has been met.

**Uniqueness criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

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

Mr. Thompson: That is correct. We have received no comments whatsoever.

Mr. Munson: It would seem he is actually protecting the rights by putting it in the rear instead of the side.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Mr. Dunn: I would simply note that, while I often hesitate on this one, it is difficult to show a substantial hardship. I don't know that the ordinance requires a substantial hardship; it just requires a hardship. I see it being so because if we were to disapprove this, they would have to build it in a way that would make it less functional and usable for the family.

Ms. Farrington: I tend to agree. I also want to bring up the fact that if it was designed in a different manner, there could be a hardship for the neighbors. It could be redesigned, but it falls in with Mr. Dunn's statement of it not being the function the homeowner is trying to achieve.

**Hardship criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare. Staff notes that denial or approval shouldn't affect this in any way.

Mr. Munson: I concur.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: They are in tune with that particular requirement.

**Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

**A motion to approve CASE 57-2018 – John Gyllenborg/Builder; Ken & Ellen Paulus/Owners – Request for a variance to the rear build line in accordance with the LDO, Section 16-2-5.3 in an R-1 District for property commonly known as 10412 Howe Lane – was made by Farrington; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

CASE 58-2018 – Judy Donnelly/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 8500 Reinhardt Lane. **CONTINUED**

CASE 59-2018 – Curtis M. McGeeney/Owner – Request for a variance to the front yard build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3 in an R-1 District for property commonly known as 11701 Brookwood Street.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has installed a fence that encroaches the 35' build line. The fence was constructed 28'4" from the build line at its closest point. A variance for 6'8" is needed to allow the fence to remain.

Chairman Clawson: Questions for staff?

Mr. Munson: You said it was constructed without a permit or with a permit?

Mr. Thompson: It did have a permit; they just didn't follow it.

Mr. Munson: What is the reason they didn't follow it?

Mr. Thompson: That, I can't answer.

Chairman Clawson: Are there any other questions for staff?

### **Applicant Presentation**

Curtis McGeeney, 11701 Brookwood Avenue, appeared before the Board of Zoning Appeals and made the following comments:

Mr. McGeeney: From the northeast corner, it is 35' from the side property line. The fence company installed it so it went straight, maybe inadvertently, instead of at an angle. In order to run parallel with the sidewalk, it would be installed at an angle. It is 35' off the back corner currently, but it is only 28' off the front or the northwest corner.

Chairman Clawson: Is there a plot plan?

Mr. Thompson: *(Placed plan on overhead)*

Mr. McGeeney: The issue with the property line is because they made the fence line straight as opposed to running it at an angle. It makes sense from an aesthetic standpoint because otherwise, along Brookwood, which is the main street of the neighborhood, the fence runs at a tangent.

Chairman Clawson: The fence is not parallel to the property line.

Mr. McGeeney: It is parallel to the home; it is not parallel to the side.

Chairman Clawson: Or the property line.

Mr. McGeeney: Correct.

Mr. Munson: What kind of fence is it?

Mr. McGeeney: It is black wrought iron.

Mr. Munson: Who installed it?

Mr. McGeeney: Schlaegel?

Mr. Munson: I'm asking these questions because would it be possible for that contractor to come back and install it in the right location?

Mr. McGeeney: It is possible, but that is part of the hardship. The issue for me is there are a lot of dense pine trees. You can't see the fence from the sidewalk. Moving the northwest corner, based on where the existing patio and trees are, eliminates a big fraction of the yard space. What you can't see is to the south is a fenced-in pool. There's not a whole lot of yard space. The 28' line would be about 1' on the other side of the basketball hoop.

Dr. Peppes: Wade, referring to the picture you have there, from the street to the fence is the 28' portion? It is the back end of the lot that is 35'?

Mr. Thompson: It would be the front half. The portion you can see is 28' from the property line.

Dr. Peppes: At 28', it doesn't cover this drive completely anyway, so five more feet to the right is going to put it where it needs to be.

Mr. Thompson: Approximately.

Ms. Farrington: Can you put that map back up and show us?

Mr. Thompson: This is the actual map that the building official drew out for the contractor when he came in to pull the permit. It was dated 8/13/18. He knew exactly where he could and could not put the fence.

Ms. Farrington: Was the red line where the fence was supposed to be?

Mr. Thompson: Yes, ma'am.

Ms. Farrington: Where was it put?

Mr. Thompson: The black line is approximately where the fence is today.

Ms. Farrington: The only thing in question is moving on the one portion.

Mr. Thompson: It is just the northwest portion of the fence. The back portion of the fence is 35'4" from the property line.

Ms. Farrington: The frontage is 29'?

Mr. Thompson: Roughly, yes. It is slightly more than 28'.

Chairman Clawson: Is the black line where the fence is now?

Mr. Thompson: Correct.

Mr. McGeeney: The back line is already in accordance with the build line.

Ms. Farrington: We're looking at a 6' difference of taking that front edge off the driveway and moving it to be at an angle to meet the code.

Mr. Thompson: Yes.

Mr. McGeeney: To conceptualize it, the front end would come out of the ground, and it would swing 6'.

Chairman Clawson: Are there any other questions for the applicant?

Mr. Dunn: What makes this unique?

Mr. McGeeney: What I think makes it unique is the angle formed by 117<sup>th</sup> Street and Brookwood. It is not a 90-degree angle. It opens up wider than that at probably 120 degrees. The majority of the streets in the area all form a nice 90-degree angle, so they don't have to deal with this potential awkwardness.

Ms. Farrington: We come across lots like this quite a bit where it's a corner lot with two streets intersecting and a through lot, so it has a side setback and rear setback that have to

be dealt with. Purchasing a home that is new to you and installing a fence comes with those special requirements of dealing with a corner lot. We have to look at those rules that are set in place. It's great that the fence is wrought iron and keeps the openness and spirit and intent of the LDO, but for us, it makes it really hard because we see lots like this come before us again and again. If we approve a deviation, it is setting a precedent and doesn't follow what we're supposed to uphold. You have to have some sort of uniqueness to the property.

Mr. McGeeney: Is the angle not unique? I know it was preexisting.

Ms. Farrington: It would be one situation if this fence existed when you purchased, but this is a new fence that you're installing. The irregular shape of the lot has always existed. There are many lots in Leawood that are corner lots with a slight angle.

Mr. McGeeney: I guess this image references that most within the vicinity of my home don't have the irregular shape. Although it is pre-existing, it is unique.

Chairman Clawson: It appears that the size of this lot is similar to other lots in the area.

Ms. Farrington: There are other situations where two streets intersect with corner lots and an angle. The situation does occur in Hallbrook in many locations.

Chairman Clawson: Hardship is another topic we address. Can you discuss that?

Mr. McGeeney: There are two perspectives. One is my personal hardship, which is the intention of fencing in the area as a safe place for the kids and the dog. There is a separate fence around the pool, so that's not a safe area. If we move the fence in, we're essentially fencing in our patio, which doesn't create any yard space. Additionally, if I'm not granted the variance, the fence will be angled and will look awkward.

Mr. Munson: But that would be in the eye of the beholder.

Mr. McGeeney: Correct, but it would be a hardship nonetheless.

Chairman Clawson: Are there any other questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? I trust that all the cards went out to adjacent property owners with no responses?

Mr. Thompson: That is correct.

Chairman Clawson: As a variance, we must evaluate the five factors. The first is Uniqueness of the Property.

Mr. Munson: I personally feel he has not met the requirements in this particular situation.

**Uniqueness criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Rights of Adjacent Property Owners. Wade indicated no calls or complaints.

Mr. Thompson: That is correct.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Ms. Farrington: This one is hard. I understand the homeowner's frustration with wanting to have a straight line. We don't look at aesthetic for this. The fence was not built the way it should have been built. The homeowner can go back and have the builder correct it. That shouldn't be a hardship to them because it has to be met.

**Hardship criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial should not have any effect.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Ms. Farrington: It has been met with the openness and style of the fence. I think once the homeowner realizes once it is moved to meet the setback, there are some beautiful evergreen trees that screen the area, so it won't be noticeable.

**Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

**A motion to deny CASE 59-2018 – Curtis M. McGeeney/Owner – Request for a variance to the front yard build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3 in an R-1 District for property commonly known as 11701 Brookwood Street – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

CASE 60-2018 – Martin & Elena Bates/Owners – 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 16-4-9.3 in an R-1 District for property commonly known as 13800 Fairway Street.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to complete the enclosure of the rear yard with a 4' fence. They need a variance of 35' to be able to continue the fence that belongs to the neighbor. This is a corner lot, and the neighbor's property is considered a through lot.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Wade, you said that 13800 is a corner lot. And the neighbor's property?

Mr. Munson: Through lot.

Mr. Dunn: Wade, would you elaborate a bit on the note about the variance that was received in 2010?

Mr. Thompson: It would have been a variance for a wrought iron fence placed at the rear property line. It is a through lot. That house is on another street, but it does back up to a street that they are on the corner of. This is a corner lot going before you now.

Mr. Munson: What is the other street on this corner lot, and which side of the lot is it on?

Mr. Thompson: It is on the 138<sup>th</sup> Street side on the northeast side (*points to the house on the map*).

Chairman Clawson: There is a 35' build line there.

Mr. Thompson: For the corner lot.

Chairman Clawson: And on the pie-shaped lot, you're saying there is a fence long the back.

Mr. Thompson: Yes, but it would have been a back yard. What I like to explain to people whenever they have a corner lot is that they basically have two front yards, and the city is not going to allow a fence in the front yard.

Chairman Clawson: The pie-shaped lot is a through lot, and they had a variance to put the fence there.

Mr. Thompson: The fence is about 1' off the sidewalk, and that is where the applicants want to put their fence. They want to continue the fence that is there.

Dr. Peppes: But that is the property line.

Mr. Thompson: For both the through lot and the corner lot.

Chairman Clawson: This would be an encroachment of how much?

Mr. Thompson: 35'.

Ms. Farrington: I have a question about the fence the homeowner currently has. Was a variance granted on that property to build on the build line?

Mr. Thompson: It was granted to be put on the rear property line, not the build line.

Ms. Farrington: That was approved at an earlier date?

Mr. Thompson: 2010.

Mr. Bussing: Does the house to the north have a fence? It's a through lot as well.

Mr. Thompson: It does not. Currently, there is only one fence there, and they received a variance. It's about 1' off the sidewalk.

Mr. Dunn: I don't suppose we have any information as to why that variance was granted, do we?

Mr. Thompson: I don't have that with me.

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

### **Applicant Presentation**

Elena Bates, 13800 Fairway Street, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Bates: As Wade explained, we would like to continue with an iron fence running from our adjacent neighbor down to our lot, coming into the house.

Ms. Farrington: What type of fence?

Ms. Bates: It will be the exact fence that was built on the adjacent neighbor. It will be the same fencing company.

Chairman Clawson: What is the material?

Ms. Bates: Wrought iron.

Mr. Thompson: There's a picture on your monitor of the current fence.

Ms. Farrington: So, it wouldn't be a privacy fence; it would be an open wrought iron fence.

Mr. Bussing: The lot to the north of the lot in question has a fence, I assume, along that southern property line, coming away from the street?

Mr. Thompson: Yes, that yard is completely enclosed.

Mr. Munson: The front yard on the property to the northeast is how far from the street? Where is the fence located there?

Mr. Thompson: It is probably 75'.

Ms. Farrington: There is a photograph of the back of the homeowner's property (*photo displayed*). The homeowner is to the left on this photograph. There is another picture that shows the fence stopping right where there is a utility box. Because it juts out, that is difficult to connect the fence.

Mr. Thompson: To be honest, I don't know whose property that electrical box is on. It's possible that it is on the neighbors' property and they just stopped the fence short, but I don't know without a survey.

Dr. Peppes: Do we have an aerial picture of where the fence should be at 35'?

Mr. Thompson: I don't have one. You can see the build line on this (*displays picture*).

Mr. Dunn: As we noted in the last case by implication, it isn't whether we think it's a good idea or not; it is whether it meets the criteria. I am struggling with finding what is unique about this property. I am soliciting the help of my fellow board members to understand what might make this unique. I'm trying because it seems like a good idea, but we're not here to decide good ideas; we're here to apply the law.

Chairman Clawson: The fact that there's a 2010 variance is part of it, but things change in eight years, and the LDO has been modified since then. I forget which provisions have changed, but some have. We don't know what was going through the minds of the board members then.

Mr. Dunn: I'm certainly open to any ideas for what makes this unique. I just don't see it.

Chairman Clawson: Could you put up the plan of the whole area? I want to look at the lot size. Maybe you don't have one.

Mr. Thompson: (*displays plan*) You can tell the lots on the north side of 138<sup>th</sup> are considerably smaller. All the lots in the neighborhood are quite a bit bigger.

Chairman Clawson: Are there fences on the other side of 138<sup>th</sup>?

Mr. Thompson: There are a few, yes. They are mostly wood picket fences. Their lot is 5/8 acre.

Chairman Clawson: There are some odd-shaped lots in this area.

Mr. Thompson: The home that received the variance is an odd-shaped lot.

Mr. Bussing: There might be an argument to be had that this is a corner lot adjacent to a through lot, which creates the very issue we're addressing here with trying to line up the fence. Having said that, across the street is a corner lot adjacent to a through lot. How unique does unique have to be?

Chairman Clawson: Are there other comments or questions? Is there anyone in the audience who wishes to speak for or against this application? If not, this is a variance, and we need to evaluate the five factors. We have to vote on each in the affirmative before we can support a motion for approval. The first criterion is Uniqueness of the Property.

Mr. Bussing: I would suggest that this lot is unique due to it being a corner lot adjacent to a through lot that has a fence approved with a variance. It was built according to the permit.

**Uniqueness criterion not satisfied with a vote of 2-3. For: Bussing and Munson. Opposed: Dr. Peppes, Farrington, and Dunn.**

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

Mr. Thompson: Yes, and no comments whatsoever.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Hardship.

Dr. Peppes: I don't think this has been met just because a fence can still be built even though it's not going to be right where the sidewalk is.

**Hardship criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial should not affect this.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

Chairman Clawson: Spirit and Intent.

Mr. Dunn: I don't know what happened with that other fence next door, but fences in general are scrutinized fairly closely in Leawood. I've got to think that putting one right on the edge of the property like that would be contrary to the spirit and intent.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

**A motion to deny CASE 60-2018 – Martin & Elena Bates/Owners – 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 16-4-9.3 in an R-1 District for property commonly known as 13800 Fairway Street – was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

CASE 61-2018 – Bichelmeyer Renovations; Comfort Care/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 9825 Overbrook Road.

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 6' tall privacy fence. The fence is being requested to provide a safe area for the clients that live in the home. The home serves clients with dementia, and they could climb a 4' fence.

Mr. Munson: Are you aware of the age of the patients?

Mr. Thompson: I would assume they would be 65+.

Mr. Munson: To me, that would be a factor as to whether or not you could climb any fence.

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

### **Applicant Presentation**

Wanda Dugan, owner and operator of Comfort Care Homes, 10205 Howe Drive, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Dugan: To speak to your comments about a 65-year-old climbing a fence, I've chased an 80-year-old over a fence before. Unfortunately, with the disease process of Alzheimer's and dementia, often, they are very healthy individuals. They don't get the heart issues and things like that. They can be very athletic.

Mr. Munson: It just seems to me that a 6' fence would be a struggle for practically anyone who isn't in great condition or an athlete, much less someone who's hindered.

Ms. Dugan: You're right; a 6' fence would be, which is why we are requesting it.

Chairman Clawson: What type of fence are you proposing?

Matt Bichelmeyer, Bichelmeyer Renovations, 10608 Widmer Road, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Munson: What material is it?

Mr. Bichelmeyer: It's a treated ACQ fence.

Mr. Thompson: It will be a wood privacy fence.

Chairman Clawson: It meets the requirement for a fence height exception. It's going to be located on the property line.

Mr. Thompson: Yes; it's a standard lot.

Mr. Munson: This is in a residential area, correct?

Mr. Thompson: Yes, sir.

Mr. Munson: Is a Special Use Permit required for this particular activity?

Mr. Thompson: I don't believe so. I believe they can put this type of home anywhere.

Mr. Munson: My question is generated by the question that comes up about how it affects adjacent property owners.

Ms. Farrington: Does the property currently have a fence?

Mr. Thompson: This property does not, but there are several fences that belong to other homes.

Ms. Farrington: Are they all 4' fences?

Mr. Thompson: It appears they are, yes.

Ms. Dugan: There was a rusted chain link fence that we recently pulled from our property.

Mr. Dunn: For reference purposes, is the fence being proposed similar to those we often approve for privacy for swimming pools?

Mr. Thompson: Yes, sir.

Chairman Clawson: Other questions for the applicant? Thank you.

Ms. Dugan: You brought up the swimming pool. One of the things we've done for the residents' home is to create an ADA ramp so they will be able to access the back yard. This increases their ability to get out and garden or exercise. That is part of the reason for the privacy fence. Additionally, neighbors have dogs. A tall man or woman with dementia and judgment restrictions with their brain disease could reach over a shorter fence to try to pet a dog or anything else. That's something I'd like you to consider.

Mr. Thompson: The picture on the screen shows a fence in the rear of the yard. Did you remove that one as well or just the ones on the front?

Ms. Dugan: That one is still there because the neighbor to the back has some dogs. I'm sure they wouldn't want us to just take that fence.

Chairman Clawson: Would your fence be similar to the wood fence in the picture?

Mr. Thompson: That picture was a double-sided picket. They are requesting a standard, one-sided fence with no gaps.

Chairman Clawson: The only issue with that is if you have rails on the bottom or top, it would provide good access for foothold to climb over a fence, even a 6' fence.

Ms. Dugan: That's why we are doing the staggered fence. There is a fence that enclosed old pool equipment, and it is coming out. There is a pool, but it is buried.

Mr. Munson: How will this be protected from wind?

Mr. Bichelmeyer: Basically, we pour it into concrete and secure it in the concrete.

Mr. Munson: If you drive around Leawood now, you can see what happens to that kind of fence.

Mr. Bichelmeyer: We usually dig our piers a little bit bigger than the standard 8" pier so that they are a bit stronger. We do a shadowbox style that is enclosed on both sides to handle some of the wind.

Ms. Dugan: There is currently another home that the Alzheimer's residents live in at 9833 Overbrook. It is just on the other side of us. It has the same setup with a walking path and a 6' fence.

Chairman Clawson: Any other questions? Thank you.

Mr. Thompson: You're saying it will be a shadowbox and not a privacy fence.

Mr. Bichelmeyer: Correct.

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

**A motion to approve CASE 61-2018 – Bichelmeyer Renovations; Comfort Care/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 9825 Overbrook Road – was made by Dr. Peppes; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.**

*MEETING ADJOURNED.*