

**City of Leawood
Board of Zoning Appeals Minutes
January 23, 2019 – 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 January 23, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

MEMBERS PRESENT: Munson, Dr. Peppes, Clawson, Hawk, Bussing

MEMBERS ABSENT: Dunn and Farrington

STAFF PRESENT: Thompson, Knight

APPROVAL OF MINUTES: Approval of the minutes from the December 19, 2018 Board of Zoning Appeals meeting

Mr. Munson: On Page 2 at the top, it says Chairman Hawk, and it should be Clawson.

A motion to approve the corrected minutes from the Board of Zoning December 19, 2018 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Chairman Clawson: Our first case tonight is in Old Business.

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.

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.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to install a 6' tall fence/screen on a portion of the south property line of the home. The fence will be 81' long and serve as a screen between their home and the pool area of the home next door to the south.

Chairman Clawson: Are there any questions for staff?

Mr. Hawk: Does the pool have a fence around it?

Mr. Thompson: Yes, but it belongs to the neighbor.

Dr. Peppes: What is on the north side?

Mr. Thompson: It looks like a variation of some fences. There are some split-rail and chain-link fences.

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

Applicant Presentation:

Judy Donnelly, 8500 Reinhardt Lane, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Donnelly: I've lived there since 1992, and we have a split-rail fence around our back yard. To the south of me, our neighbors have a pool and a driveway. We've tried planting large trees, and we've lost a lot of trees there. I have some sparse ones. We've tried to landscape, but we're interested in a privacy screen just in that portion of the yard between my yard, her driveway, and her pool. I've spoken to her about it, and she thinks it's a good idea, too. She has a similar privacy fence on the south side of her property between her pool and the neighbor to the south.

Chairman Clawson: Does the board have questions for the applicant?

Mr. Thompson: As you can see, on the front of her home, she has some wrought iron on both sides, and then the split-rail fence is along the side.

Mr. Munson: Point that out on the Plot Plan.

Mr. Thompson: (*demonstrates on the monitor*) The neighbor with the pool has some chain link for a pool barrier.

Mr. Munson: Where would the applicant's fence be?

Mr. Thompson: (*demonstrates on the monitor*)

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

A motion to approve 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 – was made by Bussing; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

NEW BUSINESS:

Case 01-2019 – Dwayne Hodges/Contractor; Tim Tholen/Owner – Request for a variance to the required side yard setback for the placement of a garage in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2028 W. 95th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner is remodeling the home, which includes converting an existing garage into living space and constructing a new attached garage that would be placed 10 feet from the west property line.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: I see a 23' setback now without the garage addition. Is that right?

Mr. Thompson: No, the addition is 23 feet, so it would be 23 feet moving to the west.

Dr. Peppes: So now, it is 33 feet between, and the ordinance allows for 15 feet.

Mr. Thompson: Yes.

Mr. Hawk: Is that going to affect the large tree in the background?

Mr. Thompson: It could very well affect it, yes.

Chairman Clawson: This lot is –

Mr. Thompson: It's narrow and deep.

Mr. Bussing: Do we know the actual setback on the house to the west?

Mr. Thompson: I do not.

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

Applicant Presentation:

Tim Tholen, 2028 W. 95th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Tholen: My current garage has a side entrance from the west. The vehicles I drive cannot get into the garage. I've never been able to do so since I've lived in the house. The goal is to add on to the existing house going to the west and then turn the door so the cars pull in directly up the driveway. I currently can't make the turn.

Mr. Munson: What kind of vehicles are you driving?

Mr. Tholen: I drive an F-250, and then I have a Ford Escape. That one can sort of get in there, but I have no storage. I also have motorcycles.

Chairman Clawson: Have you investigated other alternatives so you could still meet the requirements of the LDO?

Mr. Tholen: In terms of different garage structures?

Chairman Clawson: Alternative layouts for your garage.

Mr. Tholen: I have not investigated alternative layouts.

Dr. Peppes: What about a rear entry? With all that property in the back, you could have a nice, big turnaround there and come into it. It has a 33' setback now, and you want to encroach on a 15' setback. You don't have width, but you have space in the back.

Mr. Tholen: (*referring to monitor*) There is a big tree. There is a drive-through gate that I want to maintain. If I build out even to the 15' line, I still will run into the tree. I won't be able to have a rear entry. Then the other side has brick patio, deck, and an entrance to the house. I can't go through the rear without impacting the tree.

Chairman Clawson: Are there other questions for the applicant?

Mr. Bussing: Wade, do you have an AIMS map of this property?

(Map displayed on monitor)

Chairman Clawson: There are several lots in here that I'm guessing are about the same size; is that correct?

Mr. Thompson: Yes, there are three right there together.

Mr. Bussing: It would appear that there is quite a bit of distance from the house to the west and this gentleman's property. There might be a patio there.

Mr. Thompson: I did an approximate measurement off AIMS, and it was about 54 feet.

Mr. Bussing: To the house and not the patio?

Mr. Thompson: Correct.

Chairman Clawson: A detached structure would not be allowed.

Mr. Thompson: Exactly.

Mr. Munson: How much space between the tree and the side property line is there?

Mr. Thompson: I would say it's probably about 30 feet.

Mr. Munson: So, there would be room for a driveway back through that area?

Mr. Thompson: Probably. It could get into the critical root zone for that large tree. Putting another structure or even a driveway could cause damage to the tree root system unless it was blacktop, which is more porous.

Chairman Clawson: Additional questions for the applicant? This is a variance, so we have to evaluate the five factors. The ones we usually have trouble with are Uniqueness of the Property and Hardship. Uniqueness means we must prove that the property is unique for the entire area. That is the one we'll have trouble with because there are other lots very similar to yours in terms of width and depth. Could you address that?

Mr. Tholen: The uniqueness of my lot? Well, as you can see, it's narrow and very deep. The tree is the important part to me. It provides most of the shade for the back yard and the house. Having to make adjustments without impacting that tree is what is most important to me as well as improving the aesthetics of the house. If you look at the house, you'll see a front bedroom with a front peak that faces out onto 95th Street, and then it is just one big, flat, expansive roof. The goal would be being able to turn that and get full effect and full use of the setback, even to the 10' mark. That would make a better appearance of the house. I just want to make the house look more uniform.

Mr. Munson: Let's go back to the illustration. I'm trying to figure out how the tree sits in relation to the house and what you're trying to do.

Mr. Thompson: (*demonstrates on the monitor*) That is just an estimation.

Mr. Tholen: In terms of the location of the fence and gate, there is a drive-through area that a previous owner bricked in. The edge of that brick is about 2-3 feet from the edge of the tree. From the tree to the fence is maybe 4-5 feet. Between the edge of the tree and the edge of the house is about 8-10 feet of brick, and then there's a deck.

Mr. Munson: Will the garage addition replace any of the fencing that shows in this illustration right here?

Mr. Tholen: That fencing would go away.

Mr. Munson: In other words, this garage will replace that fencing?

Mr. Tholen: Correct.

Mr. Munson: I asked about the effect of a driveway on the west property line. Wade said that the root system would be affected, but it appears that your garage is also going to affect the root system. How much worse would it be to have your driveway go around and miss the tree altogether than what you're doing now? Based on this estimate of where the tree is, it appears that the new structure will impact the root system of the tree. Am I reading this correctly? I realize the location of the tree you just gave me is your best estimate. If that's where it is, it would seem that the driveway along the west property line going back to the garage in the back would have less effect on that tree than this garage is going to have on the tree root system.

Mr. Thompson: That is correct, and he said that currently, there are some bricks. Those will be porous, and water will get down into the ground and feed the root system. A tree of that size is going to have a critical root zone of 12-15 feet all the way around the tree.

Mr. Tholen: Some of this discussion leads into the next variance we'll be discussing.

Dr. Peppes: I want to clarify that the width of the proposed garage is 23 feet, but the width of the existing garage is 23 feet. Am I reading that correctly?

Chairman Clawson: It would be 33 feet from the existing house to the property line.

Dr. Peppes: I'm looking at the existing side-entry garage. He has a two-car garage that is 20 feet wide now, and he's going to make a garage that is 23 feet wide.

Mr. Thompson: Correct. It would extend from the existing corner of the house.

Chairman Clawson: You're going to convert the existing garage to space, I'm guessing.

Mr. Tholen: Yes, the additional garage will either be a two-car or a three-car garage, depending on the variance I get. The remainder will be storage for my motorcycles and eventually a kitchen remodel that will also recapture some of that space.

Dr. Peppes: Is 23 feet a standard size for a three-car garage?

Mr. Thompson: It's probably a little narrow for a three-car garage. I would say each bay would need to be at least 12 feet.

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

Dwayne Hodges, 10326 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hodges: I am the contractor on the project, and I'd like to answer a few questions if I could. Regarding the tree in the back, with the placement of the garage as it is now, if we put a driveway going around to enter, we would have to take the tree totally out. That is what we are trying to avoid. The next variance is asking permission to be forward of the build line. That keeps us even with the front of the house, but it keeps the back of the garage far enough away from that tree that we think we can maintain that. The current garage is 20 feet wide, but it's not quite 20 feet in depth. His truck won't even fit in, and even to get a car in, he's only got two 8' doors because that's all he can do on a 20' wide garage. Pulling in on a curve is exceedingly difficult to do. We're asking to move the building a little bit forward. That is the next one coming up. On the placement of it right now, without detaching it or putting an extremely long arbor or something of that nature, there is no way we can get that in there located properly without taking the tree out.

Chairman Clawson: You didn't look at any options where you would place the garage behind the house?

Mr. Hodges: I did actually look at that because garages are all I do. With where the patio and the tree are, we would have to go so far back there, I didn't see any reasonable way to get that done. Leawood says we have to have a substantial architectural attachment to the house. Keeping that in mind and keeping the tree in mind, I don't know how we would get the architecture and the structure in place to accommodate that.

Chairman Clawson: Other questions for Mr. Hodges? Are there any other folks wishing to speak either for or against this application?

Dexter Shibal, 9421 High Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Shibal: I'm here to represent the lady that lives in the house right next to Tim. I'm the second house along the long back yard he has. We have no objections at all with what he is trying to do. Pam was ill today, so she didn't come, but she has no objection. I don't, either.

Chairman Clawson: Thank you. Is there anyone else who wishes to speak? As I indicated before, this is a variance. We have five factors we have to evaluate as a board, and we vote on each one individually. To support a motion for approval, we have to vote in the affirmative on all five factors. The first is Uniqueness of the Property.

Mr. Munson: Just an observation: this case needs a tree-hugger. It seems like what this really boils down to is the safety of the tree.

Chairman Clawson: The issue with trees is that they are not permanent. A variance goes on forever with the property. We have to consider that. Other comments?

Mr. Bussing: I sympathize with Mr. Tholen's problem here, but I don't see that the property is unique. It has some circumstances that create a lot of problems, but I don't see that it's unique in the context that the ordinance calls for and we have to abide by.

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

Chairman Clawson: Rights of Adjacent Property Owners. No calls or complaints?

Mr. Thompson: Correct, and I have not spoken to the neighbor that this neighbor spoke of. That's the first I've heard that anyone was for the request.

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

Chairman Clawson: Hardship.

Dr. Peppes: I think the tree comes into play, but again, like you said, the tree could be gone in five years, and we have a variance that will encroach on the side yard for eternity. I just feel there are other options that could be done, including a smaller garage of some type that would abide by the setbacks. I don't feel it has been met.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Bussing: Doesn't appear that there are any issues there.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I don't feel it has been met because it's all about fitting in the square that is available.

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

A motion to deny Case 01-2019 – Dwayne Hodges/Contractor; Tim Tholen/Owner – Request for a variance to the required side yard setback for the placement of a garage in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for

property commonly known as 2028 W. 95th Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Case 02-2019 – Dwayne Hodges/Contractor; Tim Tholen/Owner – Request for a variance to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2028 W. 95th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner is remodeling the home, which includes converting the existing garage into living space and constructing a new attached garage that would extend the existing home west 23 feet. The current structure is 14 feet over the average front build line. They are asking for four additional feet for a total encroachment of 18 feet.

Chairman Clawson: Basically, the average is of the adjacent two houses.

Mr. Thompson: Exactly.

Chairman Clawson: Can you show us on the map?

Mr. Thompson: (*demonstrates on monitor*)

Mr. Hawk: What would be the approximate distance to the home on the west?

Mr. Thompson: About 54 feet on the west. The house on the west sits at a 45-degree angle and sticks out quite far. The house to the east, on the other hand, is set farther back. The average of those two figures is how we arrive at the average front build line.

Mr. Bussing: It appears the second house to the east is more in line with this structure, though.

Mr. Thompson: That is correct.

Mr. Bussing: I don't suppose you could recalculate the average using it.

Mr. Thompson: No, sir.

Chairman Clawson: With the one sitting diagonal, where do you measure?

Mr. Thompson: The plans examiner averages it.

Chairman Clawson: The fourth house down looks like it's pretty much in line with this project.

Mr. Thompson: Yes, that's the house that Mr. Bussing was speaking about.

Mr. Bussing: The house to the east is lined up, too. It's the house next to them that's the problem.

Dr. Peppes: Since the first variance was denied and he can't take the garage and encroach on the side yard, if he stays within the 15' setback, now we are looking at letting him encroach on the front build line.

Mr. Thompson: Yes, sir.

Chairman Clawson: He's asking for an additional 4 feet from where he is now.

Mr. Thompson: Yes.

Dr. Peppes: Basically, he'd be out farther than anybody else along there, except for the one that's on the corner that is at a diagonal.

Mr. Thompson: Yes, sir.

Chairman Clawson: Other questions for staff?

Applicant Presentation:

Tim Tholen, 2028 W. 95th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Tholen: I'm not sure I understand the measurements and how the code works. What I'm looking for is a variance to build this new garage just to the existing front line of the house and not have to push it back, which would push it into that tree.

Mr. Thompson: That is correct. Any work that you would do to the front, unless you move it in, requires the variance.

Mr. Tholen: I'm looking to get to the current existing front line of the house, relative to 95th Street.

Chairman Clawson: It looks like you're proposing not to go any farther out than the existing house.

Mr. Bussing: So, where's the additional 4 feet coming from, Wade?

Mr. Thompson: It will be 4 feet on that side. The east side sticks out farther than the west side.

Chairman Clawson: Is it that far off?

Mr. Thompson: Yes, because of the way the roof system is, it has the prow in the front on the east side.

Mr. Bussing: According to this, it looks like he's lined up with the prow on the east side of the house.

Mr. Thompson: The new addition would be lined up with the prow on the east side. It currently doesn't have that; it jogs in.

Chairman Clawson: The current garage jogs in?

Mr. Tholen: Yes, there is a wall that goes back to the front of the house, and that line is continued all the way down through the garage to the west.

Chairman Clawson: Where you're bumping it out at the existing garage is new structure.

Mr. Thompson: That is correct.

Dr. Peppes: On the house and the garage.

Mr. Thompson: Correct. There is a jog between the tree and the light pole.

Chairman Clawson: Are there any other questions for the applicant? Can you put up the AIMS map again?

(plan placed on overhead)

Mr. Bussing: Is the calculation that you described general practice, or is it embedded in the code?

Mr. Thompson: That's the formula in the LDO.

Chairman Clawson: What is the platted build line on it?

Mr. Thompson: It would be 35 feet for a new home, but I actually do have the original plat. It is 35 feet.

Chairman Clawson: Are there other questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? Again, we have to evaluate the five factors. The first is Uniqueness.

Mr. Munson: Nothing has changed since the case prior to this.

Uniqueness of the Property criterion not satisfied with a unanimous vote of 0-4. Opposed: Munson, Dr. Peppes, Hawk, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners. No calls or discussion.

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

Chairman Clawson: Hardship.

Dr. Peppes: It's the same as before. I think it's the tree that is causing the situation. Something could be built without encroaching. I feel it hasn't been met.

Mr. Hawk: We're really not talking about the tree in this case.

Dr. Peppes: But he can't move it back and make it even with the house so as to not have to deal with the variance because of the tree.

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

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

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: The intent of the ordinance is to ensure the uniform appearance of the homes from the streetscape. I think granting this would alter that.

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

A motion to deny Case 02-2019 – Dwayne Hodges/Contractor; Tim Tholen/Owner – Request for a variance to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2028 W. 95th Street – was made by Hawk; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Case 03-2019 – Mike McCown/Owner – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(F)(2) in an RP-1 District for property commonly known as 14121 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition to the home, which includes a garage, pool bath, and storage. The maximum allowable square footage for this lot is 5,744 square feet. The proposed addition will add 1,021 square feet for a total of 6,865 square feet, or 19.5% larger than what is permitted.

Chairman Clawson: This proposed addition will meet all the setback requirements?

Mr. Thompson: Yes, sir.

Chairman Clawson: Questions for staff?

Mr. Hawk: Aren't we getting pretty close to the maximum? We talked about allowing 20%, and 19.5% is in the proposal?

Mr. Thompson: Yes, anything over 20% would be a variance, so this meets the criteria for an exception.

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

Applicant Presentation:

Mike McCown, 14120 Meadow Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. McCown: This is similar to the gentleman before. We have a tight turning radius, and as most of you are aware, most have bigger cars than they did 10-15 years ago. I'm a general contractor. I drive a truck. My wife drives an SUV. Our garage just doesn't fit the mandates of these vehicles. We initially bought the property with intentions of building this and growing our garage space with children, SUVs, and vehicles.

Chairman Clawson: Questions for the applicant? This obviously falls within the requirements for the exception.

A motion to approve Case 03-2019 – Mike McCown/Owner – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(F)(2) in an RP-1 District for property commonly known as 14121 Meadow Lane – was made by Bussing; seconded by Hawk.

Chairman Clawson: Before we vote, is there anyone here who wishes to speak for or against this application?

Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Chairman Clawson: For the next two cases, we have new correspondence that is in support of both cases.

Mr. Thompson: That is correct.

Case 04-2019 – Jeffery & Cathy Alpert/Owners – Request for a variance to the side yard setback in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 4321W. 125th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to enclose a covered patio on the southeast side of the home. The home was constructed as close as 5.5 feet to the east property line. The structure moves away from the property line and is 6.2 feet where the patio starts. A variance of 5.8 feet is necessary for the project. This is an existing patio that has a roof structure over it, and they just want to enclose two walls.

Dr. Peppes: Why can't this be an exception?

Mr. Thompson: It is less than 10 feet. Even though it is legal, nonconforming, it is still less than 10 feet.

Chairman Clawson: These small setbacks were permitted?

Mr. Thompson: Yes, sir. In an RP-1, they were back then. They are not now. Now, it is 12 feet.

Mr. Munson: His situation results from a change in the code? Is that what we have here?

Mr. Thompson: Not really because, even for the variance, it is 10 feet. Being in RP-1, they were allowed to be closer, so it has to be a variance.

Mr. Munson: All they're asking to do is enclose it; is that correct?

Mr. Thompson: That is correct, but any work at all has to have the variance.

Chairman Clawson: They're not increasing; they're just enclosing.

Mr. Munson: It almost seems like that could be done administratively.

Mr. Thompson: I was hoping. I went to the plans examiner and the building official. I couldn't swing it.

Mr. Bussing: Would it be your opinion that, in today's environment, there would be no way we would allow homes to be built like this?

Mr. Thompson: Correct.

Mr. Bussing: So, something changed.

Mr. Thompson: Yes, we have even had new homes come before the board with builders wanting to squeeze lots in. This requires encroachment. Yes, something did change, and it has affected these owners.

Mr. Bussing: For new construction?

Mr. Thompson: Yes, the one that comes to mind is the new subdivision off 103rd. It was a five-acre lot, and they put seven lots in with green space on the west side.

Mr. Bussing: I don't recall seeing those.

Mr. Thompson: It's already done.

Mr. Munson: It would seem that if we, for some reason, did not find that this property was unique, it would be a penalty for someone using the property in a manner that nobody would have a problem with. I don't like this case.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

Jeffery Alpert, 9068 Barstow, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Alpert: We are living in a temporary residence. We were Leawood residents for 22 years. We sold our home and bought this one with the intent of renovating it and moving into it. As we got into the process, we found that there were some unique issues relative to this lot, which you have a pretty good feel for at this point. The fact that somehow, either the LDO was changed after this subdivision was approved and developed, or somehow, an exception or variance was granted, which I doubt. I think most likely, the LDO was amended after this subdivision was platted and completed. What we're left with is side yards that are, in almost every case, nonconforming. My neighbor to the east, Don Pierce, was before you a little while ago with the same issue because he wanted to add a screened-in porch to his house. It did not conform because of the 12' requirement. This is a 6'x11' porch, which for us, is really not a usable feature of the home. Therefore, we want to enclose it and use it as interior space as part of our renovation. In terms of the criteria, I think this is a unique situation because, as a subdivision, it is in nonconformance with the current LDO. We tried to find any evidence that would give us some indication of how the situation transpired. Nobody had any documentation on it. It just kind of is what it is. In terms of Rights of Adjacent Property Owners, the only one who is affected is Mr. Pierce, my neighbor to the east. He indicated that he had no problem with it. Hardship to us would be not being able to take a space that is currently not usable for us and turn it into a space that would be completely usable for us. In terms of Public Safety and General Welfare, it is a pretty obscure change. It doesn't really affect anybody except maybe Mr. Pierce. I think in terms of what we're requesting, Spirit

and Intent is really that we are not trying to encroach on a side yard that is in conformance; we are trying to enclose something that is already there. It is integral to the house. The roofline is all integrated into the roof of the residence; it is not like it's tacked on. That is the sum of our request.

Chairman Clawson: Questions for the applicant? How many houses in this area have this situation?

Mr. Thompson: I don't think too many just because of the odd shape of this lot because of the weird little area that juts out on the property. There may be three at the most, including this one.

Dr. Peppes: They have side yard setbacks of 10 feet, then?

Mr. Thompson: RP-1 has 12' setbacks now.

Dr. Peppes: It may have been 10' setbacks at that time?

Mr. Thompson: It is possible. I probably looked at the same things that he and Richard Coleman looked at.

Mr. Hawk: We have already approved a similar situation?

Mr. Thompson: I can't answer that.

Chairman Clawson: I remember that case. There's no one else here who wishes to speak for or against.

Mr. Thompson: I have the letter that I posted at your positions from Leonard and Gail Williams, who are in favor of both requests.

Chairman Clawson: They live directly behind. Well, this is a variance, so we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Bussing: Mr. Alpert did a commendable job in his report, describing how this property is unique. The side yard setbacks appear to be all over the place. Apparently, the rules with regard to setbacks changed sometime between the original construction and today. That would make this a unique issue to try to resolve.

Mr. Munson: I concur.

Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No other calls have been received.

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

Chairman Clawson: Hardship.

Mr. Bussing: As Mr. Alpert indicated, strict application of the LDO would render this particular space unusable. It doesn't change the setbacks of the structure.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Chairman Clawson: Public Safety and General Welfare.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met because it's being enclosed with the same roofline. Nothing is sticking out, so I think it will fit in just fine. The setback is also farther away.

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

A motion to approve Case 04-2019 – Jeffery & Cathy Alpert/Owners – Request for a variance to the side yard setback in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 4321W. 125th Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

Case 05-2019 – Jeffery & Cathy Alpert/Owners – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(F)(2) in an RP-1 District for property commonly known as 4321W. 125th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants are remodeling their home, which includes an addition of a 20'x20' family room and the enclosure of the current covered patio. The additional square footage adds 558 square feet or 16% over what is permitted.

Chairman Clawson: It looks like they're within the building line.

Mr. Thompson: Correct.

Mr. Hawk: No complaints or calls.

Mr. Thompson: Just the letter of support that we received.

Mr. Hawk: I think we're ready for a motion.

Chairman Clawson: We need to let the applicant speak.

Applicant Presentation:

Jeffery Alpert, 9068 Barstow, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Alpert: I think Wade summarized the case quite adequately. The actual residence's square footage as it exists is over the current LDO for the RP-1. We're actually adding 389 feet for the addition and 76 feet that is the total square footage for enclosing the porch. As Wade said, we're not encroaching on any setbacks. For the side yard, we moved the addition so that it is almost 13 feet off the side yard, so we would be in conformance with the current LDO. We're not tearing any trees down, so hopefully, it's an acceptable condition.

Chairman Clawson: Questions for the applicant? Is there a motion?

A motion to approve Case 05-2019 – Jeffery & Cathy Alpert/Owners – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(F)(2) in an RP-1 District for property commonly known as 4321W. 125th Street – was made by Bussing; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.

MEETING ADJOURNED.