

**City of Leawood
Board of Zoning Appeals Minutes
February 27, 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 February 27, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

MEMBERS PRESENT: Dunn, Clawson, Hawk, Farrington, Bussing

MEMBERS ABSENT: Munson and Dr. Peppes

STAFF PRESENT: Coleman, Thompson, Knight

APPROVAL OF MINUTES: Approval of the minutes from the January 23, 2019 Board of Zoning Appeals meeting

A motion to approve the minutes from the Board of Zoning January 23, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: We have a large number of cases tonight, so as such, I would ask that the applicants please limit initial remarks to three minutes. I would ask Wade Thompson to be the timekeeper. We have two cases for Old Business this month.

OLD BUSINESS:

Case 48-2018 Michael Hillyard/Owner - 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.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has installed a 5' tall fence that encroaches the 35' build line on the east side. The fence was constructed 21 feet from the east property line at its closest point and moves away from the east property line. A variance of 14 feet is needed to allow the fence to remain.

Chairman Clawson: The permit indicated where the fence had to be placed and indicated the height, correct?

Mr. Thompson: Yes, the permit indicates placement and a 4' height.

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

Applicant Presentation:

Michael Hillyard, 3900 W. 142nd Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hillyard: So, the guy who put in our fence no longer has the company. I've tried to reach out to him. He had the permit and didn't abide by it. I had no idea that we couldn't put a 5' fence in. I had no idea that Mission Road is considered another front yard. The reason we put the fence in is the safety of my kids and dog. We live right on Mission Road on 142nd Street. We have hundreds of bikers when it's nice riding down the street on Mission, which isn't safe to begin with. We have all the children from Prairie Star who live right across the street hanging out in the front of my yard right by the tree. They walk up and down the street. We have an acre back lot, and we let our kids play out there on the big swing set. It's a big safety deal. Also, I contacted David Ley. He wrote me an email and said the city has 40 feet of right-of-way and a 10' wide utility easement. By 2022, they are widening that road, and they're taking 50 feet of our property. That's the only reason we put a row of 24 trees in and the fence to protect the trees. He said if they remove landscaping outside of the right-of-way or easement, they would reimburse me. I don't know what else you need to hear.

Chairman Clawson: Wade, can you put up a location map? (*map displayed on monitor*) The fence location currently is where?

Mr. Thompson: The red line is the fence; the blue line is the 35' build line.

Chairman Clawson: Your contention is that the fence installer had all the information of where to locate the fence, and he put it in the wrong spot?

Mr. Hillyard: Yes, sir. That's all his information.

Chairman Clawson: This is a variance, and we have to evaluate the five factors. The ones that are frequently the most difficult are Uniqueness and Hardship. Could you address those?

Mr. Hillyard: It is a unique property because we're right next to a school with kids walking all over the place. Also, in a few years, they're going to be tearing my whole yard up anyway to add a road. That's not your normal, everyday deal. Somebody told me it was 2020; somebody said 2022. I don't know when it's going to be done.

Chairman Clawson: Is the widening of Mission Road planned?

Mr. Coleman: Yes, in 20-something, Mission Road will be widened. I can't tell exactly, but from the aerial map, you can see the 50 feet of right-of-way that goes to the east (*inaudible comments*).

Ms. Farrington: Would it go past the sidewalk trail that is there, or would it be before that?

Inaudible comments

Mr. Hillyard: That seems pretty unique. I mean, it's a beautiful fence. Every neighbor who walks by says they love the fence. It makes the neighborhood look great, makes our entrance look great. I can't get a hold of the guy who put it in. Sorry.

Chairman Clawson: Are there any additional questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? As I indicated, this is a variance, and as such, we need to evaluate the five factors. We will determine if the application has met each criterion. If we vote in the affirmative on all five factors, we can support a motion for approval. If we vote against any of the five factors, we have to support a motion for denial. The first is Uniqueness.

Mr. Dunn: By legal definition, I don't see that it has been met. As I've said in many of these cases, our job isn't to say what we personally think is right; our job is to apply the law. Uniqueness is a particular criterion. If it were based on closeness to a school, we would have far too many properties in Leawood to call that unique anymore. I'm sorry. I wish I could see it. I feel sorry for the homeowner.

Mr. Hillyard: You don't think it's unique that –

Chairman Clawson: Sir, our discussion now is among the board members; I'm sorry. Other comments?

Uniqueness criterion not satisfied with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners. I take it all the letters went out and everyone was notified?

Mr. Thompson: That is correct. No calls or complaints have been received.

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

Chairman Clawson: Hardship.

Ms. Farrington: In this case, the hardship seems to have been brought on by the homeowner's fence company. The permit was approved for a 4' fence, and the placement

was where it should have been; however, that was not what was installed. Unfortunately, that hardship occurred with the homeowner and the person he was contracted with.

Hardship criterion not satisfied with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Public Safety and General Welfare. Staff has a comment that states they have received several compliments from local residents about the work.

Mr. Thompson: I just took that off the application. I don't have anything that supports that at all.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: Well, 5' fences require an exception for a reason. The property in Leawood is located where it is for a reason as well, so I can't imagine this not violating it.

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

Chairman Clawson: Uniqueness, Hardship, and Spirit and Intent have not been met; therefore, we must support a motion for denial.

A motion to deny Case 48-2018 Michael Hillyard/Owner - 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 – was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Mr. Hillyard: What happens now?

Mr. Thompson: The fence will have to be moved to the 35' build line. The next case is his as well. It is for the 5' exception.

Case 49-2018 Michael Hillyard/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 3900 W. 142nd Drive.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants have installed a 5' tall fence that encloses the rear yard. A permit was issued for a 4' tall fence. An exception for 1 foot is required for the fence to remain 5' tall.

Chairman Clawson: Questions for staff?

Applicant Presentation:

Michael Hillyard, 3900 W. 142nd Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hillyard: Once again, I did not know that he was putting a 5' fence in. How am I supposed to know that, Pat? As you're shaking your head up there, I'm just asking the question.

Mr. Dunn: I will not be abused by you, sir.

Chairman Clawson: Let's maintain some proper decorum here, please.

Mr. Hillyard: He was just shaking his head, so I thought he wanted me to ask you the question.

Chairman Clawson: They put a 5' fence in; therefore, an exception is required. Do you have any other comments about your situation?

Mr. Hillyard: We were in the process of putting in a pool. That's why he said they were putting in the fence, but then Wade said that we should have put a 4' fence in first, and then when we got the pool, we should have changed it to a 5' fence.

Chairman Clawson: If it's a pool, it needs to be a 6' fence, right?

Mr. Thompson: A 4' fence is required; a 6' fence is allowed.

Chairman Clawson: Questions for the applicant? Thank you. Is anyone here who wishes to speak for or against this application? If not, do we have a motion?

A motion to deny Case 49-2018 Michael Hillyard/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 3900 W. 142nd Drive – was made by Farrington; seconded by Dunn. Motion carried with a vote of 3-1. For: Dunn, Hawk, and Farrington. Opposed: Bussing.

NEW BUSINESS:

Case 06-2019 – R. Scott Beeler; Moler Trust/Owner – Request for a variance to the front yard setback for the placement of a fence and gate in accordance with the LDO, Section 16-4-9.4(A) in an R-1 District for property commonly known as 10342 Mohawk Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners want to construct an entryway gate and replace a 4' tall fence with a new fence that will range in height up to 6' tall. The plan indicates the fence and gate would encroach the front build line approximately 214 feet and be 105.6 feet from the front property line.

Chairman Clawson: We've seen this case before, haven't we?

Mr. Thompson: Correct.

Chairman Clawson: The orientation of the house makes it difficult to determine where the front is and where the side is.

Mr. Thompson: That is correct. The front of the house actually faces the east, but it is addressed off Mohawk. The driveway is on the south side of the home.

Chairman Clawson: Are there any questions for staff?

Mr. Hawk: When we looked at it previously, was the driveway coming in from the south, a different direction?

Mr. Thompson: No, it has always been at the current location.

Chairman Clawson: There was a road off Mohawk at one time, wasn't there?

Mr. Coleman: There's a dead-end road at the northeast corner. It's a 4.5-acre lot with an irregular frontage.

Mr. Bussing: Is there a pool on this property?

Mr. Coleman: Yes, there is.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

R. Scott Beeler, Lathrop and Gage, 10851 Mastin, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Beeler: I'm happy to represent the Molers. I apologize if I run a little over your time, but as you've expressed, there is some history to this matter, and I want to make sure we're all on the same page. When this matter was last before you, the fence and the gate that were proposed were in the exact same spot as they are proposed here tonight. The

matter was continued due to some concern on the part of neighborhood owners to the north and to the east, who thought the perimeter fence they were looking at was actually part of the variance application. Staff informed them that it was not, but they were a little concerned, so a continuance was granted so they could further review the paperwork. I would go on to say that there were no parties here, nor did anyone express objection to the location of the fence or the gate that was proposed back in 2017, and once again, it is the same location. The issues that have occurred since this time are a very long period of litigation that involved the homeowners' association (HOA) where this property is located in Mission Farms. I'm pleased to say that litigation was resolved. I have the written agreement of the HOA. Their Design Review Committee approved this application and is supporting it in this location and with these materials. In addition, I'm very pleased to say I've also had lengthy discussions with the representative for the neighborhood, meaning the neighbors to the north and to the east. Every single lot that borders this property on the north and east have issued to us their approval of the application for this fence variance. I would add that the fence that was before you in 2017 on the north and the east was a 6' wood privacy fence because this is a pool barrier fence around the perimeter of this entire property. To be good neighbors, my clients have agreed to upgrade the product for the north and east sides to make that matching wrought-iron material. The entirety of the perimeter of this fence is see-through wrought iron of the standard nature. It is a 5' or 6' fence, depending on the section. This meets the pool barrier requirement. The security gate meets all the city's pool barrier requirements as well. We have designed it in accord with our meetings with the city. I would add that we've met with the city numerous times, including both Mr. Thompson and Mr. Coleman, to reach an accord to be sure that what we were doing is what they preferred in the way of material. Again, it is. I'm very happy to say that in this very uniquely situated property with the long needle nose, if you will, coming in off Mohawk and then establishing the gate location and the southern fence line, it is right where the fence is today. There is an argument in this case that a fence under your code definitions is a structure, and as long as there was a structure there before legally as that fence was because it came in before the ordinance was passed that this fence doesn't need a variance, but we're here. I want to make it clear that when my client bought this lot, everyone needs to know that this lot was called out in the homeowner's association declaration as having gated access at both Mohawk and what was called 104th Terrace. We've backed off and allowed for that eastern access to go by the wayside. We've let it be released, so it no longer is a road there. Our sole access comes off Mohawk. As part of that litigation, the original developer issued an affidavit stating that the intention of the development was always to recognize this very large lot. It stands out in size among all the lots in Mission Farms, and it was to have its own access and gated access at that. I think as I've heard from a number of people who have looked at this case over time, why have a gate if you don't have a fence, or why have a fence if you don't have a gate? We could have put this gate, pursuant to the declarations, right at Mohawk, but in discussion with the city and their druthers for this, we have moved it back to what we believe to be a safe, seeable distance, and put it there at the drive. I say seeable because if we put this back all the way to the build line hundreds of feet, we would essentially create a security problem. It could allow drivers to drive up, believing they are on a street but will actually run into a security gate because they can't see it. Additionally, someone could drive up

and park in secret. As you can see from submittals, this is landscaped extremely well. It would create a security problem for the landowners. Mr. Chairman, there is no question that this is a uniquely shaped lot, no matter what we described for it. It is also a lot that was intended to be fenced and gated. Now, we're pleased to say that, after a very long period of discussion, work, and effort on the part of the city, the applicant, and the surrounding neighborhood, we have the HOA's approval and support of the application as well as that of every adjoining neighbor. I think some of those might be here. I know staff has received some inquiry. We've received agreement from those folks, and I would expect they would be here to have that discussion or know I'll make that comment for them. This is a wonderful asset to be added to Leawood. It is a multi-million-dollar residential property bordering upon filling out the last available lot in Mission Farms. It is a property the city and all the surrounding neighborhood will be proud of and that adds to everyone's value there. There is no question but that having a high-end, stone column security gate and high-end wrought-iron material is an additive for all. The unnecessary hardship is that these people bought a lot that was marketed as having gated and fencing access, and their HOA declaration says so. If you look 25 years ago when this was first going through platting, you'll see the city was aware of that exception as well. There is a requirement that everyone recognized an exception would be needed for this lot. It's been that way for decades. The variance does not affect the public health, safety, morals, or convenience. This is a high-end security gate that has the Knox Box system in it, which allows the Fire Department access if there is a fire alarm and locks down the gate if there is an emergency that is not medical or fire related. It has the opposite effect if there is a break-in. It is, at the city's request, accessible for emergency services. Lastly, it is not opposed to the general spirit and intent. I think that is critical in this case. Here is a property that has always been planned for this exact purpose with the hope that someone would come in and build a high-end property like this. Now, it is happening, and it would run afoul of the general spirit of this ordinance if it were not allowed. I would simply say this to conclude: you have a separate zoning category that talks about five-acre residential properties being allowed gated access. That is an arbitrary number that is meant to allow large properties like this to have gated access. I draw everyone's attention to the properties just south of 143rd and Mission by example. Almost every one of those estate lots has gated access. Some are not wrought iron, but they are still gated and are all the way out to the street. This property is not doing that. They have cooperated to move it back to keep it as visibly aesthetic as possible. I think this property meets each and every requirement with a heavy emphasis on the spirit and intent. I'm happy to answer any questions. Thank you for the extra time.

Chairman Clawson: Are there any questions?

Mr. Dunn: Just to clarify, you feel it is unique because of the unique shape and size of the property, which would result in the security gate being less than optimally functional?

Mr. Beeler: Well, the property is unique, which promotes having a fence and a security gate. Again, there would be a right under that circumstance to put that fence and security gate all the way out at Mohawk to give it its most effective value. We're moving it just as a concession, but the Uniqueness criterion is met because this property design, by having

to drive in that needle-nose area, adds to the need for security of a property because you cannot see the house and see what might be going on in an untoward manner from the road. Lastly, as the chairman mentioned, it is unique in that when there is a large home like this on a property this big, it has to orient in this direction. It actually fronts to the east, but because it is addressed to the south, that creates a unique situation as well as to where this build line even is. If it's the side yard, no variance is required. We could put it all the way down to the street. It is unique in that fashion as well.

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

David Bell, 10324 Mohawk Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Bell: We border part of the property on the north. (*Referring to map*) Just as Mr. Beeler indicated, I'm here on behalf of the Nye family at 10323 Howe Drive, the Bell family (me), the Chaplin family at 10320 Mohawk Road, the Smith family at 10325 Mohawk Road, the Hammond family at 10321 Mohawk Road, the Brazel family at 10317 Mohawk Road, the Chris Alex family at 3100 103rd Terrace, the Daugherty family at 10328 Mohawk Lane, and the Lane family at 10332 Mohawk Lane. I've received permission from all of those to speak on their behalf. I would say I was here a year and a half ago. I was somewhat vocally opposed at the time. As I bought my house and drove south on Mohawk Road, I faced a wide-open range, and a house was being built. It took some time for me to adjust. That being said, since that time, we appreciate the Molers working with us through their attorney to come up with a solution for the fence of the entire property. I understand we're talking about the variance here, but the reality is that it impacts us because the uniqueness of this property is that the rear of the Molers' property is our front side. We have a situation where they have a pool and may have the right to put up a 6' privacy fence there, and I've got a privacy fence in my front yard, which would not normally be the case. We've got two subdivisions meeting together. I think that adds to it being unique. Since that time, we have appreciated talking with the Moler family through their attorney, sharing their plans for the entirety of the property in terms of the fencing. I think the solution that we've come together with meets our needs as the homeowners that surround the property in the entirety, which is still being able to view the open views as part of the LDO. We have a 4 ½-year-old son, and I don't want him going into the pool, so we need the height there. What is the manner that satisfies all those requirements? We would respectfully request on behalf of all of those neighbors that the plans submitted by the Molers that they have shared with us through their counsel meet all those criteria and, more importantly, meet what we expect out of Leawood, which is a compromise of some sort between safety and open view. Based on that and the uniqueness and the desire of all the neighbors that surround this property, as I've indicated here, we would respectfully request that the BZA approve the variance request.

Chairman Clawson: Thank you. Is there anyone else who wishes to speak?

John Petersen, Polsinelli, appearing on behalf of the owner at 10350 Mohawk, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Petersen: My client is actually a resident of Mission Farms. I know we've had a lot of commentary tonight about property owners to the north and east. In terms of variances, I'm usually on the other side of the equation. Tonight, I am standing on behalf of the property owner at the indicated address in opposition to the request for a variance. If I had to take Scott's side, I would say he did a good job. He brought up a lot of issues that are good issues but not particularly relevant to the matter before you this evening, which is the issue of what the code says in terms of a front yard placement of a fence. What we know is that it is out of compliance. I don't know what went on with litigation between his client and the HOA, but the HOA's declarations are very relevant to the criteria you consider when you look at a variance. As we know, we have Uniqueness as a criterion. It's a big piece of property. Just because it's unique doesn't mean it can't comply with code. They could still have a fence and still have a gate. What is the impact on surrounding property owners? That is where this comes into effect. I want to read what the HOA declarations say. This is the document that my client relied upon when he purchased his property. When I read this, I want you to listen for the word "fence" to come into the equation and what it says about it. I won't read the whole thing to you, but it says no fences in this subdivision. "Fences are not encouraged because they fragment the landscape of the community." That is the spirit and intent of this subdivision. "The owner of Lot 12, however, shall have the right to install a gate at the property line of said lot adjacent to the right-of-way of 103rd Terrace, subject to design review." We acknowledge there could be a fence there, and it's the one alluded to today, almost as if it is grandfathered in. It is a split-rail wooden fence. They are standing on that to say that they want a 6' wrought-iron gate and standing on the fact that they somehow, through litigation, got the HOA to agree to it. It's really not relevant to what we have before us this evening, which is that the code says if a fence is going to be built, it will be built at the appropriate location: the front yard. There is no hardship if they put the fence and the gate there. The uniqueness of the property doesn't restrict it. Moving it out closer to adjacent property owners within Mission Farms does, in fact, negate the spirit and intent of the subdivision that didn't want fences at all but particularly someone asking for a variance to have a fence in the front yard, which is unique anywhere in the City of Leawood. I could go through the rest of the criteria, but we would suggest that you take staff's recommendation and deny the variance. First, although the lot configuration and size may be somewhat unique, it doesn't rise to the level in terms of inhibiting them to be able to have a security device for their pool, have a gate at some location that would restrict access to their property. They could have a gate, and the rest of it to impede vehicular entry could be done through landscaping. It doesn't need to be done with a 6' fence that violates the exact provisions of the LDO. With that, we stand in opposition to the requested variance.

Chairman Clawson: Your client is which property?

Mr. Petersen: You're standing at the driveway of the applicant's lot, and we're two houses to the left (*refers to the map on the monitor*). They would observe the fence

structure every day they ingress or egress from their home. It is obviously not what the character of this neighborhood was anticipated to be.

Chairman Clawson: The proposed gate would be where? (*demonstrated on the monitor*)

Mr. Bussing: Mr. Petersen, you've had a lot of experience with this. What is the city's obligation with regard to HOA deed restrictions or the document you had?

Mr. Petersen: None.

Ms. Farrington: Can I clarify that we're looking specifically at the gate itself and not the structure that they're discussing as well?

Mr. Thompson: It would be the fence and the gate that would be built in front of the front build line, which is the front of the home.

Ms. Farrington: Did they submit a permit request for the fencing?

Mr. Thompson: It will rely on whether or not they get approval tonight.

Chairman Clawson: Is there an existing split-rail fence there, or has it been removed?

Mr. Thompson: Part of it has been removed. Everything up front has been removed. They did install a temporary construction fence, and it has since been removed as well.

Ms. Farrington: Was the split rail fence one that had existed for a long period of time, or was it put in place by the developer for the sectioning of the properties?

Mr. Coleman: It was put in place by the developer a long time ago. There are multiple split-rail fences with chain link backing them in this subdivision. In fact, the LDO was adjusted to allow the split-rail fences with the chain link to remain.

Ms. Farrington: I'm familiar with this because it obviously used to be a horse farm and then was developed into these properties. The fence wasn't a long-term fence that encased the property.

Mr. Coleman: The fences have been there for more than a decade.

Mr. Petersen: The split-rail fence was put there when the developer subdivided the lots. That was a distinctive character for that larger lot. My client, when he bought his home, knew the split-rail fence was there and understood it would be there for that lot. He did not anticipate that there would be a 6' wrought-iron fence with a gate.

Chairman Clawson: This variance is for the location of the entry gate, and it says it is replacing a 4' tall fence. There is no 4' tall fence.

Mr. Coleman: There was a split-rail fence that was approximately 4' tall. You should know that we measure the build line from the farthest property line on there rather than the line that is at the cul de sac. That is why it is way back up there. It is not like the other one farther south.

Mr. Dunn: If we don't grant this, where could a fence be placed?

Mr. Coleman: At the house.

Chairman Clawson: At the southern edge of the house?

Mr. Coleman: Yes.

Mr. Dunn: The fence would have to adjoin the house basically.

Mr. Coleman: Correct. We don't have a provision for irregular front yard setbacks. WE have one for irregular rear yard setbacks, which is an average calculation.

Mr. Dunn: Why do we have that for rear yards?

Mr. Coleman: It is more common that we have irregular rear yards than front yards.

Mr. Dunn: It's intended to do what they're trying to do here?

Mr. Coleman: It's there to make adjustments to pie-shaped lots sometimes so that we get an average of the back so the lot becomes more usable.

Mr. Petersen: I'd like to make clear for the record that my client has no objection to a fence that secures the pool, that has been worked out to the neighbors to the east and north that has a more aesthetically pleasing impact. What we're asking for is, as we interface with this lot, we would like the code that doesn't allow fences in the front yard be considered and that the city takes the position that your professional staff has recommended and not allow the fence in the front yard. Thank you.

Mr. Beeler: No disrespect to Mr. Petersen, but this subdivision that my client's home is in is replete with wrought-iron fences, including the lot next door to Mr. Petersen's client. They have a full fence around their side yards and back yard. Mr. Petersen's client isn't even an adjoining owner, all of whom have supported this. He's referring to documents and conversations that have occurred with the designated representatives for the HOA that his client lives in. That person may or may not like the decision that was reviewed ad nauseum by that committee, but they have approved this. I have provided that approval letter for the record, in support of it as it is designed. There are fences all over. If he wants to speak again, I would ask that I have the last say as the applicant. If we move this all the way up where he's talking, what is the net effect of that against a uniqueness requirement? To have any security in a fence, he would have to fence off as much as two acres of his own property. That would be the net effect. If we look all the way down to

the cul de sac, we'll see split-rail fencing 4' tall running up both sides of that driveway, put there by a developer who knows how many years ago. My clients have agreed to take out that fencing that was all falling down and right where you can tell is the mode lot, it will come across from the east line and cross the driveway there. We're not encroaching any further; we're backing up. We're making it more accessible. I just want to be sure the record is clear that there are fences throughout that subdivision. We have proposed a material that is exactly the same as those fences.

Mr. Petersen: My response is every single one of those fences comply with the LDO. That is all we're asking. We are asking for equal treatment with the house we interface with. Thank you.

Mr. Beeler: Thank you for the last say on that. I'll let you be the practical analysis. This house faces immediately due east. This fence is down on the south, where their only access to their property is. Is that really the front yard?

Chairman Clawson: I was remiss in my opening remarks. I should have said I'd like to keep the opening remarks to three minutes unless you're an attorney. In that case, you have two minutes. Is anyone else here who wishes to speak for or against this application? This is a variance, so we have to evaluate the five factors. The first is Uniqueness.

Mr. Bussing: I would propose that the shape of this particular piece of property, it's unique location, the proposed use, and the history of this lot make it unique.

Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Bussing: I applaud the efforts of the homeowner and Mr. Beeler to meet with the neighbors. I am extremely reluctant to cross Mr. Petersen, but I don't see that his client is even adjacent to this property. Granted, they live in the neighborhood and are nearby, but it is not an adjacent property owner. I think the efforts that the homeowner and his attorney have made are to be complimented with regard to satisfying the adjacent property owners. I think this has been satisfied.

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

Chairman Clawson: Hardship.

Mr. Bussing: As we continue to note, this is the difficult one. I endorse Mr. Beeler's explanation that placing the fence according to the LDO renders it essentially ineffective for security purposes. I don't see that the proposed location is particularly obtrusive. I think the safety of the property owners would be less effective.

Mr. Dunn: I would just add that I don't think there is one factor that convinced me of Uniqueness and Hardship, but with the factors all combined together, particularly when Richard stated that we have no provision for irregular front yard setbacks and we have this unusual situation with a front yard that's not really a front yard, I think it has been met. The fence they would allow to be constructed would be minimally useful for the purposes they want it for.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Public Safety and General Welfare.

Mr. Bussing: I think this goes hand-in-hand with the discussion we just had on Hardship. The express purpose of the property is to safeguard the property. The fence location would certainly do that, and I don't see the safety of the rest of the city impacted at all.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: This is the one I have the hardest time with, quite frankly, just because it has been no fences for some time, and now we deal with fences. It is difficult to figure this out sometimes. Once again, I go back to what I see as being a truly unique piece of property and unique circumstances. That would allow me to reluctantly say that I agree that this criterion is met, but it's a difficult one for me, quite frankly.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: We have voted in the affirmative for all five factors, and therefore, we can support a motion for approval.

A motion to approve Case 06-2019 – R. Scott Beeler; Moler Trust/Owner – Request for a variance to the front yard setback for the placement of a fence and gate in accordance with the LDO, Section 16-4-9.4(A) in an R-1 District for property commonly known as 10342 Mohawk Road – was made by Dunn; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Case 07-2019 – R.M. Standard/Contractor; Moler Trust/Owner – Request for a variance to the requirement that a permanently installed generator must be placed in the rear yard in accordance with the LDO, Section 16-4-1.3(A)(7)(d) in an R-1 District for property commonly known as 10342 Mohawk Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to install a generator that would be placed in the side yard of the home. The plan shows the generator placed on the east side of the home, facing the neighboring subdivision.

Chairman Clawson: Has it been installed yet?

Mr. Thompson: No, it has not.

Chairman Clawson: Questions for staff?

Mr. Bussing: Isn't the east side of the home the back side?

Mr. Thompson: The east side would actually be the front side.

Chairman Clawson: In the previous case, it was called the side yard.

Mr. Thompson: I'm sorry; yes, it is the side yard.

Mr. Hawk: What is the distance between the generator and the neighbors?

Mr. Thompson: I only have measurements that I took off the AIMS map, so they're approximate. It is approximately 82 feet from the fence and about 90 feet to the home.

Ms. Farrington: In the last case, we were told that the front of the home faced west.

Mr. Thompson: The front of the home faces east.

Mr. Bussing: I thought I heard the same thing.

Mr. Thompson: It is addressed off the south side, but the front of the home faces east, which is the side yard. The east side is the side yard. The south side is the front yard.

Ms. Farrington: Can you put up an overall plan of the house?

(plan placed on monitor)

Ms. Farrington: Where is the front door on this home?

Mr. Beeler: *(referring to monitor)* This is a detached garage that you are seeing.

Inaudible comments

Chairman Clawson: And the generator will be placed where?

Mr. Thompson: On the north side of the home (*demonstrates on the plan*).

Mr. Dunn: How close would that be to adjacent property owners?

Chairman Clawson: Probably closer than if it was on the east.

Mr. Beeler: It would be closer than it is where we have proposed it.

Chairman Clawson: Why couldn't it be placed on the west?

Mr. Thompson: That would be the side yard again. It has to be in the rear yard.

Chairman Clawson: There are no neighbors over there, though.

Mr. Thompson: That is correct.

Mr. Coleman: (*referring to map*) They can put it anywhere in this area. *Inaudible comments*

Mr. Hawk: Are we trying to dictate the placement of a generator that is really not that relevant?

Mr. Thompson: The city feels it is important enough to place it in the rear yard.

Mr. Coleman: The ordinance states that it is to be in the rear yard. Not all houses that have generators are this large.

Chairman Clawson: What kind of generator is it?

Mr. Beeler: It's a sound-attenuate generator that meets the city's code. It will be fully enclosed by a fence structure and landscaping, so it will not be visible. Again, to find the placement on this uniquely shaped lot is difficult. This puts it as far away as we can from a neighboring, populated area. It is farther away there than if we put it on the north side. I'm not criticizing, but the city has taken the position that the north side is the rear yard. There is nowhere to put it over there without getting very close to Mr. Bell, and I know he is not happy about that.

Ms. Farrington: Can you put up the plan view and point exactly to where the generator is proposed?

Mr. Beeler: (*points to map*) Immediately adjacent to the building.

Ms. Farrington: There is landscaping around that in the plan view and a drive that goes around it. Can you put the photograph that is submitted with this, and the closer one?

Photo placed on monitor

Ms. Farrington: So, the drive and the landscaping haven't been placed.

Mr. Beeler: No.

Ms. Farrington: And that's where the heating and cooling unit is as well as the mechanical equipment is.

Chairman Clawson: Do you have any additional comments?

Mr. Beeler: No, sir. I was trying to stay to that two-minute thing.

Chairman Clawson: You did a good job. Are there additional questions? Will you put the plan view back up? It appears if you required it on the north, it is awfully busy up there.

Mr. Coleman: I just think it wasn't accounted for under our regulations. The location makes the most sense because it is close to the power panels, but it is outside of the building line, and the LDO calls for it to be in that line.

Ms. Farrington: There is a pool on that north side. Where is the pool equipment?

Mr. Coleman: The pool is on the northwest side.

Mr. Beeler: Most of the equipment is enclosed in the main structure. There is a cabana house.

Ms. Farrington: Can you point to where the cabana house is and where the mechanical equipment for the pool is located?

Demonstrates on the monitor

Mr. Beeler: I guess I would just say through all the discussions, it has just come to everyone's basic agreement that it is placed in the right place, given the layout; it is just that if you draw that line straight across just as Richard did, it is sitting one foot outside that line. If we move it around the corner, it would be sitting in front of one of the garages. That's why it can't go there. It is where it has to be.

Chairman Clawson: Other questions for the applicant? Is there anyone here who wishes to speak for or against this application? Again, this is a variance request, so we have to evaluate the five factors. The first is Uniqueness.

Mr. Bussing: Since the location issue is created by an ordinance that deals specifically with back yards, side yards, and front yards and this property has none of the same, I am convinced we are dealing with a unique property.

Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Hawk: It doesn't appear that the other property owners are really concerned about the placement of the generator.

Ms. Farrington: No one has spoken for or against this tonight. Have you had any letters come through?

Mr. Thompson: I had one phone call from a resident on the east property line that lived a little bit south, and they were against the request. The home that will be most affected and where the picture was taken from their driveway is vacant right now. It may be a hard sell if they have to look at a generator.

Chairman Clawson: There will be landscaping to hide that.

Mr. Hawk: I think we have to realize that generators are used so infrequently that, perhaps, this is not even a consideration.

Mr. Dunn: Not in my neighborhood.

Chairman Clawson: These natural gas generators can be quiet. They're not very noisy.

Mr. Bussing: I'm not in sync with this one. I think parking the generator on that side puts it closest to the neighbor. I think it needs to be located somewhere else. If they need a variance to put it on one of the other three faces of the house, they can come back in and do that. I don't think they should put the generator that close to the neighbor's house. They have options to the west. I would think they have to whatever direction that is.

Mr. Dunn: I don't think they have an option to the north if that's what you're thinking.

Mr. Bussing: There are homes there as well, so whatever side the pond is on would seem to me to be the most appropriate with regard to the effect on adjacent property owners.

Chairman Clawson: They're probably getting power from the east. Is that correct?

Mr. Thompson: I'm not sure where that comes in. I would say the east side since the utility boxes are located there.

Chairman Clawson: We were discussing Rights of Adjacent Property Owners.

Rights of Adjacent Property Owners criterion satisfied with a vote of 3-2, including an affirmative note from the chair. For: Hawk, Dunn, and Clawson. Opposed: Bussing and Farrington.

Chairman Clawson: Hardship.

Mr. Dunn: This one is a little different than the last one because, as my friend Gary pointed out, there are other locations where this could be proposed. They're not even looking at those. Hardship comes in if it were forced to be placed where the ordinance requires it. That would create a hardship on the other homeowners. I'm trying to reason it through. I'm having a hard time with this one. There are other locations it could be put that are as accessible as this one. I'm open to other thoughts.

Chairman Clawson: Other thoughts?

Hardship criterion not satisfied with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: I agree with staff's comments that, due to the placement of the house and close proximity to the neighborhood, it has potential to affect the property owners to the east, but quite honestly, a generator this size placed anywhere has the potential to affect property owners. I don't think that is enough to say it violates this criterion because I think generators violate them generally. If we're going to allow generators, I don't think this placement particularly violates this criterion.

Chairman Clawson: Could the generator be placed on the north side of this detached garage?

Mr. Thompson: As long as it was in the side yard.

Mr. Coleman: We've already been out there. They would have to put it north of the driveway because there is not enough room. There is the garage door.

Mr. Dunn: The reason it couldn't be placed just around the corner as suggested is because the door to the garage has already been placed there. Is that correct?

Mr. Coleman: Right.

Mr. Dunn: If it were a wall, it could be placed there.

Mr. Coleman: Correct.

Chairman Clawson: We are on Public Safety and General Welfare.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: My position would be that placing the generator where they are proposing would violate Spirit and Intent because the purpose is to protect neighborhoods from generators' appearance and noise. I don't think it has been satisfied.

Spirit and Intent criterion with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: We have voted on all five factors, and as a board, we did not agree that Hardship or Spirit and Intent have been met; therefore, we must support a motion for denial.

A motion to deny Case 07-2019 – R.M. Standard/Contractor; Moler Trust/Owner – Request for a variance to the requirement that a permanently installed generator must be placed in the rear yard in accordance with the LDO, Section 16-4-1.3(A)(7)(d) in an R-1 District for property commonly known as 10342 Mohawk Road – was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Case 08-2019 – Callie Cosentino & Beau Haun/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 8605 Reinhardt Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to enclose their rear yard with a 5' tall metal fence. The current home has been razed, and a new home is currently being constructed. This is one of the larger lots in the area at almost $\frac{3}{4}$ acre.

Chairman Clawson: Questions for staff?

Mr. Hawk: Would metal be wrought iron?

Mr. Thompson: Yes, sir.

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

Applicant Presentation:

Beau Haun, 8605 Reinhardt Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Haun: We would like to put in the 5' fence for security. We have four children, two of which are under the age of two, that will be playing in the back yard. Additionally, we have a restraining order against the grandson of the former owner because of threats that were made to my wife after the purchase of the home when we razed it. That's another security concern. We also intend to put a pool in soon.

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

Jerry Lammon, 8604 Wenonga, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lammon: My trust owns that home, and I speak on behalf of my wife as well as Courtney and Rob Sprague, who live at 8608 Wenonga. This house was permitted with a setback that comes five feet closer. You mentioned that this was a large lot, but when I talked to Travis Torres, you said it was given an irregular lot exemption because it was one of the smaller lots. The house sits within 25 feet of both the Spragues' and my property line on the back. We have had no discussions with the property owners before it was permitted, and we have had no discussions with regard to this fence. I called the city, and they wouldn't divulge what the permit was for. Here I am, spending my time because of what I see as some lack of civility on the part of the city in responding to the phone calls that we placed to the city to see what the variance was. We don't wish to contest it, but I'm here because we felt that we were probably looking at a 6' cedar privacy fence. Had the city responded to my request to know what was going on, I wouldn't have wasted two hours tonight.

Chairman Clawson: Wade, can you respond to that?

Mr. Thompson: If he called, it hadn't gotten to my office.

Mr. Lammon: I called the number on the certified letter. I called twice.

Chairman Clawson: That is unfortunate.

Mr. Thompson: Who did you speak to?

Mr. Lammon: Whoever takes your messages. My office manager did that. She called twice and followed up because we hadn't gotten anything from your office.

Mr. Thompson: I'm not familiar with it.

Chairman Clawson: You might want to discuss that with some of the staff.

Mr. Thompson: Can do.

Mr. Lammon: Will this be a welded fence or a preformed panel fence with offsets to the top, or will it follow the grade?

Mr. Thompson: You'll have to ask the homeowner that.

Mr. Lammon: Speaking on behalf of myself and the Spragues, we wouldn't contest if it followed the grade at 5 feet.

Mr. Haun: It is a welded fence, and it will follow the grade.

Chairman Clawson: Does anyone else here wish to speak for or against this application? Do we have a motion?

A motion to approve Case 08-2019 – Callie Cosentino & Beau Haun/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 8605 Reinhardt Lane – was made by Bussing; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: The next case, Case 09-2019, has been continued to the next meeting.

Mr. Thompson: That is correct. They did not get their letters mailed.

Case 09-2019 – Philip Jobe/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 9646 Belinder Road. **CONTINUED**

Case 10-2019 – Malcolm & JoAnne Ayer/Owners – Request for a variance to the front yard setback for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 13804 Fontana Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants made significant repairs to a legal, nonconforming fence without a permit. The fence was constructed 3.9 feet from the south property line. A variance of 26.3 feet is necessary to allow the fence to remain in its current location.

Chairman Clawson: This is a legal, nonconforming fence that had repairs made to it in excess of 50%?

Mr. Thompson: That is correct.

Mr. Dunn: How much in excess, do you know?

Mr. Thompson: All the panels were replaced and a few of the posts, so 99% probably.

Mr. Hawk: Again, if they made minor repairs, we wouldn't even be talking about it. Is that correct?

Mr. Thompson: Yes, sir.

Chairman Clawson: Some posts were replaced, too. Due to the location of a corner lot, it necessitates the variance.

Mr. Thompson: Yes, sir.

Mr. Hawk: Is there a pool?

Mr. Thompson: Yes, and the fence covers up the pool equipment on the side where this fence encroaches.

Chairman Clawson: Which side is in question?

Mr. Thompson: It would be the south side.

Mr. Dunn: Can you show where the existing fence is? Is it where the white lines are?

Mr. Thompson: (*Referring to photo*) The white line is the property line, and the fence is two feet off. It's actually 3.9 feet off the property line.

Mr. Dunn: Could you show me where a fence could be legally placed?

Mr. Thompson: (*shows on photo*)

Chairman Clawson: Does that have to conform to 35' setbacks?

Mr. Thompson: Correct.

Mr. Dunn: Would legal placement require the fence to run right up next to the pool?

Mr. Thompson: Yes, it would.

Chairman Clawson: It looked like it would be in the pool.

Mr. Thompson: Today, the pool or the fence wouldn't be able to be placed there without a variance.

Ms. Farrington: Was the pool placed when the home was built?

Mr. Thompson: A few years after the home was built.

Mr. Dunn: According to the applicant's questions, they purchased the house in '91 and built the swimming pool and deck in '91 and '92, so immediately after purchasing the home.

Ms. Farrington: The Site Plan in our packet states that the house was constructed in 1979. The fence permit was issued in March, 1982, and the pool was constructed in 1993. That's an 11-year difference between the fence and the pool. The fence was in place before the pool was even constructed.

Mr. Thompson: That's right. This is a copy of the building permits that have been pulled.

Mr. Dunn: My point was that the fence was originally placed by the prior property owner, and the pool was installed by the current property owner. Is that correct?

Mr. Thompson: That is correct.

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

Applicant Presentation:

Malcolm and JoAnne Ayer, 13804 Fontana Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Ayer: Do you have my answers?

Chairman Clawson: We do.

Mr. Ayer: We purchased the house in '91. The fence was there. I maintained the fence over the years. It's not a Home Depot fence; it's a custom-built fence, and we have copied it exactly as it was. Because of an illness, there was a long period that the fence wasn't maintained. I hired a fence company to repair it, and it required that much restoration.

Chairman Clawson: Your contractor did not go to the city for a permit?

Mr. Ayer: Apparently not, which is pretty dumb, but I understand I'm still liable.

Chairman Clawson: Questions for the applicant? And as far as you know, Wade, there was never a permit?

Mr. Thompson: Not since the original fence permit was pulled for the original fence location, and no BZA action has ever taken place on the home.

Chairman Clawson: At the time, there was no requirement that they meet a specific setback on that side.

Mr. Thompson: Correct; as long as it was built on or behind the property line, it was okay back then.

Chairman Clawson: Other comments for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application?

Dane Herbold, 13805 Fontana, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Herbold: I live across the street from the Ayers family, and I just want to say that their fence was in disrepair. They were just trying to do the right thing to do and fix the fence. They didn't change the footprint. They didn't even change the fence, other than putting new materials on it. It's good for the neighborhood, and I think it was the right thing to do.

Chairman Clawson: Thank you.

Sherry Widman, 13808 Fontana, appeared before the Board of Zoning appeals and made the following comments:

Ms. Widman: I live just south of the Ayers family. The fence is fine. I back out every day and look at it. They've repaired it so it looks aesthetically pleasing. It's a nice addition to the neighborhood. I built my house in 1980, and the people who originally built their house had just moved in. They are the ones who put the fence in, as you know. They've just maintained it exactly the same. They've kept it up.

Chairman Clawson: Thank you. Does anyone else wish to speak? This is a variance, so we have to go through the five factors. The first is Uniqueness.

Mr. Dunn: I would suggest that the confluence of the number of circumstances distinct to this property and location have conspired to place them in a tenable position that leaves them without a viable option if we were to deny this, which, in my mind, satisfies the Uniqueness criterion.

Uniqueness criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners. Letters went out?

Mr. Thompson: Letters went out, and we've received no calls or complaints. You've had a couple in support of the request.

Mr. Dunn: I also can't imagine how it would adversely affect them to put a good fence in place of a bad one.

Rights of Adjacent Property Owners satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Hardship.

Mr. Dunn: If having to put a new fence through your swimming pool isn't a hardship, I don't know what is.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: I don't see any reason why it would be affected since this fence has been in place for the last 38 years, and it's essentially a newer version of the same fence being put back in place.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: Seems to be that everything done by the homeowners has been done to honor it.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

A motion to approve Case 10-2019 – Malcolm & JoAnne Ayer/Owners – Request for a variance to the front yard setback for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 13804 Fontana Street – Hawk; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Case 11-2019 – Gwen & Jeff Johnson/Owners – Request for an exception to the front yard build line for the placement of a covered entryway in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 10208 Mohawk Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to add a covered entryway to the front of the home. The home was originally constructed 35.5 feet from the front build line. The new addition extends out three more feet and will be 17 feet wide for a total of 51 square feet. An exception for 2.5 feet is being requested to construct the addition as shown on the plan.

Chairman Clawson: Are there questions for staff?

Mr. Hawk: I would hope that staff would be allowed to make the recommendations to approve these things. We see so many of these.

Mr. Thompson: I agree, and luckily, Richard is here to hear that.

Mr. Dunn: Just for clarity's sake –

Mr. Coleman: It used to be a variance, and we changed it to an exception.

Mr. Hawk: Is there any reason we can't incorporate this into your procedure so you could accommodate these folks without having to come here?

Mr. Coleman: They vary in the amount of setback that they require. We'd have to work on something that allows us to do that.

Ms. Farrington: Maybe within a certain depth or width.

Mr. Coleman: Perhaps.

Chairman Clawson: To refresh my memory, how much of an extension into the build line is permitted?

Mr. Coleman: It's up to 75 square feet.

Mr. Thompson: Anything over that is a variance.

Chairman Clawson: And no more than six feet.

Mr. Coleman: Correct.

Mr. Dunn: Just to be clear, the part of the property that extends 2.5 additional feet is a roof and some posts. Is that correct?

Mr. Thompson: That is correct. This case actually did start out as a variance until they provided me with a survey that showed me just a small portion would actually extend beyond the front build line.

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

Applicant Presentation:

Gwen and Jeff Johnson, 10208 Mohawk Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Johnson: We have pictures if you'd like to see them (*displays pictures on the monitor*). They said it was okay to build the roof out as far as we wanted it at 5 feet, but we weren't allowed to put the posts out that far. We are just asking to be able to put the posts out as far as the roof so it doesn't have a 3' overhang, which would look far worse, in our opinion. I'm surprised Leawood would let us build something like that anyway.

Chairman Clawson: The picture on the left is what you intended?

Mrs. Johnson: Yes, but it will be painted.

Mr. Johnson: It's probably a 2.5'-3' exception, and certainly, the curb appeal of the home will improve dramatically. Certainly, the neighbors would be appreciative of that as well.

Chairman Clawson: You'll tie it in to your existing roof?

Mr. Johnson: Yes, sir.

Chairman Clawson: The one you're showing on the left is probably eight feet.

Mrs. Johnson: I couldn't find something exact.

Mr. Johnson: It's the vision.

Chairman Clawson: Questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? Is there a motion?

A motion to approve Case 11-2019 – Gwen & Jeff Johnson/Owners – Request for an exception to the front yard build line for the placement of a covered entryway in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 10208 Mohawk Lane – was made by Bussing; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Case 12-2019 – Curtis Petersen/Polsinelli; Ranch Mart North, LLC/Owner – Request to consider an Appeal of Administrative Decision relating to the location of a trash enclosure in accordance with the LDO, Section 16-4-1.4 in an SD-CR District for property commonly known as 3705 W. 95th Street.

Staff Presentation:

Richard Coleman made the following presentation:

Mr. Coleman: Staff has analyzed the request. We have been working with the developer on the redevelopment of Ranch Mart Shopping Center. The east side of the center where Seasonal Concepts and the indoor recreational area is going to be torn down, and two new buildings will be constructed there. They consist of approximately 24,648 square feet. They have three proposed restaurants in those buildings: two in one and one in the other. They did not want to provide any trash enclosures with those two new buildings, so they proposed to place the trash enclosure at the end of the National Bank of Kansas City drive-through to the east across the east drive of the development.

Chairman Clawson: This is for the bank and also the new buildings?

Mr. Coleman: It's not for the bank. It's for the two new buildings. The ordinance says that the accessory structures (which trash enclosures would be) should be attached to the primary structure. I just handed out another section on Article 2H, "Service loading and utility, outside storage, and display and screening. Service and loading areas shall be accommodated entirely onsite for each parcel." Attached to that is a parcel map. They are re-platting the shopping center, but the two buildings are on a separate parcel than Kansas City National Bank.

Ms. Farrington: So, you're basically saying they have to have their own trash enclosure?

Mr. Coleman: Right.

Ms. Farrington: Besides the bank.

Mr. Coleman: Yes.

Chairman Clawson: So, you're asking the board to consider an appeal to an administrative decision.

Mr. Coleman: They're asking the board, not me.

Ms. Farrington: Is it based fully on the LDO requirement that the trash enclosure should be attached to the primary structure for the bank itself?

Mr. Coleman: The trash enclosure is not for the bank; it's for the restaurants.

Mr. Hawk: The buildings haven't been built yet.

Mr. Coleman: Correct; we are in the planning stage.

Mr. Hawk: So, they may or may not be built.

Mr. Coleman: They'll be built. They are requesting that the trash enclosure for the two buildings to not be located with either building but with the bank, attached to the drive-through.

Chairman Clawson: I was surprised the bank was letting them.

Mr. Coleman: They don't own the property.

Ms. Farrington: What I'm trying to understand is this Article 2 that you gave us basically states that it shall be accommodated for each parcel, so there should be three trash enclosures, not one for all three.

Mr. Coleman: I believe the bank's trash is handled inside the building. There are two new buildings.

Ms. Farrington: I'm trying to understand what they're trying to appeal.

Mr. Coleman: They're trying to appeal my reading of the LDO that the trash enclosure should be attached to the building that it serves.

Chairman Clawson: The applicant feels that you made an error in your evaluation of where the trash enclosures should go. They're asking us to overrule it.

Mr. Coleman: Correct.

Ms. Farrington: I just want to be clear. It is basically with regard to being attached to the structure and has nothing to do with the amount.

Mr. Coleman: It has nothing to do technically with the amount, but there are two buildings. Leawood requires trash bins to be screened, enclosed, and attached to the primary structure of the building. They don't want to put trash enclosures with their buildings; they want to put them across the aisle and attach them to the drive-through. My supposition is that this is not the primary structure in that it doesn't serve either of those buildings, and it is also in the drive-through canopy area, which is not part of the primary structure because the bank would be the primary structure and the drive-through would be the accessory structure.

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

Applicant Presentation:

John Petersen, Polsinelli, 6201 College Boulevard, Suite 200, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Petersen: This is more exciting to talk about than fences. This is about the redevelopment of Ranch Mart North. I have Tripp Ross, Chris Hafner, and Len Corsi here as well. This is always tough for you. Normally we are up here on variances; now,

we're up here on an administrative appeal. We're pulling out a piece of a very complicated redevelopment concept that has gone through Planning Commission and City Council. I just want two minutes to put this in context so you can understand what we're talking about. The area we're focusing on are those two end buildings. Those of us who have been around here know there was a big bowling pin on top of a ball that swirled around. The building on the right is east. To the north, which is at the top, is the old bowling alley. What I circled is the trash enclosure that we're proposing to build adjacent to the structure. For factual context, we have the Seasonal Concept and bowling alley buildings. Those are going to be completely redone and will be pulled apart. The great part about this development is we're finally going to have true, four-sided architecture. We'll have a plan that invites people to come in and be around the building, things we have been working on for some time. As you can see, the building in the area invite people in. It is a very activated space. Looking from the east to the west, you can see the separation. The point is that we have taken back of house where we normally talk about those nasty things we have to do, which is appropriately dispose of trash for a period of time until it's picked up, and we've removed the back of house. The code contemplates some things. First, it contemplates an accessory use, which is either accessory to a building or accessory to a use. The code talks about where to place trash enclosures. I'm not going to talk about intent. The intent of the code is we don't want floating trash enclosures out in the parking lot. We want them to have an architectural feel to them. We want the materials to match the buildings that surround them. We want the doors not to be wood and deteriorate. We want it to be incorporated into the architecture. I am asking, pursuant to the code, to allow a trash enclosure that is incorporated into the architecture. There is nothing in your code that says we have to tell who's going to use the trash enclosure. Nothing says where a building has to dispose of its trash. It speaks to the issue of enclosures for trash adjacent to buildings. This discussion about tracts and parcel is new. We have one lot that is the main shopping center and the bank. Interpretation of the code is I can build a trash enclosure adjacent to the physical structure of the bank. The bank will use this, by the way. We are the owners of the real estate of the bank. There is nothing in the code that says who can use trash enclosures. This is the plan we want to implement. This is what we want to do, moving forward. As part of that, we're going to build a trash enclosure adjacent to a structure, meeting all of your design criteria in terms of compatibility with architecture and screening. We will be in compliance with your code, end of story.

Chairman Clawson: Questions?

Mr. Petersen: The alternative, of course, is what I would call an adding on, adding on, adding on to Richard's interpretation of the intent of the code, and people sitting outside enjoying the restaurants would have to walk by the trash enclosure. I don't think that's the intent of the code. We would ask for your interpretation that what we are proposing meets the code. Thank you very much. I'd be happy to answer any questions.

Mr. Hawk: Can you show us where the trash enclosures might be in relation to the buildings?

Mr. Petersen: (*Referring to map*) We've got one here and one behind Price Chopper as the two most immediate ones. We are not proposing to have four-sided architecture, outdoor seating areas, pedestrian walkways, and places with people to gather with a trash enclosure plopped in.

Mr. Dunn: Mr. Petersen, here's where I'm struggling with this: What I'm reading here says that all accessory structures have to be attached to the primary structure. I thought I heard what you say is that the code requires that it is adjacent to the primary structure. Those are different.

Mr. Petersen: If we want a trash enclosure, it has to be adjacent to a structure. There is nothing in the code that says what trash enclosure the tenants use. If you have a mixed-use building and multiple tenants, there may be a trash enclosure on that building that is appropriate and works with the design. That doesn't mean that every tenant in the building uses it. They may use one in another spot.

Mr. Dunn: I wasn't trying to go there. Once again, I find myself in the position that I'm not here to say whether I think it's a good idea or not; I'm here to say whether I think staff has overreached or misinterpreted or something like that. What I'm trying to figure out is the trash enclosure is being proposed on the outside wall of the drive-through.

Mr. Petersen: Which is part of the bank structure.

Mr. Dunn: It is part of the bank structure but barely. Staff's interpretation is that's not the real structure and that it is an accessory structure.

Mr. Petersen: That is not staff's position.

Mr. Coleman: That is staff's position.

Mr. Petersen: If the bank was being built today and we proposed to build a bank with a drive-through and part of the overall architecture has a structure there, would we be in compliance with the code? I would say we would be, and that's all I'm asking for approval for today. That's it. I'm not asking for Richard's opinion about where people are going to put trash from other buildings. I'm asking for that to be approved because nothing in your code talks about utilization of trash enclosure.

Mr. Coleman: It says "primary structure," and it says that for a reason.

Mr. Petersen: It is attached to a primary structure.

Mr. Coleman: It's not the primary structure. The canopy is not a primary structure.

Mr. Bussing: I have a question for counsel. Fundamentally, what is our job here tonight with regard to this application?

Ms. Knight: Do you agree with Richard's interpretation of the code? It's an appeal of an administrative decision. The administrative decision was Richard's interpretation and application of the code. Mr. Petersen and his client don't like Richard's interpretation, so they're appealing it to you so you can look at it from his perspective and see if you agree with his perspective of what the meaning of the code is and how it applies in this situation.

Ms. Farrington: I would like to look at the photo that shows the overhang. I'm assuming this is the overhang of what the bank structure's drive-through is going to look like. Is that correct?

Chairman Clawson: What it looks like now?

Ms. Farrington: I don't know if that's existing or if it hasn't been built yet. Is that the actual structure that the trash enclosure would be attached to?

Mr. Coleman: Yes, that is the existing structure.

Ms. Farrington: Is that where the proposed trash enclosure is going to be attached?

Mr. Coleman: At the bottom of the columns, yes.

Chairman Clawson: Would you enclose the west wall?

Mr. Petersen: Yes, it would be fully enclosed, meeting all of your criteria in terms of what a trash enclosure is to look like.

Ms. Farrington: I would like to back up a few steps. We're looking at the LDO requirement, and it states that the trash enclosure is to be attached to the primary structure. Does it have to be the primary structure of the tenants using it? Have we determined that? The tenants using this trash enclosure are going to be the restaurants on these two freestanding buildings across the parking lot.

Mr. Coleman: The bank has been in existence for more than a decade, and it has never had a trash enclosure attached to the driveway. If they needed a trash enclosure attached to the drive-through, they would have placed one there. I also wanted to call attention to what I handed out because it's also relevant to this case. That is that the service and loading areas should be accommodated entirely onsite for each parcel. The development is divided into multiple parts. The two new buildings are on a separate parcel than the bank building. Those two new parcels could be sold off without any trash facilities.

Chairman Clawson: A legal description exists for each of those separately.

Mr. Coleman: Correct. They have their own parcel numbers.

Ms. Farrington: Can you put up the plan that has the two freestanding buildings plus the overall Ranch Mart plan for development? (*plan displayed on monitor*) There are two freestanding structures that will be constructed where Seasonal Concepts and the baseball facility are being demolished. Then you pointed out there is an existing trash enclosure on the back of Price Chopper. That is attached to a primary structure that utilizes it, which is the grocery store, correct?

Mr. Coleman: Correct.

Ms. Farrington: They are obviously trying to not have the trash enclosures attached as a primary but attached to the bank across from the parking lot, stating that it falls as a primary structure, even though they're not going to be utilizing the trash enclosure.

Mr. Coleman: That is my interpretation, yes.

Mr. Petersen: The bank will be using it. There are no restrictions in your code about multiple utilizations. The code speaks about being attached to a primary structure. What we have proposed is that there will be a trash enclosure attached to a primary structure.

Ms. Farrington: The question is if the drive-through is a primary structure or if the building the primary structure. It's the definition we have to look at. We have to break it down and see if his interpretation is abiding by the LDO and if we agree with that interpretation. It comes back to deciding if the drive-through is a primary structure or if the trash enclosure would have to be on the actual building of the bank itself.

Mr. Petersen: If I may speak to that, in your code, a canopy for a bank is not considered an accessory use; it is considered part of the primary structure. It is required to be architecturally consistent and built as part of the primary structure.

Mr. Dunn: And I will point out that Leawood has dealt, for a long time, with these accessory structures that were architecturally attached and corrected that after many years of having full-size buildings built 20 feet off the property with a little beam of wood connecting the two of them because they were architecturally attached. It's hard for me to conceive that with a bank, a structure for a drive-through is accessory to the bank itself because it's integral to the bank itself. I don't know any banks that don't have drive-throughs.

Chairman Clawson: It's not really an afterthought or add-on. It's part of the bank.

Mr. Dunn: It's not.

Chairman Clawson: It is a requirement of the LDO that the trash dumpsters have to be enclosed, correct?

Mr. Coleman: Yes.

Chairman Clawson: And you said it has to be attached.

Mr. Coleman: Correct.

Chairman Clawson: Could they put a dumpster enclosure, adjacent to Cure of Ars?

Mr. Coleman: On the bank?

Chairman Clawson: No, just in general. If they wanted to put a dumpster over in the corner, could they do that?

Mr. Coleman: Do you mean freestanding? They could not do that.

Mr. Bussing: I want to take a different track on this. I'm going to go back to my recent history of time on the City Council, where we struggled with the redevelopment of this property the entire 15 years I was on City Council. I was delighted to read that they finally reached an agreement and they're going to proceed with upgrading this important property in Leawood. As Mr. Petersen noted, these modern-day architectural concepts, development concepts require, perhaps, a new way of thinking with regard to codes. They require a less strict doctrinaire interpretation of the codes to get the kind of output, the kind of structure that Mr. Petersen has proposed for those two locations. Reasonable people can read this language and draw either conclusion. Mr. Petersen and Mr. Coleman are both right or both wrong. You can draw whatever conclusion you want from this rather ambiguous language. My perspective is this is a particular project that we've waited decades for, and I feel that the city needs to be as accommodating as possible and as prudent to get this project going. I don't see this as a stretch with regard to trash enclosures. You can't park it by Cure of Ars. That would be the best solution, but you can't do it. I don't see a place on that diagram where you could put trash enclosures without completely disrupting the flow of traffic. I could read it and say that Richard is right and they should find another place, or I could read it and say that Mr. Petersen has a great point. I think we need to step back as a city and decide if we want this or not. If we want this, we need to interpret our codes in a manner that supports the kind of development we want.

Chairman Clawson: Given the architectural plan you have for the ability to walk around all the buildings, I think you're right and that having a trash enclosure back there would be a detriment to the project.

Mr. Coleman: There are blank walls on the north side, and there is also a utility corridor on the north side of the south building. There is a screen wall there that is there because it is screening all the utilities for the building. It is feasible to incorporate trash enclosures for those two brand new buildings instead of dragging it across the drive to the dumpster at the back.

Ms. Farrington: Do you have elevations of the project?

Mr. Dunn: Wouldn't the north side of the south building be between the two buildings?

Mr. Petersen: The north side wouldn't, but we're trying to invite people to come in from the north as well as the east.

Mr. Coleman: (*Refers to plan on monitor*) There is a utility corridor here. This is a screen wall that goes all the way back, and all the utilities that serve the building are in the back. There should be sufficient space to put trash of some type back there.

Mr. Petersen: I've experienced this thought and this idea. Go out to 135th and Roe, and look at Gaslight Grill. That was the idea. You come off the east parking lot there, and you have Gaslight Grill on the left as you're moving to the west, and you've got Bonefish on the right. They want to invite people down there, and all along the back of that building are trash dumpsters, and it stinks. They are enclosed, Richard; you know they are. That is exactly it. I am going to close with this: there are two ways you can go and be sound with your code. I think BZA member Bussing has that it is well within trying to interpret the intent of what is trying to be done here that you could make a finding consistent with the code, or I'll give you the strict application. I'm asking to build a trash enclosure adjacent to an existing structure meeting all your architectural elements. The code does not speak to use. You can go one way or the other, and we're going to have a great project. I would ask you to override staff's recommendation and allow us to proceed.

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

Ms. Farrington: I still want to see the elevations if you have them.

Mr. Thompson: Mark, could you put the elevations on the computer?

Mr. Dunn: Mr. Petersen, not that I want you to speak more, but I do have a question. I sometimes try to restate what somebody said to make sure I understand it, but let me try that with you. What I hear you saying is the only question we have to answer is whether this is an enclosure that is adjacent or continuous with an existing structure. That is really the only question we've got to answer. These other questions about whether the restaurant is going to use it or not use it are not relevant to this.

Mr. Petersen: That is my most succinct and strongest legal argument because I agree totally with the concept of whether we do this or what if. The strictest application of your code says the trash enclosure needs to be adjacent to a primary structure to be compatibly correct, and that's what we're doing.

Chairman Clawson: Is that what you wanted, Dana?

Mr. Petersen: We do not have the north elevation. I apologize.

Ms. Farrington: That basically just shows a rendering, so it doesn't show the actual function of what can be designed or is designed.

Mr. Petersen: There are patios on the north and points of entry into the building on the north as well. I'll state that for the record.

Ms. Farrington: What about on the west side? I guess I still have a question regarding the statement requiring the trash enclosure to be attached to the primary structure. Is it the primary structure that utilizes the function of the dumpster? If the bank is going to utilize it, that's one thing; if other properties are going to utilize it, is it attached to that primary structure? Basically, on the property, there are other dumpsters. There is one behind Price Chopper, which is utilized by Price Chopper and other businesses. There's probably one in the alleyway on the west side, I'm assuming, that's behind the restaurants on that end. Multiple businesses probably utilize that. When this trash enclosure is attached to the primary structure, is the bank going to be utilizing it, or is the trash enclosure being designed for these two freestanding buildings specifically?

Mr. Dunn: I don't want to sound too much like a lawyer because I don't practice anymore, but it says, "all accessory structures shall be attached to the primary structure." It doesn't say, "Only accessory structures to be utilized by the primary structure shall be attached to the primary structure." Are you following me? I understand what you're saying, but it doesn't say that. The only thing this has to do to qualify is be an accessory structure, and it is an accessory structure.

Chairman Clawson: Richard, you were just saying that the drive-through is an accessory structure.

Mr. Coleman: I would consider it not the primary structure. It's a canopy. Sometimes they're not there; sometimes, they're added. If you look at the design of the bank, the canopy for the drive-through doesn't have any walls; it only has a roof. The roof is subservient to the rest of the structure, which is the main bank.

Mr. Petersen: Is a porte cochere part of the primary structure?

Mr. Coleman: It could be an accessory. It sticks out.

Ms. Farrington: It sticks out and is not necessary. There are hotels that don't have those, just as not all drive-throughs have overhangs.

Chairman Clawson: As a board, we have to decide if the drive-through is a primary structure or an accessory structure?

Mr. Coleman: That's what it's boiling down to, yes.

Mr. Bussing: I think Mr. Dunn captured it. When the bank was built, that overhang of the drive-through was part of the overall plan and part of the primary structure and is therefore the primary structure. I don't know how you can separate that.

Mr. Coleman: It's not enclosed, for one. The rest of the building is an enclosed structure where people have offices, and the drive-through is attached to it and has no walls.

Chairman Clawson: If there was another story on top of the drive-through with offices, would that be considered primary or accessory?

Mr. Bussing: Like Commerce Bank.

Mr. Coleman: If the second story was attached to the part of the rest of the building, then it would be part of the primary structure because you could walk through it. Just having a canopy or something that protrudes from the building does not make it a primary structure.

Mr. Petersen: I will tell you that there's nothing in your code that would support what Richard just said. I would ask the BZA to fall back to common sense on buildings and utilization of buildings. Our position is that it's part of the primary structure. I'm sure that's how it's rated in terms of fire code and everything else. By the way, I don't think that outdoor bank facilities can be utilized in Leawood without an overhand and without being part of the overall structure.

Mr. Coleman: Just take the drawing on your screen for example. There's this metal thing that's attached to the building. Is that the primary structure? Could you attach a trash dumpster to that? I would say no.

Mr. Petersen: Richard, you reviewed that plan and approved it, considering it to be an accessory use to that building.

Mr. Bussing: Do you want a motion, Mr. Chairman?

Chairman Clawson: I would love a motion.

Mr. Bussing: I'm not sure how to word this. A motion to rescind?

Ms. Knight: You could word it that way, or you could word it in terms of granting the appeal.

A motion to grant the appeal of the administrative decision for Case 12-2019 – Curtis Petersen/Polsinelli; Ranch Mart North, LLC/Owner – Request to consider an Appeal of Administrative Decision relating to the location of a trash enclosure in accordance with the LDO, Section 16-4-1.4 in an SD-CR District for property commonly known as 3705 W. 95th Street – was made by Bussing; seconded by

Hawk. Motion carried with a vote of 3-1. For: Bussing, Dunn, and Hawk. Opposed: Farrington.

Chairman Clawson: The next three cases are related. The last case – Case 15-2019 - is not going to be reviewed today; it's going to be considered as part of Case 14-2019. It's really not an exception requirement, so really, Case 14-2019 and 15-2019 will be combined. The case we'll look at first is 13-2019.

Case 13-2019 – Ryan Rader/Owner – Request for a variance to the Average Front Setback in accordance with the LDO, Section 16-2-4.5(A)(1) in an R-1 District for property commonly known as 2813 W. 87th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant is in the process of a major remodel. To construct the home as shown on the plan, a variance for 7.3 feet is needed to add the third garage bay that would provide space for a total of four or more vehicles.

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

Applicant Presentation:

Ryan Rader, 2813 W. 87th Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Rader: We're asking for an exception on the setback ordinance where you average out the adjacent properties. When we designed this, we designed it at 35 feet, and I think we were 35 feet back from the street with the original plan. The way the lot curves, it cuts it off. We don't build curved houses; we build square houses. We kind of got blindsided by this one because we thought we were fine, but when we came back to the averages, it averages the two adjacent properties. The property to the west has an average that comes off the side of the house instead of the front of the house. When the front of the house is within the mid-30s, the side is back in the 40s, and it really throws off my offset average. Also, I just wanted to add that if we do have to push it back another 7-10 feet, it's going to ruin the floor plan on the upper bedroom. Even if we knock it down, no matter what, I would have to ask for an exception on the setback. No matter what we did, we'd have to stuff that house back into a lot that tapers down in the back. I've got a unique, pie-shaped lot.

Chairman Clawson: Wade, how do you calculate the existing front yard setbacks. Do you use the county AIMS map?

Mr. Thompson: They use measurements off the surveys.

Chairman Clawson: You're looking at each side of the house, and then you average them?

Mr. Thompson: To be honest, I don't know how they do the formula. Our plan reviewer does it.

Mr. Coleman: It's 35 feet from all points of the right-of-way.

Chairman Clawson: I know that. We have an existing house on each side.

Mr. Coleman: They draw the front yard. It would be round on the setback 35 feet from each house. The front corner to the front corner of the existing homes. There would be a line drawn through there.

Chairman Clawson: The line at 35 feet would be the required setback. When you have an existing house, they have to measure the existing setback on both sides, and then that's the average, correct?

Mr. Coleman: Yes.

Chairman Clawson: Do they measure each side of the house?

Mr. Coleman: They measure the point that is closest, so if a corner sticks out, it's where they measure.

Chairman Clawson: So, you basically took the 35' line and used that as your basis for your design?

Mr. Rader: Yes, and then I got the monkey wrench of the average thrown at me, so that's why I'm here. I like to follow the rules, but I feel if we do go with that rule, it will ruin the plan, and I don't think it's going to make any difference. It's one of those situations where the ordinance and reality don't really mesh. A lot of it is because they have to average with the side of the house, and that lot turns back.

Chairman Clawson: With your plan, your setback is what?

Mr. Rader: It's 35 feet.

Mr. Dunn: On this picture in front of us, where's the area that's in violation?

Mr. Rader: *(points to map)*

Mr. Dunn: Ironically, it seems to be the part that's the farthest from any of the other property lines. Am I seeing that wrong?

Mr. Rader: I would agree with that. It's got a huge front yard.

Mr. Dunn: Having said that, I'll just ask because we're going to get to these questions. All I've heard so far toward Uniqueness is that you have to comply and you can't build what you want.

Mr. Rader: If I comply, I can't build what I designed.

Mr. Dunn: If you fix this in accordance with what the staff has told you, you can't build what you want.

Mr. Rader: That's correct.

Mr. Dunn: So, what makes this unique, other than that you've already designed it and spent the time to design it?

Mr. Rader: Uniqueness comes from some of the unforeseen difficulties with the lots and the Leawood setbacks that are already there. I didn't know that it was going to be this difficult. I bought it from Larsen at a pretty good deal. I found out later why I got it for a good deal. Uniqueness comes from the difficulty of building on that lot and staying within the rules.

Ms. Farrington: The little square drawn on the plan is the only area that we are to approve for a variance?

Mr. Rader: Correct.

Ms. Farrington: I look at the depth of that garage as 32 feet. What is in question is 7 feet, 3 inches. That's a difference of about 27 feet in depth.

Mr. Rader: And the bedroom above. It would take quite a big chunk out of the bedroom upstairs, which would make it functionally obsolescent.

Ms. Farrington: Do you have that plan?

Mr. Rader: I might. I don't think I have it.

Chairman Clawson: I guess I'm not sure that's the only portion that wouldn't be in compliance. I think it would be clear across the entire front of your garage.

Mr. Rader: Some of that is already there. I think it would make the house also look like buck teeth with that addition. We wouldn't mind moving it in a couple feet, but I think 10 feet is just going to ruin it.

Chairman Clawson: You know we have to go through the five factors. Could you address some of those?

Mr. Rader: Uniqueness, I would say is that pie-shaped lot and how it tapers back. It limits construction in doing a remodel. Also, the adjacent property I have to average it with is within 30 feet in the front, but the side is not. I believe the way the house is angled and sits, I think it will sit on the lot proportionally, and I think it will fit in with the size of a lot of other rebuilds. I'm actually probably about 2,000 square feet less than a rebuild that is behind me. I think it will positively affect the neighboring houses. It will secure those property values and keep them high. Hardship for me is this is a house I am building for myself. I need a third-car garage because of how I operate. I feel that if we took that setback out, it would eliminate that third bay. I think it would hurt the look and the value of the home as well. I feel like we met the 35' setback. There's a ton of development and redevelopment in this neighborhood, and I think it just flows right along with that redevelopment.

Chairman Clawson: Questions for the applicant? Is there anyone here who wishes to speak for or against this application?

Tyler Robertson, 8721 Norwood Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Robertson: I live across the traffic island directly to the east. This is visible out my window. I wasn't certain from the plans, but it sounds like the house is remaining mainly the same except for that small piece. Is the 35' measurement from the easement or from the curb line?

Mr. Thompson: It is from the front property line, which is the curb.

Mr. Robertson: If you're not pushing the front of the current garage line out and you're putting in that one piece, I think it's closer to 55 feet from curb line back to the house instead of the 35 feet that you're talking about.

Inaudible comments

Chairman Clawson: We need to have all discussion on the record.

Mr. Rader: When we designed the remodel, we designed the tip of that third garage to touch that 35' setback. Since it's curved, it just clips that corner. The rest of the house is behind it just because the lot swoops out. The house is flat; the lot is not.

Mr. Robertson: It is a unique lot. It's one of the smaller ones in the neighborhood; I will say that. I was just trying to find out what was happening with this today and understand. I'll let my other neighbors speak.

Alta Emposol appeared before the Board of Zoning Appeals and made the following comments:

Ms. Emposol: I do oppose perhaps the style of the flat roof. I think it's important that this neighborhood is continued to be very desirable. The property values have continued to go upward. I think adhering to the property lines, the size of the house on the property, and zoning are very important. I think this needs to be a house that would fit into this neighborhood that is mostly ranches, even the new builds that fit the neighborhood well. I think it's important that everyone is considering that when building a new home.

Chairman Clawson: Thank you. Does anyone else wish to speak? This is a variance, so we have to evaluate the five factors. The first is Uniqueness. It is kind of a pie-shaped lot. If you look at an AIMS map, you see others that are similar.

Mr. Bussing: As Mr. Dunn has said a number of times, Hardship and Uniqueness are the two criteria we struggle with the most. Currently, this particular lot has some issues with regard to how the homeowner is trying to make his plan fit, but from the overall perspective, I don't see this lot as unique. There are a number of lots this size and shape all throughout Leawood, particularly up north. I don't think this one is particularly unique.

Mr. Dunn: I reluctantly have to agree with you. This is a different-shaped lot, but as what was pointed out to us earlier, Uniqueness is not simply if we find it to be a unique shape, but is it the cause of the issue they're dealing with. Despite the unique shape of this lot, an addition could be built, just not the one he wants. I'm sorry.

Mr. Rader: I don't think it will look good.

Uniqueness criterion not satisfied with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: Calls and complaints have been received. I gave you the letter.

Mr. Dunn: It may surprise some of you that what I've heard of the complaints, they have to do with the change in the neighborhood and not related to the variance that's being requested. I don't see how the variance being requested is going to adversely affect their rights.

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

Chairman Clawson: Hardship.

Ms. Farrington: I find it difficult on this one to come up with some sort of reason that there is a hardship by approving this variance. There could be more width put in; it could be pulled back and still achieve the third-car garage. Aesthetically, the homeowner brought up the look of the home. When it comes to aesthetics, we don't really have an

opinion when it comes to the variance of how it looks. The plan already steps back on the other side of it, so to be within the variance, you could basically pull in line with that depth, which wouldn't change the look of the property at all. It would still have the same visual on the front, just recessed a bit. Not approving this variance would not create any hardship. The homeowner could still add the addition and meet the square footage and what he's trying to achieve.

Hardship criterion not satisfied with a unanimous vote of 0-4. Opposed: Dunn, Hawk, Farrington, and Bussing.

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: I don't see that it is affected either way.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: The intent of the ordinance is to maintain that common streetscape, and I think violating that ordinance leaves us open to all kinds of variability that we don't want. I think the application needs to be denied.

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

Chairman Clawson: We didn't feel Uniqueness, Hardship, or Spirit and Intent were satisfied; therefore, we must support a motion for denial.

A motion to deny Case 13-2019 – Ryan Rader/Owner – Request for a variance to the Average Front Setback in accordance with the LDO, Section 16-2-4.5(A)(1) in an R-1 District for property commonly known as 2813 W. 87th Terrace – was made by Farrington; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Dunn, Hawk, Farrington, and Bussing.

Ms. Knight: I'd like to make a record on Case 15-2019. It will not be considered because it involved a request for an exception regarding whether the dwelling reflects the character of the other surrounding dwellings of the neighborhood, and that factor is one of the factors to consider to decide Case 14-2019. It is not its own separate factor. It will be considered as part of this next case.

Case 14-2019 – Ryan Rader/Owner – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(F)(2)(a) in an R-1 District for property commonly known as 2813 W. 87th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to do a major remodel that includes increasing the size of the home. The maximum allowable square footage for this lot is 5,000 square feet. The proposed addition will add 993 square feet for a total of 5,993 square feet, or 20% larger than what is permitted.

Chairman Clawson: Again, the square footage calculation includes the garage?

Mr. Thompson: Yes, sir. They get an allowance of 450 square feet for the garage, but this garage is going to be bigger than that.

Mr. Dunn: This may be a stupid question, but since we just denied the variance, it is going to require some redesign. Does that make it problematic to approve an exception for square footage until we see what the actual design is going to be?

Ms. Knight: That's what I was just going to say. Unless the square footage goes up with the redesign, it will change, and it most likely will go down.

Ms. Farrington: If you were to minimize the last issue we voted on, it was 7'3" by 11", which is approximately 78 square feet on two levels, looking at 150 square feet. What we are looking at is 993 square feet. What we denied in the last is only 150 of the 993. We're still looking at something that is over 20%.

Mr. Thompson: It would be a little less than 20%. It would be more like 17%.

Ms. Knight: That's if the plans are redrawn to just take that corner out. If they're redone, it could be something different.

Mr. Dunn: At this point, all we'd be doing is writing a blank check for square footage that is less than 20% over, right?

Mr. Thompson: Yes, and if the homeowner wants to continue this case since it will involve a redesign, he could do that.

Chairman Clawson: If he redesigns and it comes up to be 5,800 square feet, which is less than 20%, and we've already approved the exception, it would be okay.

Mr. Thompson: Correct. He's asking right now for a variance up to 20%.

Chairman Clawson: Which is permitted under the exception requirement.

Mr. Thompson: Yes, sir.

Ms. Farrington: We have to look at this separate from the previous one.

Ms. Knight: It's similar factors. And if you grant it, he would have that exception up to 20% even if he redoes the plans. If you don't grant it, he can still redo the plans and come back with a different exception.

Mr. Thompson: But, this 20% exception does include the character, which is what the last case would have been. It is a factor in this case.

Chairman Clawson: That's been considered in cases before. We denied cases that were less than 20% but the remodel didn't meet the requirements of the neighborhood.

Mr. Thompson: That is correct.

Ms. Farrington: It could be stated that it is going to have to be redesigned regardless because of the last motion, so we have to look at the issue at hand, which is what is in front of us, which is the 993 square feet, and vote on that and all these factors versus even worrying about that.

Mr. Thompson: Correct.

Chairman Clawson: Other questions for staff? Does the applicant wish to speak?

Applicant Presentation:

Bob Delpopolo, Delpopolo Architects, 8139 Westgate Drive, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Delpopolo: I understand this consideration for the square footage. We have developed the 20% criteria. We have the 5,000 square feet that we are not going to exceed on this property, which is acceptable. I've worked all those numbers out with Travis. If we come in here with the redesign, that will still keep us under the 5,000 square feet, no matter which way we look at this. I'm asking for that variance for the square footage to be approved so we will not exceed the 5,000 square feet, no matter what design we use. If we cut back on the garage and the second-story bedroom, we will still maximize the property at 5,000 square feet that we're allowed.

Chairman Clawson: As I understand, the maximum allowable for the lot is 5,000 square feet.

Mr. Delpopolo: That is correct. We're going to 6,000 square feet. We're not going to exceed 6,000. We're allowed 5,000. We're asking for 20% more. That gives us 6,000. Even when we redesign this to pull this back because of the setback requirements, we will not exceed 6,000 square feet. If we get the 6,000 square feet approved as one part of it, we'll deal with the next part.

Chairman Clawson: Are there questions for the project architect?

Mr. Dunn: I'm sorry, but we've had a number of exception cases we have considered, and every one of them, we've looked in detail at what the additional square footage was needed for. I'm not comfortable approving this exception without knowing what the additional 20% is needed for. It just doesn't make sense to me.

Mr. Delpopolo: The 20% is needed because we're allowed to do that. We're allowed to have 6,000 square feet.

Mr. Dunn: It's needed because the exception allows it.

Mr. Delpopolo: That's right. No matter what the function of the house is inside, we are allowed to have that 6,000 square feet.

Mr. Dunn: In that case, there's no point in us making a decision. If applying within the 20% met an automatic approval, we wouldn't have to have this hearing.

Mr. Dunn: We were told to come and present that.

Chairman Clawson: One of the issues we typically have to look at is if the design fits in the neighborhood.

Mr. Delpopolo: That's the second part of the question. First of all, we have the 6,000 square feet approval, and then the second part is that no matter what the character of the house in the neighborhood, the 6,000 square feet will be achieved one way or the other.

Ms. Farrington: Let me clarify that we have not approved the 6,000 square feet. That is what you're asking for at this point. What is allowed is 5,000 square feet, and you're asking for 20% more. That's what we're looking at now. We have to consider the size of the lot and the constraints. This exact ordinance is put in place so people can't come in and just build huge structures on small lots. That's what we're looking at. That is why there is a 20% requirement.

Mr. Hawk: We would like to see what you intend to do with the 6,000 square feet.

Chairman Clawson: Do you have an architectural rendering of this?

Mr. Delpopolo: No, we just have elevations.

Mr. Thompson: The elevations are in the packet.

Chairman Clawson: It would have been nice to see a rendering.

Mr. Delpopolo: No, we put an extra bedroom on the third floor that created this variance to be allowed. We're trying to keep pace with the square footages of the other rebuilds behind us and also down the street, in terms of the square footage on some of those

homes, too. We're just trying to keep pace with the market value in the area right now. The house right behind them was 7,980 square feet, and it was \$1.5 million.

Ms. Farrington: But we're not looking at apples to apples because we don't know the property size of that lot as well.

Mr. Delpopolo: We're talking about scale and how it relates to the other homes around the area.

Ms. Farrington: We've had many applicants with houses that were razed and rebuilt, and we've had to vote on this exact issue before. It's put in place, and you can go right up into the 20%. You could even do 19% and not have to be here. When you're asking for 20%, it comes before us, and we have to vote and decide whether it's acceptable or not for the property that we're looking at.

Mr. Thompson: Anything over 5,000 square feet has to come before you.

Ms. Farrington: Okay, so it's already 20% over.

Mr. Coleman: There's a calculation that determines the size of house that goes on the lots for these.

Mr. Delpopolo: And it should be on the calculation. Travis calculated that out.

Mr. Coleman: There's an exception in the LDO to increase that figure by 20%.

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

Alta Emposol appeared before the Board of Zoning Appeals and made the following comments:

Ms. Emposol: I wrote a letter. I think compliance with property lines, zoning laws, and maintaining the integrity of the neighborhood is important to the continued increase in the property values of the homes in Leawood Hills. It is important that the homes are built and remodeled to fit the lot size and to meet the compliance of the zoning codes of Leawood. This is important to the continued increase in property values and the desirability of the neighborhood. When a house is so big that it's out of line with the other homes, you lose the integrity of that neighborhood. I think that's important to property values in Leawood. That is my complaint right there. I think that zoning and property lines and size and structure of the house are extremely important, that they fit the rest of the neighborhood.

Tyler Robertson, 8721 Norwood Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Robertson: I'm conflicted with a lot of the conversation. I'm a licensed architect. I'm thinking of what this will do for the neighborhood. I don't necessarily disagree with doing a more modern design or increasing square footage, but it is about scale and proportion of the neighborhood. This happens on a grade change coming from one street down. It's somewhat by itself, but it does need to relate to the adjacent neighborhood and the homes within it. My only concern is if you're just making the house to be 6,000 square feet because we're allowed to, that means you're not designing for the site, the neighborhood, and the views around it. I think that's reckless.

Chairman Clawson: Thank you for your comment.

Mr. Rader: We tried to design for the site as best as possible, and we got kicked in the teeth a little bit by the average of adjacent properties. You guys already made your decision. To try to address him, it's a difficult house, and we really tried to keep a lot of the same lines in the house. We really tried to make it fit in, and I feel like it was a mistake rejecting that first application. I guess that's all I've really got.

Chairman Clawson: Does anyone else wish to speak for or against this application?

Inaudible comments.

Mr. Robertson: I do appreciate some modern design in the neighborhood. We're seeing it pop up. We have standing seam metal roofs. We do have a lot of them with suburban architecture design that takes a little bit of a craftsman style. I think Leawood Hills has done a great job of doing a really nice, big home in a respectful way. I'm not scared off by a modern design. I haven't seen any renderings of this. I haven't seen the flat roof that my neighbor spoke about earlier. I'm not concerned with some of that; it is just the scale and fitting with the neighborhood.

Mr. Bussing: Mr. Robertson, are you familiar with the city's scale and massing ordinances?

Mr. Robertson: Somewhat.

Mr. Bussing: It is a difficult challenge to balance the wants, needs, and rights of the property owner who owns the house and knows what he wants to do with it versus the wants, rights, and needs of the neighborhood. The city tried to address that as best they could by designing those massing and scale ordinances to make sure that the size of the structure that goes on the lot is consistent with some parameters. Everybody is supposed to try to live by those rules. We don't always get that, but that was the intent.

Mr. Dunn: The problem in Old Leawood is that there are so many houses that are far under what is allowed for that piece of property. When we get these rebuilds, we're getting houses that are so much bigger than what was there, but they're within the requirements. It's a hard balance.

Mr. Robertson: That is true. I think the neighborhood has done a good job with the offset. I don't have a concern with that. Like I mentioned, I haven't seen the drawings and plans of what was proposed, so I can't speak to that, but I'm not opposed to something different in the neighborhood as long as it is respectful. Thank you.

Chairman Clawson: Have you submitted plans to the HOA?

Mr. Rader: They don't have any problem with it. I'd like to say the size of scale is nowhere near some of the bigger ones. I feel like it fits really nicely. I wouldn't go doing something atrocious and make a real eyesore in the neighborhood. That being said, it does have a flat roof, and trust me; it's not something I wanted to do because they're expensive a little different, but we had to go with that because of the plan. I don't know if you guys know this, but most of the houses in there are ranches, and I have a side-by-side split. It's just the way that difficult lot lays. I did have to go at it with a different plan. Just to show, Case 15-2019 blindsided me the other day, so I took about an hour out of my day yesterday to make this. (*refers to monitor*) Here's the subject property, and these are the other similar properties in the neighborhood. 9640 Lee Boulevard just had the addition done with a flat roof over the porch and garage. That's been done within the last year. This one about two doors over has a flat roof all the way across. I'm not a fan of that one. This one is about a block over from me. They kind of did a half ranch with a flat roof. This one is super old on 89th Street, but it's a flat roof, and it backs up to the pond. It's so strange, it's kind of hard to photograph. Another older one is at 8822 Ensley Lane. That thing probably looks like it was done in the late '70s, early '80s, and it's got a flat roof. This one is a couple blocks over on 90th. It's got a flat, angled roof. My roof isn't actually flat; it does pitch to the back. Here's another one at 9219 Wenonga. It looks like recent construction, and it's got angled and flat roof on it. Here's one right by my house, and it's just crazy with the roofline. That's the wildest one I found. It's at 9421 Belinder. I feel like contemporary homes are easy to find. I obviously didn't find them all because I didn't take that much time, but just cruising through, those were the ones I found. I feel like the design does fit with the spirit of the neighborhood and the evolving spirit of the neighborhood.

Chairman Clawson: Other questions for the applicant?

Ms. Farrington: When we're looking at these two cases together, are we voting on the two issues together or separately? The one issue has to do with the LDO and the 20%, and the other has to do with the modern style and fitting in with the neighborhood. To me, they're too different issues.

Ms. Knight: They have to meet both of them. The first one gets them here because it's 20% or less. If it's higher than that, it's not an exception. The second one is what you are considering, but it has more to do with the size than the aesthetics. We're not here to judge if you like it or don't like it. You're here to judge whether the size of this rebuilt dwelling reflects the character of the neighborhood. With that, you have to look at the character of the neighborhood, but this is not an architectural review board. This is the

BZA. You are looking at an exception to maximum square footage, not if you like the house.

Ms. Farrington: That's what I'm having trouble with. The description in our packet talks about character, and beauty is in the eye of the beholder. I have an appreciation for a lot of different architectural styles. The homeowner just talked about different modern structures in that neighborhood, so it does exist. It's not a great departure from what there is around the neighborhood. To me, that is separate. I guess I'm trying to figure out how these are tied.

Ms. Knight: You're not going to vote on Case 15-2019. I don't know if that was a mistake by staff or the applicant misunderstanding. It is a factor in the exception for maximum square footage; it's not a separate factor, so it's not a separate case. It is part of 14-2019. It is to be considered in your analysis of whether to grant the exception for maximum square footage.

Ms. Farrington: The character is based on the square footage and the size statute and has nothing to do with aesthetics.

Ms. Knight: I don't want to say it has nothing to do with aesthetics because it talks about character, so to some extent, you can analyze it, but it is basically about size.

Chairman Clawson: To be able to evaluate that, it would be nice to have more information about houses in the area and how big they are with recent rebuilds in the area.

Mr. Bussing: Yes, but the massing ordinances are supposed to address that. Ideally, the construction of those massing ordinances were such that small lots get small houses; big lots get big houses. If you're within the LDO for massing and scale, you're good to go, no matter what it looks like.

Mr. Thompson: If this house was being constructed at 5,000 square feet or less, we would issue a permit. On this particular design, we would issue a permit.

Mr. Bussing: Can I make a motion?

Chairman Clawson: You may.

A motion to approve Case 14-2019 – Ryan Rader/Owner – Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(F)(2)(a) in an R-1 District for property commonly known as 2813 W. 87th Terrace – was made by Bussing.

Mr. Bussing: The exception for the square footage has satisfied me that we are within the necessary ordinances, and the applicant's quick show of the other homes of this style and size satisfy me that we are within the character of the neighborhood.

Mr. Dunn: I'm going to second that motion because I'm going to defer to the judgment of my fellow member, who has convinced me it would be a meaningless exercise to disapprove this simply because I don't know exactly what the final structure is going to look like.

Motion seconded by Dunn. Motion carried with a 3-1 vote. For: Dunn, Bussing, and Hawk. Opposed: Farrington.

MEETING ADJOURNED.