

**City of Leawood  
Board of Zoning Appeals Minutes  
April 24, 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 April 24, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Bussing

**STAFF PRESENT:** Thompson, Knight

**APPROVAL OF MINUTES:** Approval of the minutes from the March 27, 2019 Board of Zoning Appeals meeting

**A motion to approve the minutes from the Board of Zoning February 27, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.**

Chairman Clawson: We have one case tonight in Old Business that has been continued.

**OLD BUSINESS:** Case 09-2019 Philip Jobe & Joe Woods; Crimson Homes/Owner - \*CONTINUED\*\* Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9646 Belinder Road.

Chairman Clawson: Presumably, we'll have this case at the next meeting?

Mr. Thompson: Probably not. I did write him a letter telling him if I didn't hear from him today that I would consider it withdrawn, and I have not heard from him. Hopefully, it's gone.

Case 19-2019 Jordan Marx/Owner - Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an RP-1 District for property commonly known as 3940 W. 131st Terrace.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant wants to replace an existing 26-year-old, 4' tall wooden privacy fence. The fence was considered legal, nonconforming, as are several other fences along the west side of Mission Road. At the fence's closest point, it is 27 feet from the property line. A variance of 8 feet is needed to replace the fence at its previous location.

Mr. Munson: Is it 8 feet or 7 feet?

Mr. Thompson: I have 7 feet on the Staff Report, but my math was wrong; it is 8 feet.

Mr. Munson: Thank you.

Chairman Clawson: Does the board have questions for staff? Did they have a permit originally?

Mr. Thompson: It did, but it was almost 27 years ago when they first built it.

Mr. Munson: It says the sprinkler system and other landscaping added make the property unique. Could you explain that to me?

Mr. Thompson: There is a large berm that separates the house from Mission and a lot of pine trees and other landscaping as well as a sprinkler system over the last 27 years.

Mr. Munson: This was done by the property owner?

Mr. Thompson: It was probably done by the developer because the berm runs all the way along the rear of those homes.

Chairman Clawson: Could you put up a plan view?

Mr. Thompson: *(Displays plan on monitor)*

Chairman Clawson: The hash line shows where the fence would be?

Mr. Thompson: The hash line is where it would be. It is the build line and where it would have to be moved to. You can see the fence. This is just off Google Maps.

Ms. Farrington: Is the current nonconforming fence in alignment with the properties to the south?

Mr. Thompson: The immediate home to the south will need a variance of about 1 foot if they replace the fence. It is a little bit east of the 35' line. Then, the houses just past that house have fences all in line and meet the 35' requirement.

Chairman Clawson: The one to the south conforms to the build line?

Mr. Thompson: They do not. They're close at about 1 foot over the build line.

Chairman Clawson: The one to the south?

Mr. Thompson: They do conform. The other three homes conform.

Dr. Peppes: Is it because the homes are farther out?

Mr. Thompson: This particular lot is at the end of the cul-de-sac, so the house is moved back farther. To get any yard at all, they built the fence closer to the street.

Chairman Clawson: You can see that it does sit back farther. Other questions for staff? Is the applicant here?

**Applicant Presentation:**

Dennis Marx, 12425 Slater, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Marx: I'm representing my son Jordan, who is out of town on business. I pretty much agree with everything that has been said as far as the direction of the fence and where it sits and so forth. He is just asking for a variance to replace the existing 4' fence to be in conformity with the rest of them to the south. The property to the north doesn't have a fence. The berm is fairly high. The landscaping was done by the developer back 27 years ago. Across the street on Mission Road is the farm where all the animals are. That kind of adds to the uniqueness of the property. If he had to move the fence further in, he would have to go with a 6' fence, which has been granted. Then, it wouldn't be in line with the rest of the properties to the south. He's just trying to keep it uniform.

Dr. Peppes: There's been a 6' fence that has had a variance?

Mr. Thompson: He can have a 6' fence, but since it's so far up on the berm, he's only requesting a 4' fence.

Mr. Dunn: What you're saying is if he had to move it back, he would need a 6' fence because it wouldn't be on the berm and wouldn't be as high. Is that correct?

Mr. Marx: That is correct.

Mr. Thompson: And they do have BZA approval for a 6' fence.

Chairman Clawson: Do you have a picture of the berm?

Mr. Thompson: (*Displays photo*) That's a picture from his driveway. It's probably an 8' berm from the driveway.

Chairman Clawson: The fences to the south are in line with this existing fence?

Mr. Thompson: The ones just past the closest fence are. The fence closest is about 1 foot off.

Ms. Farrington: In the picture, is the fence closest to us the property just to the south?

Mr. Thompson: Yes. You can see where the fence was. It has since been removed. The last few windstorms took a toll on it and knocked the panels down. They had to remove the whole thing.

Mr. Munson: Is that fence visible from Mission Road?

Mr. Thompson: It is not.

Dr. Peppes: The last panel of fence is where it will be hooked into?

Mr. Thompson: It will jog another 5-6 feet to the east.

Dr. Peppes: Up on that berm a little bit more?

Mr. Thompson: Yes, sir.

Chairman Clawson: Would that be the same type of fence basically?

Mr. Thompson: Yes, sir.

Mr. Dunn: But if it were placed where the lot allows, it would be jogging back the other way from the existing fence; is that correct?

Mr. Thompson: Yes, that is correct. It would be about 1 foot in from that fence.

Mr. Dunn: I'd like to publicly say you're a good father. Thank you for coming.

Chairman Clawson: Other questions? Thank you.

Mr. Munson: Looking at the photographs, it appears that they do have unusual, if not unique, circumstances. They are different than most properties around there.

Mr. Dunn: I think the fact that the fence that was there for so long created this is significant. Everything has been built around it. You can create uniqueness unintentionally, and I think that's what's happened.

Chairman Clawson: Is anyone here who wishes to speak for or against this application? This is a variance request, and as such, we have to go through the five factors. We have to discuss those as a board and vote on each one. To accept a motion for approval, we have to vote in the affirmative for each of the five factors. The first is Uniqueness.

Mr. Munson: I feel they've met this requirement.

Mr. Dunn: I agree.

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

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

Mr. Thompson: Yes, sir. We've gotten no calls or complaints whatsoever.

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

Chairman Clawson: Hardship.

Mr. Hawk: *Inaudible comments.*

Dr. Peppes: I agree, but they could also put the fence where it needs to be. They would lose their yard. Hardship is something I look very strongly at each time. Now, we're looking at the legal, nonconforming issue. When they first put the fence up, the fence was legal, and things got built around it. The berm and all the bushes came. Now, having to take that fence and put it someplace else because of what's happened is not fair to the homeowner that what has been good for the last 23 years is no good anymore. Now, in order to move the fence, it will be a hardship. I don't say it's often, but I think it's been met.

Mr. Dunn: I don't know how many cases we see up here where we reluctantly come to the conclusion that the only hardship is the person won't be able to do what they want to do. That's not this case. I don't think it has to be overwhelming to exist. I think it exists in this case.

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

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

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: We talked about how this property is unique with the large berm. The developers seem to have put this berm into place when the neighborhood was developed on Mission. Spirit and Intent was taken into account from the beginning. When it was a legal, nonconforming fence placed there in the beginning, it was met and has been for the past 27 years. I feel the criterion is met.

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

**A motion to approve Case 19-2019 Jordan Marx/Owner - Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an RP-1 District for property commonly known as 3940 W. 131st Terrace – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.**

**NEW BUSINESS:**

Case 20-2019 Ericka Domalakes & Michael Axline/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9435 Belinder Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to enclose their rear yard with a 6' tall wooden privacy fence. The yard is currently enclosed with a 5' wrought iron on the front and 4' chain link on the remaining three sides. The current fence received board approval for a 5' tall fence in 2011.

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

Dr. Peppes: Is that the 5' portion on the front side that was approved in 2011 and not for all the way out the yard?

Mr. Thompson: Correct. You can see where a couple panels have been removed. This home had a total remodel done and is now completed. The fence panels were removed, so they can get the equipment in the rear yard. It's just standing there right now.

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

**Applicant Presentation:**

Erika Domalakes & Michael Axline, 9435 Belinder Road, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Domalakes: We just moved there about a month ago from Prairie Village. Right now, what we currently have is sort of a hodgepodge of different fences. There's the 5'

iron, and there's 4' chain link and partial chain link but also a 6' privacy fence for our neighbors because they have a pool and actually no fence where we've put those panels up for temporary closure for our dogs. We have two neighbors. Our neighbors directly to the north have a pool, so they have a partial 6' fence as well. The neighbor to the south has a 5' fence on the side adjoining us, but the other two sides are 6' privacy fences because there's a pool there as well. It's kind of confusing. We also have 60-pound dogs that have easily gotten out of 4' fences multiple times. We live one house from 95<sup>th</sup> Street. It's a very big concern for safety, and the fact that they can see every little thing that's happening is more of a nuisance for me but mostly everyone else because they're barking at everything they see. I'm 6 ½ months pregnant with our first child, so some of that with not having an open view is why I want the wood.

Mr. Axline: We've spoken with all three of our neighbors directly behind us and to each side of us to make sure they're fine with it. One of our neighbors is here. We originally applied for the 6' fence. When talking with him, he preferred a 5' fence along the back side. We are happy to do a 5' fence along the back side because of their request. We have a letter from our neighbor to the north and have talked to the neighbor to the south, and they're both in support. We wanted to make sure that we're getting along with our neighbors. We really just want it for safety and to cause as little nuisance as possible with our dogs and our family expansion.

Mr. Thompson: You're wanting to change the request from a 6' fence to a 5' fence?

Ms. Domalakes: Just the one side.

Mr. Axline: If we can, yes. If it's something that we need to do 5' all the way around to make it look uniform, we would be fine with that.

Ms. Domalakes: The only reason we're saying the 5' with the two 6' fences is they already have a 6' privacy fence, so it would actually be the same as theirs. On the other side, the other two are already 6' privacy fences. They were okay with it being that because then they have one fence rather than different pieces.

Mr. Axline: It would just make it more uniform.

Chairman Clawson: Your proposed fence would be on the property line.

Mr. Axline: Correct.

Ms. Farrington: Your request says that the current fence received board approval for a 5' tall fence. Does this property have an approval for all sides or just the back side?

Mr. Thompson: Just the front. They put the wrought iron on the front two sides. That's what was approved. It sounds like they are asking for the remaining three sides to be 5' tall.

Ms. Farrington: The two that would face the street are approved at 5' tall, and the original approval was for 6' all the way around.

Mr. Thompson: Everything is 6' tall.

Ms. Farrington: They're also asking for the exception in the back for 5' or 6'.

Mr. Axline: After we applied, we talked with our neighbors, and that's what we asked.

Mr. Dunn: But that's a modification you're agreeing to tonight.

Ms. Domalakes: Yes.

Ms. Farrington: I guess if we're talking about uniformity, will the wrought-iron fence on the front remain?

Ms. Domalakes: We're replacing the whole fence.

Ms. Farrington: It would be one type of fence.

Mr. Axline: Correct.

Chairman Clawson: Could you put up the photo with the iron fence?

Mr. Thompson: (*Refers to photo*) That would be the north side of the home. It has a 5' wrought-iron fence. The south side of the home has a 5' wrought-iron fence, too.

Mr. Dunn: The fence to the right is your neighbor's fence?

Mr. Axline: Correct.

Ms. Domalakes: We kind of have a hodgepodge.

Mr. Thompson: They do have a pool in their rear yard.

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

Ms. Domalakes: We have a letter from one of our neighbors who couldn't be here.

Chairman Clawson: Please give us your name and address.

Jeff Ryberg-Cox, 9434 Manor, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Ryberg-Cox: We share the back property line, and as they discussed, we would prefer the 5' fence on our shared property line. With that modification, we are okay with that. We do have one question for staff. There's an offset. Our yard is 80% against theirs and 20% with the next one. If we wanted to keep that uniform, could we do that as part of this one, or would we do a separate application for height exception to do that last 20 feet?

Chairman Clawson: The last 20 feet would be on a different property line?

Mr. Ryberg-Cox: It would be on a different property line with the same neighbor who wrote the letter who has said she would be okay with it.

Mr. Thompson: If it's on someone else's property, it would be a different application.

Ms. Farrington: How tall is that last little bit on the adjacent property?

Mr. Ryberg-Cox: It is a 4' continuous chain-link fence into the next yard.

Chairman Clawson: You would replace it with wood?

Mr. Ryberg-Cox: I think we would replace it to match what they're doing so we'd have uniformity across the back. Our whole neighborhood is in the process of getting rid of the chain link.

Mr. Thompson: If they put it on the property line, I don't know why they couldn't do it. You're saying it's going to be set in about 1 foot?

Mr. Ryberg-Cox: No, we're talking about the property line. It's offset to the north.

Mr. Thompson: Who has the chain link?

Mr. Ryberg-Cox: It's along all the back property lines.

Mr. Thompson: Whoever's property the chain link is on would have to get an exception.

Mr. Ryberg-Cox: I believe it's on ours.

Mr. Thompson: Then you would have to get an exception.

Mr. Dunn: Are you saying that if we approve this, everything but 20 feet of that chain link will be gone?

Mr. Ryberg-Cox: That will take out the bulk of the chain link between our two yards. We would just want to keep it uniform for the next 20 feet north.

Mr. Dunn: I just want to make sure I understood. You said you'd be left with 20 feet of chain link, and you want some assurance you'll be able to get the same consideration.

Mr. Ryberg-Cox: Yes, so we can match consistently across the back yard.

Chairman Clawson: Thank you. Does anyone else wish to speak?

Ms. Farrington: Are we trying to approve a 6' fence all the way around with the back being a 5' fence, or are we approve a 5' fence all the way around?

Mr. Thompson: I believe it's a 5' fence all the way around. So, 5' in the back and 6' in the sides and front.

Chairman Clawson: We have approval for a 5' fence in the back and 6' fence everywhere else. What if they decide at some point that they don't want to do a 6' fence and want a 5' fence? Would that require them to come back before the board?

Mr. Thompson: No.

Ms. Knight: Which is why technically, you could approve their request for a 6' fence all the way around if you're so inclined, and they could elect to build the rear portion as a 5' fence.

Mr. Ryberg-Cox: If you approve a 6' fence all the way around, we have a strong preference for a 5' fence. We don't want a 6' fence along the back line. Our back yard is fairly narrow, so we feel that a 6' fence would put us in a canyon in our back yard.

Chairman Clawson: If we approve a 6' fence all the way around and they decide to lower the back to 5', they could do that without coming back. That's all we're talking about.

Ms. Knight: I understand that it sounds like you want some assurances today. It sounds like the applicant has agreed. If they are technically modifying their application, then you could approve 6' on the sides and 5' in the rear.

Mr. Dunn: For process purposes, our motion would have to include that, correct?

Ms. Knight: Yes, I think it should be specific which way you're going to go.

Ms. Farrington: Can we ask the homeowners what the preference is since it's their application?

Ms. Domalakes: Either is fine. We're not going to say that we'll do one thing and then do another. I can understand why they would be uncomfortable with that, but we can say whatever makes it less complicated or easier.

Chairman Clawson: Thank you.

*Inaudible comments*

Mr. Thompson: I don't have an answer for the distance, but whoever's property has the gap would be responsible for the upkeep.

Chairman Clawson: There would still be a gap?

Mr. Thompson: Not on their fence. There is a gap between their fence and the neighbor to the north because they have another fence beyond the chain link. They would be responsible for the upkeep of that area.

Chairman Clawson: That's on their property.

Mr. Thompson: Yes, sir.

Chairman Clawson: Do we have a motion?

**A motion to approve Case 20-2019 Ericka Domalakes & Michael Axline/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9435 Belinder Road – with the modification that the approval for the fence on the back side of the house would be limited to 5' – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.**

*MEETING ADJOURNED.*