

**City of Leawood  
Board of Zoning Appeals Minutes  
June 26, 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 June 26, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Dunn and Farrington

**STAFF PRESENT:** Thompson, Knight

**APPROVAL OF MINUTES:** Approval of the minutes from the May 22, 2019 Board of Zoning Appeals meeting

**A motion to approve the minutes from the Board of Zoning May 22, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

Chairman Clawson: We have one case tonight in Old Business.

**OLD BUSINESS:**

Case 24-2019 Jason Norris/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 16-4-9.3(A) in an R-1 District for property commonly known as 2601 Somerset Drive.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing 24+-year-old, 5' wooden privacy fence with a 6' wooden privacy fence. The fence is considered legal, nonconforming and surrounds an in-ground pool. He would like to extend the fence 10 feet to the southwest, which would place the fence 7 feet past the 30' build line and 23 feet from Manor Road.

Chairman Clawson: Which portion of the fence would require the variance?

Mr. Thompson: (*Shows plan*) It is the black line, which is the southeast portion of the fence that will require the variance. As it moves to the north, it moves past the build line.

Mr. Munson: Does it violate the build line or not when it moves north?

Mr. Thompson: It does not.

Chairman Clawson: Can you show this on the plot plan?

Mr. Thompson: (*Shows on the plan*) That is a guesstimate.

Dr. Peppes: The red line on the plot plan is the legal, nonconforming portion that is there now?

Mr. Thompson: Correct. The green is the 10' extension that he would like to add to it.

Chairman Clawson: The 6' fence is okay; it's just that they would need to conform to the build line.

Mr. Thompson: Yes, it is just the variance for the placement. He can have a 6' fence because he has a pool.

Chairman Clawson: Is the applicant here?

**Applicant Presentation:**

Jason Norris, 2601 Somerset Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Norris: My understanding is there are five issues we are seeking to address here. By moving that line south and over, it will greatly expand the back yard. It is already a unique lot as it is. There really isn't a real back yard because it has two front yards. With the pool taking up a lot of that, it really restricts the amount of green space I can have back there. Why I'm seeking to move this back to the south is to give me more room. Right now, if the kids play ball in the front, there's a good chance it's going to roll into the street. I have younger children who may not pay attention, so that obviously gives me some concern. As you can see on the lot, it does get skinnier as it goes to the south, which greatly reduces the back yard that I have. Are there questions about that, or should I jump into addressing the five issues?

Chairman Clawson: Go ahead.

Mr. Norris: The first one is if the variance arises as a condition that is unique to the property that was not a result of something I did. I've only owned the house for three years, so this was in place before that. The unique location, use, and history make it unique, I believe. As I just point out, the shape of it does create a problem, and I'm trying to improve the neighborhood with a fence that is more aesthetically pleasing. The second thing is that it's been there for 25 years. It won't affect the rights of the various neighbors. It's not going to encroach upon them. We've had a lot of teardowns in the neighborhood, so they're used to change.

Chairman Clawson: All the letters have been sent?

Mr. Norris: They have.

Chairman Clawson: Did you get any comments?

Mr. Norris: No, and I physically talked to my neighbors as well, and they're all on board with this. I provided some pictures of what it looks like currently. It is in a bit of disarray and hasn't been properly maintained, so they'll be happy to see it. I need to get this determined before I can get the next phase of my property rehab, and that is doing the landscaping. Where this lands will determine how my vegetation is going to look. Since I submitted this, I've painted the house as well. I'm doing some things to improve the property and the value of the neighborhood.

Chairman Clawson: You've got some pictures in your packet. Can you show the angle they're taken from?

Mr. Norris: (*Refers to photos*) The first picture is taken from farther down Manor Drive, which is the opposite side of my neighbor's driveway. The fence you see is covered by some Kanza grass right now, and I'm looking to bring that back. Right now, it's got that odd shape. I really just want to square it out and make it 90 degrees and cut directly across. The next picture is taken from across the street to the east. The house is my neighbor on Somerset Drive. They actually have a 6' fence across the back of their yard already, and they don't have a pool, so they're going to be okay with it because it will be consistent with the sight line. Mine looks a little out of place because it dips down, to be honest. The neighbor on the other side also has a pool.

Chairman Clawson: Given the placement of their pool, how would they put a fence in without violating the requirement?

Mr. Thompson: Today, they would have had to move the pool back.

Chairman Clawson: But they need a fence around the pool?

Mr. Thompson: Correct; a fence is required.

Mr. Munson: What are the provisions for a fence around a pool? Must it be solid, or can it be open?

Mr. Thompson: It could be wrought iron; it just needs to meet the code. The pool requires a barrier.

Chairman Clawson: Other questions for the applicant?

Mr. Munson: This is more editorial. Was there any consideration for a wrought-iron fence versus the wooden fence to go around there?

Mr. Norris: No.

Mr. Munson: The problem with the wood fence is that the wind blows them down, and they fall out of repair and look pretty bad. That was why I was asking the question. Aesthetically, the wrought iron would be better than a wood fence, but that's me.

Mr. Norris: I can appreciate that comment. It really comes down to the privacy factor as well. We'll be spending a lot of time out there in our swimming suits.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. The ones that give us the most trouble are Hardship and Uniqueness. Could you briefly discuss those?

Mr. Norris: I touched on Uniqueness at the onset of the conversation, but that really has to do with the shape of the lot and due to the preexisting pool that was there when I purchased the home. A corner lot that isn't at a 90-degree angle, is going to have an odd shape. I don't believe there are a lot of properties like this in Leawood; I think this is an older part of the neighborhood, and Old Leawood is older anyway. As you go farther south, it becomes less of an issue. It's something that is unique to that area and to this specific property.

Chairman Clawson: Hardship?

Mr. Norris: If I was to be compliant, I would effectively have a fence running through my swimming pool. That's not how you want to be able to play water volleyball. The neighborhood is already accustomed to the sight line that is there. It's consistent with the front of the house and runs straight parallel with Manor Drive. That's why we're seeking the extension there. I don't believe it's going to impair the adequate supply of light or air. It's not going to create a safety issue whatsoever.

Chairman Clawson: Other questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? If that's the case, we need to evaluate the five factors. We'll vote on each one and have to vote in the affirmative on each to support a motion for approval. The first is Uniqueness.

Mr. Bussing: We've seen a lot of corner lots, but I would agree with the applicant that this one is unique in its shape, the access to major streets on either side, and the addition of a pool in the back yard certainly create issues. I think it meets the criterion.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No calls or complaints.

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

Chairman Clawson: Hardship.

Dr. Peppes: On this factor, if the applicant had to place the fence in the correct position, it would go through the pool, and the fence needs to go on the outside of the pool. I think it would really make it better and tie in better with what's out there. I think it has been met.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial won't affect it.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met because not only are we extending the 6' fence, but it is also tying in better with the adjacent fences. Along that area, it will all tie in together. I think that's a better streetscape than different sizes.

Mr. Hawk: Also, the applicant indicated he will do some landscaping, which will make it even less of a visual consideration.

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

**A motion to approve Case 24-2019 Jason Norris/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 16-4-9.3(A) in an R-1 District for property commonly known as 2601 Somerset Drive – was made by Hawk; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

**NEW BUSINESS:**

Case 25-2019 Jeff & Gwen Rydberg-Cox/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 9434 Manor Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner at 9435 Belinder Road received a fence height exception in April, 2019 for a 5' tall fence on the rear property line. The applicant would like to match the remaining area to fully enclose the rear yard.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: We're just considering the section in red on the plot plan?

Mr. Thompson: I believe so. Yes, it is across the rear.

Dr. Peppes: It is approximately 25 feet.

Mr. Thompson: Yes.

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

**Applicant Presentation:**

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

Mr. Rydberg-Cox: We just want to finish the back line of our fence so it looks the same all the way across. We have a bid from the same builder, and he's going to do it double-sided so it looks finished on both sides and matches.

Ms. Rydberg-Cox: We have a landscaping contract, too, to put trees in front of it when it's all done.

Mr. Hawk: This is about how many feet?

Mr. Rydberg-Cox: 25-ish or so. It's the last 20% or so of the yard. You gave the variance for 80% in April.

Mr. Bussing: You have a fence on the east or west?

Mr. Rydberg-Cox: We do. It's 4' chain link, and we don't intend to change that. On one side, our neighbor has a pool with a 6' fence.

Mr. Thompson: The pool is to the south of their property.

Chairman Clawson: Other 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 25-2019 Jeff & Gwen Rydberg-Cox/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 9434 Manor Road – was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

Case 26-2019 Shawn Barnum/Owner - Request for a Variance to the maximum distance between the primary structure and an accessory structure in accordance with the LDO, Section 16-4-1.3(B) 25 in an R-1 District for property commonly known as 3239 W. 88th Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new, two-car garage that includes a second story. It will be connected to the primary structure with a breezeway and will be 20 feet away from the main structure. A variance for an additional 5 feet is being requested.

Chairman Clawson: Are there questions for staff? The LDO does say that an auxiliary structure and primary structure shall not be more than 15 feet apart.

Mr. Thompson: Correct.

Dr. Peppes: But there's no side yard encroachment on this.

Mr. Thompson: That's correct.

Dr. Peppes: It is just a variance for the distance between the two structures.

Mr. Thompson: This particular variance, yes.

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

**Applicant Presentation:**

Shawn Barnum, 3239 W. 88<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Barnum: You got a little bit of a highlight of what we're talking about. We have a couple variances here in discussion. This first one that we're discussing is trying to get a 20' breezeway instead of a 15' breezeway. Really, the consideration for that or the hardship, if you will, is we have an existing swimming pool. Because of the 35' setback, we can put the proposed structure on the property without any problem with the easements or anything like that, but because the pool sits off-center from the back of the house, we really need the 5 feet because we're encroaching on the side of the pool, and I'm worried about digging footings next to a pool that has been there a long time, and also the plumbing on the pool itself is on that same side. The plumbing is run to the side adjacent to where we would need to dig the footings. If we got the additional 5 feet, we're still within the easements, but we can clear the pool in the back yard. I completely understand why you would want 15 feet. I understand the provisions. You don't want these structures spread out. What we've tried to do is do things aesthetically. I've included pictures of the existing iron gates and 2' wide brick columns on each side. Those would remain in that breezeway area. Visually, we're breaking up the 20 feet into nominal pieces. From the street view, I think it will look just fine. Obviously, the swimming pool creates the uniqueness. There are no issues with the neighbors or adjacent properties in the easements. In order to proceed, we have to tackle this swimming pool issue and getting it to fit in the space. That's what we're trying to address here.

Chairman Clawson: To meet the 15' requirement, how close would it be to the pool?

Mr. Barnum: It would be 3-4 feet from the edge of the pool. I don't know how far the skimmer comes out when that plumbing line returns, but it is within a couple feet. To dig out the footings at the proper depth, I really don't want to get that close.

Chairman Clawson: Did you put the pool in?

Mr. Barnum: The pool was put in a number of years ago. We think it is maybe 25-30 years old. We've lived in the property for about 2 ½ years.

Mr. Bussing: I'm looking at the columns picture. The existing garage doors are to the right.

Mr. Barnum: That is correct.

Mr. Bussing: You'll lose that river birch as a result of this construction?

Mr. Barnum: That is correct. I tried to draw a little red line so you could see where the proposed garage would sit in relation to those two columns.

Mr. Hawk: These are not additional garages; these are replacing your current garages?

Mr. Barnum: This would be an additional garage space. You can talk about hardship and the hardship being a swimming pool. Well, do we need a garage? I'd like to address that. We've got a number of cars and a number of teenagers at home. That's kind of my passion. We would like to secure some of our vehicles and get them off the street and driveway. I also like to fool around and play with cars. I just don't have the space. I'd rather invest in my property than try to do something offsite and have tools. As a homeowner, this is what I like to do with my property. We bought the corner lot. We checked the easements. We actually talked to an architect. We understood that we would be able to do the garage with the easements. The architect was uninformed that there was an issue related to the breezeway and the height, which we'll get to next. I had the information. We tried to do our research but came up short. That's why we're here.

Mr. Munson: What you're saying is to build to the LDO requirements will cause you a hardship with your swimming pool and the skimmer.

Mr. Barnum: That is correct. The edge of the garage would be too close to the perimeter to do the actual dig to do the footings.

Chairman Clawson: How deep are you planning to put your footings in?

Mr. Barnum: Well, 2 ½ feet or so.

Chairman Clawson: Below the frost line. Well, it would probably be doable, but it may be difficult.

Mr. Barnum: It's a risk. If these get damaged, we'll rebuild the wrought iron and brick entryway as you see on the picture. We want it to look nice, too. We want it to look pleasing. We think we can do that aesthetically by breaking up the distance.

Mr. Munson: The breezeway will be open except for the roof.

Mr. Barnum: That is correct. It will be open, and it will have gates out toward the front side by the driveway. It will not be enclosed.

Mr. Munson: It seems as though the hardship is self-imposed, but there are other questions that come up, particularly about how to do the construction in terms of the pool, etc. It's an interesting situation. I don't know the solution.

Chairman Clawson: How deep is the pool?

Mr. Barnum: It's about 8 ½ feet at the deepest point.

Mr. Munson: How long has the pool been there?

Mr. Barnum: I'm guessing 25-30 years.

Chairman Clawson: Where's your pool pump at?

Mr. Barnum: It's on the other side of the house. It's got to travel a long distance. That's not an issue. The plumbing lines don't go to the east, which is where we're proposing. We're not digging up the pool lines and all of that.

Chairman Clawson: I was trying to figure out where your piping went.

Mr. Barnum: It doesn't go to the east.

Mr. Munson: Looking at the LDO requirements, you can get the project done, but you're nervous about whatever you're nervous about.

Mr. Barnum: Yes, I'm nervous about damaging a very expensive pool.

Mr. Munson: That's a supposition with no hard evidence that it's going to hurt it because you haven't done it yet.

Mr. Barnum: No, but I would hate to find out the hard way when 5 feet really solves the problem. I can't say for certain that it would damage it.

Chairman Clawson: A good contractor could minimize the risk. Other questions? Thank you. Is there anyone here who wishes to speak for or against this application? Letters went out?

Mr. Thompson: Yes sir, and no calls or complaints.

Chairman Clawson: This is a variance like the last case, and we have to evaluate the five factors. The first is Uniqueness.

Mr. Bussing: This is a hard one because I think the property is not unique, but I understand the homeowner's issues and concerns here. There just isn't a way for us to address that here. It goes beyond the scope of our authority. It appears to be a beautiful plan. I just don't see that the lot is unique.

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

Chairman Clawson: Rights of Adjacent Property Owners. Staff indicates that there have been no calls or complaints.

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

Chairman Clawson: Hardship.

Mr. Munson: Even with the information we have, it seems that it is self-imposed. He can do the garage and breezeway in conformance with the LDO.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Hawk: It's a non-factor.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: As staff notes, the spirit and intent of the ordinance is to ensure the uniqueness of the neighborhood and the streetscape. This is a beautiful home with beautiful landscaping. Clearly, it is met.

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

Chairman Clawson: As a board, we felt that Uniqueness and Hardship were not met; therefore, we must support a motion for denial.

**A motion to deny Case 26-2019 Shawn Barnum/Owner - Request for a Variance to the maximum distance between the primary structure and an accessory structure in accordance with the LDO, Section 16-4-1.3(B) 25 in an R-1 District for property commonly known as 3239 W. 88th Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

Case 27-2019 Shawn Burnum/Owner - Request for a Variance to the height restriction of 15 feet and one story for an accessory structure in accordance with the LDO, Section 16-4-1.2(C) 1 in an R-1 District for property commonly known as 3239 W. 88th Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct an additional two-car garage that would include a second story and be 23 feet tall. A variance of 8 feet would be needed to build the project as submitted.

Mr. Munson: In height?

Mr. Thompson: Yes, sir.

Chairman Clawson: The variance says it should only be one story, and it should only be 15 feet tall. If they met the 15' mark, they still couldn't have two stories.

Mr. Thompson: Correct.

Chairman Clawson: Questions for staff?

Dr. Peppes: So, basically, with a breezeway, we only want it to be a 1-story structure.

Mr. Thompson: It's really the accessory structure that we're talking about. We're not talking about the breezeway.

Chairman Clawson: What defines an accessory structure? What if they were just going to build a two-story addition on their house?

Mr. Thompson: That would be an addition; a garage would be considered an accessory structure to the primary structure.

Mr. Munson: If it didn't adjoin.

Mr. Thompson: Correct.

Chairman Clawson: What if they had a breezeway that's heated and was part of the house?

Ms. Knight: It's probably going to depend on the plan specifically and interpretation by planning on whether it's an addition or accessory.

Chairman Clawson: Other questions for staff?

**Applicant Presentation:**

Shawn Burnam, 3239 W. 88<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Burnam: I would like to build a one-story garage. It is a single-story garage; however, I am trying to match the aesthetic look and roof pitch of the adjacent structure, which is the home. The house has a 14/12 pitch from side to side and a 12/12 pitch from front to back. We're trying to not have an almost flat-roofed secondary structure sitting right next to a high-pitched home. It would look ridiculous. We're trying to accomplish the same type of roof pitch on the house and the garage. Obviously, that puts us higher than 15 feet, and it's approximately 7-8 feet over that allowance. What makes this unique is between the back property line and where this proposed garage is, the land actually drops 6 feet. Plus, from the original structure to where this garage will be is an additional

2 feet. If you're looking from the back of the property where the adjacent homes are to where this structure will be, it actually sits down 6 feet from the property line or 8+ feet from where their structures are. There are no houses behind this proposed structure, so I'm not blocking any views. We have a lot of vegetation and landscaping on that property line, as the pictures indicate. There's no direct visual viewpoint from the back of the homes behind us to where this garage would be. To the east is also another hill, so where this structure is, we can't see the neighbors to the east. It's basically tucked back inside the property. The elevation change is certainly unique to the property. There is currently vegetation that is not directly behind another house. Those are all unique issues related to where we're trying to set this garage. We've talked to the neighbors behind us, and they have no issues. As it relates to the hardship, we're trying to do what is in the spirit and intent of what the rules are, which is to not have secondary structures look separate than the home. We want this to look like the house. We've put a lot of effort into making it look like it was an original part of the structure. The other thing is that there is really no flat roof in my neighborhood, so it would look really out of place not only on our lot but in our neighborhood as it stands now. We're just trying to make it look nice. There's no public issues because it's on the inside of the corner lot. It's not out by the street or anything like that. We're just trying to have a nice-looking addition to our home that matches everything else.

Mr. Bussing: Will the structure have plumbing?

Mr. Burnam: No.

Mr. Munson: I'm looking at the front elevation. Which end of the elevation is the proposed breezeway and garage?

Mr. Burnam: It will be to the left of that picture. I will give you a better look than that.

Mr. Munson: That's fine. Looking at the plan and the preceding page, I see the garage as you propose it sitting back quite distant from the front of the house.

Mr. Burnam: That's correct.

Mr. Munson: The size of the garage compared to the house is about 10% of the façade of the house. Which way will the roof be built on the garage? Will it be built with the flat slope facing the street, or will it be built with the slopes of the roof facing to the sides?

Mr. Burnam: It will hip basically exactly like the home, so it will hip on all sides and be shingles on all sides. It will not have a gable; it will be hipped.

Mr. Munson: I'm wondering if that taller roof and the difference in the sizes of the building would look strange from 88<sup>th</sup> Street.

Mr. Burnam: No; I think it would look strange if it was flat.

Mr. Munson: I don't mean flat.

Mr. Burnam: You can see it comes about 2 feet from the garage to where this proposed new garage is, and there's about a 2' slope from the structure.

Mr. Munson: Where is the existing garage on this plan? At the end of the driveway?

Mr. Burnam: Yes.

Mr. Munson: The flat part of the slope faces 88<sup>th</sup> Street. It's not flat, but it slopes down.

Mr. Burnam: Correct; it's at a diagonal because we're on a corner lot.

Chairman Clawson: Your drive comes off 88<sup>th</sup> Street.

Mr. Burnam: It does, and it curves because the house is on a 45-degree angle on the lot.

Mr. Bussing: Wade, the ordinance reads, "No accessory building or structure committed by this ordinance shall exceed one floor or level and a height of 15 feet measured from ground level except as otherwise specifically authorized." That tagline there seems to leave us open to exercise our authority. What is, ". . . except as otherwise specifically authorized?"

Mr. Thompson: I would say that would be authorized by the building official and not the BZA.

Mr. Bussing: We give the building official authority to make exceptions and variances?

Mr. Thompson: No, but I don't know where else that would apply. You have your powers that are granted.

Ms. Knight: You would have to find that he meets the requirements of statute. If you find that, you could grant a variance. I don't think that's what it's referring to. My guess is that there are some specific exceptions in the LDO, and I don't know those off the top of my head.

Mr. Bussing: I would argue that the standard ordinance limiting all accessory structures to one floor level and a height of 15 feet is extremely rigorous. I think that, ". . . except as otherwise specifically authorized" provides somebody the authority to allow this homeowner to do what he's trying to do.

Chairman Clawson: Part A under that section has an attached sunroom as defined by the appropriate section. It may exceed a height of 15 feet, measured at the ground level without exceeding the height of the primary residential structure.

Mr. Bussing: Maybe Mr. Barnum is building a sunroom and not a garage.

Mr. Barnum: It's not going to be as tall as the primary structure; I can assure you because that house is tall. I understand why you wouldn't want a neighbor to build a tall structure and block your view, but again, based on the nature of the lot, this is really not in anybody's sight, and there is no structure behind it. It is truly a unique spot.

Mr. Munson: If we were to grant relief at this level, what would the building official do?

Mr. Thompson: If you grant the variance, he'll issue the permit.

Mr. Bussing: If Mr. Barnum had presented this as a new plan with the house and the garage within the 15' breezeway, I wonder if it would have been approved.

Mr. Burnam: Our architect did that with another structure. It's Mr. Molle's residence. He also had a longer breezeway and a higher structure. That's why our architect didn't know these restrictions because he's already been through the City of Leawood. He was caught off guard. He's already done that.

Chairman Clawson: Your intent is that it would not have a second story.

Mr. Burnam: Really, what I had is a drop-down ladder on the inside to store car parts, but if that's an issue, I'll take it out. We're not trying to do anything in that attic space. I want the height to match the house.

Mr. Thompson: The plan I have shows attic storage above the garage. That's why we considered it a second story.

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

Mr. Hawk: I think the elevation changes make a unique situation. From back to front, it really drops off dramatically.

Dr. Peppes: This is a difficult situation because even though the grade changes are there, we can go into each neighborhood and see a high spot and low spot. I just find it hard to find this property to be unique.

Mr. Bussing: I agree with Dr. Peppes. This is a difficult case. I think in context of this particular application that the homeowner has applied for this particular accessory structure in this particular location, the slope of the lot renders it somewhat unique. The pool and corner lot contribute as well. I could support Uniqueness.

**Uniqueness of the Property criterion not satisfied with a vote of 2-3. For: Hawk, and Bussing. Opposed: Munson, Dr. Peppes, and Clawson.**

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No calls or letters.

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

Chairman Clawson: Hardship.

Mr. Munson: As staff points out, he can still build a garage that would meet the LDO requirements without having other action. It is matching his roof that is a self-imposed situation.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Doesn't affect it.

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

Chairman Clawson: Spirit and Intent.

Mr. Munson: Shouldn't be an effect either way.

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

Chairman Clawson: As a board, we felt that Uniqueness and Hardship were not met; therefore, we must support a motion for denial.

**A motion to deny Case 27-2019 Shawn Burnum/Owner - Request for a Variance to the height restriction of 15 feet and one story for an accessory structure in accordance with the LDO, Section 16-4-1.2(C) 1 in an R-1 District for property commonly known as 3239 W. 88th Street – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

Case 28-2019 Mandy & Brent Frey/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 9009 Mohawk Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to enclose the rear yard with a 6' tall wooden privacy fence. The fence is requested to help contain a neighbor's dog and help screen another neighbor's home. I placed additional documents that I received today at your station.

Chairman Clawson: They were supportive.

Mr. Thompson: Correct; it was the gentleman directly behind.

Chairman Clawson: Are there questions for staff?

Mr. Munson: I have a general question. How much weight do we give these dog situations?

Mr. Thompson: You'd probably want to ask the applicant to elaborate on that. I was only able to find one call that the animal control officer provided me with today from back in 2014.

Ms. Knight: The analysis is in your packet. You're to review based on the effects on adjoining properties.

Mr. Munson: And the dog could effect it.

Ms. Knight: It could in your interpretation, yes.

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

**Applicant Presentation:**

Brent and Mandy Frey, 9009 Mohawk Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Frey: I didn't know what I was getting into until I came here today. I grew up in a small town in South Dakota, so this whole zoning thing is unfamiliar. Our current fence is old and ugly. It's a chain-link fence and needs to go. Our neighbor behind us is actually here. He's getting a new fence as well.

Mrs. Frey: He's going to be the person who sees the majority of the fence because his whole property line is our whole back property line.

Mr. Frey: We just want to build a fence.

Mrs. Frey: There are a couple reasons. We hope to do a pool one day, and the fence needs to be completely redone. I don't want to put in a 4' fence to turn around and do it again. I already paid \$800 to put a nicer fence on the front of the house because when we remodeled, we had to tear both of those down because I didn't want to look at chain link

anymore. Now, I'm tearing that out. The whole fence needs to be replaced, and I just want to do it one time.

Chairman Clawson: You want to put it around?

Mrs. Frey: Yes, around the whole house.

Chairman Clawson: On the property line?

Mrs. Frey: We're not changing the property line at all.

Chairman Clawson: Which house is yours?

Mr. Frey: It is one from the corner on the east side of Mohawk Road. We are in one of those neighborhoods with three 90-year-old widows. One has been redone. One has been bought by a real estate agent and is being remodeled. The one next door will be next. We have a lot going on. They're probably going to do a teardown.

Mrs. Frey: There's a lot of activity going on in everybody's back yard.

Chairman Clawson: Your neighbors are the ones on the cul de sac?

Mrs. Frey: The gentleman behind us is at the end of the cul de sac. The issues with the dog from 2014 are from the neighbor's first dog. This is their second dog. I think it's 3412 that is right behind us. They just really don't keep up their property at all, either. I don't like looking at it or what they watch on TV.

Mr. Frey: They watch terrible television shows.

Mrs. Frey: Generally, we'd just like a little more privacy.

Mr. Frey: We were told to bring pictures of what we're going to do (*shows pictures*).

Mrs. Frey: It would be something like this but with more contemporary lines. It would be a very attractive-looking fence.

Chairman Clawson: A 6' fence?

Mrs. Frey: Yes.

Mr. Munson: Is the lower option one that you are considering?

Mr. Frey: It looks good on both sides.

Mr. Munson: If we're going to let them have a fence, that's the one we should let them have.

Mrs. Frey: We were actually leaning toward that one because it is nice that it looks nice on both sides.

Dr. Peppes: Are most of the fences around there chain link?

Mr. Thompson: Yes; 99% are all 4' chain link.

Mr. Frey: In our neighborhood, yes.

Mr. Thompson: I actually tried to get down there today to get some better pictures, but all the roads were impossible to drive down.

Mr. Frey: It's terrible. It looks like we live in Fallujah right now.

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

John Crosby, 8926 Mohawk Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Crosby: I sent an email to Wade earlier. I don't have any problems with the fence. I'll see most of what they build, and it's fine with me.

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

Mr. Thompson: You do have the one letter I received from Linda Houston that requested that the fence be denied. It shows the plan. She does live across the street from the Freys.

Mr. Frey: She lives across the street from us, so she's not a part of it. She just happened to be in the circle, and she loves to cause trouble. She lives in California half the year, so it's really bizarre that she wants to do this. I haven't actually seen the letter.

Chairman Clawson: Is there a motion?

**A motion to approve Case 28-2019 Mandy & Brent Frey/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 9009 Mohawk Road – was made by Bussing; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Hawk, and Bussing.**

*MEETING ADJOURNED.*