

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

MEMBERS PRESENT: Munson, Clawson, Hawk, Farrington, and Bussing

MEMBERS ABSENT: Dunn, Dr. Peppes

STAFF PRESENT: Thompson, Knight

APPROVAL OF MINUTES: Approval of the minutes from the June 26, 2019 Board of Zoning Appeals meeting

A motion to approve the minutes from the Board of Zoning June 26, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.

Chairman Clawson: We have two new cases tonight in New Business

NEW BUSINESS:

Case 29-2019 Richard Hertel/Owner - Request for a Variance to the Side Yard Setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9809 Cherokee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to raze and replace a glass ceiling on the southwest side of the home. This portion of the home is considered legal, nonconforming and encroaches the side yard setback. A variance of 7 feet, 6 inches is required to move forward with the remodel.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: Does it indicate what they want to replace it with?

Mr. Thompson: It will be traditional roofing material.

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

Applicant Presentation:

Richard Hertel, 9809 Cherokee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Hertel: We've lived in this house for 31 years. We raised our five children there. The area we're trying to improve was part of the house when we bought it. The back side of the house in this area has a cantilever area of about 3 feet. The glass roofing follows the slope of the roofline. Basically, 31 years of that situation is enough. The glass is the current roof situation. It leaks. It's difficult to maintain. It is expensive to maintain. Those glass panels are expensive to replace. We're trying to do some improvements to the interior. We'd like to raise the ceiling on the inside. Our plan on the south wall is in our pictures. We are going to raise that south wall about 2 feet or so. That would cause the roofline over that cantilever to change. We're not going outside of the footprint of the current building. The only thing changing is the pitch of the roof. Instead of being a more drastic slope, it's going to flatten out some and give us more interior room. It would be much more aesthetically pleasing and functional than what's there now.

Chairman Clawson: So, you're not going to modify the line of the wall, right?

Mr. Hertel: The wall will stay in the same place; it will just be extended up about 2 feet.

Chairman Clawson: Why is this a variance?

Mr. Thompson: Because it is so close to the side yard. It is 9.6 feet away from the property line. It is legal, nonconforming, but to do any work on that corner of the home has to have a variance.

Chairman Clawson: Even if they're not touching the wall?

Mr. Thompson: Correct. They're not going to be moving any closer or farther away, but it will go up.

Chairman Clawson: Where in the LDO does it say this?

Mr. Hertel: I had the same question.

Mr. Thompson: I had the same question, too, but the building official felt that since it was so close to the side property line, it had to have a variance.

Chairman Clawson: You can't show me the portion of the LDO that says that?

Mr. Thompson: Any work done closer than 15 feet would have to have some kind of BZA action, whether it's an exception or variance. In this case, since it's so close, it is a variance.

Chairman Clawson: There is no other way to do it?

Mr. Thompson: No, I tried.

Mr. Hertel: It's okay. I've spoken to the immediate neighbors. The only one that's really affected is the one to the immediate west. We described to them what we're doing, and it's no problem.

Chairman Clawson: That's the side you're doing the work?

Mr. Hertel: Yes, and they're the closest house to the work. They didn't have a problem. The HOA has approved the plans. In preparation for this, I filled out the application and did it her way. I was trying to get on the June docket. We were required to get a survey of the property to actually measure the setback. We couldn't get that until about ten days ago, so that pushed us back to the July meeting. When I filled out the application, I did it hurriedly. I understand there are five conditions to grant a variance. If I could, I'd like to go through those five factors with you here and give you my thoughts.

Chairman Clawson: Please do.

Mr. Hertel: The first one is Uniqueness. I haven't seen in Leawood or anywhere else a configuration quite like that on the roof. The configuration itself is unique. The other thing that is really unique about this is if the variance isn't granted, it results in a situation that's less aesthetically pleasing and functional than if the variance was granted. Without the variance, the roof doesn't make any sense. It makes sense to grant the variance so there's a consistent pitch to the roof along the entire cantilever area.

Chairman Clawson: I have one more question for staff. If they just went in and replaced the glass panels as they are, they'd still need a variance, right?

Mr. Thompson: They could replace the glass; they just couldn't raise the wall. If it was as simple as replacing the windows, they could do that because it wouldn't change the shape. He wants to tear that out, add a couple feet to the rear wall, and then fill that in.

Chairman Clawson: You're not going to replace it with glass panels, are you?

Mr. Hertel: No, it will probably be a seamed metal roof over that area. Then, from that standpoint, certainly it is unique because not granting the variance would create a situation that is worse than what would be there if the variance were granted.

Ms. Farrington: We're looking at this as a variance. Why is it not an exception?

Mr. Thompson: It is less than 10 feet. If it were more than 10 feet, it would be an exception, but that corner of the home is 9 feet, 6 inches away from the property line.

Ms. Farrington: It meets all other criteria.

Mr. Thompson: That's exactly right. It actually moves farther away if you look at the property line and the shape of the house, you'll see that the corner actually moves farther away from the property line.

Mr. Hertel: The second condition is effect on neighbors, and the only neighbor that is really affected by this is the neighbor to the west.

Chairman Clawson: You've sent out all the letters, and no responses?

Mr. Thompson: I had one phone call from Ms. Haverty. Her address is in your packet. She had no problem with the request.

Mr. Hertel: Again, I've spoken to the immediate neighbors, and none of them have a problem with it. The neighbors in the back are about 300 feet from the house because these are long lots. The views are obscured by trees, so it would have basically no effect on neighbors. As far as Hardship, again, this forces us into a situation where we have aesthetical and functional inefficiency that could be cured and made to look better. We're stuck. It maintains an unideal situation from both a maintenance and an energy standpoint than if the variance were granted. That translates into a loss of market value and marketability of the property. It also prevents us from having a ceiling over that cantilevered area and an interior that meets current ceiling requirements.

Chairman Clawson: Typically, the ones we have the most trouble with are Uniqueness and Hardship. The following two, I don't think we would have an issue with.

Mr. Hertel: I would say there is precedent in granting this variance. Last January, you had a situation with the Alperets. They wanted to enclose a covered patio. That was actually closer to the property line than our property is here, and the board granted that request.

Chairman Clawson: Are there other questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? Again, this is a variance, so as a board, we have to evaluate the five factors. We have to vote on each factor. In order to support a motion for approval, we have to vote in the affirmative on each factor. The first is Uniqueness.

Mr. Munson: I think it meets that criteria pretty well with the way he described it. It is unique.

Mr. Bussing: I would specifically point to a couple things. I think the fact that it's a legal, nonconforming structure makes it somewhat unique; we don't see those all that

often. There's a note that the interior height of the room is constructed at 7 feet, 6 inches. That's really bizarre. I don't recall seeing anything with that kind of measurement. Also, as the applicant indicated, this change doesn't make it closer to the side yard setback. That's relevant here.

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

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

Mr. Thompson: Yes, sir. We only received the one call in support.

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

Chairman Clawson: Hardship.

Mr. Bussing: If we do not approve this variance, the applicant will be forced to continue with a leaky roof or will incur a considerable expense to redo it.

Mr. Hawk: He's also talking about marketability in the future. This might be a detriment to a future buyer.

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

Chairman Clawson: Public Safety and General Welfare. Staff says that approval or denial shouldn't affect this factor. I think that's probably true.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: As staff has noted in the report, the amount of encroachment will not change if the request is approved.

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

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

A motion Case 29-2019 Richard Hertel/Owner - Request for a Variance to the Side Yard Setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9809 Cherokee Lane – was made by Farrington;

seconded by Hawk. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.

Chairman Clawson: Wade, when there is an overhang like that, apparently, the setback is being measured to the side of the building. In some cases, I have seen measured to the foundation. Is there a set procedure for that?

Mr. Thompson: I personally believe that they should measure whatever is closest to the side yard.

Chairman Clawson: I'm thinking about the one on Lee Boulevard.

Mr. Thompson: I know the house you're speaking about, and it is an optical illusion.

Chairman Clawson: It is 15 feet to the actual building.

Mr. Thompson: Correct; not the foundation. This one is different because it's a side yard.

Chairman Clawson: Okay, thank you.

Case 30-2019 Kevin & Brigetta Fortin/Owners - Request for a Variance to the Rear Yard 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 R-1 District for property commonly known as 11004 Alhambra Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to replace a wooden fence that encroaches the rear yard setback. The fence has been in place since 2000, and the majority of the fence can be replaced without board action. They will need a variance for the portion that is beyond the rear build line. The existing fence encroaches the rear property line by 35 feet.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: On the one plan view in here, is the existing fence the line shown in blue?

Mr. Thompson: Correct.

Mr. Munson: So, it goes out to just behind the stone wall?

Mr. Thompson: Yes, sir.

Chairman Clawson: And then the red line is the setback.

Mr. Thompson: That is correct.

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

Applicant Presentation:

Kevin Fortin, 11004 Alhambra Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Fortin: We are just looking to replace the current fence we have with an identical fence. It has been there since 2000 and is getting some wood rot across the bottom. We'd like to shore that up. We think it looks rough as it is now. I think the stone wall is probably what creates the issue on our end as far as bringing the variance 30 feet in. It would cut into the back yard but also would look awkward if we tried to cut the fence across and eliminate the stone wall or the feature of the stone wall there.

Chairman Clawson: Is the stone wall on your property, or is it built by the developer?

Mr. Fortin: That's a good question. I think it's on the property line.

Mr. Thompson: It's actually outside his property line, but the city granted the previous owners the ability to build it. I was able to see the request that was signed off on by Joe Johnson, who was Director of Public Works at the time.

Ms. Farrington: We're looking at two sides, and they are both owned by the property owner and not the adjacent property owners, correct?

Mr. Thompson: Yes.

Chairman Clawson: What is the other line you're showing that is perpendicular to the setback line?

Mr. Thompson: That is just the distance to the property line.

Mr. Bussing: What road is that?

Mr. Thompson: That would be College Boulevard.

Chairman Clawson: Are there other fences in this vicinity?

Mr. Thompson: There's a fence just to the east next door. It is a 6' fence with a swimming pool. It jogs in a little bit about.

Chairman Clawson: I was looking on the other side of the property.

Mr. Thompson: On the west side, there is no fence.

Mr. Fortin: I think our current fence line or where that stone wall is now carries up to College Boulevard.

Chairman Clawson: Obviously, it's a through lot, so therein lies the problem.

Mr. Thompson: Yes.

Mr. Hawk: You're just replacing the current wooden fence.

Mr. Fortin: We're not making any changes.

Mr. Hawk: Is there any thought to making it some other material so you don't have to contend with this ten years from now.

Mr. Fortin: That's a good question. Clearly, it has a life of about 15 years.

Chairman Clawson: Is this a 6' fence?

Mr. Fortin: It is. We're getting bids now, so we'll get bids to replace it with pressure-treated lumber and wrought iron. The length of the fence makes that probably not a feasible option for us. I would say our intent is truly just to replace it with an identical fence. We'll leave the posts because they're solid. It will be an identical color, just new wood.

Chairman Clawson: If you had to put a fence in on the setback line, is there any reason you couldn't do that?

Mr. Fortin: There's a tree that would come into play there. Another concern I would have is the stone wall and the dead space between the fence on the new fence line and the wall. It could be an area for individuals to congregate and be out of view of College Boulevard or police monitoring.

Chairman Clawson: When this was approved, it was not a variance.

Mr. Thompson: Correct; it just required a signature from Public Works.

Chairman Clawson: They didn't use the BZA?

Mr. Thompson: They only went to the BZA for height, and it was approved in 1999.

Chairman Clawson: The factors we have trouble with are Uniqueness and Hardship. Can you take a stab at those?

Mr. Fortin: From a uniqueness standpoint, are you referring to the new fence line in relation to the stone wall?

Chairman Clawson: Just the property in general.

Mr. Fortin: From our standpoint, obviously, a 35' setback is a significant chunk. We're not contesting a 7' or 8' setback. It would take out probably 1/3 of our back yard. We've got a very nice brick patio that would approach the border of that. Losing the chunk of yard and having dead space in the back would be my concern for the Hardship criterion. Uniqueness would be maintaining the current continuity. We've got that fence line going up College Boulevard for the other homes, and connecting our fence as it is now to the corner of that stone wall as it is would be our desire.

Mr. Bussing: Wade, could I see the AIMS map? (*Map is displayed on monitor*) If the home on the west wanted to extend a fence, where would it go? This setback runs right up, so if it went straight west, we would run right into the corner of their house.

Mr. Thompson: That house would be considered legal, nonconforming. To build a legal fence, they would have to come off that same red line that is on his property.

Chairman Clawson: Are there other questions for the applicant? Do you have a plan view of the general lots in that area? (*Plan displayed on monitor*) You don't have one that goes farther than that? Are there quite a few through lots in that area?

Mr. Thompson: Just the ones that back up to College Boulevard.

Chairman Clawson: The one across Buena Vista is not a through lot.

Mr. Thompson: That would be a corner lot, so he would be like the corner lot beside him. He's going to have two front yards.

Chairman Clawson: Would that still be a 35' setback?

Mr. Thompson: Yes, but you can see the fence he was talking about earlier.

Mr. Fortin: I think there's continuous fencing there. What's the next entrance in Longwood Forest? Is it Delmar? I think it's a continuous fence for three lots, all the way up to at least Delmar.

Mr. Thompson: It's possible it is a subdivision fence on that side; I'm not positive, but since it encroaches the build line on three continuous lots, it is possible.

Chairman Clawson: On the property on the east, if you stand at that line over, you run almost to the swimming pool.

Mr. Thompson: Correct.

Mr. Munson: To me, if he has to build on the setback line, he has a fairly vacant piece of property that could become a nuisance to somebody.

Chairman Clawson: He would have to maintain it.

Mr. Thompson: I think if the wall was not there, it would be a different story, but since the city allowed him to build a wall, it definitely makes it unique.

Chairman Clawson: So, you think that stone wall was built at the same time? It probably was, I guess.

Mr. Thompson: The fence was built in 1999. It doesn't say when the wall was built.

Ms. Farrington: You stated that you plan to replace the existing fence if this is approved, but you're leaving the posts intact. There would be posts in Section A and B, so if it didn't get approved, you would have to remove those and incur the expense, so that would increase costs.

Mr. Fortin: Yes.

Chairman Clawson: Are there other questions for the homeowner? Thank you. We have to evaluate the five factors. The first is Uniqueness.

Ms. Farrington: I think this meets the requirement for a couple reasons. First, it already had an exception for a 6' tall fence, so that has been approved. It was signed off by the director to tie in to the existing stone wall at an earlier date. Here, we have a homeowner who is just trying to replace something in a situation where there are a couple factors that make it unique. Additionally, this is a through lot, but it is an odd-shaped lot off that cul-de-sac with regard to the properties adjacent to it.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No calls or complaints.

Chairman Clawson: All the letters went out?

Mr. Thompson: Yes, sir.

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

Chairman Clawson: Hardship.

Mr. Bussing: I believe the applicant meets this requirement. Putting the fence where the setback is indicated would create quite a bit of dead space, which, as Mr. Munson

indicated, would be an attractive nuisance. It would expose that stone wall. The appearance wouldn't look right. I don't know how he would link the fences up so it would have the appearance we want.

Mr. Hawk: He would also lose much of his back yard.

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

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

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: Basically, it is just replacing an existing situation, so the spirit does not change, and I believe it meets the character of the neighborhood.

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

A motion to approve Case 30-2019 Kevin & Brigetta Fortin/Owners - Request for a Variance to the Rear Yard 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 R-1 District for property commonly known as 11004 Alhambra Street – was made by Hawk; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Hawk, Farrington, and Bussing.

MEETING ADJOURNED.