

**City of Leawood**  
**Board of Zoning Appeals Minutes**  
**August 28, 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 August 28, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Dunn

**APPROVAL OF MINUTES:** Approval of the minutes from the July 24, 2019 Board of Zoning Appeals meeting

**A motion to approve the minutes from the Board of Zoning July 24, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have four cases tonight. We have one that has been withdrawn and one continued to the next meeting.

**NEW BUSINESS:**

Case 31-2019 Gerald Janssen; Shawn & Lindsey Welch/Owners - Request for a Variance to the to the requirement of the lowest floor be elevated a minimum of two (2) feet above the base flood elevation in accordance with the LDO, Section 16-2-8.2,a. in an R-1 District for property commonly known as 8511 Lee Boulevard.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners are wanting to raze the existing structure and construct a new home on the property. The property has a creek that runs through the front, and much of the front yard is in the flood zone. The Leawood Development Ordinance (LDO) requires the lowest floor of the structure to be 2 feet above base flood elevation, which is 887 feet. They are requesting to place the basement floor at 885.6 feet and will need a variance of 3.4 feet.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: Is the shaded area in the illustration the 100-year floodplain?

Mr. Thompson: Yes, sir.

Mr. Munson: The elevation of the 100-year floodplain would be what in relation to the request of the applicant?

Mr. Thompson: That would probably have to be answered by the applicant. And so you know, the papers that were on your spots before are part of this case, and those are other factors for the board to consider.

**Applicant Presentation:**

Gerald Janssen, Elswood, Smith, Carlson Architects, 7133 W. 95<sup>th</sup> Street, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Janssen: I'm going to go through the facts of what we're looking at here. You asked about the base flood elevation. It is set at 887. The existing basement floor is 887.38. I'll back up one step. Since the base elevation is 887, as the rules read, the lowest floor is supposed to be at 889. The existing basement floor is 887.38. Also, according to the rules, we could only raise the finished floor of the house 1 foot. If we raise the floor of the house 1 foot, the proposed finished floor would be 896.5. The low window opening for the basement would be 889, which is what they're asking for the floor. However, the basement floor would then be at 885.673, so it would be 3.33 feet below the 889. The top of the window well would be at 893.33, which is significantly above the base opening. It's a quandary.

Chairman Clawson: The requirement is they can't raise the grade 1 foot, right?

Mr. Thompson: Correct.

Mr. Janssen: But also the finished floor of the house; isn't that part of a teardown?

Chairman Clawson: I thought the grade could not be raised more than 1 foot without a variance.

Mr. Janssen: That is true, and we're complying with that, but also, the finished floor of the house can't be raised more than that.

Chairman Clawson: I don't think I've ever seen that requirement. Is that correct?

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

Mr. Janssen: Then I would have to backtrack on that. I did not bring that whole section.

Ms. Farrington: We have it on Page 43. It gives the requirement for the floor elevation. I think that answers the question. It's Item 2A. It talks about new construction or

substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor elevated a minimum of 2 feet above base flood elevation.

Mr. Janssen: That is definitely one question. I am sorry that I did not bring the whole ordinance. The way I understood it, in new construction, the new floor could not be more than 1 foot above the existing.

Chairman Clawson: I don't know if I've ever seen that. That was my question: why can't you just raise it to the required elevation?

Mr. Janssen: The other challenge with that is we cannot raise the grade for the garage, so then the floor of the house would be about 4.8 feet higher than the floor of the garage. We'd have 8 risers getting from the garage to the house.

Chairman Clawson: Why can't you raise the garage?

Mr. Janssen: With the way the envelope reads, we cannot raise the house higher than the existing grade. There are restrictions for all that. Then, we're running out of room. We'd have to ask for a variance to raise the house higher than the rules call for.

Ms. Farrington: I have a question on the height of the house. It's a two-story house. What are the room heights?

Mr. Janssen: It is a 10' first-floor ceiling. I believe it's a 9' second-floor ceiling with a low-pitched roof, so that keeps us under the requirements.

Chairman Clawson: As I recall, if a house is in the floodplain, the 1' grade raise can be increased as an exception. Is that right?

Mr. Thompson: As an exception, yes.

Chairman Clawson: We had a case like that a year or two ago where a substantial portion of the lot was in the floodplain, and there was a loophole in the requirement that the grade could only be raised 1 foot because of the floodplain issue.

Mr. Thompson: I don't remember that rule.

Chairman Clawson: It's somewhere in the LDO.

Mr. Janssen: I was referring to a grade reference point from the existing house that is at 892.4. Again, I guess I wasn't prepared to answer the envelope questions; I should have been. As we lift up the house, the top is 30 feet. If we raised the house, we'd have to ask for a variance to get up higher.

Chairman Clawson: You have a height limitation?

Mr. Janssen: Yes.

Mr. Hawk: How much?

Mr. Janssen: We would have to raise the basement floor 3 feet, 4 inches. We're trying to fit the house in with the existing neighborhood and comply with the overall feel of the neighborhood. That was our starting point. Then, as we progressed, we found that we needed this variance so we didn't have to lift the whole house up.

Mr. Bussing: Mr. Janssen, you understand that you could build this house as you want if you re-platted the lot?

Mr. Janssen: Yes. We're 37 feet back, so we're past the 35' mark. If we had the property line out of the floodplain, we could.

Mr. Bussing: Isn't that a simple solution? There's some time and money involved in re-platting, but split the lot and build what you want?

Mr. Janssen: We have talked about that. To be honest, I don't know what all that takes. I don't know what steps we would take.

Sean Welch, 8511 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Welch: I'm the homeowner. We've talked about splitting the lot. One of the conditions that came up that may potentially be an issue is in splitting the lot, we still have to have access to city easements for the road because the floodplain takes up the entire front portion of the lot. We'd have to figure something out where portions of that become city easement. To Gerald's point, the floodplain itself, with our proposal, is 37-38 feet away from where our build line is going to be. If we cut this lot in half and had two .6-acre lots, that's still significantly larger than every lot in the area. It's actually a lot easier to get a variance that allows the floodplain to be 3 feet below. We're 38 feet away from the floodplain that just happens to intersect a portion of a 1.2-acre lot. That's an easier process than going through re-platting, figuring out the taxes about whether or not you have a house on a lot versus a lot without a house. It becomes a different kind of area, so the taxes would probably go down on that portion and down on the other portion. It's actually in the city's interest to leave this as one lot because the taxes would maintain a city dwelling as opposed to an unusable piece of land. All those options considered because the variance requires this one meeting, and once we get that variance, we're able to build the house as desired versus multiple meetings to try to figure out how to re-plat.

Mr. Munson: If you don't get the variance, what do you do?

Mr. Welch: We appeal. There are five conditions based on the lot. The house, as it stands now, has been vacant for more than eight years. It is unlivable. There are neighbors here

who can probably attest to the fact that the house is actually dangerous, and we are trying to make it so the house can be livable.

Mr. Munson: Was it unoccupied?

Mr. Welch: It was unoccupied when we purchased it, yes. As it stands now, the house does not conform to these rules. The current basement floor is .3 feet above the existing floodplain. We're trying to keep the character of the neighborhood by having the houses all be the same height. To your point, we could raise the house 4 feet and put it on stilts, but then we have two ranch houses and a two-story house on stilts, and no one is going to like the way that looks. If we can have this variance, we let the basement go below the floodplain. We've made sure all the architecture designs have the window wells as a part of the foundation. The actual opening to the basement is at 896, so that's a good 10-12 feet above the floodplain. The window sill conforms to the rule at 889. The wording of the rule says that the basement floor has to be 2 feet above. We're asking for it to be 1 foot below.

Mr. Bussing: Our hands are somewhat tied with regard to dealing with the flood zone and residences in and around this zone. We'll have to see. You're going to have to get flood insurance.

Mr. Welch: We've spoken with insurance, and because the floodplain does not intersect the home itself and it's just on the property, we don't have to have it.

Ms. Farrington: Are there any other properties around this property that has had a similar situation, or are they all existing homes that have been there for quite some time?

Mr. Thompson: The majority have been there for 40 years.

Ms. Farrington: This is the first case in that area?

Mr. Thompson: This house actually went to the BZA in February for the rear setback. This is one of those lots that has the rear build line in front of the front build line. They're all pretty typical. They go down to the creek and then all rise up. All the houses are pretty much the same.

Mr. Welch: It is significant that this floodplain is 37 feet in front of our proposed build. If we did cut the plot in half, we could still maintain the required front setback requirements of 35 feet.

Mr. Munson: If you split the lot, where would your road frontage be?

Mr. Welch: That's one of the complications about splitting the lot.

Chairman Clawson: Are there additional questions for the homeowner or his architect?

Ms. Farrington: When we vote on this, we have to vote on different factors. Could you speak more on Hardship?

Mr. Welch: My interpretation is to consider if there is a way to build this while conforming to every rule. Is that correct? My interpretation is if we can build a house and conform to every rule, or is the hardship that there is a rule that is stopping us.

Chairman Clawson: It typically means that if this variance were not granted, it would be an unreasonable hardship on the applicant. You wouldn't have any recourse.

Mr. Welch: We've talked about two solutions to this problem besides this variance. The first is raising the house 4 feet and putting it on stilts, changing the grade 4 feet to the garage. This would be a hardship on all the neighbors with the house not looking similar.

Mr. Munson: And a possible drainage problem

Mr. Welch: Exactly; everything we've planned now protects the neighbors with drainage to make sure we're not significantly altering the way the house currently behaves. As for platting, we've mentioned access to the road is going to be difficult. We could re-plate the line and do a really weird plat to address it to comply, but that makes things way more complicated. It's not feasible to figure out how that's sustainable and what kind of precedent that sets for other people who may want to finish their basement or build a house. Both of those two options become unreasonable when a simple variance of 3.33 feet allows us to maintain the character of the neighborhood, protect the neighbors next door, and build the house we want to build to replace a house that has been abandoned for eight years.

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

Todd Feback and mother, 8519 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Feback: My mother actually built this house in 1952, so I'm familiar with this area from the beginning. I want Sean as my neighbor, but our concern is the creek has created such a problem for us that there wouldn't be a floodplain there if the creek was taken care of in the first place. Now, I'm concerned when they build next door, which I really want them to build and it sounds like he's got it figured out, but I don't want it to interfere with our basement because our basement was flooded twice this year not just because of the creek water but because of the water coming off the hill in back of us. We have tried to control it, but we didn't have much luck this year. Other people had the same problem.

Mr. Feback: I haven't seen the plans, so I don't know how far out to the edge of the lot they're going to build. We are concerned about any additional water that might enter our properties. What my mom was discussing about the creek is that there are serious problems with this creek. Unfortunately, I don't think it falls under the city's purview.

There is serious erosion on our side of the creek, so the remediation on that is going to be terribly expensive. I think one thing that was brought up was that there was going to be some dirt put down on the 8511 site. We're worried that will potentially create an even faster channel of water, which will then negatively impact the property at 8519.

Ms. Feback: We've had to rebuild our bridge, and yet, there's still going to be erosion under that. My neighbor to the south of us and we spent quite a bit of our own money on that, as I know that the Godwins have, too. It's just money, money, money, but nothing is really being done to solve that problem.

Mr. Feback: The main concern that concerns this particular issue is if they modify the creek on 8511 property, how is that going to impact 8519 and then on down as well?

Ms. Feback: That, and is that level of his house going to send more water down to my house. That's going to be another problem.

Andrew Godwin, 8505 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Godwin: Sean is the third owner since the Wests had their house foreclosed on, and it's been vacant over three years. We were hoping that Sean and his family would move there and be able to build something. The reason I'm here is to reiterate these points that were made today. I'm happy to share that I've been flooded eight times because of the creek. That creek is dangerous. Sean and I worked together when he first bought that property to build a wall to try to increase how we could control the water going through there. We doubled the width of the creek, and it still doesn't hold that. We've had asphalt washed off our bridge.

Chairman Clawson: Which house is yours?

Mr. Godwin: I'm 8505 Lee Boulevard. I'm now officially in the floodplain, but when I bought it in 2011, it was not. The point I'm trying to bring is that the neighbors are very concerned about making any change in the grade that would affect the water flow additionally. I already have four sump pumps in a finished downstairs, and I've been flooded three times this year alone in the spring.

Chairman Clawson: What is your basement elevation?

Mr. Godwin: I'm going to have to figure this out with them. I think this is a serious problem. (*shows pictures*) That's what happens when we get 1 inch of rain in an hour. You can see the bridge down below, and that's all the way up to the driveway. That also causes flooding on Lee Boulevard, and they've had to close down Lee Boulevard because it's not passable. In the past, there's actually been deaths associated with the water that comes from there. That's very common. It's something that's not being done. One of the things that Sean and I had tried to do when he was going to build a house and move in to that area was really try to address some of those areas and how we could actually help

control that. There's more and more water that comes down, more and more houses being built that have no yards. We have more drainage that comes directly in there. We've had a manhole cover blow off there that. It was a 200-pound piece of metal thrown into the creek. We have sewage water that basically gets down into that creek. We have all sorts of issues that no one wants to address. My biggest concern right now is if we make any change in the grade of the property, something has to be done. If it's approved, I would like to see a plan there because Sean and I do share a driveway. I haven't seen the designs of the house, but making a change in the grade of the driveway could potentially funnel water into our garage and then into the house. We're all in agreement we would like to see something done with an absolute teardown. We've had lots of interesting experiences since we bought the house in 2011. It would be nice to get a nice family into that area, but at the same time, I don't want to see any more issues with the floodplain becoming more of an issue. Like I said, the corner of my house is in the floodplain, and when I bought the house, it was not.

Chairman Clawson: Thank you.

Ms. Farrington: Can I ask staff to put up this plan? (*Plan put on monitor*)

Mr. Welch: To address their comments, we went into this with the same concerns they had, which is why we are not proposing that we raise the house and building above the envelope because that would essentially cause us to have to put grade that gives us access to the house and push water into their yards. That is the option we do not want. Instead of pushing the house up, we let it got down.

Chairman Clawson: Have you performed a drainage analysis?

Mr. Welch: We haven't performed one. Our plans are fully engineered at this point. Basically, the next step is to get a full drainage study. I understand that is a requirement before we can get a building permit. We are not planning on putting any additional water or doing any changes to the creek that will adversely affect downstream. All we're planning on doing is building the house. As I said before, we have two options. We can either build the house up, which will cause water to run into their yards, or we can allow the house to be built below the floodplain, which will maintain the current drainage to allow the water to go to the creek as is designed. All of our options consider the neighbors' concerns.

Chairman Clawson: This is a variance, and we have to evaluate the five factors as a board. We have to vote in the affirmative on all five factors in order to support a motion for approval. The first fact is Uniqueness.

Mr. Munson: In the past, have we not looked at these properties that have this creek running along the floodplain and considered them as unique even though they affected several lots because it's unique in terms of trying to develop it.

Chairman Clawson: I don't remember that we have had a case like that. It's possible.

Mr. Thompson: Not for flood zone, but we have considered it unique in the case earlier this year.

Chairman Clawson: In these cases, we have looked at these for not necessarily floodplain issues but other issues and have determined there was a unique factor because of the creeks and the drainage in the front yards.

Mr. Thompson: All of these homes have the creek in the front and the sewer in the back. It's a large lot, but they've got a small building envelope.

Mr. Munson: Is this one of those homes where the rear yard is in front of the front yard setback?

Mr. Thompson: Yes, they got a variance for relief from that in February.

Mr. Munson: One of the things that crossed my mind is if they had the ability to move the structure back anymore. They couldn't do it without another variance, right?

Mr. Thompson: Correct.

Mr. Munson: This land slopes from the creek up to the back lot line. How many feet is that?

Mr. Janssen: It's about 18 feet from the floodplain.

Mr. Munson: It's moot because of the building line.

Chairman Clawson: Other discussion?

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

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

Mr. Thompson: Yes, and no calls or complaints have been made. You have what we've had tonight.

Ms. Farrington: We've had a couple neighbors share comments. The reason I had you put up the plan is you can see the house that existed before and the footprint of the designed home. The corner on the right shows the 3.3' variance. That's what we're voting on, so when we talk about each factor, we have to take into account the things they're talking to us about. This plat shows what is being proposed. I can't help but see a change in grade, a change in elevation from what is existing before. I would like to see drainage before we vote on this. It's hard to agree that it's not affecting the property owners if we don't have the data that shows it's not going to affect them on either side of

the property. We have the property owner from the north that shares the driveway. On this plan, a lot more concrete is being put in, which will cause more runoff. The property to the south has a redirection of grade and how it flows between the property. The new footprint is closer to that side than the existing stairwell on the south. It's a narrow area for the water to flow. My suggestion is I would like to see that before we would vote on something. I'm having a hard time agreeing that it wouldn't affect the property owners around them.

Mr. Hawk: I agree. I think we're perhaps being redundant, but if we want to make sure the proposal is accepted, it alleviates the concerns of the neighbors.

Ms. Farrington: If we approve this, we're approving a variance for 3.3 feet. It sets a precedent for other properties in the area and in Leawood. We're up here to abide by the ordinances. If we can't meet all these factors, it's an issue. As we go on to Hardship, it will be similar to what I'm describing with this factor.

Chairman Clawson: Are you suggesting it ought to be continued?

Ms. Farrington: I believe it should be continued and we should have a drainage analysis presented to us, showing that it doesn't affect. If we were to vote right now, I would have to say it doesn't meet the criterion.

*Inaudible comments*

Cecilia Godwin, 8505 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Godwin: I don't understand the plans. I see a red outline. I see a green outline. I see a driveway, but I'm not seeing the creek, so I don't know what I'm looking at, to be honest with you.

Mr. Janssen: (*Referring to plan*) This red line is the edge of the floodplain. The green line is the edge of the existing house. The red line is the proposed residence. The dark lines are the proposed grades. What we're proposing is not changing any grading down in the floodplain, but we do need to slope up. The dotted lines are the existing grade, and the dark lines are the proposed grade. We're planning on draining all the side down to the creek area and lifting up a couple grades in the front.

Chairman Clawson: Where is the bottom of the creek?

Mr. Janssen: The bottom of the creek must be down here (*Referring to plan*).

Unidentified Speaker: Here are the basement steps. If you're raising this up, I'm seeing a lot of water coming right in the side of our house.

Mr. Janssen: Actually, this grade is coming back to direct the water so it does not go on the property; it all stays on this property (*Refers to plan*)

Unidentified Speaker: So, this is a 15' setback?

Mr. Janssen: Yes.

Chairman Clawson: Is there a little swale there?

Mr. Janssen: Yes, it's a swale to keep the water on our property.

Chairman Clawson: We were talking about Rights of Adjacent Property Owners. We do have an issue, I think. The problem is we could act on this variance right now, but what happens if we do that and when you do your drainage study, what is the step after that? You're not going to come back to us. You're going to have to present that to the city to get a permit. Is that correct?

Mr. Thompson: They won't issue a permit without it passing the drainage study.

Mr. Janssen: The whole purpose of the drainage study is to make sure we don't infringe upon the lots on either side.

Ms. Farrington: I think when we're looking at this, we have to look at these five factors and vote in the affirmative or negative. If we feel it doesn't meet the factor, we have to deny it. Moving through this, if we vote today, I would say it doesn't meet this criterion. That's just my suggestion, looking at what I've heard tonight. We could either approve it or not approve it.

Chairman Clawson: I say we go ahead with the five factors.

Mr. Godwin: I do want to plead again. There is a hardship of the fact that this property has been owned by three people. They haven't been able to do anything and build properties because they haven't been able to get plans through the committees. Someone has invested a lot of money, and I would like to see the neighborhood become improved again. Do take into consideration I don't want flooding on my property. If they do due diligence and show that they can control additional water by doing the raising they propose, I'm for that; I would just like to say that he's got a lot of money invested in this. The people before him had money invested, and every single time, they haven't been able to build because of very strange ordinances. Yes, these are unique properties, and they are unique because the way the city and township have handled the way water is being pushed down through that property has not been correct. I greatly appreciate the concern for the neighbors, and I'm not speaking for the neighbors on the other side, but I do want to see that the property is either torn down and made into a park or something is put in there that elevates our neighborhood.

Chairman Clawson: Addressing Dana's issue, if they perform a drainage study, I'm assuming the city personnel will take a hard look at that to verify the impact to neighbors and ensure the impacts to neighbors are minimal or nonexistent; correct?

Mr. Thompson: Correct.

Ms. Farrington: You're saying that would satisfy Rights of Adjacent Property Owners?

Chairman Clawson: I think as far as the drainage issue, it should. Other comments?

**Rights of Adjacent Property Owners criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship. If this is denied, they have options. They can redesign the house to meet the requirements of the LDO. Is that a true statement?

Mr. Thompson: Correct.

**Hardship criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare. In general, placing structures below the floodplain is not prudent. I would invite other comments from the board.

Dr. Peppes: Especially if the 100-year floods happen pretty frequently, and 500-year floods approach us several times. If anything, we should always err on the other side as opposed to entering into the floodplain.

**Public Safety and General Welfare criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Dr. Peppes: Again, to place structures into the floodplain is not following it.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: We have felt as a board that factors 2, 3, 4, and 5 were not met; therefore, we must support a motion for denial in this case.

**A motion to deny Case 31-2019 Gerald Janssen; Shawn & Lindsey Welch/Owners - Request for a Variance to the to the requirement of the lowest floor be elevated a minimum of two (2) feet above the base flood elevation in accordance with the LDO, Section 16-2-8.2,a. in an R-1 District for property commonly known as 8511 Lee**

**Boulevard – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 32-2019 Melinda & Christopher Garrett/Owners VARIANCE Request for a Variance to the side and rear setbacks for the placement of a sport court in accordance with the LDO, Section 16-4-1.3(B) 6, c in an R-1 District for property commonly known as 12205 Wenonga Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants have constructed a sports court without a permit. In doing so, the sports court was placed encroaching the side and rear setbacks. It was placed 3 feet, 2 inches from the side property line, or an encroachment of 11 feet, 10 inches and 8 feet, 3 inches for an encroachment of 21 feet, 9 inches on the rear property line.

Mr. Hawk: I'm a little concerned that it took us 18 months to find this irregularity.

Ms. Farrington: Was there a permit pulled?

Mr. Thompson: No, that is why they are here. There is a 6' fence that surrounds the property, so it is hard to see in back. We have fences, decks, roofs put on over the weekend without permits fairly regularly.

Ms. Farrington: Typically, aren't there certified contractors that do that work?

Mr. Thompson: There are.

Ms. Farrington: And aren't there only a few in town? Wouldn't the contractor who performed the work know the city's procedures?

Mr. Thompson: He probably should have, but I don't know who did it.

Mr. Munson: It could have been done by family.

Mr. Thompson: It could have been.

Mr. Hawk: Don't we have a definition somewhere of a patio that extends from the house, and this is just a concrete slab that seems to be a lot like a patio? It's no obstruction and no ornamental objects.

Chairman Clawson: There's a basketball goal.

Mr. Thompson: Yes, and a patio is generally connected to the home.

Mr. Hawk: The basketball goal is what throws it off.

Mr. Thompson: Yes, sir.

Chairman Clawson: The requirement is 10 feet, right?

Mr. Thompson: Yes.

Chairman Clawson: It's been placed 3 feet, 2 inches, and I think 11 feet, 10 inches is incorrect. It should be 6 feet, 10 inches.

Mr. Thompson: It should be a 15' side yard setback.

Chairman Clawson: It should be 1 foot 9 inches. Is that correct?

Mr. Thompson: It's 3.2 feet from the property line. I think the 11' encroachment number is correct.

Chairman Clawson: It said a minimum of 10 feet from any rear or side lot line.

Mr. Thompson: Yes, sports courts are allowed to be 10 feet from the side property line and rear.

Chairman Clawson: So, the encroachment is less than shown.

Mr. Thompson: Correct.

Ms. Farrington: To correct it, it would be 6 feet, 8 inches, correct?

Mr. Thompson: Yes.

Chairman Clawson: Additional questions for staff?

**Applicant Presentation:**

Melinda and Chris Garrett, 12205 Wenonga Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Garrett: To answer your earlier question, we did have a contracting company do our sport court, along with our driveway. They had been working with the city for the driveway, and we assumed they pulled permits for both things because they were poured at the same time. The city checked the driveway, and they didn't check the sports court. That's why it's been in place for 18 months. We just didn't realize that we were in violation.

Chairman Clawson: Questions for the applicants?

Dr. Peppes: But you pulled a permit.

Mrs. Garrett: We did not. The concrete company did.

Dr. Peppes: You relied on the contractor to pull the permit, and they didn't pull it.

Mr. Thompson: They pulled a permit for a driveway but not for the sport court.

Mr. Munson: Were they put in simultaneously?

Mrs. Garrett: Yes.

Mr. Hawk: Was there an approval of the 6' fence at some point?

Mr. Thompson: The 6' fence is allowed. They have a pool.

Chairman Clawson: Other questions for the applicant? So, their options are what?

Mr. Thompson: They could either cut the concrete to make it comply, rip the whole thing out, or get a variance.

Mr. Hawk: Or remove the basketball goal so it could be considered a patio.

Ms. Knight: I'd have to look at that. I thought a patio had to be attached.

Chairman Clawson: Is your pool an in-ground pool?

Mrs. Garrett: It is. I have some pictures if you want.

Ms. Farrington: How were you notified to inspect?

Mr. Thompson: It came in from the inspector who went out to look at the driveway.

Chairman Clawson: He was the one who found this?

Mr. Thompson: I assume.

Mrs. Garrett: I don't know. We're the next docket as well for the deck. I think it was the inspector of the deck.

Mr. Thompson: Did you get a permit for the deck?

Mrs. Garrett: We didn't. We were just replacing the existing deck.

Mr. Thompson: Did the codes officer catch you replacing the deck, or how did the city find out about it?

Mr. Garrett: We have no idea.

Chairman Clawson: Then next case is yours, too?

Mr. Garrett: We can talk about that now, but no one came to our door or anything of that nature.

Mr. Thompson: Did you receive a notice from the city?

Mrs. Garrett: We did.

Mr. Thompson: Somehow, the codes enforcement officer for that area found out there was a sports court and a deck in the rear yard.

Chairman Clawson: Did you have a contractor working on the deck?

Mr. Thompson: If we're talking about the deck, I'll explain that nothing was changed in terms of the design of the deck.

Chairman Clawson: We can talk about that next. Let's finish this first. The ones we typically have a hard time with are Uniqueness and Hardship. Can you address those?

Mrs. Garrett: From a uniqueness perspective, the previous homeowner had built a geothermal heating and cooling system in the north side yard, which is the space where we would have had this structure if we could, but we can't build on top of those coils. We spoke with the neighbors and decided to put it in the back yard because it was the only space.

Chairman Clawson: What about Hardship?

Mrs. Garrett: It would be a financial hardship to rip it out.

Chairman Clawson: You would just have to take a portion out.

Mrs. Garrett: We have not priced it, so we don't know.

Chairman Clawson: Other comments or questions for the applicant? Is anyone here who wishes to speak for or against this application? We'll discuss the five factors, then. The first is Uniqueness.

Dr. Peppes: I don't feel that it has met that requirement because even though the geothermal is on the other side of the yard, if this was just moved a couple feet away and a permit was pulled, it would still fit even if it was a little smaller.

Mr. Munson: I concur with that.

**Uniqueness criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

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

Mr. Thompson: Yes, and I did receive one phone call this afternoon from a neighbor in support of the project. They drove by and said it was fine with them.

**Rights of Adjacent Property Owners criterion not satisfied with a vote of 2-3. For: Hawk, and Farrington. Opposed: Munson, Dr. Peppes, and Bussing.**

Chairman Clawson: Hardship.

Mr. Munson: It was due to the tenants' activities and not anything the City of Leawood did. It is self-imposed.

**Hardship criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Doesn't adversely affect it.

Mr. Hawk: No effect.

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

Chairman Clawson: Spirit and Intent.

Mr. Munson: The intent of the ordinance is to place sports courts at a reasonable distance from all property lines. This doesn't do that, so it doesn't meet that requirement.

**Spirit and Intent criterion not satisfied with a unanimous vote of 0-5. Opposed: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: As a board, we felt that Uniqueness, Rights of Adjacent Property Owners, Hardship, and Spirit and Intent were not met. We can support a motion for denial.

**A motion to deny Case 32-2019 Melinda & Christopher Garrett/Owners VARIANCE Request for a Variance to the side and rear setbacks for the placement of a sport court in accordance with the LDO, Section 16-4-1.3(B) 6, c in an R-1 District for property commonly known as 12205 Wenonga Lane – was made by Bussing; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 33-2019 Melinda & Christopher Garrett/Owners - Request for a Variance rear build line for the placement of a deck in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12205 Wenonga Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners replaced the rotten boards on an illegal deck that is between the pool and the fence on the rear property line. The applicants are requesting a variance for 30 feet that would allow the deck to remain.

Chairman Clawson: It is illegal as opposed to nonconforming?

Mr. Thompson: Correct; I've got the original permit that was pulled, and that portion of the deck was not on the permit application. It was added sometime before they bought the place. It has probably been there 20-25 years, but it wasn't there whenever the inspector did the original inspection.

Chairman Clawson: So, it was added later.

Mr. Thompson: Yes, sir.

Mr. Munson: This is the deck that is outlined in red on the photograph?

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there any questions for staff? Even though it's an illegal deck, he can't do any work on it? We can't force him to remove it, right?

Mr. Thompson: I think we could.

Ms. Knight: If this is denied, you can. It's illegal, nonconforming, so if you don't grant a variance for it, there's nothing they could do except take it out.

Chairman Clawson: Let's say an inspector happened to be in the area and saw an illegal deck like that, that was built 20 years ago. What would the city's stance typically be on that?

Mr. Thompson: If it were built 20 years ago, they probably wouldn't do anything. If it had fresh boards on it like this one did, it sets off all the alarms.

Dr. Peppes: If it was a newly constructed deck, it would have had to have a permit in order to be constructed.

Mr. Thompson: Not only a permit, but a variance.

Chairman Clawson: If it was a legal, nonconforming deck, the homeowner could replace boards as long as they weren't going to replace more than 50% of them.

Mr. Thompson: Correct.

Chairman Clawson: But since this is an illegal deck, theoretically, they can't do any work on it.

Mr. Thompson: Correct.

Chairman Clawson: They're seeking a variance to keep the deck.

Mr. Thompson: Yes.

Chairman Clawson: Normally, for a deck like that, it couldn't be closer to the property line than the rear build line.

Mr. Thompson: Correct. They can pour an at-grade patio.

Mr. Munson: It won't be a patio.

Mr. Thompson: It would be connected to the pool.

Chairman Clawson: But they couldn't put a basketball pole. They could pour a patio clear up to the build line.

Mr. Thompson: Yes, just like a driveway; it can go all the way to the property line.

Mr. Bussing: Strict application of our ordinance to this just seems overly punishing to me. The structure has been there for 20 years. Yes, it's illegal, but it's been there for 20 years. No one has complained about it. These folks didn't do it. They were trying to repair it. They could put a patio but not a deck. The whole thing is just convoluted in my mind.

Ms. Farrington: I tend to agree. When the home was purchased, there had to be some inspections done.

Mr. Thompson: For the home, yes, but not from the city.

Chairman Clawson: I'd like to hear their case.

**Applicant Presentation:**

Melinda and Chris Garrett, 12205 Wenonga Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Garrett: The reason we were replacing the boards is people were falling through them. It was a safety hazard. We could have just done board-by-board, but there was so much dilapidation in the entire deck.

Chairman Clawson: Do you have photographs?

Mrs. Garrett: Yes. It is also only 5-6 inches off the ground.

Chairman Clawson: It's basically a patio made of wood.

Mr. Munson: This elevation is 4-5 inches from the base?

Mr. Garrett: Yes, sir.

Mr. Munson: Is that what you plan to replace the boards at?

Mr. Garrett: We've replaced the boards already.

Mr. Munson: When people talk about a deck, I think of something up high.

Mr. Garrett: We were afraid that would be the assumption.

Mrs. Garrett: The neighbor behind has lived there for 20-some years. He says as long as he can remember, the deck has always been there.

Mr. Garrett: And he says he's never had a problem.

Chairman Clawson: I have a question for Wade. If the board would approve a variance like this, what could stop the homeowner from building a deck that was 6-8 feet off the ground?

Mr. Thompson: Technically nothing unless you put it in your motion that it has to be at grade.

Chairman Clawson: An at-grade deck; does counsel concur with that?

Ms. Knight: I'm not sure if you want to say "at grade" since it's elevated slightly. I suppose you could put a condition in your variance.

Mrs. Garrett: I'm surprised it's illegal because when we first met with Wade, he said that everything was approved.

Mr. Thompson: That wasn't me. The first time I met with you was the time I met your husband to get in the back yard to measure.

Mrs. Garrett: Okay, well, the city person that we met with who is the liaison for us said it was.

Mr. Garrett: I've even seen the original permit for the original deck, and I saw a horseshoe. That's why I'm confused as to how it was approved for a half but not the full.

Chairman Clawson: Is the legal portion of the deck also just barely off the ground?

Mr. Garrett: Yes.

Chairman Clawson: Are there any other questions for the applicant?

Mr. Garrett: Can I just add one more thing? The reason we did not come to the city for a permit was because things were so bad with just the top boards themselves that we thought just replacing that shouldn't be a problem. Our intent was not to go around anything, anyone, or any process; it was just that these boards were literally disintegrating.

Mr. Munson: Safety measure.

Mr. Garrett: Huge safety measure. When you come out our back door, my foot went through two of the planks.

Mr. Munson: We don't want you to hurt yourself; that's for sure.

Mr. Garrett: Or any of our friends.

Chairman Clawson: I understand. Thank you. Is there anyone here who wishes to speak for or against this application? In that case, we have a variance, so we have to evaluate the five factors. The first is Uniqueness.

Mr. Munson: This doesn't really change from the case before, but as Mr. Gary Bussing points out, how do we evaluate this in terms of what makes a lot of sense? To me, it doesn't change much from the case before, but we have a little wiggle room here, if you will.

Ms. Farrington: When we vote on the factors, do they all have to be in the affirmative for them to pass?

Chairman Clawson: They all have to be in the affirmative.

Mr. Munson: If one votes against and the rest vote for, it is still affirmative.

Chairman Clawson: Keep in mind, we can also add stipulations to a motion to make sure that, if we approve something, it has properties that we agree upon as a board.

Dr. Peppes: We have to get to that motion.

Chairman Clawson: We're not there yet.

Dr. Peppes: We have to discuss or figure out why this is a unique situation; whereas, before, it wasn't. Now, it's the same property, but it's unique because of a possible safety issue.

Chairman Clawson: The fact that it was a structure built many years ago. These homeowners bought it, and I'm sure they had no idea that this portion was illegal.

Mr. Hawk: They had 20 years to determine that was illegal.

**Uniqueness criterion satisfied with a vote of 3-2. For: Bussing, Hawk, and Farrington. Opposed: Dr. Peppes and Munson.**

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

Mr. Thompson: Yes, and we only had one phone call today from someone named Hogan at 12116 Cherokee. He was for the project.

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

Chairman Clawson: Hardship.

Mr. Bussing: I'll take a pass here. I think the hardship is without a variance, the homeowner will have to remove an at-grade wooden structure to replace it with an at-grade concrete structure, which doesn't make any sense to me. It's financially burdensome. I think it would be less attractive. I think there is material hardship if it is not approved.

**Hardship criterion satisfied with a vote of 3-2. For: Farrington, Hawk, and Bussing. Opposed: Munson and Dr. Peppes.**

Chairman Clawson: Public Safety and General Welfare.

Dr. Peppes: At this point, I think it's in great shape. Things have been repaired, so there isn't any safety issue. What was there before is now gone.

Mr. Hawk: The homeowners have already indicated with their action that they take care of their property by being aware of these safety issues.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: Staff's comment notes that the intent of the ordinance is to prevent accessory structures from encroaching the setbacks, which is certainly laudable; however, we're talking about two at-grade structures: one made of wood that is unacceptable and one made of concrete that would be acceptable. I don't find that difference in this particular instance material. I think it has been met.

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

Chairman Clawson: We've voted in the affirmative for all five factors, so we can support a motion for approval.

Ms. Farrington: I'd like to suggest a modification, which would be in approving this variance, it would be for an existing deck replacement at the existing footprint, not to exceed 6 inches in height. That would mean the applicant could not build other accessory structures at a higher height or in different locations.

**A motion to approve Case 33-2019 Melinda & Christopher Garrett/Owners - Request for a Variance rear build line for the placement of a deck in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12205 Wenonga Lane for the placement of a deck in the existing location, for replacement in the future, not to exceed 6 inches in height – was made by Farrington; seconded by Munson. Motion carried with a vote of 4-1. For: Munson, Hawk, Farrington, and Bussing. Opposed: Dr. Peppes.**

Mr. Munson: Could we have a short break?

*Recess of five minutes*

Case 34-2019 Jennifer Ensz/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 8801 Aberdeen Drive. **\*\*WITHDREW\*\***

Case 35-2019 Benjamin & Leslie Favier/Owners - 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 RP-1 District for property commonly known as 13802 Manor Road. **\*\*CONTINUED\*\***

Case 36-2019 Tim & Linda Cavanaugh - Request for a Variance to the front build line in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 11644 Pawnee Court.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants are requesting a variance of 5 feet from the front build line to construct a new home at the previously platted front build line of 30 feet.

Chairman Clawson: This was originally platted with a 30' build line.

Mr. Thompson: Yes, and the two homes on either side were placed at 30 feet, so this would be required to move back.

Chairman Clawson: The reason it changed is that the LDO changed.

Mr. Thompson: Yes, sir.

Chairman Clawson: This was built when?

Mr. Thompson: It's a vacant lot right now.

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

**Applicant Presentation:**

Tim Cavanaugh, 11644 Pawnee Court, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Cavanaugh: As he said, when we purchased the lot, the original plot that was done by Phelps Engineering had a 30' setback. We purchased it kind of based on that assumption. Then, we found out that it had been made to 35 feet. The only section we're really asking for a variance on is the garage, and it's a 5' variance there. I have a picture (*shows picture*). The part in yellow is the garage, and it's the only part we need the 5' difference on. If we have to push it back, this lot is extremely sloped from front to back. It's got 30-35 feet of slope from front to back. One of the reasons it hadn't been built on since the neighborhood was developed in 1998 is that this lot is very wide but very shallow. It's only 130 feet deep and has such a tremendous fall that it makes it very difficult and very expensive to build on. The retaining wall itself is going to be extremely expensive. The farther the house is pushed back, the more the height of the retaining wall has to go up. That creates quite a hardship when you're talking about that kind of expense with retaining walls. We've lived in Leawood for 45 years and in our current house for 25. We hope this is our last house, and we're building it as such. I've had some fairly significant health problems in the past few years, so we're building this as much as we can as an ADA-compliant house with zero entry from the garage into the home. I think movement of the garage will compromise that as well. That's a personal hardship for us as well. We're simply asking for 5 feet in the garage only. From the standpoint of the neighbors, this neighborhood only has 14 lots or 14 homes that have all been built for 20 years. We did get letters that I have tonight. We got letters from every single neighbor except one that was unavailable for our mailing. Every single one approved this variance.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: What development is this?

Mr. Cavanaugh: This is called Tomahawk Creek Estates. It's just behind Nativity Church. It backs up to Tomahawk Creek, the exercise trail, and the horse trail. If you went east from the Leawood Police Station up the hill, you would hit this lot.

Mr. Munson: Just as a point of interest, these are interesting. They're laid out 90 degrees differently that you would expect. Any reason they weren't platted back to the creek? It would make them long lots, but they would be more normal that way. These are unusual.

Mr. Cavanaugh: They're very unique definitely.

Mr. Thompson: They would be in the floodplain if they were platted back to the creek.

Mr. Cavanaugh: I have the original plat that shows the 30' setback that we based our plans on.

Chairman Clawson: It is on the plan view that we have.

Mr. Cavanaugh: The other thing that is unique about this lot is, because of the slope, the homes have to be built below street level. As it's currently done, the front door is already 7 feet below street level. If we push it back farther, we're down in a hole. The house on the left to us is that way; the house on the right is much higher. For the aesthetics of the neighborhood, we'd like to be halfway between the house on the left and the house on the right so it blends. We spent a lot of time, money, and effort to look at that. We had an engineer go out and shoot the house to the left and the house to the right to make sure we would be halfway between. If we change what we've done, it messes with that relationship as well.

Chairman Clawson: Looks like you have a reasonable plan here. Questions for the applicant? Thank you. Is there anyone here who wishes to speak for or against this application? We have to go through the five factors. The first is Uniqueness.

Ms. Farrington: I'll speak about Uniqueness. I think this property is unique for a couple reason. One, we're dealing with the 30' build line that it was originally platted for. Then, with the new front build line, it is unique in this neighborhood. The houses adjacent were built to the 30' line versus the 35' line. Another factor would be the large slope of this property. It is pretty steep going from front to back, and if he moved it closer to the back, it would start to get into the floodplain. It is unique. That's probably why it took so long for it to sell.

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

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

Mr. Thompson: They've been notified. I didn't receive any letters, but the applicant stated he had letters from all the other property owners.

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

Chairman Clawson: Hardship.

Dr. Peppes: Hardship is one of the hardest things we have, but in this case, in order for this house to appear okay in all the other factors, they need to place it where it is proposed. If they move it back, it would violate other things. They're trying to put it into a spot where it would work from the front with the neighbors. The farther back they move it in order to satisfy the 30' requirement, the more the other factors come into play.

Chairman Clawson: Retaining walls, for example.

Dr. Peppes: Yes, and in this case, I feel it is met.

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

Chairman Clawson: Public Safety and General Welfare. Staff says approval or denial shouldn't affect this factor.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I think by granting the variance, we actually enhance the streetscape, where it is intended to be somewhat uniform in height and setback. Granting the variance will allow just that.

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

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

**A motion to approve Case 36-2019 Tim & Linda Cavanaugh - Request for a Variance to the front build line in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 11644 Pawnee Court – was made by Bussing; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, and Bussing.**

*MEETING ADJOURNED.*