

**City of Leawood
Board of Zoning Appeals Minutes
October 23, 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 October 23, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Farrington and Bussing

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the September 25, 2019 Board of Zoning Appeals meeting

A motion to approve the minutes from the September 25, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Dr. Peppes, and Hawk.

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

OLD BUSINESS:

Case 35-19 - Benjamin & Leslie Favier/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 RP-1 District for property commonly known as 13802 Manor Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to enclose their rear yard with a 4' tall wrought iron fence. They want to place the fence on the north side of the landscaping beds that would encroach the front build line by 15 feet.

Chairman Clawson: Are there any questions for staff?

Dr. Peppes: Do we have anything that shows any neighboring fences? In the documents, they wrote about so many variances that were given in the neighborhood.

Mr. Thompson: There have been several. I have not had any calls or complaints about the request. The neighbor immediately behind the resident does not have a fence at all, but there is a fence on the other side of that neighbor.

Mr. Hawk: That is to the west?

Mr. Thompson: It would be kind of to the northwest just because of the way the road makes that jog.

Mr. Munson: To the left and inside of the picture?

Mr. Thompson: Yes, sir.

Dr. Peppes: But nothing along 138th Street?

Mr. Thompson: Yes, those are the ones I'm referring to.

Dr. Peppes: Those were the variances?

Mr. Thompson: Correct.

Chairman Clawson: So, all along here is a 30' build line?

Mr. Thompson: Correct.

Mr. Hawk: If I remember correctly, the property to the west has a fence that comes pretty close to the sidewalk.

Mr. Thompson: It's only less than 1 foot off the sidewalk, so it's right on the property line. That particular house was a little different case because that was a rear yard and a through lot. We had a case about four months ago that was down a little bit that was just like this one. It was a corner lot as well, and that request was granted.

Chairman Clawson: Which is the lot that has the fence near the sidewalk?

Mr. Thompson: (*Demonstrates on monitor*)

Dr. Peppes: Would this one be in alignment with it? Let's say there's an imaginary fence on the one to the west.

Mr. Thompson: They want to move their fence in. It's not going to be as much of an encroachment. That encroachment was on the property line. This one is going to be approximately 15 feet in. You can see it goes through that landscape bed and very close to the existing large pine trees.

Mr. Dunn: Which line goes through the landscaping bed?

Mr. Thompson: It's the green line.

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

Applicant Presentation:

Leslie Favier, 13802 Manor Drive, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Favier: We strongly advocate for the fence variance. We aren't asking for the fence to abut the sidewalk. I walked past that fence you were referring to that rides the sidewalk inappropriately. We want it to be 15 feet back. The only reason we're asking for the variance is because we have a really large landscape bed that has a flagpole, several trees, and fun features. It's one of the characteristics we enjoy about our house and property. We just wanted the fence to be on the other side of that landscape bed. It doesn't make a lot of sense to run the fence through the bed; it's got a pretty flagpole. We're just looking for it to look as aesthetic as possible for the neighborhood. I don't think a fence going through that landscape bed will be pleasing to the eye at all. It is a high profile property for Highlands Ranch.

Mr. Munson: There are several pictures in our packet. If you have access to those two pictures, could you have Wade show where the fences will be?

Mrs. Favier: (*shows pictures*)

Dr. Peppes: Do we have a picture of the landscape area? Is it highly bermed or something?

Mrs. Favier: There's a line of evergreens, and 20 feet behind them, there's a big oblong-shaped bed.

Mr. Munson: Wade, point out where their fence will be in relation to this landscaping.

Mr. Thompson: (*shows pictures*) First, the pen is where the 30' build line is. The fence would move it out so they could get a lawnmower between the fence and that.

Mr. Munson: How much room does it leave from the fence to the sidewalk?

Mr. Thompson: About 16 feet from the sidewalk. From the curb, it would be 25-26 feet.

Mr. Munson: And they're requesting a wrought iron fence, which is open?

Mr. Thompson: Yes.

Dr. Peppes: Is the wrought iron just a continuation of what's around the yard?

Mrs. Favier: There is no fence currently. It's just in fitting with the style of the neighborhood and what's requested by my HOA.

Dr. Peppes: So, there is just going to be a fence along 138th Street, and that's it? Your yard is not enclosed by a fence?

Mrs. Favier: No, it will be enclosed. I have two kids under two and a dog. This is a high-traffic area.

Dr. Peppes: It will be enclosed with a 4' wrought iron fence?

Mrs. Favier: Yes.

Chairman Clawson: So, the fence will be on the property line?

Mrs. Favier: Yes.

Mr. Munson: In order to go by the setback rule that we're suggesting, they would have to remove the landscaping?

Mr. Thompson: Either remove the landscaping or build the fence on the other side, which would reduce the rear yard, but it could be done.

Mr. Munson: The side is where the driveway comes up. Is the driveway parallel to the landscaping? How far back does the driveway go? Can you show where the driveway ends in relationship to where the landscaping is?

Mr. Thompson: If you look at your screen, you should see the driveway. The blue line would be where the fence would be if approved.

Mr. Munson: It's a wrought iron fence, so it does have an open appearance.

Mr. Hawk: The property to the west is much closer to the sidewalk than the fence proposed by the applicant. I can't see how we would want to penalize the applicant by wanting to do this. She's not talking about a wood fence; she's talking about a see-through fence, which we all like. To me, this makes a lot of sense.

Mr. Thompson: If you look at your screen now, you'll see that I've drawn the fence that is there. The neighbor directly behind does not have a fence. The one you're talking about is the black line.

Chairman Clawson: Are there other questions for the applicant? This is a variance, so I presume you understand that we have to go through the five factors. Uniqueness is often difficult for us to evaluate, and Hardship is, too. Can you discuss those?

Mrs. Favier: Our back yard is very visible to the entrance to the neighborhood and to 138th Street. It is something we have invested a lot of care in. I think by bisecting it with a fence, it doesn't make logical sense. It also will reduce the aesthetics of the neighborhood. In terms of hardship, I think the precedent has been set along 138th Street. It's a sawtooth of different fences. There have been some that have been in line with the restrictions, but then there are others that are all the way

down to the sidewalk. It wouldn't be quite fair to place this restriction on us. We have our hearts in the right place. We're trying to make it look as good as possible without losing a ton of space in our yard, but we're also not asking for too much. We're not asking to have the fence all the way to the sidewalk. I think what we're asking is reasonable. I have two young kids. We're a two-physician family, so it is hard for us to make another meeting to appeal this. My kids are constantly trying to run onto 138th Street. I really want this fence as soon as possible.

Mr. Munson: It probably doesn't strictly meet the definition of hardship as we understand it in the Leawood Development Ordinance; however, to require a fence to be run through the landscaping or remove the landscaping then creates a hardship by our action. I tend to think I will vote "yes" on Uniqueness of the Property.

Chairman Clawson: So, the proposed fence would violate the side yard setback, but also the front line, too. She is proposing to take it all the way to the property line.

Mr. Thompson: Yes, the variance would be for the encroachment to build it 15 feet from the 30' build line.

Chairman Clawson: The build line is in front of the house, too.

Mr. Thompson: They're not putting a fence in front of the house. The green line is just the build line, not where the fence is going to be.

Chairman Clawson: And you're showing that black line all the way to Manor Road.

Mr. Thompson: That's just the 15' build line. The fence wouldn't go beyond the front build line.

Mrs. Favier: The green shows where the landscaping bed is.

Mr. Munson: This is a corner lot. Which is deemed the front of the lot?

Mr. Thompson: The front faces Manor Street.

Chairman Clawson: We're just talking about the portion that exceeds the 30' build line. It's got to cut back to the house, so it wouldn't violate the front setback.

Mr. Thompson: Correct.

Dr. Peppes: I would have liked to have had that picture in my packet.

Mr. Thompson: Can you see the black line coming off the driveway? It's well before the front of the house, coming off the back of the driveway.

Mr. Munson: Is that where the fence would end, or would it go farther along? Does the fence go clear out to Manor Road?

Mr. Thompson: No, the black line coming off the driveway goes over to the 15' line. That's where the fence would be.

Chairman Clawson: That helps.

Mr. Munson: Is there any other fencing on your property?

Mrs. Favier: No.

Mr. Munson: Do you plan to enclose the other part of your lot?

Mrs. Favier: It's going to be enclosed. The red lines show where the fence will be, and the green line is the landscape bed.

Chairman Clawson: I think the fact that this is a proposed wrought iron fence is a good feature. How do we ensure that it is what is maintained?

Mr. Thompson: Technically, they could put up any approved fence unless you want to specify wrought iron.

Mr. Munson: They're asking for a 4' fence?

Mr. Thompson: Correct.

Mr. Hawk: We've always approved 4' fences if they fall within the guidelines and the setbacks. A 4' fence is acceptable, especially if it's wrought iron.

Mr. Thompson: Right, but I think the chairman is asking if we can make them put up a wrought iron fence.

Chairman Clawson: If they sell the property and someone wants to put in a wood fence, they could do that unless it's specified in the variance.

Mr. Thompson: Right.

Mrs. Favier: Our HOA won't allow it.

Chairman Clawson: Any other questions? Thank you. We need to evaluate the five factors. The first is Uniqueness.

Mr. Munson: I expressed my feelings on it. I will say that as the reason I will support it.

Dr. Peppes: I can't support it. If we look down at the property toward the west, we see that it's a through lot. We've discussed through lots on occasion and have given relief to them, but this is a nice corner lot and is just like every other corner lot in this neighborhood that is not a through lot and that is in all the other neighborhoods. The flower bed is a structure, but it's not anything that

can't be changed. Even though it is there, they can make the flower bed smaller or go out the other way with it. This criterion has not been met as far as I'm concerned.

Mr. Hawk: I'm going to agree with Dr. Peppes. Even though we approved another lot, it was a through lot. Visually, this just makes sense to approve it with the way this lays with the wrought iron fence. I'm still going to vote with Dr. Peppes and say no.

Uniqueness criterion satisfied with a vote of 3-2, including an affirmative vote from the chair. For: Munson, Dunn, and Clawson. Opposed: Dr. Peppes and Hawk.

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

Mr. Thompson: Yes, and there have been no complaints. I didn't hear anything from the HOA. I know the applicant said they do not allow wood fences, but they haven't expressed that to the city.

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

Chairman Clawson: Hardship.

Dr. Peppes: Usually, we're dealing with some type of easement that the property owner doesn't have a choice with. I believe that's a choice that's made by the property owner. In that respect, I don't think it has been met.

Mr. Munson: The hardship to me is that they would have to remove their landscaping.

Mr. Hawk: How long has the landscaping been there?

Mrs. Favier: It was there when we moved in. It's been there twelve years.

Hardship criterion satisfied with a vote of 3-1. For: Munson, Dunn, and Hawk. Opposed: Dr. Peppes.

Chairman Clawson: Public Safety and General Welfare.

Mr. Munson: Staff says that denial or approval wouldn't affect this factor. I agree.

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

Chairman Clawson: Spirit and Intent.

Mr. Munson: With the wrought iron fence, I think it continues the visual character of the neighborhood because it leaves it open as opposed to if it were a different material. I feel it has been met in this situation.

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

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

A motion to approve Case 35-19 - Benjamin & Leslie Favier/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 RP-1 District for property commonly known as 13802 Manor Road - was made by Hawk; seconded by Munson. Motion carried with a vote of 3-1. For: Munson, Dunn, and Hawk. Opposed: Dr. Peppes.

MEETING ADJOURNED.