

**City of Leawood
Board of Zoning Appeals Minutes
November 20, 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 November 21, 2019 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Munson

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the October 23, 2019 Board of Zoning Appeals meeting

A motion to approve the minutes from the Board of Zoning October 23, 2019 Board of Zoning Appeals meeting was made by Hawk; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Chairman Clawson: We have several cases tonight in New Business, including one that is withdrawn and one that is continued. Is there a representative for the case that is continued who would like speak on the case briefly?

Greg Musil, Rouse Fretz Law Firm, 5250 W. 116th Place, appeared before the Board of Zoning appeals and made the following comments:

Mr. Musil: We have agreed to move Case 49-2019 to the December 18th meeting.

Chairman Clawson: Thank you. We have a number of cases tonight, including variances and exceptions. Since we have a full caseload tonight, I would like to have the applicants limit their remarks to five minutes. Wade will be our official timekeeper. That should be plenty of time for you to present your case, and of course, there will be questions by the board for the applicant.

NEW BUSINESS:

Case 43-2019 Suzy Jolley, Engle Homes LLC/Owner - Request for a Variance to the front build line for the addition of a new front porch in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8932 Mohawk Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remodel the existing home, which includes a new front entryway, which would be placed 29.9 feet from the current 35' front build line. A variance of 5.3 feet is needed to construct the porch as shown on the plan.

Chairman Clawson: So, originally, this had a 30' build line?

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: This is kind of like a legal, nonconforming situation?

Mr. Thompson: Exactly, and we have an exception for the front porches, but this is bigger than the exception allows.

Chairman Clawson: What is the exception?

Mr. Thompson: It is 75 square feet, and it can't stick out any farther than 6 feet.

Mr. Dunn: Are they replacing the front porch?

Mr. Thompson: They're actually tearing off the existing front porch, which extends most of the way down the house, and replacing it with this new design.

Mr. Dunn: Just to be clear, is the old front porch in violation of the build line?

Mr. Thompson: Barely, yes.

Mr. Hawk: Is the new porch more horizontal than vertical?

Mr. Thompson: Yes, it is.

Chairman Clawson: Any other questions for staff?

Applicant Presentation:

Suzy Jolley, 8932 Mohawk Lane, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Jolley: The existing front porch spans the entire front length of the property. It's an overhang of about 3 feet with a sidewalk adjacent to the house. There are two problems with that. First, it's aesthetically not very pleasing and makes the house look smaller and covered up. The main thing is that it also causes a lot of water problems because the water gets in underneath the sidewalk that is adjacent to the house. We'll tear out the

sidewalk and existing overhang, which is considerably more square footage than what we're going to replace it with because it spans the entire house right now. The one we'll replace it with will just cover the front doorway with a double gable. This also allows proper drainage because we're going to place a new sidewalk, curved out away from the house, onto the new driveway. This will allow us to do grading, which was recommended by our structural engineer.

Chairman Clawson: What's shown is what you're proposing?

Ms. Jolley: Yes.

Chairman Clawson: What is the square footage underneath the porch?

Mr. Thompson: For one thing, it sticks out 6 ½ feet, and it is 10.7 feet long. I don't have the exact square footage.

Ms. Jolley: You can see around the front door area and coming out about 6 feet to the front.

Chairman Clawson: The portion on the left sticks out about 5 feet?

Ms. Jolley: Yes, and we also had two different survey companies do an average on the plot plan for the houses on either side of this property. The front build line of 8926 Mohawk Lane to the west is 24.2 feet. to the curb, and at 8927 Mohawk Lane is 27.8 feet. Ours would still be farther back at 29.9 feet. Most of the homes on that street are built a little closer to the street anyway.

Mr. Dunn: Is the 35' build line where it would be on the existing overhang?

Mr. Thompson: Yes, that is the existing house today.

Mr. Dunn: Everything we see in front of that is currently beyond the build line.

Mr. Thompson: Yes, sir.

Ms. Jolley: It's already over the build line right now.

Mr. Hawk: You're asking for how many feet beyond the red vertical line?

Mr. Thompson: 5.3 feet.

Mr. Dunn: The current porch is approximately 4 feet beyond the build line?

Mr. Thompson: Yes.

Chairman Clawson: Other questions? This is a variance, so we have to evaluate the five factors. Uniqueness and Hardship can sometimes be problematic. Could you address those?

Ms. Jolley: It is a unique property. It sits at the top of a cul-de-sac on a very desirable street. The two homes immediately next door have their front setbacks closer to the street than this property, as do what appears to be most homes on this street. The lot is very large and wide. It is now imbalanced on the lot. The additions and changes proposed will enhance the home to fit more appropriately on the lot. The front porch and gable are impactful to the street, as you can see it when you are driving down the street. This would beautify the entire street without creating hardship, not tearing down, and not impeding on any other lots. There are several reasons our porch design is beneficial and necessary aesthetically and practically. The new front entry is considerably less square footage than what is existing in the porch and overhang and serves many purposes. The existing porch overhang spans the entire length of this 50+-year-old home, thus much more square feet. The concrete on the porch has settled and has created drainage and water problems in the basement. Not only is it outdated and unsightly; the concrete needs to be torn out to allow proper grading around the home. Our design calls for new grading, landscaping, and sidewalk on the front of the home.

Chairman Clawson: We've probably read these comments here. Hardship is an issue that sometimes is problematic because you could still build a porch without a variance, right?

Ms. Jolley: What happens is if we make any changes to what is there right now, it is already over the build line. If we have to leave it like it is, then we'll have water problems in the basement. If we make any changes at all, it's already over the build line.

Chairman Clawson: Since it is over the build line, will they still need a variance to build?

Mr. Thompson: Yes, they would have to have a variance. Once the front porch is removed, if they left it there, they could go on with the project. This is an extensive remodel, so everything behind the build line, they could get a permit for, but they wouldn't be able to update the front.

Chairman Clawson: I think we understand.

Mr. Bussing: When did we change the front build line in this neighborhood? More importantly, what was our intent in doing so?

Mr. Thompson: Just to push the houses back.

Mr. Bussing: So, the expectation is that any time any home on this house on this street had any work done at all, the houses would all be moved back. Over time, we would have houses like this. Does that make sense?

Mr. Thompson: Yes.

Mr. Bussing: This is on a cul-de-sac, so the line the front yard build line is intended to promote doesn't really come into play because it's on a curve.

Mr. Thompson: Correct.

Mr. Dunn: I don't know if this is for the applicant or not, but I noted somewhere in here that the depth of the lot is fairly short.

Mr. Thompson: Yes; if they were to tear down the whole house, it would be hard to place a house on that lot because it is so shallow, especially working with a 35' front build line.

Mr. Dunn: Because of that size and where it is located, the placement of that house is optimal.

Mr. Thompson: Correct.

Mr. Hawk: I think part of the uniqueness is it is on a cul-de-sac. On a street, you might be able to see a variance, but on a cul-de-sac, you can't unless you get your tape measure out.

Ms. Jolley: Exactly, and that's what I was saying because the way it sits, it's at the top of the cul-de-sac, so you don't even really see the side; you just see the front of it.

Chairman Clawson: Thank you. Is there anyone here who wishes to speak for or against this application? This is a variance, so we need to evaluate the five factors. We'll vote on each factor. To support a motion for approval, we have to vote in the affirmative on each of the five criteria. The first is Uniqueness.

Mr. Bussing: I think it meets the criterion for a couple reasons. As Mr. Thompson just indicated, the lot is rather small. Given the current ordinances, nothing new could be built on it. The homes on either side encroach on the front yard build line. I think the whole environment on this cul-de-sac is unique.

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

Chairman Clawson: Rights of Adjacent Property Owners. Letters were mailed out?

Mr. Thompson: Yes, and no calls or complaints have been received.

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

Chairman Clawson: Hardship.

Ms. Farrington: Looking at the existing house and the way it was originally constructed with the long span of front porch and the drainage issues the homeowner is facing, with this remodel, the existing situation would lead to problems that would create hardship for them. They are providing a foundation for this new porch; whereas, the existing porch probably didn't have one. It will be more hardship if it is left as it is versus going with the new design.

Mr. Hawk: With the drainage problem, it looks like they are severely limited if we don't allow this.

Ms. Farrington: It also carries over into Public Safety and General Welfare. The gradation of the contours goes to either side of the property. If there are drainage issues that are into the home, it could also spread to the neighbors as well. Reducing the span of the front porch should improve this.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial shouldn't affect this criterion.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: It looks like they submitted the plans to the homeowners' association, and it all seems to fit within the spirit and intent of Leawood.

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

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 43-2019 Suzy Jolley, Engle Homes LLC/Owner - Request for a Variance to the front build line for the addition of a new front porch in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8932 Mohawk Lane – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Case 44-2019 Dwarka P. Gupta/Owner EXCEPTION Request for an - to the Maximum Allowable Square Footage on a lot in accordance with the LDO, Section 16-2-5.3 f (2) a in an R-1 District for property commonly known as 3212 W. 121st Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to add a first-floor master bedroom to the rear of the home due to health issues. The lot permits a 3,383 sq. ft. home. With the new addition, the home will be 3,700 square feet. An exception for an additional 317 square feet, or 9.4%, is needed to construct the addition as shown on the plan.

Chairman Clawson: Are there any questions for staff?

Mr. Dunn: For the record, the reason this is an exception is it is within the 20% allowed variance?

Mr. Thompson: Yes, sir.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

Dwarka Gupta, 3212 W. 121st Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Gupta: My wife is my interpreter. I suffer from profound hearing loss, so I may not understand some of the questions. We want to build a bedroom on the first level. We're having trouble going up and down the stairs – both of us – but we like the area we're in, and we've been there since the house was built 34 years ago. We would hate to move. That's the reason for the addition. It is 20 feet long by 22 feet, 6 inches wide. It is an addition to the existing home. It has a bathroom and a closet.

Chairman Clawson: Are there questions for the applicant? Wade, can you put up Exhibit B?

Mr. Thompson: *(Places on monitor)*

Chairman Clawson: The proposed addition is at the top of the screen. Are there questions for the applicant? This is pretty straightforward. Is there anyone here who wishes to speak for or against this application?

Herbert Simon, 3105 W. 121st Street, appeared before the Board of Zoning Appeals and made the following comments;

Mr. Simon: We live behind the Guptas. We are for the expansion. There were a couple of worries. I checked them out, and everything is fine for us. We would be the ones most affected if there was a problem, but we're fine with it.

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

A motion to approve Case 44-2019 Dwarka P. Gupta/Owner EXCEPTION Request for an - to the Maximum Allowable Square Footage on a lot in accordance with the LDO, Section 16-2-5.3 f (2) a in an R-1 District for property commonly known as 3212 W. 121st Terrace – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Chairman Clawson: We have another case for you tonight.

Case 45-2019 Dwarka P. Gupta/Owner VARIANCE Request for a - to the rear yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3212 W. 121st Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to add a first-floor master bedroom to the home due to health issues. Per the plan, the new addition would be placed 29.2 feet from the rear property line. A variance for 10 inches will be necessary to construct the addition as shown on the plan.

Chairman Clawson: Was the lot platted with a 30' build line?

Mr. Thompson: Yes, sir, and that is today's standard.

Chairman Clawson: Are there any questions for staff? You may come and present your case again.

Applicant Presentation:

Dwarka Gupta, 3212 W. 121st Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Gupta: We are looking to build a bedroom in the back. The request is for a variance. We have 29.2 inches available to us, and the city allows a minimum rear setback of 30 feet. We're looking for a variance of 10 inches.

Dr. Peppes: We're ten inches away. Is there any way that you could make this happen by not going 10 inches? This is a variance, and as you know, there are five questions that have to be answered. This looks like a pretty routine home. Uniqueness is difficult; Hardship is a difficult criterion to satisfy, and we're only 10 inches apart. If it were 5 feet or 8 feet, I would understand, but with 10 inches, there is a way to live within it and not even come here to do that.

Mr. Gupta: Surely, we could go to 29.2 instead of 30; it just reduces the length of the closet a little bit. There would be plenty of space in the bedroom; the closet was the only issue. That's why we're looking for 30 feet. If it's a show-stopper, we'll whack off 10 inches.

Dr. Peppes: I don't know how the rest of everyone feels here, but it's going to be tough.

Mr. Dunn: As I've said before, our job here is not to say whether we think it's a good idea. Our job is to say whether the criteria of the law have been met. A variance is very difficult because it asks us to find that the property is unique for some reason or another and that there is a particular hardship caused by this. As far as I see from the case, while it looks like a well-planned addition, the only hardship is that you won't be able to build it exactly the way you want to. I support what you said, Dr. Peppes.

Chairman Clawson: Are there other questions for the applicant? Is there anyone here who wishes to speak for or against this application?

Herbert Simon, 3105 W. 121st Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Simon: We're all for him being able to build it. I've talked to him, and we've gone over everything. I'm more than in his corner. We have nothing against it.

Chairman Clawson: Again, this is a variance, and we have to evaluate the five factors. The first is Uniqueness.

Dr. Peppes: The houses around are all similar in nature. There's not one thing that makes this more unique than anything else in this area. I can't support Uniqueness.

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

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

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

Chairman Clawson: Hardship.

Ms. Farrington: I tend to agree. For it to adhere to the rear yard setback would not hinder building this. Another solution would be to manipulate and gain the square footage of the closet and still meet everything. I think Hardship probably doesn't play into this one.

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

Chairman Clawson: Public Safety and General Welfare. This factor probably wouldn't be impacted by approval of this variance.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I don't think it has been satisfied. As we look a rear yard setbacks, we want the same distance all the way up and down. A house that encroaches on that will stick out. That is not the landscape we're looking for.

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

Chairman Clawson: We have found that Uniqueness, Hardship, and Spirit and Intent criteria were not met; therefore, we must support a motion for denial.

A motion to deny Case 45-2019 Dwarka P. Gupta/Owner VARIANCE Request for a - to the rear yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3212 W. 121st Terrace – was made by Dr. Peppes; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Mr. Hawk: What are the next steps? We already have approval of the first part. If they come back with 10 inches less, you can approve that and they can build?

Mr. Thompson: Yes.

Chairman Clawson: Or, if they wanted to go wider to achieve the same square footage, they could do that, right?

Mr. Thompson: Yes, sir.

Case 46-2019 Philip or Stacy Kneibert/Owners - Request for a variance to allow a detached structure in accordance with the LDO, Section 16-4- 2.2 in an RP-1 District for property commonly known as 11345 Brookwood Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to construct a pool pavilion in the rear yard. The pavilion is a roofed structure with open sides and is required to meet the rear yard setback. Ordinance 16-9-209 defines a pool cabana as a shelter located near a swimming pool, used as a bathhouse accessory to the swimming pool. To clarify, a pool house has to

have a bathroom in it. This is going to be a roofed structure with open sides, so it is really considered a detached structure.

Chairman Clawson: There's a pool nearby?

Mr. Thompson: There will be, yes.

Mr. Dunn: Wade, are there different requirements for a pool cabana?

Mr. Thompson: Yes, because a cabana is considered a detached structure because it does not have a bathroom in it.

Mr. Dunn: I'm just trying to figure out why we have the part that says what defines a pool cabana. Is this considered a pool cabana?

Mr. Thompson: They're labeling it as a pool pavilion, which we consider a detached structure.

Chairman Clawson: So, if it had a bathroom, it would be what?

Mr. Thompson: It would be a pool house then.

Chairman Clawson: And it would not be considered a detached structure.

Mr. Thompson: Correct. You can consider it like a gazebo, which would be permitted if it is 64 square feet or less, but if it were bigger, it would be considered a detached structure. This is so big, it's considered a detached structure.

Chairman Clawson: Are there any questions for staff?

Mr. Bussing: The issue is the rear yard setback, isn't it?

Mr. Thompson: That will be the next case. If you approve this request, they have to get a variance to the rear yard average.

Dr. Peppes: So, we're approving that it's a detached structure.

Mr. Thompson: Yes, sir.

Mr. Dunn: If this had walls and a bathroom, this would not be a detached structure?

Mr. Thompson: It would still be a detached structure. They have options. They could move this closer to the house. They could connect it.

Chairman Clawson: They could have a connecting roof so it would be an architecturally attached, detached structure.

Mr. Thompson: Correct.

Ms. Farrington: What we're voting on in this action is to deem this a detached structure and not a pool cabana.

Mr. Thompson: Correct.

Mr. Dunn: Is there such a thing as a pool cabana that if they proposed it in this location, it wouldn't need a variance?

Mr. Thompson: No, sir.

Ms. Farrington: What I don't understand is if it is a detached structure or pool cabana, it still would have to meet a setback, so why are we voting on what it is?

Mr. Thompson: Because it doesn't fit the criteria as a pool house.

Mr. Bussing: Because it doesn't have a bathroom.

Mr. Thompson: Yes, sir.

Mr. Bussing: But if we call it a cabana, it doesn't need to have a bathroom.

Mr. Thompson: A pool cabana does have a bath house.

Mr. Bussing: I think you said a pool house has a bathroom; a cabana does not have a bathroom.

Mr. Thompson: It says, "Pool cabana as a shelter located near a swimming pool, used as a bath house accessory to the swimming pool."

Chairman Clawson: But it still has to meet the setback requirements, regardless of what we classify it as.

Mr. Dunn: To try to make it as simple as possible, is there a classification of this structure they could propose in this spot that wouldn't require a variance?

Mr. Thompson: No, sir.

Ms. Farrington: I'm still confused as to why we're even voting that this is a detached structure because it follows all the criteria provided as a detached structure in the Leawood Development Ordinance (LDO).

Mr. Thompson: This pool pavilion is a roofed structure with open sides. It doesn't fit the definition of a pool cabana.

Ms. Farrington: It's a detached structure.

Mr. Thompson: Correct.

Ms. Farrington: The LDO states what a detached structure is on Page 14, Article 4. Is it because the applicant submitted it as a cabana?

Mr. Thompson: They submitted it as a pool pavilion.

Chairman Clawson: But if it's defined as a detached structure, it's not allowed.

Mr. Thompson: That's the case. The case is whether or not you are going to allow a detached structure to be placed. If you do, then they'll have to get the variance to the rear yard average.

Mr. Dunn: They have to get us to approve them putting in a detached structure, and then they have to get our approval to put it outside the build line.

Mr. Thompson: Correct.

Chairman Clawson: Is everyone clear? Are there other questions for Wade? Is the applicant here?

Applicant Presentation:

Bruce Wendlandt, project architect, 7924 Floyd, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Wendlandt: Hopefully I can clear up some of the confusion. My apologies for calling it a pavilion. In my mind, it's a cabana. I didn't realize this is where it was going when it got flagged. If I might, you can't clearly see on the screen, so I've got a bigger floor plan. I want to focus your attention on the northern end of the pool cabana. This is not a fully open pavilion; it does have an enclosed end to it. Currently, there is a storage closet and a sitting area with fireplace. What we're discussing here today is the definition of pool cabana in the LDO. That's all we're talking about right now.

Chairman Clawson: For this case.

Mr. Wendlandt: That is my understanding. I can read off a number of definitions to you, and I can find as many definitions of pool cabana that might discuss a bathroom as I can that do not discuss a bathroom. In the City of Leawood, with respect to a definition of a pool cabana, the bathroom was not always in the definition. I did not go back and do extensive research. I don't know who or how many brought that qualifier in to the definition. What's important is I know across the intersection at 10400 Brookwood, we have a pool cabana that does not have a bathroom. What are we talking about in terms of the definition of a pool cabana. If I take my structure, I can slide the wall 4 inches. I can

get a stool to fit in there and meet the plumbing code 15 inches clear each side of the center line. Then, suddenly, this structure magically meets the definition for a cabana. The frustration here is we have an LDO qualifier that is legislating something on the interior. If we move that wall 4 inches and put in a toilet at extreme cost to the Kneiberts (and they don't need it), we're putting hardship on this, and we're having space that represents 7% of the total structure. Everything else on the structure, with the exception of the setback we're going to discuss later, meets the criteria. So, we go through all the gyrations, spend the money, put the stool in, go through the hardship, and this structure, if approved, has zero perception to the viewing audience outside. I don't see where toilet vs. no toilet has anything to do with this discussion. That's what I believe we're discussing first. This is still an acceptable detached structure, toilet or no toilet, and it fits within the criteria of pool cabana.

Chairman Clawson: Questions for the applicant?

Dr. Peppes: We could talk about a toilet infinitum. The LDO is the LDO. Whether you like the way it's interpreted or not, the way the words are on paper is if it's got a toilet, it's one thing; if it doesn't have a toilet, it's something else. Am I right, counselor?

Ms. Tomasic: I think it's whatever your interpretation of the LDO is. I don't think it's defined either way except for what Wade read in earlier.

Dr. Peppes: What I understood about what was read in earlier is one structure had a toilet, and a detached structure didn't have to.

Mr. Thompson: Yes, if they want to call it a cabana, it's a bath house.

Dr. Peppes: And a detached structure does not.

Mr. Thomson: Yes, sir.

Chairman Clawson: Does it have to have a toilet? How about a shower?

Mr. Thompson: Per the building official, it just has to have a toilet.

Mr. Dunn: And that's based on the language that says, "A pool cabana is a shelter located near a swimming pool used as a bath house, accessory to a swimming pool." Is that correct?

Mr. Thompson: Yes, sir.

Mr. Dunn: It doesn't say it needs a bathroom; it says it is used as a bath house.

Mr. Thompson: Yes, sir.

Mr. Dunn: Wade, we have all these ordinances, and I was trying to make sense of what fits with what. I'm looking at Article 4, Section C. It's on the second page of our attachment: Accessory building and structure size limitations. What I'm trying to figure out is we obviously allow for detached structures if they're within a certain size and fulfill a certain purpose, one of which is a pool cabana. Does this building, whether it is a cabana or not, exceed the size limitations for an attached structure we can approve?

Mr. Thompson: I'm assuming it does meet the criteria because it wasn't called out by the building official.

Mr. Wendlandt: It is not over 15 feet.

Mr. Dunn: I guess what I'm leading here too is if we believe a building structure, whether it has a bathroom or not, is built next to a swimming pool and used for swimming pool purposes meets the definition of pool cabana, we can approve this.

Mr. Thompson: Correct.

Chairman Clawson: How close is this proposed cabana to the main structure?

Mr. Wendlandt: The closest contact corner would be roughly just under 24 feet.

Chairman Clawson: Another alternative would be to provide a roof between the cabana and the main house, so it would not fit the definition of a detached structure.

Mr. Thompson: It would have to be moved over, then, because it would be more than 15 feet away.

Mr. Wendlandt: There would be more comments I could make on that, but that would be for the next discussion.

Chairman Clawson: Other questions for the applicant on this case?

Mr. Dunn: I am a little confused, and I'm doing my best to state it as clearly as I can. This is a request for a variance, which requires us to go through five criteria. I don't know what I'm deciding the five criteria for. What I heard before is the issue is the definition of what a pool cabana is. Whether I agree that it meets the five criteria or not, I may agree this is a pool cabana. Is that what decides this case? I'm not sure.

Mr. Wendlandt: I'm trying to show the context of the neighborhood. This is very important. (*shows plan*) This is right across from the Kneiberts. It is very visible. I can't drive down 114th Street and look at that pool cabana and say there's a bathroom in it or not. We know there is not one in there. I guess my bigger picture is it doesn't change what that is and what the curb appearance is.

Chairman Clawson: I think we understand that. I guess the issue of this board is do we agree that the ordinance requires a pool cabana to have a bathroom in it.

Mr. Hawk: I think that's inconclusive. I don't think we can make that judgment.

Ms. Farrington: When we look at Article 9, Page 21, the definition of pool cabana says that it is a shelter located near a swimming pool, used as a bath house, accessory to a swimming pool. In Article 4, Page 8, it talks about supplemental provisions. In Item 15, it describes a bath house, pool house, and cabana only in conjunction with swimming pools. Is the definition of this solely a cabana in conjunction with the pool?

Mr. Thompson: I think yes if it has a bathroom.

Ms. Farrington: But Item 15 talks about a bath house and pool house defined separately as a cabana. On the last article, they have it as a pool cabana.

Mr. Bussing: I haven't found a reference to a bathroom yet.

Mr. Hawk: We're reading into the fact that there might be a bathroom. Unless it specifically outlines it, I don't think we can make that call.

Chairman Clawson: That's a decision the building official made. It's his interpretation.

Mr. Thompson: Correct.

Ms. Tomasic: One thing to keep in mind is that this was done as a variance to allow a detached structure as opposed to an appeal of an administrative decision of the department of what the definition of a bath house is. That's not before you to make a determination of the definition of a bath house or a pool cabana. This is determining if you will support a variance to allow a detached structure. If they had appealed the administrative decision, it would be a different question, and then you could get into the interpretation of the bath house and pool cabana. I would also point out that it is weird the way it is written, but because cabana is also defined with the bath house, I think it is mostly just repetitive in Item 15 because both require a bath house. I also think they probably should have defined pool house. I still think what is before you is if you will allow a detached structure because they didn't appeal the building official's interpretation of what a pool cabana is. I would maybe try to focus on allowing or not allowing a detached structure and not get into the interpretation of the definition of a pool cabana.

Chairman Clawson: We could evaluate this as a detached structure, regardless of what type of building it is.

Ms. Tomasic: Correct; and then you don't have to worry about if it has a toilet or a shower. You just need to decide if you are going to allow a variance for a detached structure; you don't have to get into that separate discussion.

Mr. Dunn: We cannot second-guess the administrative official's decision that this is a detached structure that requires a variance. Is that correct?

Ms. Tomasic: If they had appealed the administrative decision, you could have, but since that's not how it was done, I don't think you have to second-guess the building official's interpretation; I think you get to sidestep that and make your own decision on detached structure instead.

Mr. Dunn: But we have to find that it meets all five criteria for a variance. We don't have the capability of finding that this is a pool house as defined by the ordinance and therefore didn't need a variance. I think everybody up here is getting a sense that we all think we probably shouldn't have to decide on the variance portion of this because we think it probably meets the criteria for a pool accessory structure. That's what I'm hearing, and it's certainly my concern because if all I'm deciding is if it's unique, I won't be able to find that. There is no real hardship. I don't know what other decision I could make, but I do have questions about whether this is a detached structure that meets the criteria of our own ordinance that allows it to be built. That's what I have a question about.

Mr. Bussing: If we were to take your recommendation and make a decision around detached structures, Section 16-4-2.2 points out that no detached structure except as allowed by the ordinance. Section 15 states that bath house, pool house, and cabana are allowed, only in conjunction with swimming pools. There is a pool. This is a house used in conjunction with the pool. What's there to decide? I think the building official erred, but that's not for me to determine. He certainly cost the resident a serious amount of angst and expense because of the error. I don't want to compound it with this board having to make a decision we're not capable of making.

Ms. Farrington: I want to expand on that, too, because if we deem this as a detached structure but don't define it as a pool house, bath house, or cabana, then we're labeling it just as a detached structure. People come up with car ports and different things in their yard that we have had to deny because they don't meet the LDO. If this is not truly defined as what it is, it might not meet the criteria and probably won't pass.

Chairman Clawson: If an appeal to an administrative decision had been made, we would be either saying that the administrative official made a mistake or interpreted it correctly. Is that right?

Mr. Thompson: Correct; he would be here to explain why he determined it to be a detached structure.

Chairman Clawson: We're kind of in a quandary here.

Dr. Peppes: We're trying to help you out.

Mr. Bussing: Our action tonight could seriously impede their project.

Chairman Clawson: We're in a quandary, too, because the LDO is not clear on this issue.

Ms. Farrington: Would we be able to vote and define it as a detached structure and further define it as a pool cabana?

Mr. Thompson: I believe so. Then, they couldn't enclose it and use it as a garage. I think that's what you were talking about earlier. If you specify that it can only be used as a pool house / cabana, that would be fine.

Chairman Clawson: The pool has not been built; correct?

Mr. Wendlandt: No, we're trying to do it all together.

Mr. Bussing: We have to vote on these five factors to get to that point, and they don't support it. We end up turning it down because of a definitional error in the ordinance; that's just not right. There has to be an alternative approach that allows us to not label this thing inappropriately.

Chairman Clawson: If we agree that the administrative official made an error in judgment and we evaluate this as a pool cabana, we can do that.

Mr. Thompson: I believe so, yes.

Ms. Tomasic: I believe that was Ms. Farrington's point: you could allow a detached structure and vote on it that way, making the caveat that it will be used as a pool cabana or pool house. You could analyze it as a variance under that. Another option would be if the applicant wanted to do it as an administrative appeal in addition to or instead, it could be continued so the building official could be here to explain his interpretation. Then, you don't have to vote on the five factors now, and you could hear from him before making that decision. It is a separate application, and the building official has to be here to give his opinion on why he made that interpretation. I think it would have to be up to the applicant if he wanted to agree to that continuance and go that route, but then it would prevent a vote on the variance if you're uncomfortable making that decision without hearing from the building official. That would be another option.

Mr. Dunn: It's not hearing from the building official, which I think is a good notion; it's that the only thing in front of us to vote on is the variance, and if this is not a structure that requires a variance, we have just put the kibosh on the plans improperly because we voted on it as a variance, but we don't even think it needs a variance. That's what I'm hearing from everybody. I know the people up here well enough to know that we're not cagey enough to go through these five factors and approve them all just because we don't want to deny it. We don't feel that would be appropriate.

Ms. Farrington: I agree because if we did that and we approve the factors, what's to say they couldn't come back and try to approve something else on the property? It sets a precedent, and that doesn't follow what we're supposed to uphold.

Mr. Dunn: If this were a detached structure, there is no question in my mind I wouldn't end up approving a variance.

Mr. Wendlandt: When I filled out the application, I did not fill out two applications; I filled out one to put a pool cabana in the back yard. We worked hard to make sure the structure criteria were met.

Mr. Dunn: You're not responsible for what is in front of us to decide; we're not saying that.

Dr. Peppes: If we all agree that it is a pool cabana and if you took out the detached structure on the variance tonight and put pool cabana, we're still in the same position.

Mr. Dunn: We don't for a pool cabana.

Chairman Clawson: It's allowed.

Mr. Dunn: They wouldn't even be here. Is that correct?

Mr. Thompson: The definition of a cabana, per the building official, has to have a bath house.

Mr. Dunn: We've got that, but if it was found to be a pool cabana, we wouldn't be here for a variance.

Mr. Thompson: It would still need the variance for the rear yard setback.

Mr. Dunn: But we haven't gotten to that yet. They wouldn't need it for this.

Ms. Farrington: How much of a hardship would it be for the applicant to ask for a continuance to the next month, and we could address this with the building official?

Unidentified speaker: *Inaudible comments*

Mr. Wendlandt: He said it.

Chairman Clawson: The whole thing probably hinges on the next case.

Mr. Wendlandt: When I saw this printed up, I was having a hard time understanding it. Given what it is, I understand why we're discussing this first. Then, we're going to discuss the next step.

Chairman Clawson: I think the case ought to be continued to next month, frankly, so we can have the building official here and present his arguments. What do you think, Wade?

Mr. Thompson: That's probably the safest. I hate to put them even further behind schedule.

Mr. Dunn: I don't want to put them behind schedule myself, but I would have to abstain on every one of these questions. I think most of us would. We wouldn't be able to get a final decision anyway.

Ms. Farrington: If we view it as a detached structure, we have to follow our ordinance, and looking at what's in front of us, it doesn't meet the criteria, so it's not going to pass.

Chairman Clawson: We can do that. Unfortunately, I think that's the case.

Mr. Dunn: The only way we can get past this is if we can continue it and try to figure this mess out before we come back here. I realize that puts a hardship on you all, but the hardship is going to be on you if we have to vote on it the way it's written because we'll deny it. That's another hardship.

Mr. Wendlandt: Question for procedure. Do we have to go through another noticing of all the certified letters?

Mr. Thompson: No, you don't.

Mr. Dunn: What if the building inspector says he made a mistake on the definition tomorrow morning? Does this part of it go away?

Mr. Thompson: No, because I did talk with the building official this afternoon to go over this case. It wouldn't go away.

Ms. Farrington: If it is continued and the building official stays with the position, it gives the applicant the time to resubmit with a bath house. Is that correct?

Mr. Thompson: Yes.

Mr. Dunn: What I understood before is the applicant could bring the issue of the disagreement with the administrative official to this board for a decision. Is that correct?

Mr. Thompson: Yes, that would require a separate application.

Mr. Dunn: All right; do you understand that?

Mr. Wendlandt: I understand.

Mr. Hawk: Is there any way to move the timetable up? I know we have a meeting in December. Is there any way for staff to handle some of these things so these people don't have to wait another month?

Mr. Thompson: No, because the board has to approve that and not staff.

Mr. Wendlandt: Does the application have the typical delay with notification that has to take place prior? We filed many weeks ago for tonight. Are we talking a similar delay of this application?

Mr. Dunn: I don't know. I haven't seen an application to question administrative official determination.

Mr. Thompson: There would not be a delay. I would notice it in the paper, but because you continued the case in here, I think it would be okay.

Chairman Clawson: I suggest we continue.

A motion to continue Case 46-2019 Philip or Stacy Kneibert/Owners - Request for a variance to allow a detached structure in accordance with the LDO, Section 16-4-2.2 in an RP-1 District for property commonly known as 11345 Brookwood Street – was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Mr. Hawk: Do we need a motion to continue the next case?

Chairman Clawson: We could vote on that case now. It doesn't hinge on whether it is a cabana or detached structure, right?

Mr. Thompson: Correct.

Mr. Dunn: Are pools allowed to violate the setback?

Mr. Thompson: Yes, sir.

Mr. Dunn: But pool structures are not?

Mr. Thompson: Correct.

Mr. Dunn: Could I have a whole pool that's entirely outside the setback? Is that possible?

Mr. Thompson: No; they are allowed to encroach some, and I think it's 5 feet.

Mr. Dunn: The pool can encroach 5 feet, but the building cannot.

Mr. Thompson: Anything above ground has to meet the setback.

Mr. Dunn: And that is what we're considering with this?

Mr. Thompson: Yes, sir.

Case 47-2019 Philip or Stacy Kneibert/Owners - Request for a Variance to the Adjusted Rear Setback for the placement of a Pool Pavilion in accordance with the LDO, Section 16-2-5.3(D) in an RP-1 District for property commonly known as 11345 Brookwood Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to construct a pool pavilion in the rear yard. The pool pavilion is a roofed structure with open sides and is required to meet the adjusted rear build line of 58.09 feet from the rear property line. A variance for 25.29 feet is needed to place the structure as shown on the plan.

Chairman Clawson: Are there any questions for staff?

Mr. Dunn: Lay this out for me. I've looked at the plan, but my mind doesn't work that way. Is this pool structure planned to be built on the far side of the pool?

Mr. Thompson: It would be on the north side of the pool, away from the street.

Mr. Dunn: Away from the house? Closer to the build line?

Mr. Thompson: Yes, closer to the rear build line.

Mr. Dunn: So, basically, the pool is all within the build line, and the structure would be outside the build line or largely outside the build line?

Mr. Thompson: Yes.

Chairman Clawson: It would probably help if we had a plan view on the screen.

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

Mr. Dunn: Could you point out the pool and pool house on this?

Mr. Thompson: The blue would be the pool; the red would be the pool house.

Mr. Dunn: And the setback that the pool house would be in violation of is which side?

Bruce Wendlandt, architect, 7924 Floyd, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Wendlandt: (*referring to plan*) This line is the 30' setback line. The pool, hot tub, and pool cabana are behind that 30' line. The green line is the 15' side yard setback. The pool cabana is within the 15' side yard setback. The LDO is written in such a way that the pool cabana structure has what they call a modified rear setback. My discussion today is going to be the context of the neighborhood, what's going on, and how punitive that portion of the LDO is to the Kneiberts that it is denying them reasonable development of a larger lot. They're essentially penalized for having a larger lot in this context. That's what I was hoping to discuss on this.

Mr. Dunn: I want you to present your case. My question for staff was which setback is this structure violating. Is it the line on top of the page?

Mr. Thompson: It's really the green line, so it's the entire structure.

Mr. Wendlandt: Their statement is that the pool cabana should be to the west of that green line. It is properly okay to the south.

Chairman Clawson: How deep is that lot?

Mr. Wendlandt: Normally, it's 180.

Chairman Clawson: The setback requirement says for lots that have a depth of 150 feet.

Mr. Thompson: That's where the formula comes in. A normal setback is 30 feet.

Chairman Clawson: So, if it's more than 150 feet, you have to use the formula.

Mr. Thompson: Yes, sir.

Mr. Dunn: According to this picture, the pool is entirely outside the build line.

Mr. Thompson: Both the pool and the pool house are outside.

Mr. Dunn: When the pool is built, will they have to come back for a variance for it?

Mr. Thompson: No, the pool is allowed.

Mr. Wendlandt: The water can be as close as 10 feet to the rear setback.

Mr. Dunn: Who allowed the pool?

Mr. Thompson: The building official.

Ms. Farrington: The LDO states that it's a structure and not in ground. We've looked at other lots with depth issues with this formula. This is just 30 feet over that formula, so that additional 30 feet has caused this 25' variance.

Mr. Wendlandt: It's substantial. When I show you the context of the neighborhood versus this formula, it is exceedingly punitive.

Chairman Clawson: I'd like to see a plot with several houses in this vicinity. Could you provide that?

Display placed on monitor

Mr. Wendlandt: I can show you context immediately across the street.

Chairman Clawson: The one next to you has the same depth.

Mr. Wendlandt: That common property line is skewed. It narrow as it goes to the street.

Chairman Clawson: Can we see the ones across the street?

Display on the monitor

Mr. Wendlandt: The Kneiberts are across. On 114th Street, we're looking at 11400 Brookwood. This is the pool cabana, and it is approximately 33 feet off the rear property line. I want to draw your attention to the way it is all working. How proximal is the pool cabana to the neighbor behind? We can see that. We can see that from corner to corner, we have approximately 84 feet of separation. Then, as we look at the other neighbor, it is approximately 112 feet apart. What is the difference? We have the real-time numbers, but this is very proximal in terms of being in their face. It's in prime viewing area, but the numbers are what they are. That's the context of that neighbor in that corner. If we look at what we're proposing, we're not crowding the pool to the property line. We're staying beyond the 30' build line. We're not proposing the pool cabana to go over that 30' platted building setback. We then apply this formula, and we get that line. We're being penalized, and here's why I say that: the proposed cabana is ideal with respect to the streetscape. The view from 114th Street is a nice axial view down the pool, up to the cabana. It's pulled away from the main viewing area. The distance we're talking about from 11400 Brookwood is proximal. What are we, as proposed? Well, to the neighbors to the east, we are 105 feet proximal. We're not only that far; we're not in their primary viewing area. We are not in their face. The neighbors to the northeast are 158 feet away. The neighbors to the north are still 70 feet away. The distances are still incredible. The hardship is they're trying to get a very nice, formal setting on central axis. The concept of a pool with the cabana laid up that way is multi-fold. If we had to take this cabana and stack it over here, there is no point in doing a nice detached cabana. They no longer get to have a wonderful view out of their house of their pool cabana because of the way the building line modification is written. They're not after an attached structure. I won't even begin to go into the difficulty of what that would be because as we step out of their

breakfast room, we're going down 6-7 rises. That's a problem. This is the best ideal solution. I'm going to make the argument that if it's built on the modified setback line or on the 30' setback line or somewhere between, they still get to build right up in the Kneiberts' face, no matter what. When the Kneiberts bought this property, they bought it as is; they didn't build. Imagine thinking you're going to be able to do something nice on your lot someday, but it's coming at a penalty such as this. The distances are totally within the spirit and intent of the ordinance. We're trying to propose good, architectural, aesthetic design and not formulaic design.

Mr. Dunn: So, what makes this unique in part to you is due to the fact that we have an ordinance that requires calculation of setback requirements based on the formula that we use. That creates a unique situation for you in that you have a much more substantial setback to have to meet than anybody else would. That's what I heard you saying.

Mr. Wendlandt: Absolutely, but I want to draw attention to the fact that, even as proposed, our proximal distance is still far greater than what you're seeing in the fabric of the community just across the street.

Mr. Dunn: What could be built without a variance? That's what you're showing with the other drawing, is it not? These folks could build one without a variance?

Chairman Clawson: Is across the street RP-1, too?

Mr. Dunn: It is. This is the same zoning.

Ms. Farrington: This is all in the context of the same neighborhood; it's just some of the lots have bigger depth than others, so the plats aren't exactly uniform.

Mr. Dunn: What does that 58.9' adjusted rear yard setback apply to? Is it just this house?

Mr. Thompson: It would apply to any of those homes because the yards are so big. That's why they have to use that formula.

Mr. Dunn: How many yards are encompassed within your measurement area to come up with the unique setback?

Mr. Thompson: Just his yard is used to determine that number.

Ms. Farrington: So, if the adjacent ones are not over 150 feet in depth don't have to follow the same formula.

Mr. Thompson: Correct, but they probably are.

Chairman Clawson: So, the house just above it probably has a smaller lot, so his setback would be 30.

Mr. Wendlandt: I didn't run a formal tag on the house across the street, but I'm going to guess it's in that range of 30-40 feet. Here's what's so nonsensical: this house could have a wind addition that reaches all the way back. We're not talking about a pool cabana; we could be closing off a structure all the way over here.

Chairman Clawson: I don't think that's true.

Mr. Dunn: I don't think so.

Mr. Wendlandt: That's the 30' rear setback. We've got to meet other criteria in terms of the yard.

Chairman Clawson: I think that's wrong.

Mr. Wendlandt: That's the platted rear build line.

Chairman Clawson: But the LDO is going to take precedence over that.

Mr. Dunn: Is that right?

Mr. Thompson: Yes, sir. If they wanted to make an addition as he just said, they would have to meet the 58.09' setback.

Mr. Dunn: And they'd need a variance to do otherwise.

Mr. Thompson: Yes, sir.

Chairman Clawson: The LDO is specific about the requirement. I don't know where this formula came from or the background; do you?

Mr. Thompson: No, sir. It's been here as long as I have.

Mr. Wendlandt: I think that's part of the uniqueness of the situation. You'd take almost every written rule, especially when they deal with numbers and lot sizes, and you'll find problems. That's why we're here discussing it.

Chairman Clawson: We agree. Are there other questions for the applicant? I still would like to see a group of houses in this area, though, if you could find that. In RP-1, it requires lot sizes less than 12,000 feet.

Ms. Farrington: Yes, that's what it says in Article 2, Page 17.

Chairman Clawson: So, about ¼ acre.

Example displayed on monitor

Chairman Clawson: That's fine. I'm just trying to get a handle on the size of this lot, relative to others in the neighborhood. I'm guessing that third lot above the lot in question is smaller.

Mr. Thompson: That looks to be the smallest.

Chairman Clawson: That one would probably have a 30' setback. It looks like the house above that has a pool.

Mr. Thompson: Yes.

Chairman Clawson: These are all RP-1, right?

Mr. Thompson: Yes, sir.

Chairman Clawson: I'd say the third house above the pool is much closer to the rear property line than what we're proposing.

Mr. Hawk: They're all about 30-35 years old.

Mr. Thompson: This one was built in 1992.

Chairman Clawson: Are there additional questions for the applicant?

Mr. Wendlandt: To the best of my knowledge, the Kneiberts have not heard any objections from the community.

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

Mr. Dunn: I made some notes on this while we were talking about it just because I wanted to be specific in the way I state this. I struggle with Uniqueness all the time. We know that; I think we all do. I wrote down that I don't know if it qualifies as unique, but it is a highly unusual set of circumstances that allowed these folks to build a pool outside the 58.9 setback but not a structure with the pool because that's typically what you do with a pool. I find that to be the result of factors that don't qualify as one of a kind but are pretty close.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No calls or complaints have been received.

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

Chairman Clawson: Hardship.

Mr. Dunn: The thought I had was that if they are allowed to build a pool where it is but have to build the structure within a different setback requirement, they are essentially building an addition on their breakfast room or whatever room is on the corner because it would be that close to the house. I think that's a pretty substantial hardship.

Dr. Peppes: A lot of times when I bring up hardship, it's about limitations. If there's something there that's prohibiting them from doing something, whether it be an easement, sewer line, etc. In this situation, they're able to put a pool but not a cabana next to it because it has different criteria, and those are a result of the formula that are specific to their property. I'm usually pretty tough on this one, but I feel it has met its requirement.

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

Chairman Clawson: Public Safety and General Welfare. Staff makes an interesting comment here: "Approval of this request would place the new structure with the fireplace close to the wood shake roof of the owners' house. The adjacent homes have tile roofs."

Mr. Thompson: I did conform with Mr. Wendlandt that it will be a gas fireplace, so that may shed some light on that, too. If they were burning wood out there, it might be an issue. I wanted to confirm that first.

Mr. Dunn: The question I had is I see homes with firepits all over the place in the back yard. A fire pit could be pretty much anywhere, couldn't it?

Mr. Thompson: No, it's a detached structure, so it has to meet the criteria as well.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: If you look at the overall plot that was put up, you see that it has a significantly wider lot size; therefore, the formula was applied to it. The property adjacent is an angular lot, it meets the 30' setback. The property two above it meets the 30' setback. I would say that this falls in line with the neighboring properties, so it does meet the criterion.

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

Chairman Clawson: We have voted in the affirmative on all five factors. Is there a motion for approval?

A motion to approve Case 47-2019 Philip or Stacy Kneibert/Owners - Request for a Variance to the Adjusted Rear Setback for the placement of a Pool Pavilion in accordance with the LDO, Section 16-2-5.3(D) in an RP-1 District for property commonly known as 11345 Brookwood Street – was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Case 48-2019 Vincent & Sarah Rupp/Owners VARIANCE ****WITHDRAWN**** Request for a Variance to the front build line for the placement of a new front porch in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12410 Overbrook Road.

Case 49-2019 Leawood Hills Development, LLC/Owner - ****CONTINUED**** Request for a Variance to the minimum lot size requirements for new lots in accordance with the LDO, Section 16-2-5.4 (D) in an RP-1 District for the properties located in the Hills of Leawood Villas at 151st Street and Mission Road.

Case 50-2019 Brian & Kimberly Zickefoose/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 2906 W. 92nd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing 5’ privacy fence with a new 5’ wooden privacy fence. As you can see from the pictures, it is old and decayed. They just want a new fence.

Chairman Clawson: Are there any questions for staff?

Mr. Hawk: Would the new fence be slotted, similar to this?

Mr. Thompson: Yes, sir.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

Bre Zickafoose, 2906 W. 92nd Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Zickafoose: Do you want to hear the story on the fence? Four years ago when we moved into the house, the inspector commented that he usually doesn’t speak to fences,

but he wanted to let us know ours was in exceptionally bad shape. That was fine for a while until a couple years ago when my two boys wanted a dog. Our puppy is wonderful and darling, but he really likes to run and jump. He has found that this very old, rotted fence is really easy to push and get through. We back up to 92nd Street, and when he runs out that way, there is construction and new houses. It's terrifying to me that he's going to get out and get hit by one of these big trucks. We looked into getting the fence replaced, and we talked to our neighbors. We have five neighbors that adjoin the fence. Four out of the five also have dogs. Some have little dogs; some have big dogs, but they all get back and forth through our fence because it's old and needs to be repaired. The only problem with a 4' fence is our dog can jump that like it's not even there. Now that he's a full-grown, happy, excited two-year-old, a 4' fence won't keep him inside, and I feel like we're not solving the problem of keeping him from getting hit by a car and keeping all of our neighbors' dogs out of our fence or our dog out of their yards. Here we are, requesting to put back the exact same fence we have but new, nice-looking, and not rotted.

Chairman Clawson: Questions for the applicant?

Dr. Peppes: So, does this fence go around the periphery of the property?

Ms. Zickefoose: It goes around the whole property. It is all our fence. Of course, it would be great if we were sharing it with any of those other five, but it's all ours. We're just going to do it and put up the whole fence. I think it will benefit out neighbors as well.

Chairman Clawson: Do we have a motion?

A motion to approve Case 50-2019 Brian & Kimberly Zickefoose/Owners - Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 2906 W. 92nd Terrace – was made by Bussing; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

MEETING ADJOURNED.