

**City of Leawood  
Board of Zoning Appeals Minutes  
February 26, 2020 – 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:** Munson, Dunn, Dr. Peppes, Clawson, Hawk, Farrington, and Bussing

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Thompson, Tomasic

**NEW BUSINESS:**

Case 01-2020 Kirk Strobel/Land & Water; Mike & Stacy Scifres/Owners - Request for a Variance to the maximum allowable grade change for the construction of a swimming pool in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9135 Lee Boulevard.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners have razed the original home and have constructed a new one in its place. On 3/28/2018, the board approved a variance to allow the elevation itself to be raised. This request would be to lower the grade, or cut into the hillside, ranging from 1-3 feet for the placement of a pool.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: What does the code say about the maximum it can be lowered?

Mr. Thompson: Any change over 1 feet, either up or down, requires a variance.

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

**Applicant Presentation:**

Kirk Strobel, Land and Water Swimming Pools, appeared before the Board of Zoning Appeals, provided photos, and made the following comments:

Mr. Strobel: Mr. and Mrs. Scifres hired me to design and build a swimming pool. As we reviewed the back lot, as you would see on their plot, we found no place to put a pool without this variance approval. We selected to downsize the pool and put it in the place that was the flattest and the most accommodating. We're very much aware of the code we're asking for the approval through. In the binder that I gave you, I provided you with a couple pictures. This is a picture of a wall that was already approved during the construction of the home. Without that wall, there would not be any patio. Without that wall, all the water from the silt side would be laying against the foundation. The committee has already approved a retaining wall of approximately 3 feet on this property. Since I took the project, we did some studies and were able to document some of the rain. There is a huge problem where that wall stops and is unprotected to the remaining part of the house. That would be perfect for where the pool is to be located. It creates a wall barrier that we would add on to the existing wall. The next picture looks like a project under construction. The home 3-4 lots to the south is under construction. The builder has the very same problem and had to present before the committee. They were then allowed to have the wall so they could have the pool and the deck. We're asking for the approval to put this pool with the retaining wall behind it, which will protect the property. It has already been engineered. You have a copy of the engineering in there. It meets all the other criteria as impervious square footage of the home. That has been presented back to the city. After we had that approved, we also spoke with the neighbors. It doesn't affect the neighbor to the south. It doesn't have anything to do with the neighbors to the east or west. It's a pretty sizable lot. The neighbor to the north shares the same drainage. It doesn't change the drainage or add to it. It is interesting because it's not calculated in the engineering, but the pool is almost 600 square feet. At any given rain, the rain would have to exceed 6 inches before that much square footage would even run because the pool collects water. That is what we're asking for. I'd like to ask if Mr. and Mrs. Scifres have anything to add.

Stacy Scifres, 9135 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Scifres: After moving in the home in September, there was a heavy rain, and I checked the back door multiple times because the water was within inches of it, and it kind of scared us. We wondered why our builder didn't originally have the wall extend the whole length of our house. Now, about half of the house needs a wall, no matter what. It kind of makes sense just to be proactive while we put the pool in and make the wall there, also, so we don't have any issues with our house flooding. Thank you.

Mr. Strobel: Do you have any questions for me?

Mr. Munson: I'm wondering what the grade is, coming down from the top of the hill down to where it hits the wall near the swimming pool. It looks pretty steep.

Mr. Strobel: I do not know the grade. I know on the prints, you'll see grade marks. Those are approximately every 10 feet, so you've got about a 12" drop every 12 feet.

Mr. Munson: It drops 12 inches in 10 feet? Quickly, how does that calculate grade-wise?

Mr. Strobel: It would be about 10%.

Mr. Munson: You'll build on top of the existing wall?

Mr. Strobel: No, sir. (*demonstrating on the plan*). The wall moves from the south toward the north and stops about 2/3 the length of the home. This is where they have a patio and outside grill. We're adding the pool on farther to the north, which would be about the last 1/3 of the home that is unprotected.

Mr. Munson: Everything I see in this illustration that's tinted yellow is what?

Mr. Strobel: I only highlighted it. I did not know that this committee had already had the information and that a previous wall was approved there. That's what I was highlighting in that yellow.

Mr. Munson: Again, which wall are we talking about?

Mr. Strobel: The wall I showed in the pictures is the yellow on prints of the plot.

Chairman Clawson: When this package was put together and submitted, did the city engineer or someone review the drainage report in detail?

Mr. Thompson: Dave Roberts reviewed it, and it passed.

Chairman Clawson: Are there any other questions for the applicant? This is a variance, so we have to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five factors. Do you have any comments on those?

Mr. Strobel: I'm familiar with the process.

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

Mr. Munson: Staff says that it has a creek, sanitary sewer line, and considerable elevation change. That is true of all those properties up and down the line; is it not?

Chairman Clawson: In this area, it's a common issue.

Mr. Munson: So, it's really not something that makes the property unique in and of itself.

Dr. Peppes: I think it has been met. I live half a block from this place. It's a beautiful setting, but a creek runs through the front yards of only about 4-5 houses. They are

probably all the same, but the uniqueness is in the area and the steep grade on the back side of the house all four of those houses share. I'm far away from it and don't share any of it, but I think it is unique in that it is a couple houses but is still unique in the area.

Mr. Bussing: I agree with Dr. Peppes.

Mr. Dunn: I'd like to add that I've come to the realization after doing this over time that unique doesn't mean it's the only one; it means that it is highly unusual. These lots are highly unusual.

**Uniqueness criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. Staff notes that it should not adversely affect the adjacent property owners.

Mr. Munson: Have the adjacent property owners indicated their attitude about it?

Mr. Thompson: I received one phone call from the neighbor to the north, and when he heard they were cutting into the hill, he was okay with the project.

Mr. Munson: He would most likely be the one most affected by runoff since he's so close, and he didn't object.

Mr. Thompson: Yes, sir.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Mr. Dunn: I'd simply note that, if what we're presented with here is accurate, which I believe it is, the property owners have a hardship with drainage due to no wall in that location. I think it would create a significant hardship if we say they can't put a retaining wall in that spot.

Dr. Peppes: I agree. Usually this is where I go ballistic, but I feel this is just the opposite. I think we need to give relief and allow this to happen.

**Hardship criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: I'd like to speak on this. The report states that the drainage study was complete, and it met all the requirements. This actually would improve the current drainage on the backside of the house. I feel it is met.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Bussing: It's a beautiful-looking project that fits right in with Leawood.

**Spirit and Intent criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

**A motion to approve Case 01-2020 Kirk Strobel/Land & Water; Mike & Stacy Scifres/Owners - Request for a Variance to the maximum allowable grade change for the construction of a swimming pool in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 9135 Lee Boulevard – was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 02-2020 Nicholas Bosman/BRR Architecture; 2C Development, LLC/Owner - Request for a Variance to the Design Standards (60/40 Rule) for a parking lot in accordance with the LDO, Section 16-4-5.3 (A), 4 in an SD/CR District for property commonly known as 13651 Nall Avenue.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to develop the currently vacant lot. Due to an existing utility easement on the south end of the property, no building over that portion prohibits the owner from achieving the required 60% parking and 40% landscaping ratio.

Mr. Munson: What's the name of the development that's there now?

Mr. Thompson: It's a vacant lot.

Mr. Munson: What abuts it?

Mr. Thompson: Seville Furniture is close; Church of the Resurrection is also closed.

Chairman Clawson: We're seeing a proposed development, and the utility easement is to the south?

Mr. Thompson: It's on the north side, close to 135<sup>th</sup> Street.

Chairman Clawson: Can you briefly explain the 60/40 Rule?

Mr. Thompson: Per the Leawood Development Ordinance, no more than 40% of any site boundary link that fronts onto a public street may be developed as parking areas. Because of that easement, they need to cut into that 40% to get the required parking stalls.

Dr. Peppes: For the square footage of the building.

Mr. Thompson: Yes.

Ms. Farrington: The photograph shows red on the border. Is that the area of the parking that fall within the requirement?

Mr. Thompson: That would be the additional area they are asking for. The new parking area would be on the south side of the building.

Chairman Clawson: Do we know what the resulting ratio would be?

Mr. Thompson: I don't know that; you'd have to ask the applicant.

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

**Applicant Presentation:**

Ellen Pantaenius, General Counsel for 2C Development and Onspring Technologies, 10801 Mastin Street, Suite 400, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Pantaenius: I also have Nick Bosman with BRR Architecture and Brad Sonner with Olsson. Chris Pantaenius is the CEO of Onspring Technologies. I'd like to start with a quick background of Onspring and the project. Onspring is a Kansas company that was founded in 2010, currently based in Overland Park. We have about 40 employees and are growing very quickly; hence, we are looking to build our permanent office headquarters in the Cornerstone of Leawood development. We anticipate that, with the two buildings, we'll have about 200 employees onsite who will earn, on average, over \$100,000 a year. It will bring a great pool of customers to Leawood. We also have put together some attractively designed buildings that will add to the development's appearance. We're excited about the opportunity to come to Leawood to construct, but our ability to move forward with the project depends on getting the approvals we need to conduct our business from this site. The first variance we are requesting pertains to the application of the 60/40 Rule. We have some additional images that will help illustrate what we're asking for. Utility easements that cover a lot of the south side of the property affect how we can orient the buildings and parking areas. The parking is already very tight, so with the strict application of the 60/40 Rule, 20% of our needed parking would be eliminated, which would substantially impact our business operations. Brad Sonner from Olsson will have additional comments from a civil perspective (*displays additional images*). You can

see the southwest corner and how the easements cut over. We cannot construct buildings in that area, but we can construct parking. If the 60/40 Rule is applied, the area in red shows the parking that would be eliminated.

Chairman Clawson: If the 60/40 Rule is enforced, you would lose what is in red?

Ms. Pantaenius: Correct.

Mr. Munson: How many employees do you estimate will be in proposed Building B?

Ms. Pantaenius: We're planning to construct these buildings in two phases in order to accommodate the growth of our company. The north building will be constructed first, and each building should have approximately 100 employees.

Mr. Munson: What does the code say the requirements are for parking spaces per square footage for commercial buildings? How many are they required to have to handle the number of employees?

Mr. Thompson: I don't have that figure right now.

Ms. Pantaenius: One additional point is this development has cross easements on it, but we'd like to avoid having our employees park across the street for safety reasons. We're hoping to get as much parking onsite as possible.

Mr. Munson: I wondered because if the employees don't have enough parking, what will you do?

Ms. Pantaenius: Like I mentioned, we could park across the street or potentially enter into agreements with other property owners, but it's not ideal.

Chairman Clawson: The area in red could be used for parking.

Ms. Pantaenius: With the variance.

Chairman Clawson: In that case, what would the ratio be?

Brad Sonner, 7301 W. 133<sup>rd</sup> Street, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Sonner: The requirement is 3.5 stalls per 1,000. We are just under that with this plan. We have 159 stalls, and 168 would be required. As Ellen mentioned, I think this is supported at the staff levels because we have cross parking.

Chairman Clawson: If the variance would be permitted, what would the ratio be of parking to landscaping?

Mr. Sonner: I don't have that exact calculation. We're probably 60-70% parking to 30-40% landscaping on that side.

Ms. Pantaenius: With the way this property is situated, the two buildings front almost the entirety of the Nall Avenue side, so we're well above the 60/40 requirement on that side. Looking at the property as a whole, we meet the 60/40 Rule. Looking at public streets individually, there is a problem.

Ms. Farrington: You're telling us is you have 159 parking spaces, but 168 are required. That would include the red area in question. You also have 11 on one side, 10 on the other, and an additional 3, which means 27 parking spaces would be eliminated.

Mr. Sonner: Approximately, yes.

Ms. Farrington: You're already providing 9 fewer spaces than required, with an additional 27 if this is eliminated.

Mr. Sonner: Yes.

Chairman Clawson: Since this is a variance and we have to go through the five factors, could you address those factors and how you would justify them?

Ms. Pantaenius: I sure can. With respect to Uniqueness of the Property, the utility easements that front a substantial part of 137<sup>th</sup> Street prevent us from building our building there, which would permit us to meet the 60/40 Rule. Parking is the only reasonable use of that area, and it allows us to have the onsite parking we need. We do not believe it will adversely affect the rights of adjacent property owners. As you can see, there is parking throughout this development that has been approved and, in most cases, doesn't satisfy the 60/40 Rule. It may have been before the rule was put into place, but this property will not look any different from any others. Church of the Resurrection is directly to the south, and it is almost entirely parking.

Chairman Clawson: All the notices went out. Have you received any comments?

Mr. Thompson: No comments whatsoever.

Mr. Dunn: I would assume if this is denied, the practical result would be that your employees would use other parking areas rather than going across the street.

Ms. Pantaenius: I think no matter where they park offsite, they would have to cross streets to get to the building.

Mr. Dunn: It sounds like there is more likely a hardship resulting to other property owners if this is not approved.

Ms. Pantaenius: That is correct.

Mr. Hawk: Has Church of the Resurrection been advised and asked if you could use some of their parking, since they don't need all the parking during the week?

Ms. Pantaenius: We have not had that conversation with them yet. We did notify them of this request, and I would guess it's an option that would be open to us. There's a tall berm, and it's hard to get to. It's certainly not ideal for our employees to park there. We believe that strict application will create an unnecessary hardship in that we won't have adequate onsite parking. Granting the variance will not affect public health, safety, and other aspects of general welfare. In fact, it will improve safety for our employees. We don't believe granting the variance is opposed to the general spirit or intent of the ordinance. Our property as a whole satisfies the 60/40 Rule. We'll have beautiful landscaping on substantial areas and an attractive building fronting Nall Avenue.

Mr. Bussing: Do you have a rendering of the building?

Ms. Pantaenius: We don't.

Mr. Munson: Did you include the electric charging stations as part of your count for parking?

Ms. Pantaenius: Those are included.

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

Kevin Jeffries, President and CEO of Leawood Chamber and Economic Development Council, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Jeffries: We just wanted to say that the Economic Development Council is very much in support of this project. It brings some office uses to the 135<sup>th</sup> Street Corridor, which Governing Body has requested. This is the first large office complex development we have had presented to us in my tenure since Demdaco showed up. We're anxious to have this project, and it has the full support of the Chamber and Economic Development Council.

Chairman Clawson: Does anyone else wish to speak? In that case, we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Bussing: I would note, as staff has noted, that the 30' utility easement across the corner of the property renders it unique.

Mr. Dunn: I agree with Mr. Bussing.

**Uniqueness criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Rights of Adjacent Property Owners. No comments from any of them?

Mr. Thompson: None whatsoever.

Mr. Munson: We wouldn't hear from them unless this parking ratio was denied.

**Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Hardship.

Mr. Bussing: Strict application of the ordinance would result in the loss of 35 parking stalls, which would render the project very difficult. That would be significant hardship.

**Hardship criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: If they did not have the adequate parking, it would cause their employees to have to cross streets, whether minor or major, and it would be against the public safety and general welfare.

**Public Safety and General Welfare criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Chairman Clawson: Spirit and Intent.

Mr. Munson: Staff says it meets the requirements, and I concur.

**Spirit and Intent criterion satisfied with a unanimous vote of 6-0. For: Munson, 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 02-2020 Nicholas Bosman/BRR Architecture; 2C Development, LLC/Owner - Request for a Variance to the Design Standards (60/40 Rule) for a parking lot in accordance with the LDO, Section 16-4-5.3 (A), 4 in an SD/CR District for property commonly known as 13651 Nall Avenue – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

Case 03-2020 Nicholas Bosman/BRR Architecture; 2C Development, LLC/Owner - Request for a Variance to the Design Standards regarding Dumpster placement in accordance with the LDO, Section 16-2-9.2(H), 3 in an SD/CR District for property commonly known as 13651 Nall Avenue.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to develop the currently vacant lot that would include two structures. The request is for the detached trash enclosure that would be located away from the two structures.

Mr. Munson: As I indicated previously, I have to leave in ten minutes.

Chairman Clawson: If you have to leave, we'll make note of that in the minutes. Are there any questions for staff? I'm looking at the plan view that shows a trash dumpster enclosure that's basically in the parking lot. There's just one right now?

Mr. Thompson: Yes.

Dr. Peppes: Is that the only trash enclosure for the whole development?

Mr. Thompson: As far as I know, yes; it's the only one notated on the plan.

Mr. Dunn: You've got Article 2 highlighted. How does locating it there violate this?

Mr. Thompson: Trash enclosures have to be attached to the structure.

Mr. Dunn: I'm looking through this paragraph, and I don't see that. That's what I'm trying to figure out. Where does it say that they have to be attached?

Chairman Clawson: It says, "Integrated into the building elevation design."

Ms. Farrington: The sentence before says, "In all cases, the area shall be screened from view with landscape or architectural elements designed as part of the building or structure."

Mr. Dunn: With all due respect, that requires interpretation that is beyond me.

Chairman Clawson: It says, "In all cases, the area shall be screened from view with landscape or architectural elements designed as part of the building or structure." Is that correct?

Mr. Thompson: Yes, sir.

Chairman Clawson: That's basically the issue right there.

Mr. Thompson: That's correct.

Chairman Clawson: Other questions for staff?

Mr. Munson: I'm wondering about the rationale for this requirement. We have a couple existing former city councilmen on our board. Can any of you remember how this requirement came to be?

Mr. Dunn: Absolutely not.

Dr. Peppes: I think maybe the intent was if the dumpsters were attached to the structure, it would be maintained better than it would be in the far parking lot, where people just throw stuff in there and the doors are kept wide open. If it is attached to the structure, someone will take care of it. I'm not sure that was written down, and my memory is not the best about it.

Mr. Bussing: Dr. Peppes's memory is exactly on point. I think there is ample evidence throughout the city where detached trash enclosures have not been properly maintained in spite of the assertions of the owners. In the rewrite of the LDO a few years ago, we decided that perhaps attaching them to the main structure would improve the appearance and cleanliness of the structure.

Chairman Clawson: It has to be accessible by a trash truck wherever it is. I'm picturing how this location could be accessed, and I'm not sure how it would be accessed if it were attached to the building. I think the applicant needs to provide that clarification.

Mr. Bussing: I think the architects are sharp people and could figure that out.

**Applicant Presentation:**

Ellen Pantaenius, General Counsel for Onspring Technologies and 2C Development, 10801 Mastin Street, Suite 400, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Pantaenius: There really isn't a good place next to Building A, which will be built first, to put a trash enclosure. The location we've set here does give easy accessibility to trash trucks. It keeps it away from employees entering the building. It just makes a lot more sense in that respect. The enclosure will be constructed with materials that are identical to our building itself. It will be completely cohesive with the building design and will look nice. We don't want to have our office facing a trash enclosure that doesn't look nice. We will definitely maintain it well and construct it well. Another point is that in Leawood, particularly the Mission Farms development, trash enclosures away from the building have been approved. This wouldn't be different in that regard.

*Mr. Munson left the meeting.*

Ms. Pantaenius: We have renderings we can show (*displays on monitor*).

Brad Sonner, 7301 W. 133<sup>rd</sup> Street, Overland Park, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Sonner: Attaching it to the building and having a service drive up to it will eliminate parking stalls for us. We would have to penetrate the perimeter parking to the east and south of the building. We're fighting that challenge of keeping a good, healthy parking ratio. We wanted to make note of that. We feel we have it positioned in the parking lot for ease of trash truck use. They can easily come in, get the trash efficiently, and leave very efficiently, too. When they're attached to the building in the service drive, the trucks pull in, back up, and perform a three-point turn, all of which starts to wear on the pavement. There are equally as many challenges doing it that way.

Ms. Pantaenius: I can go through the five factors on this item as well. Uniqueness of the Property, we're planning on constructing two buildings. If we were to construct the trash enclosure next to a building, it would most likely be next to the second building.

Chairman Clawson: Can you show where that would be if you had to attach it?

Ms. Pantaenius: If we had to attach it to the second building, which won't be constructed at the outset, it would probably be down in that south parking area, eating into parking. It would be well away from Building A when that is constructed initially. There are some unique aspects of this property with the way we have to situate the buildings with the easements and our phased construction plan that make that not feasible. Moving the trash enclosure will not adversely affect the rights of adjacent property owners. As you can see, it's still set well back from the street. On the south side is the Church of the Resurrection lot with a large berm. No one will really notice or see this structure.

Chairman Clawson: Will there be screening or vegetation?

Ms. Pantaenius: We will have vegetation where we can put it, and on the corner area will be landscaping.

Chairman Clawson: Can you point it out?

Ms. Pantaenius: (*Refers to plan*) The corner will be grass, landscaping, and berms. That will help shield the trash enclosure from view and some of our parking as well. The strict application of the ordinance will create hardship in the sense that there really isn't a location to locate this next to the building without eating into the parking areas. With our phased construction, the trash enclosure would be located next to a building that would be far away from the other building when it's constructed. Granting the variance will not adversely affect general health, safety, or general welfare; it will only benefit these. It will make it easier for trash trucks to come and go and collect the trash without going in front of entryways and further interfere with traffic and parking in our office

development. Granting the variance will not be opposed to the spirit and intent of the ordinance because it will be constructed of materials that are identical to our building. It will be part of a cohesive development. The walls will be over 6 feet tall and will have surrounding landscaping as well as a non-transparent metal gate, as is required. It will be well maintained.

Mr. Hawk: What is the interval between the construction of Building A and Building B?

Ms. Pantaenius: It probably will not be very long, just judging from the way our company has grown the past few years. We're anticipating maybe a year or so between. We didn't want to construct both buildings at once and have a lot of surplus space that wasn't being used initially.

Ms. Farrington: If this is between Phase 1 and 2, are the parking lot and structure going to be built with Phase 1?

Ms. Pantaenius: Yes, it will.

Chairman Clawson: Are there other questions for the applicant? 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 of the Property.

Mr. Bussing: The 30' easement doesn't apply here, and I don't see anything else that renders this particular property unique. It's a beautiful design of the buildings, and it looks very nice, but my experience with detached trash enclosures in the city has not met our expectations. I think we need to enforce the LDO on this particular site.

Chairman Clawson: Other comments?

**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. Notices went out.

Mr. Thompson: They did, and I've received no correspondence whatsoever.

**Rights of Adjacent Property Owners criterion satisfied with a vote of 4-1. For: Dr. Peppes, Hawk, Farrington, and Bussing. Opposed: Dunn**

Chairman Clawson: Hardship.

Dr. Peppes: As I spoke at the beginning, I'm not a favor of trash enclosures that aren't attached to the building, but in order to attach the enclosure to the building, we're going to lose parking spaces, which was the whole issue before. It bothers me that we're going to make them attach it to the building and then take away spots when they're already needing more spots. I think this has been met.

Mr. Bussing: As much as I loathe to do so, I disagree with Dr. Peppes. I think the hardship is a function of the design location of the buildings on the lot. Again, I think the applicant has hired one of the best architectural firms in the city. I'm sure those folks can figure out an acceptable location that will minimize the parking disruption. I think the hardship that they've described here is self-imposed.

Ms. Farrington: I would agree. Where it is currently designed, it takes up potential parking spots. It can be designed in a different location, and it would be a tradeoff.

**Hardship criterion not satisfied with a unanimous vote of 1-4. For: Dr. Peppes. Opposed: Munson, Hawk, Farrington, and Bussing.**

Chairman Clawson: Public Safety and General Welfare. Staff was in favor of building as an attachment for this criterion. Any other comments?

Mr. Dunn: I just think the ordinance itself incorporates that thought that it's in the best interests to have it attached rather than to have it in a remote spot. As Mr. Bussing pointed out, those trash enclosures tend to not get the same attention, and that can be a bad thing.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: This is a hard one. It's a beautiful project. I'm glad to have them come to the city. Clearly, as Mr. Jeffries indicated, having this type of employer move into the city is very much what the city is looking for, but this issue with trash enclosures is so problematic that we need to abide by the intent of the ordinance.

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

Chairman Clawson: We felt that Uniqueness, Hardship, Public Safety and General Welfare, and Spirit and Intent have not been met; therefore, we must support a motion for denial in this case.

**A motion to deny Case 03-2020 Nicholas Bosman/BRR Architecture; 2C Development, LLC/Owner - Request for a Variance to the Design Standards regarding Dumpster placement in accordance with the LDO, Section 16-2-9.2(H), 3 in an SD/CR District for property commonly known as 13651 Nall Avenue Case 28-2019 Mandy & Brent Frey/Owners - Request for a fence height Exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 9009 Mohawk Road – was made by Dunn; seconded by Hawk.**

**Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.**

**\*\*EXECUTIVE SESSION FOR TRAINING\*\***

Chairman Clawson: I'd like to move that the board recess for no more than 30 minutes for consultation with the City Attorney, which is privileged due to attorney-client relationship, pursuant to the Attorney-Client Exception, KSA 75-4319(b)2.

*MEETING ADJOURNED.*