

**City of Leawood  
Board of Zoning Appeals Minutes  
June 24, 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 June 24, 2020 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Munson

**STAFF PRESENT:** Thompson, Tomasic

**APPROVAL OF MINUTES:**

Approval of minutes from the December 18, 2019 and February 26, 2020 Board of Zoning Appeals meeting.

Mr. Thompson: I made a change to the February 26 minutes. It listed Knight and should have been Tomasic.

Chairman Clawson: That was the only change? Are there any comments on the minutes?

**A motion to approve the minutes from the December 18, 2019 and February 26, 2020 was made by Bussing; seconded by Peppes. Motion carried with a unanimous roll call vote of 5-0. For: Dr. Peppes, Bussing, Hawk, Dunn, Farrington.**

**MEETING STATEMENT:**

Mr. Thompson: To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Board of Zoning Appeals is being conducted using the Zoom media format, with some of the commissioners appearing remotely. The meeting is being livestreamed on YouTube and the public can access the livestream by going to [www.leawood.org](http://www.leawood.org) for the live link. The public is strongly encouraged to access this meeting electronically; however, if you wish to comment on a public hearing item, please contact the Community Development Department to make arrangements.

Public comments will only be accepted during the public hearing portion of each agenda item where a public hearing is required. The City encourages the public to submit comments in writing prior to the public hearing by emailing comments to [WadeT@leawood.org](mailto:WadeT@leawood.org). Written public comments received at least 24 hours prior to the meeting will be distributed to members of the Board of Zoning Appeals. Individuals who

contacted the Community Development Department in advance to provide public comments will be called upon by name.

Electronic copies of tonight's agenda are available on the City's website at [www.Leawood.org](http://www.Leawood.org) under Government / Board of Zoning Appeals / Agendas & Minutes. Because this meeting is being live-streamed, all parties must state their name and title each time they speak. This will ensure an accurate record and make it clear for those listening only. This applies to all board members, staff, applicants and members of the public who may speak. All motions must be stated clearly. After each motion is made and seconded, a roll call vote will be taken. The Chair or staff will announce whether the motion carried and the count of the vote. Reminder, please mute all microphones when you are not speaking. Thank you.

Ms. Tomasic: As a housekeeping item, Chairman Clawson, when you take the roll call vote, you can say the members' names, and they can respond with their vote.

Chairman Clawson: We have five cases this evening.

**NEW BUSINESS:**

Case 04-2020 Eliezer Vargus / Owner – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 8332 State Line Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has constructed a 6' tall fence on the property without a permit. The exception is needed for the City to issue the permit to keep the fence.

Chairman Clawson: Are there any questions for staff?

**Applicant Presentation:**

Eliezer Vargus, 8332 State Line Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Vargus: Back in October, I hired a contractor to build a fence. He built the fence, and a couple months later, I got a letter from the City. I came here to order the permit. I actually asked the contractor before he started about permits, and he said he would take care of it. Clearly, he didn't do I, so I came here. They asked me where it was positioned. I told them it was right where the previous fence was. They told me the limit was 4 feet, and we needed it to be 6 feet because we have a German Shepherd, and I don't think 4 feet is enough to keep her inside. I requested the exception to keep it.

Chairman Clawson: Are there questions?

Dr. Peppes: Is this the house that is turned sideways on State Line?

Mr. Vargus: Yes.

Dr. Peppes: Wade, could you point out where State Line is in relation to that picture?

Mr. Thompson: (*refers to visual on monitor*) My pen is pointing to State Line. The heavy black mark is the property line; the red shows where the fence was placed. State Line is east of his property.

Dr. Peppes: His property is adjacent to a busy street.

Mr. Thompson: Yes, sir.

Chairman Clawson: Any other comments or questions?

*Brief pause due to technical issues with Mr. Dunn's audio.*

**A motion to approve Case 04-2020 Eliezer Vargus / Owner – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 8332 State Line Road – was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous roll call vote of 4-0. For: Dr. Peppes, Bussing, Hawk, Farrington (no vote from Dunn due to technical issues).**

Case 05-2020 – Ambassador Construction Co.; Tim & Elin Murphy / Owners – Appeal of Administrative Decision – Request to consider an Appeal of the Administrative Decision to allow an unapproved roofing color in accordance with the LDO, Section 16-2-10.3(D) in an R-1 District for property commonly known as 3521 W. 87<sup>th</sup> Street. **\*\*Applicant continued to July 22\*\***

Case 06-2020 – Julia Heinrichs / Owner – Request for a fence height exception in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 5200 W. 112<sup>th</sup> Street. **\*\*Applicant withdrew application\*\***

Case 07-2020 – Tony Penny / Owner – Request for a Variance to the side yard setback in accordance with the LDO, Section 16-4-9.4 in an R-1 District for property commonly known as 10331 Pawnee Lane. **\*\*Applicant withdrew application\*\***

Case 08-2020 – Manish & Amy Ketecha / Owners – Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.4(D) in an R-1 District for property commonly known as 12604 Granada Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to replace an existing fence with a 4' tall wooden cedar fence on the property line. The request is to allow for the construction of the portion beyond the rear build line. They simply want to replace the existing fence with the same design.

Chairman Clawson: I looked at this on Google Earth. It's basically a hill, so there's a retaining wall. There are probably several houses along here with fences.

Mr. Thompson: Yes, we will eventually see all these homeowners come before the board to simply replace existing fences that have been there for 20 years.

Mr. Bussing: Are they legal, conforming fences currently?

Mr. Thompson: They would be legal, nonconforming.

Chairman Clawson: There are several homeowners with fences in this area.

Mr. Thompson: Yes, sir.

Chairman Clawson: Have there been calls or letters regarding this?

Mr. Thompson: I've just been informed that the applicants are not here. I guess we can go to the next case. I know they were planning on being here because the applicant sent me a picture an hour ago.

Chairman Clawson: Should we continue and see if they come late?

Mr. Thompson: We can just set it aside and go to the next case and take it up if they show. I don't think we can approve or deny without them here to present their case.

*\*\*Suspended discussion on Case 08-2020 due to applicants' absence*

Case 09-2020 – Larry Arlan / Owner – Request for a Variance to the rear yard build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3704 W. 119<sup>th</sup> Terrace. **\*\*Withdrawn Application\*\***

Case 10-2020 – Brian & Barbara King / Owners – Request for a Variance to the front yard build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 14004 Canterbury Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants wish to construct a 3' tall split rail fence along the front of the property, including a gate over the driveway, and around the side of an existing

pond. Two small sections of the fence have already been installed. An existing 6' tall fence on the front southeastern property line will be removed and replaced to match the split rail.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Was the 6' wrought iron fence permitted with a variance?

Mr. Thompson: No; it was probably approved by the Planning Department when the development went in. It was part of the development.

Chairman Clawson: Any other questions for staff? In that case, we'll hear from the applicants.

**Applicant Presentation:**

Brian and Barbara King, 14004 Canterbury Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. King: Thank you for your time tonight. Our reasons for being here are twofold. One is aesthetics. As Wade mentioned, we have an existing fence that is left of our driveway and goes  $\frac{3}{4}$  of the way but doesn't quite finish. There's nothing on the other side. We would like to make the front of the property look good and keep it with a farm or acreage-type look. Additionally, it will provide safety with the pond. We had an incident with one of our pets during the winter. We have an electric fence, but dogs can run through those pretty easily. She got stuck, and we had to call the Fire Department to get her out. If we can put up some sort of barrier with pets and kids running around, I think it makes sense. I appreciate your time in looking at this.

Chairman Clawson: This is a variance, so we have five factors we have to evaluate. The most problematic are Uniqueness and Hardship. Could you address those?

Mr. King: I think the main issue is safety. We have a rather large body of water that is unobstructed from a good portion of the property.

Chairman Clawson: What subdivision is this?

Mr. King: This is the Well Creek subdivision.

Chairman Clawson: Is your property similar in size to the other lots in the area?

Mr. King: I would say so, yes.

Chairman Clawson: How big is this lot?

Mr. King: It's about 2  $\frac{1}{2}$  acres.

Chairman Clawson: Are there other questions for the applicant?

Dr. Peppes: I'm looking at a picture with the iron fence. I would suspect this is the gate for entry. Is this the fence that is coming down?

Mr. Thompson: Currently, there is not a gate in front of the driveway. The fence that will hopefully show up on the monitor is in front of the house now. The fence that is coming down is to the south. It is not pictured. It is a 6' tall fence with brick posts that hold it up.

Dr. Peppes: What is the picture, then?

Mr. King: That's an example of fences and gates in our neighborhood and in the surrounding area.

Chairman Clawson: This property is a different situation than we're used to seeing with normal-sized lots, especially with large ponds on the property. As an applicant, you could probably make a case for Uniqueness due to the fact that you have this pond that you're trying to put a fence around.

Mr. King: Yes.

Chairman Clawson: Can you show where the proposed fence will go? It is the green line?

Mr. Thompson: Yes, the fence is in green; the yellow is the property line.

Chairman Clawson: The fence would go around the pond and then come down around what street?

Mr. King: Canterbury Street.

Chairman Clawson: It will go along Canterbury, then.

Mr. King: Yes.

Mr. Thompson: You can see that there's a street that T-intersects with their property. There is a stop sign, and I'm really surprised someone hasn't run that stop sign and taken that fence out yet.

Ms. Farrington: We're voting on a variance on the front build line, correct, and not to enclose the pond or any other area?

Mr. Thompson: That is correct; it is just the portion in front of the front build line.

Ms. Farrington: Can you show a picture of what the split rail fence looks like?

Mr. Thompson: (*Displays photo*) That fence is actually in place right now, and there is another section on the north side of the driveway. There's about 16 feet of fence in place right now.

Ms. Farrington: It's a fence that can be seen through, not a privacy fence.

Mr. Thompson: That is correct.

Chairman Clawson: The portion of the fence is what is along Canterbury.

Mr. Thompson: That is the only portion you need to approve. It is the portion in front of the front build line, which is 30 feet.

Chairman Clawson: How much would they have to move it back?

Mr. Thompson: If you don't grant the variance, they wouldn't be able to put the fence in front of the home.

Dr. Peppes: It would encroach on the lake, so the fence would be in the water?

Mr. Thompson: Probably not over there, but there would be a smaller portion that couldn't go beyond the front of the house. Even though it is a 30' build line, the fence cannot be built in front of the home. The front of the house is considerably behind the front build line.

Chairman Clawson: Any other questions for the applicant? Have you had any correspondence concerning this case?

Mr. Thompson: No, I haven't had any, either for or against.

Chairman Clawson: In this area, are there similar fences on other properties?

Mr. Thompson: Currently, there are not on that street. There are some on estate lots a couple streets over.

Chairman Clawson: You wouldn't happen to have a plan view of this area so I could see the adjacent lots?

Mr. Thompson: On that street, there are currently no other fences beyond the front of the home. There are some on Windsor, which is one street over, and there are some on Mission.

Mr. King: There's a fence down the street that's covered by trees.

Mr. Tomasic: Please be sure you're speaking into the microphone and that you're saying your name.

Mr. Dunn: I'm looking at Exhibit B, and I just wanted to make sure that I'm understanding. That wrought-iron fence picture is currently in the place where the split-rail fence would go?

Mr. King: That is correct.

Chairman Clawson: Taking out the current fence and putting in the split-rail fence is what this entails.

Mr. King: That is correct.

Chairman Clawson: Other questions for the applicant? Thank you. We will evaluate the five factors. We do that as a board and vote on each one. If we vote in the affirmative on all five of the factors, we can support a motion for approval. The first is Uniqueness of the Property.

Mr. Bussing: I would say this property is unique in the sense that it has a large body of water and the size. There are large lots in the area, but this is particularly large. With the pond on the property, it makes it unique in my view.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Ms. Farrington: It does not affect the adjacent property owners. It looks like the pond goes over two properties: this property and another that may have a similar case, but I don't see that any of this will impede anybody nearby.

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

Chairman Clawson: Hardship.

Dr. Peppes: I believe that it has been met because the front of the house is far behind the front build line, so there is no way to construct a fence by using the criteria that we usually use. In situations where there is no control, I feel it is a hardship.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that they feel the 3' split-rail fence will keep some people out. It probably won't keep animals out, and it is more aesthetic than anything else.

Mr. Dunn: I would just note that the criterion is whether it adversely affects it, and I think it's pretty clear that it does not negatively impact it.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I think it has been satisfied. It's a big, beautiful house and lot, clearly in line with the intent of the ordinance.

Dr. Peppes: I think the split-rail design will make a uniform, relaxed look around the property and get rid of the wrought-iron fence. If anything, it will add to it.

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

**A motion to approve Case 10-2020 – Brian & Barbara King / Owners – Request for a Variance to the front yard build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 14004 Canterbury Street – was made by Bussing; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Dr. Peppes, Bussing, Dunn, Farrington, Hawk.**

Mr. Thompson: Case 08-2020 is here now. I told them not to be here until 6:00 because I was planning on that other case that got continued to last a pretty long time.

Case 08-2020 – Manish & Amy Ketecha / Owners – Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.4(D) in an R-1 District for property commonly known as 12604 Granada Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to replace an existing, 4' tall wooden fence with the same height and style fence on the rear property line. The request is to allow for the construction of the portion beyond the rear build line.

Chairman Clawson: Does the board have any questions for staff?

Mr. Bussing: This is legal, nonconforming?

Mr. Thompson: Yes, sir.

Dr. Peppes: Could you put the picture back up?

Mr. Thompson: (*refers to photo*) The fence is in dire need of replacement or removal.

Mr. Bussing: There are fences along the other properties that are aligned with this fence?

Mr. Thompson: Yes, they are in line, and they will probably come before the board in the future for replacement as well.

Mr. Hawk: Who maintains the area between the wrought-iron fence and the wood fence? Is that the property owner?

Mr. Thompson: That is either going to be the City, or it could be a subdivision fence.

Chairman Clawson: Other questions for staff? We'll hear from the applicant.

### **Applicant Presentation**

Amy Ketecha, 12604 Granada Road, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Ketecha: Wade pretty much summed it up. We're just trying to replace the current fence on the exact same fence line. It will be in conformity with everyone else's fence. It is a basic 4' picket fence that you see everywhere.

Chairman Clawson: If this was not approved, they would have to move the fence from where?

Mr. Thompson: 30 feet from the property line.

Mrs. Ketecha: It essentially cuts the back yard in half.

Mr. Thompson: If the request is not approved, they would either have to remove the fence they have now or construct one that is right down the middle of their rear yard.

Mr. Bussing: Wade, can you give me some history? How did this whole series of fences get constructed along here? Was it part of the development when it was built that the Planning Commission approved? Were these legal fences when they were built?

Mr. Thompson: That, I don't know. There's a good chance they were just constructed when the house was being constructed, so they were just allowed.

Mrs. Ketecha: The homes that back up to Roe from our property all the way to 131<sup>st</sup> sit at the same fence line.

Mr. Thompson: I do have a copy of the permit issued in 1998 to Burge Fence. It was placed legally in its current spot.

Chairman Clawson: That was prior to this version of the Leawood Development Ordinance (LDO). As with the previous case, this is a variance. We have to evaluate the five factors. Uniqueness and Hardship can be difficult. Could you address those?

Mrs. Ketecha: I will say that something unique about our particular property is that it's right behind what amounts to an 8' wall there. We have young children, and it's sort of a safety thing as well. We have dogs and young children. We definitely want the fence. In addition to that, we have irrigation that runs throughout the back yard, so moving the fence involves a lot of extra expense as well. In addition to that, it would actually make it nonconforming to all the other houses along Roe. Our neighbor is here, and our fences line up with each other. He is in agreement.

Chairman Clawson: Hardship, you touched on. You have vegetation and irrigation lines. Are there questions for the applicant? Your neighbor is here. Would you like to speak on behalf of this application?

Brett Dicus, 12600 Granada, appeared before the BZA and made the following comments:

Mr. Dicus: I live on the north side of Amy. We share an identical fence line along Roe. We're looking to the future ourselves and replacing our fence in a couple years. We would be presented with similar hardship in that irrigation. We have a lot more landscaping and large trees that would require removal in order to the fence line in 15 feet. When we originally bought the home and looked at the property line, we were unaware of this easement or the 15 feet in question. When she applied for a permit, that was the first time we were made aware of that limitation on the use of the space. We bought the property as is with all the fence and vegetation there. I'm here to both learn and support our effort to more or less replace the fence in line because any deviation from that line would require a lot of overhaul to the land, the landscaping, and the irrigation system. We, too, would frown upon losing 15 feet of that backyard space that we currently use for animal and children access. At this point, as a neighbor, I support the current line as is.

Chairman Clawson: Is there an easement through here?

Mr. Thompson: I don't believe so.

Mr. Dicus: In review of the plat, our property line is on the fence line now. We have been trying to learn about what we're in breach of and what the new rules outline as far as why a fence can't be on the property line.

Mr. Thompson: This is considered a through lot, so you basically have a front yard in your back yard. The LDO prohibits fences beyond that.

Mr. Dicus: Again, I just support the notion that all the homes from Tomahawk Creek south to 131<sup>st</sup> have a fence allowed on the same line.

Chairman Clawson: Are there any other questions? We have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Dunn: I'd just point out that we've had this discussion regarding these through lots many times before. I'm not quite certain if that makes it unique, but in my mind, it's getting to the point where it comes close to, if not satisfying, this criterion.

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

Chairman Clawson: Rights of Adjacent Property Owners. Wade, you have received no calls or complaints; is that correct?

Mr. Thompson: That is correct.

Chairman Clawson: Any other comments by the board?

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

Chairman Clawson: Hardship.

Dr. Peppes: I'd like to go back to what Mr. Dunn has said. We've discussed through lots on many occasions with not being able to satisfy the LDO because it is a through lot. Plus, now that we find out that all those fences were legal, nonconforming, I think it would be a hardship to make them move that fence halfway back in their back yard.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Bussing: I think it's clear that it is no impacted.

Mr. Hawk: It also provides protection for animals and children.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: This does not oppose the general spirit and intent of the LDO; in fact, it replaces a fence that is legal, nonconforming and has been there for many years. It meets the criterion.

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

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

**A motion to approve Case 08-2020 – Manish & Amy Ketecha / Owners – Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.4(D) in an R-1 District for property commonly known as 12604 Granada Road – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Dr. Peppes, Bussing, Dunn, Farrington, Hawk.**

Case 11-2020 – Paul Minto; Patrick & Amanda Dunn / Owners – Request for a Variance to the Maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 11729 Manor Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners would like to construct a 1,258 sq. ft. addition to the south side of the home. The current home is 5,158 square feet, and it already exceeds the maximum allowed by 898 square feet. A variance for the addition would put the home at 2,156 square feet over what is permitted.

Chairman Clawson: When this home was constructed, I presume there was not a limitation on size of the house versus the lot size.

Mr. Thompson: That is correct. Due to all the teardown/rebuilds, the LDO was changed to include this rule, which came into effect after this home was already constructed.

Chairman Clawson: Are there questions for staff?

Mr. Bussing: On the staff comments on the application on Page 2, it indicates that the area calculation for an irregularly shaped lot produces a significantly undersized maximum house size, so much so the existing home is deemed impermissible. Can you explain that?

Mr. Thompson: That's filled out by the applicant. He would have to answer that.

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

**Applicant Presentation:**

Patrick Dunn, 11729 Manor Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Dunn: Before starting, I just wanted to take a moment to thank the entire BZA committee for all the hard work you do. I'm sure it goes unappreciated for the many volunteer hours, and also to the professional staff of Leawood, who have been really exceptional during this process. Our family is a young family. Our kids are 12, 9, 4, and 2. My wife has been hunting for a house for a long time and finally found this house on a cul de sac. We currently have been living on State Line Road about 15 minutes north. It has become terrifying with the possibility of a kid running out the front door and possibly getting run over by a car or something else. We're really excited about this house. When we talked with both realtors as we were buying it, both our agent and the sellers' agent said we wouldn't have any problem doing the addition and that the neighbors next door have a 2,500 sq. ft. addition. We thought it would be great. We'd move in and get it started right away. Then we had the unforeseen delays with the pandemic and other elements, too. We're really excited about hopefully getting this started. I want to turn over to Paul Minto with Urban Prairie Collaboration. He's an architect.

Paul Minto, Urban Prairie Architectural Collaborative, 4523 Mercer, Kansas City, MO, appeared before the Board of Zoning appeals and made the following comments:

Mr. Minto: I think the last time I was here was when we did the Red Door Grill. Pat was right; staff has been really good. I'm not here to shoot the messenger; I'm here to talk about the zoning. *(displays an image)* A lot of this case is going to talk about the uniqueness of the property. I always like to return to the original document, which is your zoning ordinance, and look at the intent. In the end, what we're trying to do is what's best for the city and community. The zoning ordinance talks about characteristics of density and then the architectural character of a neighborhood in general, and trying to keep with the spirit and intent of that zoning is where we're going to go. One of the things that was pretty interesting is we're not talking about setbacks, height, bulk, or lot area coverage. We're talking about Floor Area Ratio (F.A.R.), which is density. There's a form that works, but then you take the Floor Area Ratio and look at some of the additional elements of the lot that will give you an increase, and you get an increase if you exceed certain widths and depths. In this particular instance, it is a pretty uniquely shaped property, and it requires the formula for a non-rectangular property. First, the width is established. It is measured at the front yard setback. In this instance, it's 35 feet. We come up with just about 87 square feet of front. This is where it gets even more interesting. You take the formula for the lot depth. When you have a lot this uniquely shaped, you get a formula. They say to go to the front property line, go to the midpoint of that line, span out from that point, go to the nearest point on the back property line, and that establishes one dimension. From that same center point, go to the farthest point on the property, and that establishes a second distance. We took those two distances, added them up, and divided by 2. That gave us the technical depth of our lot. We then took that square footage and put it into the formula. That is a significant calculation that ends up with the 4,260, which is the number Wade shared with us, realizing that using this formula today on a house that was built over 30 years makes that house basically nonconforming. Somebody changed the rules somehow through the deal and has basically down-zoned the property. Wade obviously has a better perspective on that than I do. What's really interesting is if you take a similar square footage of property and do it

as a rectangular, you end up with 5,418 square feet, and 127% of that would be allowed if the lot were simply a different shape. That's just a formula. It's not Wade's problem, and Travis was very helpful in helping us confirm that these calculations were right. They're being penalized in "density" simply by the shape of their yard. If the intent of the code is to make comparable density, it is a curious formula. The more unique the shape of your property, the more this formula is going to take you away from what would normally fit in. They're not asking for a side yard setback or a front yard setback. They're not asking for any deviation from height or anything like that. If you look at that theoretical property with its normal setbacks and calculate the area, you get a little under 10,000 square feet of buildable area. Then, you look at their property and use the same determination and actually end up with a larger yard. In theory, aside from the density of the house, we actually have more area to put it. We actually have a bigger footprint that is allowable according to the city, but to do this tiny house, that's a result of the formula. It's an interesting conundrum. Again, we have 176 more square feet of buildable area on their site than they would on a square one, and yet, they're being penalized significantly for that. Again, the formula is there; I'm not challenging that. I just don't think it's going to get us where the end is. In 2016, the AIMS map shows their house, and then in 2018, there was an addition on the neighbor's house. Somehow, the process has been evolving over time, allowing these houses to increase in what seems to be a pretty reasonable way. In fact, if you look at that house and don't use the city's formula for the nonrectangular lot and just basically do Floor Area Ratio, which is how much house on how big of a lot, although their lot is a couple square feet larger, their Floor Area Ratio is .3. If you take the Dunns' house and add on the square footage they're asking for, although the lot is a bit smaller, their Floor Area Ratio is actually lower than the neighbors'. Again, when we're trying to determine the intent and if this keeps with the spirit of the neighborhood, I would contend that it does that quite nicely in terms of the architectural character. I have the renderings of the elevations. It's a quite handsome home. It's been well maintained. Pat didn't tell you this, but I believe it sat on the market for almost two years. It suffers what I call the "Old House Syndrome." A house built 30 years ago doesn't afford all the amenities that people look for today, particularly with the Covid stuff. Having mom, dad, kids, and multi generations in a house, it demands different amenities than it did 30 years ago. In fact, it's a handsome house, but it's really too small. It doesn't have a master bedroom on the downstairs floor, and that's the biggest part of our addition. It has bedrooms upstairs. Pat didn't tell you he's had several foot surgeries. Again, they went in thinking it was a great house in a great area but with no bedroom on the main floor. Having one extends the life of the family in the house and makes it a better asset in the community. It makes it comparable to the neighbors' houses. The addition will stairstep on to the back. There's a little window seat that we'll remove and extend the ridgeline out a bit and do a master suite downstairs as well as expand a bedroom upstairs. The reason I'm showing this is your ordinance is quite good. You saw how the house stairsteps and gets shorter as it gets to the property line, both in the footprint and elevation. In terms of trying to keep with spirit and intent and working with neighbors, I think Pat has 2-3 letters of support. They flew through the Hallbrook Association review. I believe that's all part of the record. Nobody is upset with it. In fact, it seems to be doing a pretty good job. I'll end on a photo and just summarize. This is one of the smallest houses. The neighbors are excited because the house sat empty for two years, and there was rumor it

was going to be rented. With Pat and his family moving in, there is a long-term neighbor who will invest in the property and bring it up to the rate and speed of the other properties. They're all happy about it. If you look at these properties, you'll see a couple houses with significant additions in the last four years. Regarding density, Wade's numbers are exactly right. If you go by the formula, that's what the math tells you. If you look at how that number was derived, it seems to be detrimental to the owner. I don't think that was truly the intent. If you look at it compared to the neighbors' houses, what he is asking to do is to become compatible with what's going on out there today in density and architectural character. There was a question about how that calculation was.

Mr. Bussing: Thank you very much. That was excellent.

Mr. Minto: I'm sure there are questions.

Chairman Clawson: Are there questions for the architect?

Mr. Bussing: I just want to make sure I understand. This addition does not require any height variances, any setback variances, just the Floor Area Ratio.

Mr. Minto: That is the only thing we're asking for. I'll confirm with Wade, but I believe that's where we got stuck.

Mr. Thompson: Actually, it's the maximum square footage allowed.

Mr. Minto: But it wasn't setbacks, height, or any of the other things.

Mr. Thompson: That is correct. They meet all the other requirements.

Chairman Clawson: Are there other questions for the applicant?

Mr. Bussing: That's unusual, isn't it, Wade? My recollection is when we're dealing with additions to homes like this, people are asking for setback variances. It's rare that we see a case like this, where it's simply a density issue.

Mr. Thompson: Correct.

Chairman Clawson: We've seen cases where it was strictly gross square footage.

Mr. Thompson: That's correct. We get them a couple times a year, especially with the teardown/rebuilds up north.

Chairman Clawson: In general, there is a fudge factor that is allowed within the LDO for the gross square footage.

Mr. Thompson: There is an exception if it's less than 20%, but since this exceeds the 20%, the variance comes in.

Dr. Peppes: Is it because this lot is such a different dimension and smaller than the adjacent lots that the size is what it is?

Mr. Thompson: That is part of it. It is an odd-shaped lot, and they are being penalized because of the shape. If it were a perfectly rectangular lot, they could build a bigger home, but it would still require a variance because of the sheer size of the addition and since it already exceeds what's permitted.

Chairman Clawson: You said in the writeup that 4,260 would be allowable. Does that include the 20%?

Mr. Thompson: No, if they were to build a new home today, 4,260 is what they could pull a permit for on this lot. If they wanted to build a home bigger than that, if it was less than 20%, they would qualify for an exception. Anything over the 20% requires a variance.

Chairman Clawson: On this lot, they could build 4,260. They could come to the BZA and request an additional 20%.

Mr. Thompson: That is correct.

Chairman Clawson: That would be another 800 square feet, and that would require an exception. Other questions for the applicant? In that case, we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Bussing: I think the lot is unique in both shape and size compared the lots in the immediate area. That makes it unique.

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

Chairman Clawson: Rights of Adjacent Property Owners. Staff noted that calls were made; letters went out, and you receive two in support?

Mr. Thompson: I have three letters included in the Staff Report. No one called and had a negative statement about the request.

Mr. Hawk: This HOA they're involved in is one of the most difficult to get things through. I'm thinking if they can get an application through this process, they've obviously done their homework.

Chairman Clawson: Have they been in the loop?

Mr. Thompson: Yes, and a letter from them, approving of the plan, is in the packet.

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

Chairman Clawson: Hardship.

Dr. Peppes: This is really tough for me right now because we're dealing with a legal, nonconforming house, but we still have certain LDO limitations on it. It is an irregular lot and a lot that is smaller than those adjacent. Well, these limitations are there for a reason. When you've got a smaller lot, they want to see that the density stays within the size of the lot. The aerial pictures show all the adjacent homes with lots not of similar size or shape but of larger size and shape. I'm rambling now, but I'm trying to convince myself that it has been met. I think if I could use the phrase that Mr. Dunn used earlier, this is one of those situations where we've seen these cases before, and all the applicant is trying to do is better the things that are there. Sometimes, the process keeps them from it. Let's go on ahead, and I believe that it has been met.

Mr. Hawk: Most of the homes now of this size do have a bedroom on the first floor. On a personal note, whether these folks live here now or another family 20 years from now, they're going to be looking for a bedroom on the first floor. To deny them this opportunity would be an injustice.

Mr. Dunn: I agree with both members. Hardship is difficult to get a handle on, but it seems to me that comparing them to their neighbors, they would have a significant hardship building a home that is consistent with the other homes around there, quite frankly.

Chairman Clawson: As I remember back in previous cases regarding gross square footage, we've been pretty strict on them. I can think of at least two in the past 3-4 years where we put our foot down. It makes me a little uncomfortable on a case like this that we're stepping outside of the bounds of our typical stance on these kinds of cases. Any other comments?

Mr. Bussing: I agree with your perception; however, I think what persuades me that this is different than those other cases you referenced is the small nature of the size of the lot and the unique dimensions of the lot. I think many of those cases you referenced earlier were bigger lots, more rectangular lots, teardowns with replacing a smaller house with a larger house. I agree that this pushes that boundary, but I see this particular lot as so unique in this neighborhood, given its size and shape. I'm also struck by the fact that they're not requesting any variances to the setbacks, to massing, to height. It will fit right in as well as I can tell.

Ms. Farrington: I agree with Gary. When we look back at some of the cases we haven't passed in the past due to this Floor Area Ratio or exceeding maximum square footage, a lot of those houses were in North Leawood where they had teardowns and were building significantly larger homes next to ranch-style homes that changed the whole unique character of the area. In this situation, I think this lot happens to be the smallest lot in the

cul de sac of the Hallbrook neighborhood. The adjacent homes have had additions, and their square footage to begin with is quite larger. It's kind of the reverse of what we have faced in many of the cases. In this unique situation, I think going against the grain works because it fits the neighborhood and fits supporting improving upon that neighborhood specifically.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial of this requests would not affect this factor.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: I note that staff's comments say that the intent of the ordinance is to not only protect the character of the neighborhood but to ensure enough green space to reduce water runoff. Mr. Thompson, I seem to recall that specific runoff studies are done when these applications are made to ensure there's no runoff.

Mr. Thompson: They are. This one did pass.

Mr. Bussing: I think Spirit and Intent has been satisfied.

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

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

**A motion to approve Case 11-2020 – Paul Minto; Patrick & Amanda Dunn / Owners – Request for a Variance to the Maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.4(D) in an RP-1 District for property commonly known as 11729 Manor Road – was made by Hawk; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Dr. Peppes, Bussing, Dunn, Farrington, Hawk.**

Case 12-2020 – Katie & Jeff Dyer / Owners – Request for an exception to the side yard setback for the placement of deck in accordance with the LDO, Section 16-2-5.3 in an R-1 District for property commonly known as 2024 W. 96<sup>th</sup> Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to replace a deck on the rear of the home that has been in place for 20+ years. The deck is 13.8 feet from the east property line. An exception for 1.2 feet is necessary to reconstruct the deck as designed.

Chairman Clawson: Are there questions for staff concerning this case? We'll hear from the applicant.

**Applicant Presentation:**

Katie Dyer, 2024 W. 96<sup>th</sup> Street, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Dyer: We basically just want to rebuild a deck in the same spot our existing deck is in. We'll move it 6 inches to it matches the front setback line so we don't have to go in several feet on one side.

Chairman Clawson: Do we have a plan view that we could look at? The deck is inset a little bit?

Mr. Thompson: Yes, sir.

Chairman Clawson: Are there questions for the applicant? This is a fairly straightforward case. Any questions? Have there been any calls or letters?

Mr. Thompson: I haven't heard from any of the neighbors, either for or against.

Chairman Clawson: Are there questions? Is there a motion?

**A motion to approve Case 12-2020 – Katie & Jeff Dyer / Owners – Request for an exception to the side yard setback for the placement of deck in accordance with the LDO, Section 16-2-5.3 in an R-1 District for property commonly known as 2024 W. 96<sup>th</sup> Street – was made by Dr. Peppes; seconded by Bussing. Motion carried with a unanimous roll-call vote of 5-0. For: Dr. Peppes, Bussing, Dunn, Farrington, Hawk.**

*MEETING ADJOURNED.*