

**City of Leawood
Board of Zoning Appeals Minutes
July 22, 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 July 22, 2020 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Hawk

STAFF PRESENT: Thompson, Tomasic, Torrez

MEETING STATEMENT:

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 members appearing remotely, and City Hall is closed to the public.

The meeting is being livestreamed on YouTube and the public can access the livestream by going to www.leawood.org for the live link.

Any member of the public that wishes to make public comments may do so in writing prior to the meeting or remotely using the Zoom media format. Those wishing to share public comments remotely must register with Wade Thompson, by calling 913-663-9173 or emailing wadet@leawood.org on or before Friday, July 17th at 5:00 p.m. 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. Written public comments received at least 24 hours prior to the meeting will be distributed to members of the Board of Zoning Appeals.

Electronic copies of tonight's agenda are available on the City's website at www.Leawood.org under Government / Board of Zoning Appeals / Agenda & 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.

APPROVAL OF MINUTES:

Approval of minutes from the June 24, 2020 Board of Zoning Appeals meeting.

A motion to approve the minutes from the June 24, 2020 Board of Zoning Appeals meeting was made by Bussing; seconded by Dunn. Motion carried with a unanimous roll-call vote of 4-0. For: Munson, Dunn, Farrington, and Bussing (Dr. Peppes was experiencing technical difficulties)

Chairman Clawson: We have quite a few cases tonight. I would like the applicants to try to limit their presentation to ten minutes if possible. Wade will keep track of time.

OLD BUSINESS:

Case 05-2020 Ambassador Construction Co; Tim & Elin Murphy/Owners APPEAL OF AMINISTRATIVE DECISSION - Request to consider an Appeal of 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. 87th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant and property owners would like to keep the unapproved color of shingle that has been installed on the majority of the home. This color was denied by a previous administrator in 2002.

Chairman Clawson: Is Travis here? Do you want to make a statement before we hear from the applicant?

Travis Torrez, City of Leawood Building Official, appeared and made the following comments:

Mr. Torrez: The original application was submitted, and they applied for concrete tile. It was discovered in December, 2019 by an inspector that they had put on the Black Pearl. They applied for the material after the fact. It was previously denied under another administration. They were allowed to reapply, and it was denied again, based in part because it doesn't meet the criteria. It doesn't have the five color blend granules, which they have readily admitted it doesn't.

Chairman Clawson: Are there questions for Travis or Wade? In that case, the applicant may make their presentation.

Applicant Presentation:

Greg Musil, Rause Frets Law Firm, 5250 W. 116th Place, appeared before the Board of Zoning Appeals on behalf of the applicant and made the following comments:

Mr. Musil: Available for questions are Mr. Keith Eymann of Ambassador Construction and Rich Henrix with Imperial Roofing, who installed the Certainty Grand Manor Black Pearl shingles that are at issue here. You're asked to review a new redial of the application to have the Black Pearl shingle approved within the City of Leawood's approved roofing materials. We have no record of what was denied in 2002 or why. What was done this time was done because it was denied before and it wasn't going to be approved again. This appeal to the BZA was expressly authorized by the Leawood Development Ordinance (LDO). The Planning Director is obligated to determine if a roofing material meets the aesthetic, safety, and performance standards of the LDO. There is no issue here tonight about safety or performance; the question is about color. The house had Black Pearl shingles installed before they sought approval of it. That is not the way we should have done it. Both Mr. Eymann and Mr. Henrix regret that decision because they now look at a \$65,000 tear-off and re-roof with something approved if this appeal isn't successful. What we know tonight is if we had appealed it before ever installing the roof, it still would have been denied based on what we have been told by staff and what Mr. Torres just told you. I want to confirm that the members received the packet of materials.

Mr. Thompson: Yes, the members were given the additional pictures.

Mr. Musil: Thank you. One of the disappointments of Covid is the scanned photographs you have are not nearly as effective or crisp as the printed photographs we would have liked to hand out. Grand Manor Black Pearl is not some outlier in color or performance. The city has already approved a number of Certain Teed Grand Manor shingles; Mr. Coleman simply won't approve the Black Pearl. What is interesting is that it is virtually indistinguishable from two shingles that are already on the approved list: GAF Timberline Charcoal and Malarkey Black Oak, both of which have the same dark black color as the Black Pearl. You've seen pictures of those in the materials I've sent, and we'll look at those again. Both of those shingles are approved. The Staff Report asks why we didn't just use one of the approved colors on since they're approved since they're indistinguishable. The answer is simple: City of Leawood cannot arbitrarily discriminate against a particular manufacturer if the colors meet the aesthetic test set forth in the LDO, which are that it's compatible with other roofs in Leawood and is aesthetically similar to weathered shakes, slate, or tile, which this is. The second point is that Grand Manor is compatible with shingles already in Leawood. We already have houses with the Timberline Charcoal and Malarkey Black Oak. There's no reason an indistinguishable color by another manufacturer shouldn't be allowed as well. The denial was arbitrary and not based on any good reasons. The new justification that is in the Staff Report, which was not told to anybody when the denial was made several months ago, is that the LDO requires a laminated shingle to have five color blend granules. The Black Pearl does not have five color blend granules. Neither does the Timberline Charcoal, Malarkey Black Oak or a number of other shingles that have been approved and are on the approved list. Once again, if you are going to discriminate against the Grand Manor Black Pearl shingle because it doesn't have five granules, then you must also disapprove of shingles that have been on your approved list and have been used in Leawood for years. We have no quarrel with those shingles or those manufacturers; they're good products that perform well, but

you cannot discriminate against a particular manufacturer when the color is indistinguishable and it meets all the other performance standards and has as many color granules as the ones that are already approved. I put in my materials that standards that are in the LDO: to meet the aesthetics, safety, and performance. The shingle fully meets those. To deny it is not only arbitrarily discriminatory, but it would also require the tearing off of a brand new roof that is allowed otherwise in color schemes and manufacturers in Leawood in order to replace with an approved roof shingle that would be the same number and same number of granules. That doesn't make any sense. I would like to share my screen just a moment to walk through and get to the point where it shows the colors because I think it's important. (*Shares screen.*) I've highlighted the shingles that do not have five granules but that are approved. When we get to the pictures, you'll see the Black Pearl on the left, which staff will not approve; Timberline Charcoal in the middle, which is already approved and installed on roofs; and the Malarkey Black Oak on the right, which is already approved and installed on roofs. Those are indistinguishable. In fact, the Black Pearl is less black and less dark than the others. I wish you could see the prints of those. We also showed a number of houses, including the house at issue, another house nearby that has an all-black slate roof, and a house with black solar panels. We're not just making up the number of color granules. We sent a memo from Robert Jenkins, who has spent 40 years in the roofing business. He certainly is a Certain Teed employee, so he would like to see his product approved. He has examined Black Oak and Charcoal and has identified those as not having five granules. Again, all we're asking for is to be treated the same way under your ordinance that Timberline Charcoal and Malarkey Black Oak are. It's a very simple request. We would stand for questions.

Mr. Bussing: Always a pleasure to see you. I have three points I want to make. First, you indicated the denial of the roofing materials was arbitrary and not for good reason. That doesn't seem to fly in that I believe the denial was made because the roof was not in accordance with the permit that was drawn, and the roof was not approved by City of Leawood. I think the denial was appropriate. Secondly, issues of roofing and building materials, including compatibility of materials not on Leawood's list with the materials that are the list, appearance, sustainability are all under the purview of the Planning Commission. I don't believe this body has the authority to address any of those issues. My third point is that the board is here to hear an appeal to determine if there has been an error in some order, requirement, decision, or determination made by an officer of the city. I think that's the narrowness of our decision. Has there been an error committed with regard to this particular decision? I, for one, don't see that there has been an error. Thank you.

Mr. Musil: I would ask Ms. Tomasic to weigh in as well. In the LDO, the final determination as to aesthetic, safety, and performance as set forth in the ordinance or for the Planning Director, and a decision made by the Director of Planning may be appealed to the City of Leawood Board of Zoning Appeals. I believe this is absolutely in the right place, and I think Mr. Thompson and Mr. Torres would agree, which is why we're on the agenda. This is not left up to the Planning Commission; it is left up to the BZA to determine whether or not the Director of Planning, in approving a roofing product,

complied with the ordinance. I appreciate the points you made, but I think we're at the right place, and you have the authority to do this under the LDO.

Mr. Dunn: Since this is not a variance or exception, I was curious about our standard for review. Member Bussing has suggested that our standard of review is whether there was an error made by the administrator in his determination. Mr. Musil, you have said that our standard of review is another wording of this. Can you clear up what our standard of review is? We're not an architectural review panel. We're not here to determine whether we think a particular thing is a good or bad idea; our job is to determine whether it falls within the criteria set forth in our ordinance and whether it meets the standard of review that is applicable. That is why I'm curious. Obviously, we could debate a number of different roofing materials that haven't been approved by the city. Frankly, it looked pretty nice to me. What is our standard of review? Mr. Musil, could you state it as best you can, and then could our staff confirm?

Mr. Musil: My understanding, based on discussions with staff, are in question as well. I didn't know what the standard of review was, either. You have the authority and obligation to look at the ordinance, look at the roofing material being requested because it has been requested and denied, and determine as a BZA whether it meets the aesthetic requirements of the code. It has not been deemed to not meet the performance or safety standards. I think you have plenty of authority to apply the judgment of the BZA through a majority vote as to whether or not the color is within the aesthetic bounds of the ordinance. I know you normally don't decide what the ordinance is supposed to mean; you decide whether it's been applied right. In this case, with an appeal of the ordinance, that's how I see it.

Ms. Tomasic: I would agree with Mr. Musil that the BZA is reviewing the determination by the Director of Planning that the roofing product did not meet both the city's aesthetic and safety performance standards as set forth in the code. Where I disagree is, the aesthetic standard set aside, I think there is an issue with the safety and performance standards because that is where the minimum of the five color blend of granules is listed as a requirement. I would disagree on which provision is lacking. Even if the aesthetic standard is met, my understanding is the safety and performance standard is what is not met because it does not meet the minimum of five color blend granules. The provision of the code that member Bussing read is my understanding of the standard of review. You are reviewing when there is an error in the order, requirement, decision, or determination made by an officer. You are determining whether the Director of Planning made that error in deciding that this roofing product does not meet those standards.

Mr. Torrez: I'll speak to the city's process. When someone is applying for new roofing material, they submit an application. On the application, it basically has an evaluation report. Each box must be checked, including minimum counts per square, five color blend granules. The director is definitely evaluating the five color blend granules on each product. They're saying the products on the list don't meet this, which is a sidebar. He has provided a board and houses where this shingle is put on that he reviews to determine

whether it meets the requirements listed in the LDO. If it doesn't check one of the boxes, it is denied.

Chairman Clawson: I do have a question concerning the memorandum written by Robert Jenkins. This is the memo that lists five different manufacturers, product names, and colors. It indicates that four of these are approved, but four do not meet the requirement of the five color blend granules. Can this be confirmed?

Mr. Torrez: That was evaluated with each of those materials by the director. We're provided a board. I don't know what criteria he's using to say that it doesn't meet the five color blend granules. Some of the darker materials may have a brown or green. The director is looking at all of those aspects when he is evaluating it. He has asked me if I believe it has the five color granules.

Chairman Clawson: If an application is made for a specific product, is there a checkbox for five color granules?

Mr. Torrez: I'd have to look to see if that is one of the boxes that gets checked, but it is one of the criteria that is considered.

Chairman Clawson: It really is just an aesthetic consideration, correct?

Mr. Torrez: I believe so.

Erik Henrix, Imperial Roofing, appeared and made the following comments:

Mr. Henrix: I just wanted to weigh in regarding color granules. That would not affect the safety and performance of a shingle. The safety of the shingle would be determined by the shingles' ability to remain on the roof in extreme winds. All of these shingles have met the safety guidelines. Granule color has nothing to do with the performance of a shingle.

Mr. Musil: I agree with Ashley; the color of granules is under the section that refers to safety and performance standards, but that doesn't mean it deals with safety and performance; it is an aesthetic that determines what the color will look like from the street. The reason we brought up the other shingles is somebody has not reviewed those. I don't know if they've reviewed them since we brought it up. If there are other approved shingles with less than five color granules, then either the ordinance ought to be changed, or everyone ought to be treated equally. That's all we're asking.

Ms. Farrington: They're coming to us as an appeal, but in the LDO, our job on this board is to uphold the LDO and the requirements of it, which has this list of approved colors and certain types of roofing. That is one aspect. The thing that I'm having trouble with is they had an application that was not approved in 2002, according to the notes we were given, and then it was applied again recently and denied; yet, the action was to go ahead and install an unapproved color. Am I understanding the one that was approved was not

available, and the action taken was to disregard that and move on? What I see is doing something and then asking for forgiveness later, which doesn't follow the LDO. In the LDO is a process for status of application, and it includes various items to be submitted for approval. In this case, it wasn't approved, and a change was made without coming back in to be reviewed. Here we are, after the fact, having to look at an issue that could have been resolved prior to dealing with a roof that has already been installed that is valued at \$60,000. To me, that falls on the contractor. How many roofs have you installed in Leawood, and do you typically get approval for the color? If you have to have a color change, wouldn't you go back? Can anybody answer to that?

Mr. Musil: I'm certainly not endorsing putting an unapproved roof on. As I indicated, Mr. Henrix and Mr. Eymann don't, either. They did it in this case, believing that color was appropriate. We've never been told exactly why it was denied, and we're appealing a specific decision, which the BZA has the authority to do. Whether we had done it before we put it on or after, we would be in the exact same situation, except I understand when the BZA or City Council is upset about somebody asking for forgiveness instead of permission. I can't do anything except apologize for that, but we would be in the exact same spot if they had applied for this last October.

Mr. Henrix: The fact is we do lots of roofing in Leawood, and unfortunately, when I was told to order the Black Pearl Grand Manor, I knew that Grand Manor itself was allowed; I honestly did not run down through and look to see if the color was approved. I knew Grand Manor was the very upper end of composition shingles. I did not realize, with City Hall and the Justice Center having black slate, that it would not be allowed. The whole scenario for Black Pearl is to emulate a black slate roof. I would have never thought that it was not approved.

Chairman Clawson: Are there additional questions?

Mr. Munson: Back in the '90s when I was on the Planning Commission, asphalt shingles weren't even allowed at that time. It had to be cedar or slate or something like that. Due to numerous requests by manufacturers and their representatives to allow asphalt shingles, a series of meetings were held that stretched out over several months and years. Finally, the city developed the current requirements for shingles. I'm confirming the information Mr. Bussing has already put out about the situation. My feeling is if we are to have different shingles that are not in the current LDO requirements, they should go through the same process that the other manufacturers did by going through the Planning Commission to get their particular product approved. I think the applicant has created the hardship. It is interesting to hear their views, but I don't think we can try to override the decisions our staff has made, based on what the LDO tells them to do.

Mr. Dunn: I still don't know what the standard of review is for us. Is it stated somewhere? If the only review we have is if it meets the written criteria in the code, I don't even know why we're having a hearing because it has three granules, and we require five. If our standard of review allows us to fully interpret the code and say

whether this material meets the aesthetic criteria for roofing materials in Leawood, it's an entirely different question. I need to know what I'm being asked to do.

Chairman Clawson: In my opinion, our action today is to review the decision that was made by the planning official and make a determination if his evaluation of this material was correct in accordance with the LDO. Would you concur with that, Wade?

Mr. Thompson: Yes.

Mr. Torrez: I would agree. Staff is looking at the LDO criteria when they're evaluating roof material applications. This was denied based on the criteria in the LDO.

Chairman Clawson: Did the Planning Commission review this?

Mr. Torrez: No, per the LDO requirements, the director would approve or deny based on the criteria that the Planning Commission and City Council laid out several years ago.

Chairman Clawson: If a manufacturer submits something to be approved by the city, the planning official makes that decision?

Mr. Torrez: For material application, yes. If someone wanted a new material that is not on the list or wanted a change in criteria requirements to get a material on the list, it would need to go through the planning process. Otherwise, the criteria are in the LDO, and the planning official makes the decision.

Mr. Henrix: One of the things we learned in going through all this is the manufacturers have changed the way they apply their granules and the number of granules. The number of granules changed over the last few years. If this was reviewed and denied in 2002, we're talking about an 18-year-old review situation. Everything is constantly changing. The way the manufacturers pick their colors and the types of granules are more than likely different than what they were using in 2002.

Mr. Munson: I would suggest that the information they presented would be hearsay at this level, and if they wish to bring that attention to the Planning Commission and City Council, they should do so in a formal manner.

Chairman Clawson: I assume you're referring to the information regarding the five different products and the number of granules.

Mr. Munson: That, too, but also I just wanted to make the observation that if someone is going to present evidence tonight, that it be backed up and presented to the appropriate bodies.

Mr. Musil: If I could make one minute of closing comments, I'd like to. Under Section 16-2-10.3(d)5, the Planning Director makes the determination as to whether or not a new product should be approved. This body then reviews that process. There have been

approvals of products with less than five granules. In other words, they did not meet your standard. With all due respect, a lot of stuff you do here is hearsay. We have a signed memorandum from anyone who would qualify as an expert in any court in America. They've been approved. The Planning Director has denied this one. No one appeals if they're approved, so those people with less than five granules are out there selling and installing roofs all over Leawood, and this manufacturer with this particular shingle is being denied. You have the power to fix that tonight and treat everybody equally. I hope you'll do so. Thank you for your time and service.

Chairman Clawson: I drove by and looked at this roof today, and in that area, there are a lot of dark roofs. I don't know what kind of shingles they were or what the manufacturers were, but they look similar to this one. I understand the issues concerning the number of granules in this case, but we have to act on this tonight. Is there anyone else that wishes to speak on behalf of this case?

Mr. Dunn: Looking at the LDO, I note that in Section 16-2-10.3(c)4, it says that the Director of Planning or designee shall determine whether a new roofing material product meets both the city's aesthetic and safety and performance standards set forth in this ordinance. Then, it states that a decision made by the Director of Planning may be appealed to the City of Leawood Board of Zoning Appeals. It does not further state what our charge is in doing that. By default, it would appear to me that our charge is to review whether the new roofing product meets the city's aesthetic, safety, and performance standards set forth in the ordinance, which is the decision made by the Director of Planning. This is the reason I've had the question I had because if we are here to simply say that he correctly decided that it only had three granules rather than five, we really have no decision to make. If we are here to determine whether the Director of Planning correctly determined whether the roofing materials meets the city's aesthetic, safety, and performance standards as set forth in the ordinance, I think it's a different question. I don't see anything to indicate that this material does not meet our safety, performance, and aesthetic standards set forth in the ordinance.

Chairman Clawson: Is there a motion?

A motion to deny Case 05-2020 Ambassador Construction Co; Tim & Elin Murphy/Owners APPEAL OF AMINISTRATIVE DECISSION - Request to consider an Appeal of 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. 87th Street – was made by Munson; seconded by Bussing. Motion carried with a vote of 4-1. For: Bussing, Dr. Peppes, Farrington, Munson. Opposed: Dunn

NEW BUSINESS:

Case 13-2020 Brian Shalton/Owner - Request for a Variance to the front build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 12008 Overbrook Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant wants to replace a legal, nonconforming, 6' tall wooden privacy fence that has been in place since 1998. The fence would be placed 6.11 feet from the front property line and 17 feet from the curb.

Chairman Clawson: Are there any questions for staff? There have been two fences in the same spot?

Mr. Thompson: The fence is currently there.

Chairman Clawson: Questions for staff? Is the applicant available?

Applicant Presentation:

Brian Shalton, 12008 Overbrook Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Shalton: I'd like to replace the fence. I've lived in this house 16 years, and it's time. The fence just needs to be replaced. I'm not sure if the variance was there when it was originally built, but it should be allowed. There's landscaping on the other side of the fence. I would come close to a pool if I had to move it in. I just hope you agree.

Chairman Clawson: Could you put the plot plan on the monitor? In general, if the fence were to be denied, he'd have to move it back to the 30' build line.

Mr. Thompson: Yes, sir.

Chairman Clawson: I don't see where the pool is.

Mr. Thompson: It's just barely on the other side of the build line.

Mr. Dunn: Am I correct in understanding this fence is going in the same location as the one that is coming down?

Mr. Thompson: Yes, it is.

Mr. Dunn: Am I also correct in my understanding that to require it to be placed in a location in accordance with the ordinance would put it right on top of or adjacent to the pool and would require the moving of some plumbing?

Mr. Thompson: Yes, it would. I don't have the actual measurement of how close the pool would be to the fence. Brian may be able to answer that question.

Mr. Shalton: I'm not sure if we would have to move the plumbing. It's under the sidewalk that wraps around the pool. It would definitely be very close.

Chairman Clawson: It looks like it would be pretty close to one of the trees.

Mr. Shalton: It would actually go on the other side of the tree (*shows a picture*).

Mr. Dunn: Can someone describe what we're looking at?

Mr. Thompson: That's where the fence is. You can see where the pool is. The black line is the property line, so it would have to be 30 feet behind that property line.

Chairman Clawson: Are there additional questions?

Mr. Dunn: Did the applicant build the original fence?

Mr. Shalton: I did not. I moved into the house in 2004, and I believe the fence was built in 1998.

Chairman Clawson: Wade, the pool was added in '83 with the original fence, and then the original fence was replaced with the current fence in '98. Was there any documentation on those?

Mr. Thompson: Yes, I have the city's copy of those.

Chairman Clawson: Back then, it didn't require a variance.

Mr. Thompson: That is correct. Back then, the pool would have required a fence, and the fence was installed at its current place. It was then replaced in 1998, and we issued that permit.

Chairman Clawson: Since this is a variance, we have to go through the five factors. Uniqueness of the Property and Hardship are two we sometimes have trouble with. Could you address those?

Mr. Shalton: Like I said, there is landscaping on the other side that would be on the outside of the fence at that point. I believe the fence would come very close to the pool. We also have a gate on the driveway with a stone pad that would have to be pulled up. I think aesthetically, it's far enough back and doesn't cause any issues with my neighbors. I know they were all delivered certified mail, asking if they had any issues. I'm not sure if that answers your question.

Chairman Clawson: Have we received any comments?

Mr. Thompson: I received one letter in support from the neighborhood.

Mr. Shalton: Speaking with my neighbors, they are behind it.

Mr. Munson: Do the stakes represent where the fence is going to be, or will it be in the existing location?

Mr. Thompson: Those are the property line stakes. The fence will go exactly where it's shown in the picture.

Ms. Farrington: Is this a corner lot?

Mr. Thompson: Yes.

Ms. Farrington: We're looking at the rear build line, even though the front of the house faces Overbrook?

Mr. Thompson: You'd be looking at the side of the home. The true back yards are going to be on the west side.

Ms. Farrington: We're voting on the side?

Mr. Thompson: You're only acting on the portion in the red that is beyond the 30' build line.

Ms. Farrington: Is that from the side yard, or is it considered the rear?

Mr. Thompson: It's the side yard, but it's a corner lot, so it basically has two front yards.

Ms. Farrington: So, it is somewhat unique in that there are two fronts.

Mr. Thompson: Yes, but as far as qualifying it as being unique, I don't think we could do that because we have so many corner lots. You might be able to say that the city issued a permit years ago for the placement of the pool, and if they were to uphold the build line, it would put the fence very close to the existing swimming pool.

Ms. Farrington: What I'm trying to understand is that the placement of the pool was probably limited because of the way the house was situated facing Overbrook. There's only one direction it could be installed.

Mr. Thompson: Yes, that is correct.

Chairman Clawson: Are there other questions? Is there anyone who wishes to speak for or against this application? We will no go through the five factors. As a board, will discuss each factor, and we will vote on whether we feel it was satisfied. If we vote in the affirmative on all five factors, we can support a motion for approval. The first is Uniqueness of the Property.

Mr. Dunn: I believe the property was bought and updated in good faith with the fence in the current location. While not the only occurrence of that in the city, I believe it satisfies the Uniqueness criterion.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: The only correspondence we got was one letter in support, and it was included in the packet.

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

Chairman Clawson: Hardship.

Dr. Peppes: Being the situation that it's a legal, nonconforming situation with the fence there already and was given a permit back in the day, and also if we were to make him draw back to the correct distance from the build line, it would encroach upon the swimming pool, I believe it has been met.

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

Chairman Clawson: Public Safety and General Welfare. Any discussion?

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

Chairman Clawson: Spirit and Intent.

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

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

A motion to approve Case 13-2020 Brian Shalton/Owner - Request for a Variance to the front build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 12008 Overbrook Road – was made by Dunn; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 14-2020 Tim Cunningham; Michael Rea/Owner - Request for a Variance to the front build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 14009 Canterbury.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners wish to construct a 5' tall steel fence that would enclose much of the front yard, along with a gate that ranges from 5'6" to 7' tall. They want to place the fence on the front – or west – property line, which is 13 feet from the curb. On the east side, the property line varies in distance from the curb 6-20 feet.

Chairman Clawson: Do we have a better plot plan than this? (*Plan placed on monitor*) The red line is where the fence is proposed?

Mr. Thompson: They actually wanted to put it 9 feet from the back of the curb, but as you can see, on the south side, much of that is right-of-way, so the best they could hope for would be on the property line, which is in red.

Dr. Peppes: Is the red mark the property line, or is that where the fence will go?

Mr. Thompson: The red line is the front property line and is also where they would like to put the fence. It will wrap around the corner. It will be 30 feet behind the red line, but we all know the fence can't be placed in front of the home without BZA approval. They can build a 6' tall fence because of the pool.

Mr. Dunn: I just want to be clear. If we deny this, they would not be able to build the fence in the front.

Mr. Thompson: That is correct.

Dr. Peppes: That means they could build a fence around the pool but nothing along the front side of the house, which encompasses the south and west part of the structure?

Mr. Thompson: Since they have a pool, a fence is already in place for safety reasons. It is behind the front of the home. They could alter what they have currently and just make sure that the entire fence stays behind the front of the house.

Chairman Clawson: On the south side, they could not go clear down to the red line?

Mr. Thompson: That is correct. They would have to stay behind the 30' build line. They may be able to go a little farther than what I drew, but they would have to stay behind the 30' build line on that side.

Chairman Clawson: This is a three-acre lot?

Mr. Thompson: That is correct.

Chairman Clawson: With a creek running through the property?

Mr. Thompson: Yes, it is a year-round creek, and it is pretty deep. It has a steep elevation change all throughout the property.

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

Applicant Presentation:

Michael Rea, 14009 Canterbury, appeared before the Board of Zoning appeals and made the following comments:

Mr. Rea: I've lived in the home with my wife and three kids: 9, 7, and 4. One of them is severely autistic. We bought the property originally because we thought it would be a good place for the 9-year-old to explore and be a kid, which has been great. Unfortunately, he's at an age where he likes to explore. We've had a couple situations where he got away from us, despite our best attempts to keep an eye on him. He likes to go down to the creek and roam the property and just be a kid. He ended up at a neighbors' house ¼ mile away, and it was pretty unnerving. It happened again on July 10th. He got a trip home from the Leawood Police Department. In the blink of an eye, he can disappear. Our primary goal is to try to use the property and let him be able to roam and be safe at the same time. We ask for your consideration in that, and I'm happy to answer any questions.

Chairman Clawson: Are there any questions for the applicant?

Dr. Peppes: I'm having a hard time visualizing where the fence will be. Is it actually going to be where you drew it, Wade?

Mr. Thompson: Yes, they actually wanted to move it a little closer to the street, but it's not possible because they don't own that property. The red line is the closest they could put it to where they want to put it.

Dr. Peppes: It's going to be completely enclosed, then.

Mr. Rea: Yes, that's the intent. We'd like to enclose the property to let him roam and be outside. I didn't mention this before, but it gets to be a favorite spot for late-night drinking and broken glass at the creek as well, so that would be an added benefit to that.

Chairman Clawson: You've had problems with people getting in the creek late at night?

Mr. Rea: Yes, and the unfortunate thing is when the kids go out and play, they find the glass bottles.

Ms. Farrington: Where it shows the red line, it stops at the northern end. Is it enclosed at the north end of the property as well?

Mr. Thompson: There is currently a fence back there, but we're only concerned with the red portion that would be beyond the build line

Ms. Farrington: So, it ties into something on the front side?

Mr. Thompson: That is correct. The red would be everything that would be actionable by the board tonight because it is beyond the front build line. They can build everything in the black without board action.

Mr. Rea: For what it's worth, I have talked to all the adjacent property owners, who were all in support.

Mr. Bussing: Last month, we approved a split-rail fence that went around the exterior of the property. How is that different than what they're asking for here?

Mr. Thompson: It's really not much different other than this being a corner lot.

Mr. Bussing: So, it has two front yard setbacks.

Mr. Thompson: Correct. The fence across the street is a 3' tall fence, and they have an existing 6' tall fence that was part of the subdivision fence. That was going to be removed. Other than this being on a corner lot and the creek running through it, the applicant stated that they want the fence for the safety of the child.

Mr. Bussing: I want to make sure I understand. With approval from the BZA, they could build it on the red line.

Mr. Thompson: Yes.

Chairman Clawson: Again, this is a variance, so we have to evaluate the five factors. Mr. Rea, would you like to discuss Uniqueness and Hardship?

Mr. Rea: I'm not sure that I understand with the specifics, but I'm happy to comment as we go through each of them. We've got the builder, Tim Cunningham, on here as well. Perhaps he might be able to assist.

Tim Cunningham, 13911 W. 72nd Ct., Shawnee, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Cunningham: The hardship is his son and keeping him safe. There are plenty of trees on the lot. Hardly anyone would notice the fence. It will be a very nice fence.

Chairman Clawson: Wade, you pointed out that a creek runs through the property, which makes it unique.

Mr. Thompson: Correct, and it is a year-round creek. From the driveway level is a good 8-10 feet down in elevation change.

Chairman Clawson: I could see if there were people that entered the property at the creek to party at night. That could be a public safety issue, potentially.

Mr. Rea: For what it's worth, there are certain sections that someone could fall at least 15feet down.

Mr. Dunn: There are few enough houses in Leawood that have an active creek running through the front yard. I have no problem finding that it's a unique feature.

Chairman Clawson: Are there questions for the applicant? If not, is anyone online that would like to speak for or against this application? Hearing none, we will proceed with our evaluation of the five factors. The first is Uniqueness.

Ms. Farrington: We looked at the property and discussed the creek running through it, which makes it unique. It's a large, three-acre property. The elevation changes also make it unique.

Mr. Munson: I concur.

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

Chairman Clawson: Rights of Adjacent Property Owners. All the notices were mailed?

Mr. Thompson: Yes, and we received a phone call gathering information. He didn't state whether he was for or against.

Chairman Clawson: You did note that there could be a sight distance issue.

Mr. Thompson: Yes, you have pictures that show where the stop sign is. They have a neighborhood monument that partially blocks it already. The addition of a 5' tall fence could add to that.

Chairman Clawson: However, a wrought iron fence would be better than a fully enclosed fence.

Mr. Thompson: Exactly.

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

Chairman Clawson: Hardship.

Mr. Dunn: I'll offer the opinion that, based on the strict language of the criterion: "The strict application of the provisions of the Leawood Development Ordinance will constitute unnecessary hardship upon the property owner represented in the applicant," I think clearly, it does. I will note for the record that there is enough case law in this to make either point of view arguable, but frankly, I would fall down on the side that it has been met.

Feedback occurring

Dr. Peppes: I agree with that. This is a tough situation, but in listening to the applicant about the reasons for doing this, we have to consider the safety as far as the front yard setback is concerned in order to enclose the property. I think it has been met.

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

Chairman Clawson: Public Safety and General Welfare.

Ms. Tomasic: There is someone in the meeting that had a hand raised. If they could identify themselves, they could comment or ask the question. I think that person is unmuting and causing the YouTube feedback.

Chairman Clawson: Can we proceed?

Ms. Tomasic: Go ahead.

Chairman Clawson: Discussion about Public Safety and General Welfare?

Mr. Bussing: Clearly, the approval of this request will enhance the public safety of the homeowner's child and keep some of the unwanted traffic out of the creek as well. I'm in favor.

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: As somebody pointed out, the fence on the front run is largely going to be hidden by evergreens and so forth. I highly doubt that it will change the character of the neighborhood at all.

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

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

A motion to approve Case 14-2020 Tim Cunningham; Michael Rea/Owner - Request for a Variance to the front build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 14009 Canterbury – was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 15-2020 John D. Gower; Andrew Poland/Owner - Request for an Exception to the side yard setback for the placement of a deck in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12710 Cherokee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to add a new deck to the south side of the home. The new deck would extend off the rear corner that is 10.6 feet from the property line and move farther away from the property line. An exception for 3.4 feet is being requested.

Chairman Clawson: Since this is consistent with the line of the house and it is not less than 10 feet, it makes it an exception; is that correct?A

Mr. Thompson: That is correct.

Chairman Clawson: Are there any questions for staff?

Mr. Bussing: On the first page of the report, Leawood South Country Club is now Country Club of Leawood.

Mr. Thompson: Noted.

Chairman Clawson: Is the applicant online?

Applicant Presentation:

Andrew Poland, 12710 Cherokee Lane, appeared and made the following comments:

Mr. Poland: We'd just like to proceed with getting an exception to get the permit to build a low-rise deck. I believe it's only about 16 inches off the ground. It will be built from Trex material, so it will be composite decking. We seem to meet the four criteria for the side setback exception. The existing construction, which is the home, was originally constructed less than 15 feet but more than 10 feet; it is about 10.5 feet. It will be no

closer than 10 feet to the side property line. It will be consistent with the existing side structure. There will be no further encroachment of the existing side structure.

Chairman Clawson: Are there any questions for the applicant? Is there anyone online that wishes to speak for or against this application? Is there a motion?

A motion to approve Case 15-2020 John D. Gower; Andrew Poland/Owner - Request for an Exception to the side yard setback for the placement of a deck in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12710 Cherokee Lane – was made by Munson; seconded by Dunn. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 16-2020 Christopher & Kirsten Parker/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 9629 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing, legal, nonconforming 6' tall wooden privacy fence with a 6' tall wooden picket-style fence along the rear property line. The rear property line is on the east side of the home.

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

Applicant Presentation:

Chris Parker, 9629 Meadow Lane, appeared and made the following comments:

Mr. Parker: We have the 6' privacy fence on the eastern side of our property. When we moved in six years ago, we had 6' privacy fences on each side of the property. We replaced the southern side with a 4' picket-style fence that was compliant with code, and we're just replacing these as wear and tear requires. What we learned after replacing that fence is our dog can easily jump a 4' fence and does fairly frequently. We are going to replace the fence on the east property line. As you can see from the pictures, it is 20 years old and needs to be replaced. Because that property backs up to Lee Boulevard and there are no fences for any of those homes that would prevent our dog from getting on to Lee Boulevard, we would like to have a 6' fence. We'd like to do the picket style to maintain the consistency with the southern side, but then also in the interest of having that fence be a little more open and preserve the openness that we like about Leawood.

Chairman Clawson: Are there questions for the applicant? It's fairly straightforward. Is there anyone who wishes to speak for or against this application? Is there a motion?

A motion to approve Case 16-2020 Christopher & Kirsten Parker/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 9629 Meadow Lane – was made by Dr. Peppes; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 17-2020 Ryan Rader/Owner - Request for a Variance to the front setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2813 W. 87th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The homeowner was issued a permit to rebuild much of the home but had to preserve the portion of the home that was considered legal, nonconforming. Due to some termite damage, it was deemed necessary by the contractor and the property owner to tear down more than what was approved. In doing so, a portion of the front of the home encroaches into the front yard average setback. A variance of 5.615 feet will be necessary for the owner to complete the project.

Chairman Clawson: The report says that a permit for the addition was issued and approved in October, 2019 with the understanding that no more than 50% of the original home must remain to keep the legal, nonconforming portion of the structure. How much was actually demolished?

Travis Torrez, City of Leawood Building Official, appeared and made the following comments:

Mr. Torrez: This is a situation that came to the BZA late 2018-early 2019. They wanted an addition that wrapped the house, and they wanted to go in front of the average front setback to be even with the garage. They were denied at that time. The third-car garage was set back due to the BZA denial at that time. At that time, staff wasn't aware that they were planning to tear down the rest of the house down to the subfloor, so we notified them on April 17, 2019 that we didn't realize they were proposing to demolish the existing home down to the first floor. This would be considered a teardown-rebuild, and all existing nonconformities would have to come into compliance with the current ordinance. Basically, they would need BZA approval to reconstruct the existing part of the home that extends beyond the average front setback. We let them know as soon as we were aware that they would need to come before the BZA to construct that part of the home that sticks out at the garage front. They wanted to work to not come to the BZA, so they redesigned their demo plan to preserve part of the house so it would be less than 50%. Also, they weren't going to touch the part that was nonconforming. That went on between April and August. We got to the point where they submitted an application and we could permit it, but then it was discovered that they went beyond the scope of the plan that was approved and reconstructed several of those areas. We stopped work and informed them that they would have to come before the BZA to do what they have already done basically.

Mr. Dunn: As I understand it, the way they're building the garage that protrudes in the front was originally permitted and approved because they were going to maintain more than 50% of the nonconforming structure. Is that correct?

Mr. Torrez: This is the only part of the structure that is nonconforming; it's the front garage area and the part above the garage. We have a lot of rebuilds in the City of Leawood as well, and in many cases, they would like to keep the nonconforming setbacks if they could. Many times, the existing house might have a 10' side setback. When they submit that rebuild, it's got to meet a 16' setback. In this case, if it was considered a rebuild, they would have to meet the average front setback, which is 5.6 feet.

Mr. Dunn: What I'm trying to get at is I heard something and see that the permit for the addition was approved and issued in October, 2019 with the understanding that more than 50% of the original home must remain. I'm not following that with what you're saying.

Mr. Torrez: (*shows demolition plan*) The white lines were to be existing, and the black lines are new. We required a more detailed demo plan because of the nature of the permit, trying to estimate that they weren't over 50% to where it would be considered a rebuild that would need to conform.

Chairman Clawson: Are you talking about 50% of the foundation or the foundation, floor, walls, and everything?

Mr. Torrez: The way the ordinance reads is open to some interpretation, but it would be that the demolition is not destroying the value by more than 50%. It's not necessarily black and white. If something that is nonconforming is destroyed by more than 50%, it would have to meet requirements to rebuild.

Chairman Clawson: Let's say I had a house that is partially nonconforming and I wanted to replace all the superstructure but leave the foundation exactly where it is. Would that be permitted?

Mr. Torrez: If it was conforming to today's standards with setbacks, but if it wasn't, no, it would be considered a teardown/rebuild and would have to comply with current standards.

Chairman Clawson: It has to meet current LDO requirements.

Mr. Dunn: Is it the question of whether it's a remodel or rebuild? Is that the issue?

Mr. Torrez: Not necessarily because even if they touch nothing else but want to redo the portion of the home that is beyond the average front setback, on those merits alone, it could not be reconstructed without approval because it doesn't meet the setback.

Mr. Dunn: So, it doesn't matter if it was 50% or not; they got permitted because they said they were not going to touch the nonconforming part; is that correct?

Mr. Torrez: Correct; that was one of the main criteria. They weren't going to touch or reconstruct that area that was beyond the average front.

Mr. Dunn: The reason it's in front of us now is because they have reconstructed the nonconforming part.

Mr. Torrez: Correct, and that would need approval to do so.

Mr. Bussing: I recall, perhaps incorrectly, that the footing wall that runs underneath the garage structure is a structure, and whatever is on top of it doesn't matter. That 6 inches above the ground qualifies as a structure, which is getting to Mr. Clawson's point about what has to be on top of it. Nothing has to be on top of it; it just has to come out of the ground. Is that correct?

Unidentified speaker: That is original foundation.

Mr. Bussing: That's the part that had to stay. I think I recall this case. Basically, all they were keeping was some of the concrete footings and foundation. We approved that.

Unidentified speaker: We kept more than the foundation. We kept as much as we possibly could, but that's pretty much correct.

Mr. Dunn: I don't think we approved it. We denied it, and then they changed it to say they weren't going to change that nonconforming portion.

Unidentified speaker: You denied the garage extension.

Chairman Clawson: You'll get your turn to talk in a minute.

Unidentified speaker: Sorry; I was just trying to help.

Mr. Thompson: The previous request to encroach the front yard for the garage was denied by the board in February, 2019.

Chairman Clawson: Any other comments or discussion?

Mr. Torrez: Just to clarify, you can see the garage addition was proposed, and the little bit that was supposed to be even with the existing garage was denied. That's why they pulled it back on the redesign.

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

Applicant Presentation:

Greg Musil, Rouse Frets Law Firm, 5250 W. 116th Place, Suite 400, Leawood, appeared and made the following comments:

Mr. Musil: Also with me tonight are the owner, Ryan Rader; Robert Wagner, project superintendent; David Elliot, the framing contractor. I'm going to get to my presentation in a minute and will ask the indulgence of the chair to go a little over ten minutes because what you saw in that picture Travis shows you is we're going to have to tear off the front of the house if we're not granted the variance. I know we'll discuss the realities of that, but I want to make a couple comments in response to what I've heard from staff and otherwise. I agree with Travis that the 50% rule is open to interpretation and is open-ended. It was not told to the builder or owner that they cannot touch the portion of the house that was nonconforming, which was the garage part sticking out. In fact, the plans show construction on that portion of the house, including the windows that you saw in the partially finished structure. In February, 2019, you had a BZA meeting on this. The addition on the west side of the house was originally asked to be at the same front line as the existing garage, and you denied that. That's why the garage that is there now is 7 feet farther back. As I'll explain later, in 2019, you did not address a full variance with respect to the front average setback line. I take issue with the Staff Report that says it was denied then and denied now. What was denied then was the addition of a third garage bay that would touch the front of the house. With that, I'm going to share my screen and ask for confirmation that it shows up on your screen. Can you see text on your screen?

Chairman Clawson: No.

Working on technical issue

Mr. Musil: I'll leave what I want to share, so if it shows up, let me know. It is a written document titled Ryan and Whitney Rader.

Mr. Torrez: While we're waiting, I wanted to show an email from August 2, 2019 prior to the permit being issued in which I made comments. We were working toward compliance. I said they couldn't reconstruct walls or increase height of space beyond the average front. On the next page, I said they couldn't add beyond the average front setback. The roof can't increase height beyond the average front. The email was sent to the owner. We had dialogue for four months back and forth between April and August, 2019, working toward permit.

Mr. Dunn: Mr. Musil, is this what you're trying to share? We have it in our packet.

Mr. Musil: It's the first page. I've changed my presentation to try to flip through it. I appreciate that. Let me go ahead, and I'll hopefully be able to show you. You've seen the preexisting house that was what a lot of us would refer to as a standard Johnson County split level built probably in the 1960s. The rendering of the new house shows balconies, but we're not building the balconies on the front of the house. It shows the structure of the house. We understood we had a limitation of what we could do in the nonconforming part of the house and frankly the rest of the house. That's why the demolition plan was done so carefully. When Mr. Wagner and Mr. Elliott started tearing up the hardwoods and looking at the floors, they found out that this house was in a lot worse shape than

they thought. I have a photograph that shows the floor above the garage 2 ½ inches out of level. The only way to do a reconstruction or renovation is to level that floor, which meant taking out old wood and adding new wood. They also found wood rot and termite damage in the nonconforming part that sticks out. They repaired that because you can't just cover up and ignore wood rot or termite damage in a structural part of the house, or it will violate your code in a different way. The real issue here is when you get into a rebuild and you're in the nonconforming part, hoping to keep as much of the structure as possible and you find out you can't keep it safely, what are you supposed to do? Ultimately, regardless of what we do, we're going to have to come to the BZA to get a variance on the front lot line. I want to make it clear the front of this house does not change one inch from what it was before. It meets the 35' R1 standard setback. What it doesn't meet is the curve. The LDO treats it differently on a curve and looks at the houses on both sides of the house to make sure it's not too far forward or too far back on the house. What we're trying to demonstrate is how much of the existing structure we saved and also show what had to be replaced. Mr. Elliott and Mr. Wagner will be happy to talk about that as the contractors who got in there and found out there were lots of problems with this house that couldn't have been discovered beforehand. The plans of the house demonstrated that there will be lots of new construction because it needed new studs and double ones because of the height of the great room, but we did not change the height, width, or depth of the nonconforming portion. One thing that Travis brought up last week was we do have an angled porch over the front entrance. Before, it was an open trellis, and now it's a porch. It was shown on the plans that were approved. I guess tonight, we have to ask for that because it is on the front of the house next to the garage and apparently is a nonconforming structure as a roof porch.

Ms. Tomasic: *working on technical issues*

Chairman Clawson: While he's doing that, I want to confirm with staff that he's not changing the front build line of the house from the original house, correct?

Mr. Torrez: They're not changing in front of the garage, but what the board is going to have to consider is there was an arbor over the front porch (*shows photo*). The arbor is turning into a covered area that does violate the average front. My understanding is they would like to build that as shown.

Chairman Clawson: What about the balcony?

Mr. Torrez: The balconies are shown on this elevation because there were a lot of attempts to get there. They're not planning on constructing those. They are planning on turning the arbor into a covered porch area, and that violates the average front setback by an amount similar to the garage front.

Mr. Musil: (*refers to display on monitor*) The portion that juts out is what was there. It's on the same foundation as before. You can see a concrete wall about 3' high. There is a similar one behind the Johnny on the Job. Those are the original foundations. When Travis says we reconstructed the whole thing, he's exaggerating a bit. You can see a

demonstration of what they found when they got into the structure of the house. The gap between the 2x4 header and the cross joist had to be filled in order to level the floors. That means something had to be done with the walls as well. That is an example of trying to keep all the old structure, but it's not possible. I wanted to demonstrate what would have to be torn off 4.1 feet or 5.6 according to Travis. That would give an idea how flat the front of the house would be. The house to the east at 8740 Norwood is the only house in the neighborhood that has expressed any opposition. I'll get to the support of all the other neighbors in a minute. The neighbor behind is in support and is ready to speak. The house to the west shows the new garage bay that was added and had to be set back because of the BZA decision in February, 2019. About 1 ½-2 feet of concrete that is shown out of the ground is all new foundation. The foundation on the left hasn't been moved and has been used to continue to support the house. We're trying to demonstrate what happens if a variance isn't allowed to stay at the same place the house was before, the bay is completely lost for a car. At the front of the garage, there are steps up to the first floor and down to the basement, so the garage cannot simply be moved in farther. The concrete wall in the garage was preexisting and utilizes part of the structure. That would have to come out in order to let the righthand bay of the two-car garage work. The next slide demonstrates that the floor joists are original construction. The wood frame and diagonal boards are original. There are new joists because of the wood rot and the termite damage found when the structure was uncovered. There is a bathroom already plumbed and framed in the basement. The wall to the right is the front of the garage and would have to be taken out, losing the bathroom in order to get a car in the righthand bay of the garage. One of the issues with how far we're off has to do with whether or not the house to the west is on a curve. 90% of the lot is on a straight curve. It is a straight line until the last 10 feet of the curb, where it starts a slight angle. It makes about 1 ½' difference in what kind of variance we need. Travis calculated it taking the smallest and largest setbacks of the houses on both sides and averaging them because he considers both of those on a curve. Our calculations are different because the house to the west is really not on a curve. That means we believe the variance we need is 4.015 feet; Travis thinks it is 5.6 feet. It is relevant to an extent as I'll show you later.

Chairman Clawson: Could you try to wrap this up if you could?

Mr. Musil: The city, by street improvement, removed 4 ½ feet of the front yard within the city right-of-way at the driveway and 2 ½ feet at the east property line. It didn't change the right-of-way line, but it certainly changed how the front of this house looks from the street. The next slides show new houses in the neighborhood. The map shows the neighbors that were personally visited by Whitney and Ryan Rader, and all of them were in support. The only one who was not was the neighbor to the east at 8740 Norwood. Two neighbors didn't answer the letter or the door when approached. We are currently showing the area of nonconformance staying; it is just a question of whether we, in good faith, repaired what we needed to repair and whether it got over 50%. Travis showed you demolition plans that were approved by the city. I included the application for 2019 simply to show that we were asking for the third bay of the garage. That's what was denied. It was not the average setback for the nonconforming part, at least in any of the records I've seen. Mr. Coleman refers to the 35' setback in the minutes. Regarding

Uniqueness, we came to the BZA in 2019 for the third garage. It was denied. We complied and redesigned. We presented all of our plans to the city for approval and were approved, documenting new construction and anticipated demolition. We began construction permitted. When we found out how bad the house was, we had to do additional work. We did no more reconstruction than was necessary, and we saved existing construction where possible. There are lots of sharp curves in the city, but I don't know if you can demonstrate another one where 4 ½ feet of the front yard has green area that would have assisted in the streetscape that was removed because of the city street project. Without the curve calculations, we can meet the 35' R1 setback. We're at 38.76 feet. Regarding adverse impact on the neighbors, you saw the map of all the neighbors who support us. One is waiting on here to support. Regarding Hardship, we can tear off 4.1 or 5.6 feet of the front, the three-car garage becomes a two-car garage, the lower-level bathroom is lost, the second-level bedroom is lost because it will only be 7 feet wide, the roof over the entry door, and the house becomes a full-flat elevation, which is aesthetically displeasing. The other alternative of seeking relief in court is something we don't want to talk about. It won't have an adverse impact on health, and staff agrees with that. Regarding intent of the LDO, clearly the city wants setbacks sufficient to create a safe and aesthetic streetscape and ensure houses are consistent in their setbacks. I don't believe the intent of the LDO was to punish renovations who got into the work and found out they were going to have to do more reconstruction simply to make a safe structure. It's on that basis that we're asking for your approval of the variance tonight, whether you consider it 4.1 or 5.6 feet. Let us stay exactly where the house was before and build the house that Whitney and Ryan Rader would like to build with the support of our neighbors. We'll be ready for questions. I'm sorry for the technology.

Chairman Clawson: Are there questions for the applicant?

Dr. Peppes: Please help me understand that the portion of this garage that still sticks out was on the plans that were permitted.

Mr. Torrez: They were there, but it was only minor reconstruction shown

Chairman Clawson: The issue seems to be the amount of demolition that was conducted. Is that it?

Mr. Torrez: I would say so, yes.

Chairman Clawson: Demolition often uncovers more damage than originally thought.

Mr. Torrez: Definitely, and it's not an issue if it meets all the setbacks.

Chairman Clawson: Are there other comments or questions?

Mr. Bussing: I guess I share Dr. Peppes's confusion as to what was approved and what we adjusted. I'm still not clear. Mr. Musil, is there one page in your presentation that could illustrate that for us?

Mr. Musil: (*Refers to slide*) The highlighting is the front of the house to demonstrate that the third bay was set back and the existing jut-out was already there. The east line would stay the same. We put windows above the garage. My understanding is they were shown on the plans, and if you've seen the front elevation, you see that there are windows shown in that. I don't know if Travis has an elevation drawing of the plans. We believe the front of the structure as it is being shown was part of the plans. The question asked was if we did too much demolition in that area such that we violated the 50% rule. I agree with Mr. Clawson that it is the issue.

Dr. Peppes: If too much of the construction had to come out, it violated the 50% rule, so you're not able to jut the garage out anymore?

Mr. Musil: If Travis agreed that we didn't demolish too much, we wouldn't need a variance because it would still be the legal, nonconforming use. Travis believes we demolished too much, so we have to come for a variance.

Dr. Peppes: It was because of the termites, the leveled floor, and other elements that made you take more than you planned on taking.

Mr. Musil: That is correct, and Mr. Wagner and Mr. Elliott can answer the questions as well.

Mr. Torrez: (*Refers to plans*) You can see the first-floor demo plan. The white walls were to remain. The black walls are new. That's what the city approved as far as the demolition. That was the part that they spent four months on to not have to go the BZA.

Mr. Bussing: So, they demolished more than they thought, but the proposal to build is on the same footprint?

Mr. Torrez: Correct; the footprint is the same as the original. Again, a teardown/rebuild has to meet the setback. We're just trying to apply the rules equally across all applicants because we do 25 teardown/rebuilds a year, and we would say that they have to meet the setbacks.

Chairman Clawson: Are there questions? Does everyone understand what the primary issues are?

Mr. Musil: I have the plans submitted to the city. We have built on the front what we said we were going to build. The question is if we demolished too much to become a nonconforming use that requires a variance. The city staff makes that call, so we are coming to you to ask for the variance.

Chairman Clawson: I think we understand.

Mr. Dunn: Travis, I had one more question. How many times have you seen this situation where somebody went forward in good faith to do something like this and maintain a nonconforming structure so they don't have to get a variance and found out midstream that they were going to need one? Is that a common occurrence?

Mr. Torrez: I wouldn't say it's a common occurrence. I know it has happened at least one other time that I can remember and maybe twice. There is one time I remember that it didn't meet the side setback. We had to get a detailed demo plan. We let them know that they couldn't get into the setback without BZA approval. They showed that they weren't going to do anything. They got into it and found damage. I believe it came to the BZA at that time. I know it came; I just don't remember the decision.

Chairman Clawson: I vaguely remember that.

Mr. Thompson: It was the Larson house, and I don't recall whether it was approved or not, but I do remember the case.

Chairman Clawson: I seem to recall it was approved; although, it's been a long time.

Mr. Dunn: That's my recollection. That's one of the reasons I asked the question.

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

Mr. Musil: I know Penelope Smith is here.

Penelope Smith appeared and made the following comments:

Ms. Smith: I see no reason to turn this down. This is going to be such a great improvement to the neighborhood. I think the board should approve it. They've been working hard on it. We've been having to look at overgrown grass and weeds back there. I think this is going to be a very nice home and an improvement to the neighborhood.

Chairman Clawson: Thank you. Is there anyone else?

Whitney Rader appeared and made the following comments:

Mrs. Rader: I just wanted to thank you for your time. We definitely do not need to take out more than we're supposed to. It was infested by termites, and we want a safe home. We're going to live here for many years. The room above the garage will be my office until we have another child, and then it will be another bedroom. We're hoping we can keep it. Thank you for your time.

Chairman Clawson: Thank you. Again, this is a variance, so we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Dunn: First, we've gone through this before with these houses where the setback is calculated based on the setbacks of the surrounding properties. We've looked at situations with variances in the street itself that cause that to affect the calculation. I think that applies in this case, and while it doesn't make it completely unique because there are plenty of houses in Leawood with the same issue, it makes it close to unique in my opinion. Also, I just find the situation where the homeowners did everything they were supposed to do, worked with staff and went forward in good faith to do something and then found that it's not going to be possible to do it that way creates a unique set of circumstances that just don't occur very often. Once again, I struggle with Uniqueness all the time. I struggle with Hardship all the time, just like Dr. Peppes. In this case, I'm willing to say these are unique circumstances.

Uniqueness criterion satisfied with a roll-call vote of 4-1. For: Dr. Peppes, Dunn, Farrington, and Bussing. Opposed: Munson.

Chairman Clawson: Rights of Adjacent Property Owners. Notices went out. One letter of support in the packet, correct?

Mr. Thompson: There were several letters of support and one letter from Ms. Intwhistle that wants the ordinance followed. She's against the request.

Chairman Clawson: Other comments?

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

Chairman Clawson: Hardship.

Mr. Bussing: As you indicated, I find it troubling that we have a homeowner and builder working to do the very best they can, and circumstances beyond their control, conditions of a structure that can't be anticipated in advance have put them in this position where denying the application would essentially kill the project. While it's perhaps a unique application of the Hardship criterion, I think this has come about through no fault of their own with unanticipated circumstances.

Dr. Peppes: All I want to do is agree with Mr. Bussing. I think it's been met.

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

Chairman Clawson: Public Safety and General Welfare. Staff agrees that this shouldn't be a factor.

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

Chairman Clawson: Spirit and Intent.

Mr. Munson: I would say this application has probably been saved by the termites.

Mr. Dunn: I don't see any violation of the spirit and intent.

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

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 17-2020 Ryan Rader/Owner - Request for a Variance to the front setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2813 W. 87th Terrace – was made by Farrington; seconded by Dunn. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 18-2020 KC Home Solutions, LLC; J. Steve & Katherine Hirschi/Owners - Request for an Exception to the Maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2504 W. 120th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to add a new ground-level master suite. The new addition would add 643 square feet to the home. An exception for 332 square feet or 10.125% over the maximum allowable square footage is being requested.

Chairman Clawson: This is an exception because their request is less than 20%; is that correct?

Mr. Thompson: That is correct.

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

Applicant Presentation:

Zach Vaughn, Director of Sales, 18901 W. 158th, Olathe appeared before the Board of Zoning Appeals and made the following comments:

Mr. Vaughn: The homeowners came to us, wanting to do a master suite. They want to stay in the home long term, and getting a master suite on the ground floor is the best way do that rather than having to go up and down the steps. Like the individual said, we're looking to go roughly 10% over the allocation of the square footage that is allowed. We hope you will consider it.

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

A motion to approve Case 18-2020 KC Home Solutions, LLC; J. Steve & Katherine Hirschi/Owners - Request for an Exception to the Maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2504 W. 120th Terrace – was made by Bussing; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Case 19-2020 Terry DeFraties; Larry & Erica Reynolds/Owners - Request for a Variance 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 3321 W. 145th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The homeowners would like to install a roof over an existing deck. The deck was permitted and legally constructed in 2013 and is allowed to extend 5 feet into the rear setback. A variance for 5 feet is necessary to construct the roof over the entire deck.

Chairman Clawson: This is simply a roof and not an enclosure?

Mr. Thompson: I believe it is just the roof, but the applicant could verify.

Chairman Clawson: Since this has a roof, it has to conform to the setback requirements.

Mr. Thompson: Yes, sir, even if it is just a screened-in or open room, it has to conform to the setback.

Chairman Clawson: Are there any questions for staff?

Mr. Dunn: Is there something unique about the fact that the deck was approved to extend 5 feet beyond what was allowed?

Mr. Thompson: The LDO permits decks and bay windows to project into the rear setback by 5 feet.

Mr. Dunn: This was not a variance that we approved?

Mr. Thompson: That is correct; they are allowed that 5 feet by the LDO.

Mr. Dunn: But only for decks?

Mr. Thompson: It would also include bay windows or a roof eave on the side of the house.

Mr. Dunn: If this were an eave of the house extending 5 feet into the setback, we wouldn't be here for a variance?

Mr. Thompson: Correct, but since it already extends 5 feet into the setback, they could cover the first 5 feet, but they couldn't fully enclose it.

Chairman Clawson: They could add a roof out to the rear build line and not require action by us.

Mr. Thompson: Yes, but since they want to enclose the rest of it, they need a variance for the additional 5 feet.

Mr. Munson: Will the roof be supported or just hanging out there?

Mr. Thompson: It will be supported. It is shown on the provided plans.

Mr. Munson: The support will be columns a couple stories high?

Mr. Thompson: The deck is probably 10-12 feet off the ground. They won't extend from the ground; they will just be at the level of the deck.

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

Applicant Presentation:

Erica Reynolds, 3321 W. 145th Street, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Reynolds: Terry is the builder with Essential Extras, but it seems like his internet connection is not very strong.

Chairman Clawson: Could you go ahead and present the case, then?

Mrs. Reynolds: I'll do my best. For our variance request, we are asking to place a roof over the square part of the deck. (*Shares screen*)

Chairman Clawson: We can't see it. We're seeing an exhibit in a letter.

Ms. Tomasic: We see your screen; it's just not what you're describing.

Mr. Thompson: I can share Exhibit A.

Mrs. Reynolds: The idea is to put the roof on top of the existing deck that was built a couple years ago. When we built the existing deck, we had the assumption that we would

always put a roof and a screened-in porch over the area that is the small square coming out from the kitchen. It was only in this last year as we were preparing for needing to school from home, and we wanted to have a safe space for our daughter to work with schoolmates that is protected from the weather. That is why we contacted Terry at Essential Extras to see if we could just put the roof. When he started to move forward with the work, he found out about the rule that we could build the deck but not the roof. That is why we are here tonight.

Larry Reynolds, 3321 W. 145th Street, Leawood, appeared and made the following comments:

Mr. Reynolds: When we build the deck, the plan was to have it covered. When we contracted with Essential Extras, we told Terry that we wanted to have it covered; we just didn't have the money to do it at that time. What we didn't know is there is a difference between the variance for the deck and having it covered. That's what we have discovered. We would like to have that small piece of the deck covered. It's not the entire deck; it's just a square portion that comes right off the entrance to the house, and that is the piece we would like to have covered.

Terry DeFraties, Essential Extras, Box 16942, Kansas City, MO, appeared and made the following comments:

Mr. DeFraties: Sorry about the connection. When we got the permit for the deck, there was a 25' rear yard setback. We stayed with that with both the upper deck and the big curved deck. When that happened, no one said anything. Of course, I didn't think to ask because I've been building in Leawood for 30 years and have seen different setbacks over the years. (*lost connection*)

Ms. Tomasic: The Zoom meeting cut out.

Mr. DeFraties: One of the screens Erica shared shows the 5'x12' area, which is the outer portion of the upper deck, which has been there since 2013.

Mr. Thompson: (*Referring to monitor*) To give you an idea, about where the umbrella is, they could build a roof structure to there. To go out the entire portion of the deck, they would have to get the variance.

Chairman Clawson: They're asking for the rectangular portion, correct?

Mr. Thompson: That's exactly right. It's about 5'x12' according to Terry.

Chairman Clawson: The excess is basically 60 square feet?

Mr. DeFraties: That is correct.

Chairman Clawson: Unfortunately, you know this is a variance. Uniqueness is a criterion we have trouble with. Would you like to try to address that?

Mr. DeFraties: What's unique is that in 30 years, I've never had a deck we couldn't put a roof over. Turns out that, in this particular case, the rule now is that you have to have the 30 feet. That wasn't known at the time. When I saw the 25' setback, that was totally unremarkable because I've seen setbacks as low as 20 feet in Leawood. I've been working in Leawood for 30 years. I thought the 25' setback was the setback and not the setback for an open deck as opposed to a covered deck. That's what created the unique situation.

Chairman Clawson: Hardship is another one we have trouble with. If the variance is denied, you can still build a portion of the deck.

Mr. DeFraties: We could build 7 feet, which is not a practical size to do anything with.

Chairman Clawson: Are there any additional questions for the applicant? We can go ahead with the analysis. The first factor is Uniqueness.

Dr. Peppes: As you look at the pictures of the neighbors, it appears that there's really not much that is unique. Pretty much all the homes have the same issue with the same back yard and same type of setbacks. I feel that this has not been met.

Chairman Clawson: Other comments?

Mr. Munson: I concur with Dr. Peppes.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: All letters were sent out with one letter of support included in the packet, which is from the house directly behind them.

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

Chairman Clawson: Hardship.

Dr. Peppes: It appears the hardship has been put forth by the applicant in that a roof can be put on but can't cover the whole thing. They could put a roof on, but it just can't cover the whole thing. I feel it hasn't been met.

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

Chairman Clawson: Public Safety and General Welfare.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it hasn't been met because if the variance was granted, the roof would encroach into the rear build line. That is something we're not wanting to see happen in a neighborhood that has rear build lines set up straight in a row in the back. I don't feel it has been met.

Spirit and Intent criterion not satisfied with a unanimous roll-call vote of 0-5. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

Chairman Clawson: We have voted in the affirmative on two of the five factors; therefore, we can only support a motion for denial.

A motion to deny Case 19-2020 Terry DeFraties; Larry & Erica Reynolds/Owners - Request for a Variance 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 3321 W. 145th Street – was made by Munson; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Bussing, Dunn, and Farrington.

MEETING ADJOURNED.