

**City of Leawood
Board of Zoning Appeals Minutes
August 26, 2020 – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211**

CALL TO ORDER/ROLL CALL:

Chairman Clawson: I'd like to call to order the August 26, 2020 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Bussing

STAFF PRESENT: Thompson, Tomasic

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 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 July 22, 2020 Board of Zoning Appeals meeting.

A motion to approve the minutes from the July 22, 2020 Board of Zoning Appeals meeting was made by Munson; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Dunn.

NEW BUSINESS:

Case 20-2020 Sarah & Steve Titus/Owners - Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2206 W 121st Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing, legal, non-conforming deck in their rear yard. The deck is 10.9 feet from the east property line; therefore, an exception for 3.3 feet is being requested.

Chairman Clawson: Are there any questions for staff? If not, is the applicant online?

Applicant Presentation:

Sarah and Steve Titus, 2206 W. 121st Street, appeared before the Board of Zoning appeals via Zoom and made the following comments:

Mrs. Titus: We would like to replace our deck. It's been here since before we bought our house nine years ago. It was poorly constructed. At this point, it is falling apart and really needs to be replaced. We need to keep the same size for three reasons. One is our pool pump and other equipment are housed under our deck along the side of it that is closest to our property line. We feel the pool equipment would be less desirable to see than a deck. We also have French doors leading out to that side of the deck as well, and we need to be able to walk out onto something. We also have pretty extensive landscaping around the edge of our deck, and if we change the size of the deck, we would have to tear all that out and replace it. The survey that we had done of our property showed that our house is 9.9 feet away, and our deck is 9.7 feet away. With the new deck, we will change it 2.4 inches so it doesn't stick out past the end of our house. It won't be any closer to the property line than our house. We have heard from a number of our neighbors letting us know that they don't care if we replace the deck. Other than those 2.4 inches, it will be the same footprint as the deck that's been there for years. It doesn't seem like it would be a nuisance for any of our neighbors since they are all used to the same deck that's been there all this time.

Chairman Clawson: Wade, it falls under the exception since it's less than 15 feet.

Mr. Thompson: Correct.

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

Mr. Thompson: I do have one letter included in the packet from Rick Henderson, neighbor, and he is okay with the request. I haven't heard from anyone against the request.

Mr. Dunn: I was a little confused by the presentation. The materials tell me the new deck will be 10.9 feet from the property line. Is that correct?

Mr. Thompson: That is correct.

Chairman Clawson: Any additional questions? Is there a motion?

A motion to approve Case 20-2020 Sarah & Steve Titus/Owners - Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2206 W 121st Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Dunn.

Case 21-2020 Jeff Grimes/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 4101 W. 123rd Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to complete the enclosure of the rear yard with a fence that would match those of his neighbors. A fence height exception for up to 6' tall is being requested. One neighbor has a 5' fence, and the neighbor directly west has a 6' fence. He would like to match those fences on each side, rather than having three different heights of fences on that corner.

Chairman Clawson: So, the fences will tie into the house?

Mr. Thompson: Correct; only the green portion will be new fence. The rest is already in place.

Mr. Hawk: There currently is no fence?

Mr. Thompson: Correct; where the green indicates, there is zero fence.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: On the map, I assume the wide street is 123rd, or is it not?

Mr. Thompson: Yes, this home is on the corner of 123rd and Bueva Vista.

Mr. Munson: The narrow street is Buena Vista?

Mr. Thompson: Correct.

Mr. Munson: This is a corner lot, so do the side yard and front yard pertain to all that? This is not a through lot, so that's not necessarily a factor. I notice the address is on 123rd Street. Is that correct?

Mr. Thompson: That is correct.

Mr. Munson: The drawing shows two green fences.

Mr. Thompson: Yes, one side will be 6 feet to match the neighbor on that side, and the other side that is labeled 5 feet will be 5 feet to match that fence.

Mr. Munson: That's the one on the front of the house?

Mr. Thompson: That will be 6 feet.

Mr. Hawk: It says steel. Is that wrought iron?

Mr. Thompson: It will probably be steel or aluminum with the appearance of wrought iron.

Chairman Clawson: Other questions? Is the applicant online?

Applicant Presentation:

Jeff Grimes, 4101 W. 123rd Street, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Grimes: That was laid out pretty well. We moved in about four months ago, and we have dogs and always planned to put a fence in. As we had people come out and survey, we noticed it was a little unusual at 6 feet on one side and 5 feet on the other. Thankfully, the property is about 75% fenced in anyway, so we're really just looking to close off the two angles. One correction is the 5' portion is actually on the front of the property, and the 6' portion is on the back. We have a couple reasons for the request. Aesthetically, it will look much better. It's actually quite a bit more expensive to do it that way, but it will look much better for us, the neighbors, and the neighborhood in general. We have dogs: a shepherd and a lab. I've never had a 4' fence and don't know if that would be a problem or not, but that seems like it could be. Depending on what dogs we might have in the

future, a 4' fence seems like it could be a bit of an issue. Lastly, if we were ever to put in a pool, I would certainly hate to have to redo it and put in a larger fence. Both of my neighbors have pools, so it's probably how their fencing is there. It is mostly to match their fencing and a little bit of extra protection, given the dogs that we have.

Chairman Clawson: Questions for the applicant?

Mr. Hawk: Has everyone been notified?

Mr. Thompson: Yes, and I had one neighbor directly south who is on Zoom. When I explained what was going on, she stated she didn't have an issue with it. I did hear from the homeowners' association, and they just wanted to get in contact with the property owner because they have an architectural review board. The fence will ultimately have to be approved by them as well. That really won't affect us.

Mr. Grimes: I've already been in touch with them, and they already approved it.

Mr. Thompson: Thank you for that information.

Chairman Clawson: Any additional questions for the applicant? Is anyone online who would like to speak for against this application? In that case, is there a motion?

A motion to approve Case 21-2020 Jeff Grimes/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 4101 W. 123rd Street – was made by Dunn; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Dunn.

Case 22-2020 Brent & Stacey Grecian/Owners - Request for a Variance to the calculated rear build line in accordance with the LDO, Section 16- 2-5.3(D) in an R-1 District for property commonly known as 9211 Lee Boulevard.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to raze the original home that was constructed in 1952 and build a new home. Once the existing home is razed, the lot becomes unbuildable due to the average front build line and the calculated rear build line. A variance to place the rear build line at 176 feet from the rear property line is being requested.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: I was looking at what would be Page 5 of the packet on this case, and it is unusual platting of the lot in the east end where it goes into the back of the next property

over. I've never seen anything quite like that. I was wondering if staff could talk about that platting. It doesn't affect the case, but it's interesting to me.

Mr. Thompson: I wish I could answer that question. The plat is very old, and I don't know what they were thinking back then. Maybe one of the previous owners had a garden back there and wanted the property. It's still associated with that piece.

Chairman Clawson: I think we understand how the front build line is calculated, but how is the rear build line calculated?

Mr. Thompson: These lots are so deep, and we get about one of these a year. I know you've asked for the Planning Commission to take this issue up, and they are right now. They're trying to figure out a new way to figure these very large lots. The formula is laid out in the LDO. They take the depth of the lot minus 150 feet, and then take 70% of that and add 30. It's a formula that the Planning Commission came up with when they developed the LDO. Like I said, hopefully, it will be amended in the near future.

Chairman Clawson: So, the result is without a variance, they could not build on the lot.

Mr. Thompson: Yes, you can see the tiny sliver between the blue and red lines. That is the building site without a variance. I have an email that I just got today from Ken Joffey, who lives next door. After visiting with Travis Torres, the building official, and I, he put in writing that he didn't have an issue with the request.

Chairman Clawson: You're right; we get these cases occasionally. Is the applicant online?

Applicant Presentation:

Brent Grecian, 2508 W. 88th Street, Leawood, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Grecian: About a year ago, my wife and I purchased the home and lot with the goal of building our dream house. Our kids are in the school district, and we've been in Leawood on two different transitions through the city over the years. We want to make it our permanent home. We've spent considerable money on architectural plans and developing, and we intended to tear down and begin in June. We believed it qualified for an irregular lot, which would only have a 30' setback, but we need to go through this process. We hope we've laid out a compelling case that, without the variance, we couldn't build anything on it, including the existing structure. It will improve the lot and hopefully, we can get along with the process.

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

Kip Star, 3020 W. 84th Street, Leawood, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Star: I'm the builder on this, and I'm absolutely in favor of it. It's crazy to have a 1.1- acre lot and only be able to build a house 10 feet deep. If I may, after the board votes on this, I've had some discussions with Scott Lambers with the city, and there are a couple things he suggested I share with the board because he said if the board had opinions on it, they could share with the city. It's just a couple of inconsistencies. I don't want to get in the way of this, but if you would entertain me for a couple minutes afterwards, I would love that opportunity.

Chairman Clawson: Go ahead.

Mr. Star: I'll go briefly. You already addressed that this was being addressed by the Planning Commission, but there are several different ways that this clearly meets the requirement and shouldn't be in front of this board. That's where my frustration is personally. We really shouldn't need a variance to begin with. That is part of the clarity that needs to be done. There are clear rules set forth in the current ordinance that should never have sent us here in the first place. Again, I don't want to interfere with this proceeding, but at the same time, it's something that Scott Lambers thought the board should address.

Chairman Clawson: I think the board would agree with you. We have recommended that this section be changed. City Council probably will at some point, but since it's still in the LDO, we have to address it as a variance. I will say that when you look at variances, the primary objective and rationale for approval is the fact that, without it, you couldn't build on the lot. This is a prime candidate for a variance. If there's no one else who wishes to speak for or against this, then we have to evaluate the five factors. Based on the outcome of those votes, we can either support a motion for approval or denial. The first is Uniqueness of the Property.

Dr. Peppes: I feel it has been met in this situation. If we recall, the neighboring house was before us earlier in the year or last year. On this property, there's a creek in the front yard, and there are sewer lines involved and power lines. With the calculations of the rear build line, it makes it impossible to put a house on this. This doesn't happen on all the properties, but it is on this one.

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

Chairman Clawson: Rights of Adjacent Property Owners. All the letters went out?

Mr. Thompson: Yes, the only person I heard from was the email I mentioned earlier, who was for the request.

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

Chairman Clawson: Hardship.

Mr. Dunn: I'd just like to say if this isn't a case of hardship, I don't know what is. I'm grateful to have an easy one.

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

Chairman Clawson: Public Safety and General Welfare. Staff commented that approval of the request should not affect it.

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I would say it has been met because, by granting this variance, we are going to allow them to build a beautiful house that will fit in the neighborhood. If we didn't, he'd have a little 10' strip of a garage or something.

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

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

A motion to approve Case 22-2020 Brent & Stacey Grecian/Owners - Request for a Variance to the calculated rear build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 9211 Lee Boulevard – was made by Hawk; seconded by Dunn. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Dunn.

Case 23-2020 Andrew Felling/Owner ****CONTINUED**** VARIANCE Request for a Variance to the rear build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12605 Wenonga Lane.

Adoption of the Leawood Board of Zoning Appeals By-Laws.

Chairman Clawson: Have these changed?

Mr. Thompson: No, they have not. We just have to approve them, and you and I have to sign them.

A motion to approve the Board of Zoning Appeals By-Laws was made by Hawk; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Dunn.

Mr. Hawk: I'd like to commend the city on the privacy partitions they have provided. They've done a great job.

Mr. Thompson: I will convey that message.

MEETING ADJOURNED.