

**City of Leawood
Board of Zoning Appeals Minutes
October 28, 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 October 28, 2020 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: None

STAFF PRESENT: Thompson, Tomasic

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.

NEW BUSINESS:

Case 25-2020 Brad Legler/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 3306 W. 92nd Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 5' tall wooden privacy fence. The property currently has three different fences, and the heights range from 3-6 feet. If the request is approved, all the other fences will come down, and a new 5' fence will be constructed.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: Were the fences in place legal or nonconforming?

Mr. Thompson: They were conforming; they are all different. Two are pickets, and one is a chain link.

Dr. Peppes: I'm having a hard time orienting the pictures. Is the chain link involved? And is the 4' picket fence involved?

Mr. Thompson: Yes, the 4' picket fence, the 5' picket fence, and the 4' cyclone fence would all be removed.

Dr. Peppes: The second picture is an extension of the first picture's 4' fence that runs into the 5' fence, and then it goes into a chain link, so chain link on both adjacent sides and then the picket fences in the back will all be 5' fences that are in the pictures.

Mr. Thompson: That is correct. The picture on the screen now is the one they would like to install.

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

Applicant Presentation:

Brad Legler, 3306 W. 92nd Street, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Legler: There are actually four separate fences. There are two chain links that vary from 3'-4'. There is a 3.5' spaced picket fence, and then there's a small 10' section of a 6' high privacy fence. The reason for changing is aesthetics, and we have a large dog that is coming with us. All three surrounding neighbors have kids and dogs. One neighbor has

two cats, and there's a hot tub in the back yard as well. It's really just for safety. Our dog could step over some of the fences now. It is for safety and aesthetics. I would be taking care of the fence as well on all sides.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: I just want to ask Mr. Legler if these fences represent the different ownerships that have occurred over time with these houses. It seems strange that one person would put up that many different fences.

Mr. Munson: They're all different. The neighbor to the right has chain link. The two in the back butt up to each other. One was done by hand, and it's about a 3.5' space gap. It was for the previous owners who had young children, so it was for them to easily hop over to play with each other. That's the main cause for alarm for our large dog. They have dogs on their side as well.

Mr. Munson: These fences were erected by different owners prior to you moving in?

Mr. Legler: Correct.

Mr. Hawk: These fences that have been erected belong to neighbors, and you're going to replace each fence with a fence of your own?

Mr. Legler: Yes, at my cost.

Mr. Hawk: And this is agreeable to all the neighbors?

Mr. Legler: Yes. We're going to butt up against the 6' fence. We're not going to change theirs. It's only about a 10' section.

Chairman Clawson: Are there other questions? Have there been responses from the public?

Mr. Thompson: I haven't heard from any of the neighbors, and all the letters went out.

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

Ms. Tomasic: Not that I'm aware of.

Chairman Clawson: Is there a motion?

A motion to approve Case 25-2020 Brad Legler/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 3306 W. 92nd Street – was made by Hawk; seconded

by Farrington. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Case 26-2020 Eric Deroo/Owner - Request for an Exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for the property commonly known as 2918 W. 92nd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to add a new addition to the rear of the existing garage. The new addition will extend off the back wall of the garage and be 10.48 feet from the eastern property line.

Chairman Clawson: Are there questions for staff?

Mr. Dunn: I just want to make sure I'm reading this correctly. Am I correct in understanding that the existing structure is closer than the requested exception?

Mr. Thompson: Yes, the existing structure is 10.36 feet away; the new addition will be 10.48 feet away. It meets the criteria for an exception.

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

Applicant Presentation:

Eric Deroo, 2918 W. 92nd Terrace, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Deroo: We just have a classic two-stall garage now and are looking for more space. Really, the only available area we have goes back on the righthand stall on the east side of the property. It goes back about 5 feet until it runs into an egress window. We have a roughly 65-sq.-ft. structure. The existing garage is 10 feet roughly from the property line. We'll maintain that and actually come back an inch or so.

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

Ms. Tomasic: Not that I'm aware of.

Chairman Clawson: And no calls or complaints have been received; is that correct?

Mr. Thompson: That is correct.

Chairman Clawson: And it meets the requirements for an exception as outlined in the analysis. Is there a motion?

A motion to approve Case 26-2020 Eric Deroo/Owner - Request for an Exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for the property commonly known as 2918 W. 92nd Terrace – was made by Dunn; seconded by Bussing. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Mr. Hawk: Were there minutes to approve?

Mr. Thompson: They weren't finished yet. You'll get them at the next meeting.

Case 27-2020 Christopher Fein; Christopher Justice/Owner - Request for an Exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 2809 W. 90th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to construct a small addition to the rear of the garage. The existing structure is 10'8" from the west property line. The new addition will be 11'1" from the west property line. This is much like the previous case.

Chairman Clawson: It meets the requirements of the exception, as the analysis shows. Are there any questions for staff? Is the applicant online?

Applicant Presentation:

Bradley Dolitzer, 601 E. 63rd Street, Kansas City, MO, representing Christopher Fein, 2809 W. 90th Street, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Dolitzer: Currently, the home does not have a family room. It also does not have a mud room. We believe adding these things are key to the usability of the existing home. When the home was built in 1950, the side setback was 10', and now, it's 15'. Similar to the last case, it's actually set back from the face of the existing western portion of the house. It's to be constructed in the exactly the same architectural style of the existing home, and the visibility to the street is low to none. The main case is the usability of the family space and an added mud room.

Chairman Clawson: Are there questions for the applicant? It says that no calls or complaints have been received.

Mr. Thompson: That is correct.

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

Ms. Tomasic: Not that I'm aware of. There are a couple other people on the application. I'm not sure if the owner wants to speak.

Mr. Hawk: In the application, it states that the homes' association rules have been consistent. Is there some piece of evidence or something in writing that shows that you submitted this to the homes' association?

Mr. Thompson: I don't know if they submitted to the homes' association or not. That would have been on their application.

Chairman Clawson: Is there a motion?

A motion to approve Case 27-2020 Christopher Fein; Christopher Justice/Owner - Request for an Exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 2809 W. 90th Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, and Bussing.

Case 28-2020 Shannon Roganovic/Nolyn Wagner; Millennium Properties/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 9135 Manor Rd.

Dr. Peppes recused himself because of the relationship with Millennium Properties.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants have constructed a 6' tall fence on two sides of the home without a permit. They are requesting an exception to keep the 6' height. Unfortunately, it is also built with the good side facing in, so even if it is approved, something will have to be done on the other side for the appearance of the back side of the fence.

Chairman Clawson: How would that be handled?

Mr. Thompson: You wouldn't handle that. Code Enforcement would handle that.

Chairman Clawson: If we pass a motion for approval, they would still have to go to the city for a permit to construct the fence and build it in accordance with the LDO requirements.

Mr. Thompson: Yes, sir.

Mr. Hawk: What are the mechanics of that? Do they have to replace the entire fence, or can they make some modifications to comply with our requirements?

Mr. Thompson: They could just put pickets on the outside as well so it looks exactly like the inside.

Mr. Hawk: We're not talking about replacing the fence; we're talking about modifications.

Mr. Thompson: Correct.

Chairman Clawson: It would be fairly simple modifications, I guess.

Mr. Thompson: It could be. There are a lot of things going on with that fence. There are actually three fences on at least one portion of the property. It could be easy if there were no other fences, but since there are two other fences in place, it might be problematic.

Chairman Clawson: We don't have to deal with that issue; we're just dealing with the height.

Mr. Thompson: Yes, sir.

Mr. Munson: How did you discover this fence that was built without a permit?

Mr. Thompson: The codes enforcement officer saw the fence either being constructed or a new fence was in place. When he checked, a permit had not been issued for that fence.

Chairman Clawson: Are there any questions for staff?

Mr. Dunn: Wade, you don't have to do this, but I would appreciate it if somebody involved would tell us what these pictures show before we make a decision. I can't tell anything from the pictures.

Mr. Thompson: (*Referring to pictures*) On the east side of the home are three different fences. The house directly east has a fairly significant grade change of 4'-6'. Someone sitting on that patio looking to the west will see a big wall of fence. That is something to take into consideration.

Chairman Clawson: It looks like a chain link fence is running parallel to the new fence.

Mr. Thompson: Yes, there is a chain link, and then also a wooden fence that belongs to the property owner to the east. Both of these houses sit on a corner lot right off Lee.

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

Applicant Presentation:

Nolyn Wagner, Millennium Properties, 10704 W. 118th Terrace, Overland Park, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Wagner: Our apologies for not obtaining the permit. We actually thought it was tied into the home remodel. This home has been through an extensive remodel process. We're

very sorry for that. If you could see pictures of the other side, you'd see that we have constructed a beautiful fence that goes cohesively with the home. The reason for taking it to that height and now asking for the variance is the elevated stature of the home. We added a second story, so we were trying to add more privacy for the future homeowners of the property and also for the surrounding neighbors. At the time we constructed it, we received a lot of praise from the neighbors. The neighbor to the north actually immediately removed his fence, which was down, and thanked us. Then, one of the neighbors to the east also appreciated it because it gave them more privacy.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: They indicate that they thought the building permit for the house permitted the fence, also. Why did you reach that conclusion?

Mr. Wagner: When we applied for the building permit, we worked with an architect and thought it was added into that as far as replacing it with the rest of the project. Mr. Jones worked with us throughout that project as a city inspector. When he came out for the final inspection, he brought it to our attention. He actually had to go back and check records to determine that.

Mr. Hawk: There is a considerable drop in the elevation there. Did you consider the use of a 5' fence rather than a 6' fence?

Mr. Wagner: No, we actually did not. We were using dimensional lumber, leaving 6' out of the ground and 4' per stride.

Chairman Clawson: Are there other questions? You did understand the discussion we were having about requirements for the back side of the fence; correct?

Mr. Wagner: Yes, sir, and obviously, if we get this passed, we would immediately go back in, weather permitting, to clad or picket the outside. We would obviously work with city codes to bring that up to the standards.

Mr. Dunn: The sheet we have is printed with a purple line, showing the two sides of the property the fence is on. I wanted to make sure that this is the only place that the 6' fence is installed; correct?

Mr. Thompson: Correct.

Mr. Dunn: Are there existing fences on the other side of both of these areas?

Mr. Thompson: Yes, there are.

Chairman Clawson: I saw there was one email in support of the application.

Mr. Thompson: That is correct. I did not receive any phone calls ore other emails.

Chairman Clawson: Are there any other questions?

A motion to approve Case 28-2020 Shannon Roganovic/Nolyn Wagner; Millennium Properties/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 9135 Manor Rd – was made by Bussing

Ms. Tomasic: Before you vote, we need to determine if there is anyone who would like to speak about the application.

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

Mr. Munson: My concern is if constructing without a building permit is allowed, then anyone can build without a permit and ask for forgiveness later. The City of Leawood must enforce its building ordinances and permitting process.

Ms. Tomasic: I didn't not see anyone raise a hand or give an indication that they wanted to speak.

Motion seconded by Farrington. Motion carried with a roll-call vote of 3-2. For: Dunn, Farrington, Bussing, Opposed: Munson, Hawk. Recused: Dr. Peppes

Case 29-2020 Nicole Curry; Jessica & Brad Allen/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 10317 Wenonga Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The neighbor to the south is in the process of constructing a new swimming pool that will have a 6' tall privacy fence that faces the street. The property owners would like to add a 6' tall privacy fence to match the fence on the south side of their home for cohesiveness. This is a 10'-12' section as noted on your screen that they are asking for.

Chairman Clawson: Can you point this out and go through what they are asking for?

Mr. Thompson: *(Refers to the plan)*

Chairman Clawson: That's it?

Mr. Thompson: Yes, and I hate to even have to bring it before you. They have a legal, nonconforming section on the other side of the home that has been there for many years. The south side of the home has a 4' fence, as shown in your packet. This property owner

does not have a pool; it is the house next door. They will be entitled to a 6' tall fence. They just want both fences to match.

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

Applicant Presentation:

Nicole Curry, 10321 Wenonga Lane, appeared via Zoom on behalf of the owner before the Board of Zoning Appeals and made the following comments:

Ms. Curry: I live to the south of Brad and Jessica. It's very simple. We want to put a 6' privacy fence in our yard, which we're entitled to do with the pool that we'll begin construction on in about a month. Just for cohesiveness of that one fence that faces the street, we want it to go straight across our houses as a 6' fence.

Chairman Clawson: You can confirm that the short fence is what you're requesting.

Ms. Curry: That's all we want, yes.

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

Inaudible comments

Chairman Clawson: Is there a motion?

A motion to approve Case 29-2020 Nicole Curry; Jessica & Brad Allen/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 10317 Wenonga Lane – was made by Dunn; seconded by Munson. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Mr. Thompson: Before you adjourn, I'd like to announce that there are no cases next month, so enjoy your Thanksgiving.

Mr. Dunn: I would like to compliment whoever has put this all together. I've been involved in a number of Zoom calls and live meetings, and none of them go as smoothly as this.

Mr. Thompson: Neighborhood Services Staff would second that.

Chairman Clawson: I agree; it has been smooth, and we appreciate that.

MEETING ADJOURNED.