

**City of Leawood  
Board of Zoning Appeals Minutes  
January 27 – 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 January 27, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Farrington

**STAFF PRESENT:** Thompson, Tomasic

**APPROVAL OF MINUTES:** Approval of the minutes from the December 16, 2020 Board of Zoning Appeals meeting

**A motion to approve the minutes from the December 16, 2020 Board of Zoning Appeals meeting was made by Hawk; seconded by Bussing. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.**

**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](http://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](mailto: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](mailto:wadet@leawood.org). Written public comments received at least 24 hours prior to the meeting will be distributed to members of the Board of Zoning Appeals.

Electronic copies of tonight's agenda are available on the City's website at [www.Leawood.org](http://www.Leawood.org) under Government / Board of Zoning Appeals / 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.

Chairman Clawson: Our first case tonight is in New Business.

**NEW BUSINESS:**

Case 01-2021 William Dennis, Jr. & Jill Thornhill/Owners - Request for a Variance to the rear yard build line in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 4401 W. 125th Terrace.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing deck that has been in place for more than 34 years. A variance for 10 feet is being requested to reconstruct the deck as shown on the plan.

Chairman Clawson: Are there questions?

Dr. Peppes: Usually, in a situation like this, it's legal, nonconforming in that they were issued a permit built it, and then we changed the ordinance. From what I read in here, a permit was never issued, so this was kind of like an illegal, nonconforming deck. Is that correct?

Mr. Thompson: I would still consider it legal, nonconforming. Personally, I don't think it was constructed without a permit. It was probably constructed when the home was, and that's why we don't have a separate permit for the deck.

Dr. Peppes: Thank you. On Exhibit 3 is a line that's on the deck.

Mr. Thompson: The line would represent where the deck would be if they were to build it without the variance being approved.

Dr. Peppes: The ordinance allows for a 5' leeway, so this is not including that?

Mr. Thompson: You'd have to ask the owner. This was provided by the applicant. I would say no. You can see the house is at the 30' build line, and the fireplace extends out 1.87 feet. I would say another 3.5 feet past the fireplace bump-out is where the 5' line would be.

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

**Applicant Presentation:**

William Dennis, 4401 W. 125<sup>th</sup> Terrace, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Dennis: You basically laid out the issue. We purchased the home last August. We knew the deck needed some surface work. We had three separate deck contractors look at it. They said that it was time to replace it because it was the same age as the house. We started going through the permitting process, and that's when we discovered this issue. Then we started looking at it from old aerial shots and realized it had been there forever like that. In the permitting process, they routed us to the BZA for the solution. The yellow line on the deck is the 25' mark from the rear property line. That will pretty much make the deck unusable. We wouldn't be able to build a walkway around the fireplace. That's the stick we're in. What they said was right. There is no permit we can find anywhere. The house was built in '83, so things happen over that amount of time.

Mrs. Dennis: Record-keeping is different these days, and we really want to replace the deck with the exact same footprint and not change anything.

Mr. Dennis: That way, it would have no impact on what's been in place forever now. In fact, the railings would probably be trimmed up a bit with new materials rather than the heavy wood that it is now. It actually would be less obtrusive than it is now. We are proposing the exact same shape and footprint. Obviously, the materials may be updated due to technology, but it will be approximately the same color as well.

Chairman Clawson: Are there questions for the applicant? In looking at the location of this house relative to the rear lot line, I see that the house was placed closer than the majority of the houses in that area. Would you agree with that?

Mr. Thompson: Yes, if you look at the aerial view, it does sit farther back.

Chairman Clawson: Are there other questions for the applicant? As you know, this is a variance, so we must evaluate the five factors. Could you spend a few minutes talking about those and how you justify your variance?

Mr. Dennis: Wade is correct. For some reason, this is a "deeper" house than the ones surrounding us. The rear of the house is right on the building line. That's a little unique. It's been in place for quite a while. As far as the adjacent property owners, it's been in place from at least 1986 from what we can tell from the aerial shots. Keeping it as it is would not have a material difference to the surrounding properties that hasn't been in place for years now.

Mrs. Dennis: Without the requested variance, the deck would really become unusable. The picture with the yellow line illustrates that. Also, when looking at the bigger picture, not only would the functionality and the value of the property and the deck be significantly affected, but looking at the bigger picture, whenever the property would turn

over, it would also affect the neighboring properties. That's certainly not what Leawood wants. It would also adversely affect our neighbors.

Mr. Dennis: As far as the variance's affect on public health and safety, I cannot identify any. Is the variance opposed to the general spirit and intent of the Leawood Development Ordinance? Preserving property values is the fundamental purposes of the ordinances, and we respect that. Frankly, it would have been nice to look at this earlier than when we pulled the permit, but that's just life. It would make the deck safe and usable. Right now, it's on the verge of not being usable and safe. We want to prevent anything from happening in that regard.

Chairman Clawson: All the adjacent landowners were notified?

Mr. Dennis: We sent certified letters and talked to several. They said it was fine. The neighbors on both sides support it. We haven't heard from the one across the street, but she is one of the officers on the subdivision HOA, as is one down the street. I have heard no one say they would not support it.

Mr. Thompson: I received two phone calls wanting information. Once I explained what they were requesting, the callers had no issue with it.

Chairman Clawson: Any other questions? Is there anyone online to speak for or against this application? We have to evaluate the five factors. In order to support a motion for approval, we have to vote in the affirmative on each factor. The first is Uniqueness of the Property.

Mr. Hawk: I don't know whether you'd consider it unique, but this is a deck that's been there for 34 years, and the applicant really just wants to replace a deck so it can be used for the next several years.

Dr. Peppes: At first, I couldn't see the uniqueness, but now, as we look closer at the plans and see the placement of the house is closer to the rear property line, it doesn't allow them enough space to provide themselves with a deck. I guess you could say that this is unique with regard to placement.

Mr. Dunn: In looking at the factor, it should be something that is not ordinarily found in the same zone or district, which this qualifies for. Even more importantly, it was not created by the actions of the property owner. I agree that it has been met.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Hawk: The adjacent property owners have been notified, and the city has received some interest into clarification. It appears that everyone is on board.

Mr. Dunn: In addition to that, I simply want to note that it is difficult to note how it could adversely impact the adjacent property owners since it's going to be put back in the same configuration.

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

Chairman Clawson: Hardship.

Dr. Peppes: This is hard one to qualify, but I believe it has been met because, once again, usually when there's a hardship, there's a structure or easement or something in the way that won't allow something to happen. I think with this, the property line is right at the back door. It doesn't allow for ingress or egress of the property from the second floor. I believe it has been met.

Mr. Dunn: I'd simply like to note that we often see cases where the only hardship we see is created by the property owners because they've gone ahead without getting approval. I'd like to commend these property owners for going through the proper process before proceeding. Certainly, I think the hardship is obvious.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Bussing: As staff notes, approval of this request would not affect public safety or general welfare.

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

Chairman Clawson: Spirit and Intent. As we pointed out, this deck has been in its current location for many years. By definition, it has probably met the general spirit and intent. Other comments?

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

**A motion to approve Case 01-2021 William Dennis, Jr. & Jill Thornhill/Owners - Request for a Variance to the rear yard build line in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 4401 W. 125th Terrace – was made by Bussing; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.4**

Mr. Hawk: I have a question. This appears to be so rote. All they're doing is replacing a deck in the same configuration and same spot. Is there a possibility that this is something that could be handled internally rather than bringing it to us?

Mr. Thompson: I would say not because I don't know what the circumstances were in 1983 when it was built. Maybe legal could weigh in.

Ms. Tomasic: It probably depends. I could see a situation where we're trying to determine how long is long enough that it's been there and under what circumstances. It might be hard to craft an ordinance that covers every scenario to allow for administrative approval. It is certainly something we could mention to the Planning and/or Building Departments to see if they have any interest in doing that or adding that to city code. It would have to come from them since they're the ones that oversee that process. I see a lot of discretion that would make it hard to write an ordinance. I'll pass it along.

Mr. Dunn: I'd just like to say to Mr. Hawk that I'm not unfamiliar with legalese, and because of this very idea, I've tried my hand at coming up with language that fits. I agree with our legal counsel that it is almost impossible to draft language that would cover this exception and not bring other things in. I'd rather see too many of these than too few.

Case 02-2021 Jacob Littrell, SixTwentyOne Architecture; Nick & Kim warren/Owners - 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 10203 Howe Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a screened-in porch off the existing kitchen on the rear of the home. The new addition would encroach the north side setback by 3 feet and be 12 feet from the property line.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Just to make it clear, even though this is a 15' side yard setback, it's only 9.7 feet. This is legal, nonconforming.

Mr. Thompson: The new portion will not extend off the rear of the home that is 9 feet, 7 inches from the property line. It's actually going to jog in, so it will be 12 feet from the north property line.

Chairman Clawson: Otherwise, it wouldn't be an exception.

Mr. Thompson: Yes; it would be a variance under those circumstances.

Chairman Clawson: Other questions? Is the applicant online?

**Applicant Presentation:**

Jacob Littrell, architect, 1828 Walnut Street, Kansas City, MO, and Kim Warren, homeowner, 10202 Howe Lane, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Littrell: As Wade stated, we are requesting an exception for the side yard setback. Nick and Kim are hoping to add a screen porch to the rear of their house. Because of some of the existing conditions, they are really limited in their ability to do that along the rear of the house. I'd like to point out a couple things that Wade did as well. The existing home is constructed 9.7 feet from the property line. Our proposed addition is set back 12 feet from the property line. We are not building the addition as close to the property line as the current side of the home. There are a couple existing conditions, namely several windows in the exterior brick wall, that limit where the new screen porch can be constructed. There is also a living room that extends out the back of the house that limits that space where the screened-in porch could be built. We are trying to fix this addition of a screened-in porch and to it in a way that is aesthetically pleasing, matches the existing architecture of the home, and matches the character of the neighborhood. In trying to do that, we are really pretty limited in that width that we could build something that is still usable and functional. That is really why we are requesting this.

Ms. Warren: I can answer any questions you may have about the challenges we're facing with placing the screened-in porch in a way that makes sense.

Chairman Clawson: Questions for the applicant?

Mr. Bussing: Mr. Littrell, I'm curious if you are removing the chimney from the back of the house.

Mr. Littrell: No, it will stay intact.

Mr. Bussing: What's the roof line over the new addition?

Mr. Littrell: It matches the existing slope of the adjacent living room. It's an 11/12 slope.

Mr. Bussing: I was looking at the picture on the screen, but the copy in our packet was kind of dark. Thank you.

Chairman Clawson: There are no other violations from the footprint of the house. So, the rear yard setback is okay.

Mr. Thompson: No other violations were noted on the new structure.

Chairman Clawson: Any other questions for the applicant? Is there a motion?

**Case 02-2021 Jacob Littrell, SixTwentyOne Architecture; Nick & Kim warren/Owners EXCEPTION 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 10203 Howe Lane – was made by Dr. Peppes; seconded by Bussing. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.**

*MEETING ADJOURNED.*