

**City of Leawood
Board of Zoning Appeals Minutes
February 24 – 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 February 24, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Munson, Bussing

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the January 27, 2021 Board of Zoning Appeals meeting

A motion to approve the minutes from the January 27, 2021 Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

MEETING STATEMENT:

Wade 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, February 19th 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.

Chairman Clawson: We have a very full agenda tonight, so I would ask that the applicants please limit your discussion and presentation of your case to five minutes if possible. Our first case tonight is in New Business.

NEW BUSINESS:

Case 03-2021 Terry Dunn - Request for a Variance to allow an accessory structure in the side yard in accordance with the LDO, Section 16-4-1.2(B) 6 in an RP-2 District for property commonly known as 11400 Cambridge Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a patio with a fire pit to allow for three-season use. The patio will have a pergola with a sitting area and a built-in gas grill. A variance to allow the accessory structure in the side yard is being requested.

Chairman Clawson: Could you clear up exactly why the variance is required here?

Mr. Thompson: The LDO only allows a built-in gas grill in the rear yard. It's deemed an accessory structure only because of the gas line. If it were a movable gas grill, they would not need a variance. They only need it because it is deemed an accessory structure.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Would somebody orient me to the front and rear of the property? Where it says "front," is that where the front door would be?

Mr. Thompson: It's not really the front door, but it's the front wall of the home. Anything in front of the front wall of the home is considered the front yard. Even if it were 40 feet behind the front build line, they still couldn't go beyond the front of the home.

Dr. Peppes: It's because they're attached to the side yard of their existing house.

Mr. Thompson: Correct. With the combining of these two lots, it makes for an interesting situation. If the existing home faced the east instead of the south, this would be a rear yard and the structure would be permitted.

Chairman Clawson: So, the front of the house does not face the street.

Mr. Thompson: It does, but with the combining of this lot, they're going to have streets on four sides of the home.

Chairman Clawson: There's a street on the south side? Is there a Plot Plan that shows that?

Mr. Thompson: (*referring to plan*) The front of the home faces the south and has a small driveway that enters onto the street. Cambridge Road is to the east of it.

Mr. Hawk: Where is the patio and the gas grill?

Mr. Thompson: (*referring to plan*)

Chairman Clawson: It's got a Cambridge address, but it doesn't face Cambridge.

Mr. Thompson: That's correct.

Chairman Clawson: Are there any other questions?

Applicant Presentation

Terry Dunn, 11400 Cambridge Road, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Dunn: This is a fire pit with a patio. Our current RP-2 lot is extremely small with a patio. The addition of the lot to the west of us will provide needed green space for our 14 grandchildren to play. Rather than being considered a side yard, it is actually the only yard, which makes it very unique. We desire to add a patio with a fire pit to allow for three-season use. This is especially important since being outdoors is safer for all of our family to be together during the pandemic.

Chairman Clawson: Are there questions for Mr. Dunn? The situation is very unique in my opinion. I looked at the plat of this area, and there was no street south of these two properties. I presume that's a new addition to the project.

Mr. Dunn: It's actually in the planning process. There is a little cul de sac where 4-5 homes can be built off Cambridge. We're facing that cul de sac.

Chairman Clawson: If this was a rear yard, they could have a fire pit with a gas line, correct?

Mr. Thompson: That is correct.

Chairman Clawson: What's the rationale for not allowing that in the side yard?

Mr. Thompson: Most side yards aren't this large. Like I said, if this house faced Cambridge, this would be the rear yard. The lot is narrow but long when the two lots are combined.

Chairman Clawson: Terry, this is a variance, so we have to evaluate the five factors. You've talked about Uniqueness. The other one we have trouble with is Hardship. Could you address that?

Mr. Dunn: Without the variance, we would not be able to include a fire pit on the enclosed patio. Hardship would come from us being far more limited in how we can use this outdoor space.

Chairman Clawson: Are there additional question? I presume letters went out.

Mr. Dunn: Certified letters have been mailed. There are no adjacent property owners at this time. The landscape architect for the developer has approved our proposed landscape plan. The developer has provided a letter stating that he is very satisfied with the plan and feels that it will benefit the whole neighborhood.

Mr. Thompson: That is true, and the letter from the developer has been included in the packet.

Chairman Clawson: There is no other resident within 300 feet?

Mr. Thompson: All the owners were notified with no complaints. There are letters to support the request.

Chairman Clawson: Any other questions for Mr. Dunn? Is there anyone here who wishes to speak for or against this application?

Ms. Tomasic: I do not see anyone indicating they wish to speak.

Chairman Clawson: We'll need to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five. The first is Uniqueness.

Ms. Farrington: Since they acquired the adjacent property, it is unique because there are streets on all four sides. That is not typical of many residential plats in our city. The shape also helps make this seem like a rear yard even though it's the side yard.

Mr. Dunn: I would add that whenever two lots are combined, it creates a unique situation.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Hawk: This has been satisfied because the letters have been mailed out.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Hardship.

Dr. Peppes: It's got to be something that's really hard to control. I think the position of where the house is and where the side lot is, is making it so this variance is needed in order for them to do anything with that property. I think it has been met.

Mr. Hawk: The only thing they're doing that is no evidently permissible is this gas grill. Without that, it wouldn't make any difference. A gas grill is certainly a consideration, and most people would have access or want access to a grill in their back yard or side yard, whatever the side yard situation entails.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Public Safety and General Welfare.

Dr. Peppes: I think this has been met. If anything, this is going to add to the safety of the neighborhood.

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Spirit and Intent.

Ms. Farrington: This actually enhances the spirit and intent of the development. It shows more green-like space in a park area. This is actually an improvement to the overall development.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, 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 03-2021 Terry Dunn - Request for a Variance to allow an accessory structure in the side yard in accordance with the LDO, Section 16-4-1.2(B) 6 in an RP-2 District for property commonly known as 11400 Cambridge Road – was made by Hawk; seconded by Farrington. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Case 04-2021 Terry Dunn - Request for a Variance to the rear yard build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an RP-2 District for property commonly known as 11400 Cambridge Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to enclose the rear yard with a 4' wrought-iron fence. Due to the location of the lot and its odd shape, the rear yard is extremely small, long and narrow. A variance to place the fence 10 feet off the rear property line is being requested. The pink portion on the display is what would be constructed if this variance is granted.

Chairman Clawson: What's the red line, then?

Mr. Thompson: The red line is the actual build line, so that's where they could place it without a variance.

Chairman Clawson: The variance is for how many feet?

Mr. Thompson: It is for 10 feet.

Dr. Peppes: This fence will tie in to the existing fence that they got a variance for when the house was built, correct?

Mr. Thompson: It will tie in. There will be a small jog that you can see in pink where it jogs to the north a couple feet and hooks into the existing fence. On the west side, the subdivision has constructed a wall, and the fence will tie in to that existing wall. This fence will encroach less than the fence that was approved in 2019.

Chairman Clawson: These three cases coming up are for fences related to this project.

Mr. Thompson: Yes.

Chairman Clawson: The plan shows the proposed fence for the current case.

Mr. Thompson: Yes. The existing fence is just off the sidewalk because of the weird placement on that corner. The next picture shows where the fence will end at the existing wall.

Chairman Clawson: The next case is the side yard fence?

Mr. Thompson: Yes, it would be considered a side yard, and then the last case would be the front yard.

Chairman Clawson: Are there other questions for staff? It's too bad we can't treat these cases as one big case. If there are no further questions, Terry, would you like to present your case?

Applicant Presentation

Terry Dunn, 11400 Cambridge, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Dunn: Our current RP-2 lot is extremely small, and the addition of the lot to the west of us will provide needed green space for our 14 grandkids to play. Rather than this being considered a side yard, it is the only yard, which makes it very unique. We desire to continually fence along the north side of our yard to tie in with the Hallbrook East Village monument wall. Having the fence at that location would provide continuity with what is already in place and protect the streetscape. I can go through the five areas. Certified letters have been mailed, and there are no adjacent property owners at this time. The landscape architect for the development has approved our landscape plans and fence placement. The developer has provided a letter stating he is very satisfied with the plan and feels it would benefit the whole neighborhood. Without the variance, we would have to locate the fence on the rear property line, which would leave a gap between the development monument walls. Hardship would be the lack of aesthetic, continuity, and the challenge of maintaining between the walls and the proposed fence. Regarding Public Safety and General Welfare, since the fence will provide a continuous barrier for our grandchildren when they are in our yard, their safety will be greatly enhanced. In addition, this will not be a concern for the public. We are proposing to keep with the same style that is on our current patio. Along with the proposed landscaping, it will provide manicured, secure green space and will still achieve the openness that Leawood values.

Chairman Clawson: Are there questions for Mr. Dunn? Is there anyone online who wishes to speak for or against this application?

Ms. Tomasic: I don't see anybody.

Chairman Clawson: We'll need to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five. The first is Uniqueness.

Dr. Peppes: I think it has been settled with having a side yard and the fence where it needs to go.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. As indicated, letters were mailed out and were supportive of the application.

Mr. Thompson: That's correct.

Mr. Hawk: It's the same criteria we looked at in the first case.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Hardship.

Ms. Farrington: I think if this was not approved, there would be an issue between the existing wall built by the development and the proposed fence. There would be a space between to be maintained, which would be a hardship on the owner.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Public Safety and General Welfare.

Dr. Peppes: If anything, like I said before, this will increase the safety of people who are in that space and people around it. I think it has been met.

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Spirit and Intent.

Mr. Hawk: The fencing just blends in seamlessly with the whole project and really makes sense.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

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

A motion to approve Case 04-2021 Terry Dunn - Request for a Variance to the rear yard build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an RP-2 District for property commonly known as 11400 Cambridge Road – was made by Dunn; seconded by Hawk. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Case 05-2021 Terry Dunn - Request for a Variance to the side yard 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 RP-2 District for property commonly known as 11400 Cambridge Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to complete the enclosure of the yard with a 4' tall wrought-iron fence. The developer has constructed a fence around the entire development. A variance for 20 feet is being requested to hook in to the existing fence. What you see on the screen in green is the portion that this variance would apply to.

Chairman Clawson: This ties in to the existing wall.

Mr. Thompson: Yes, sir.

Chairman Clawson: Was the wall approved as a variance?

Mr. Thompson: Because it is part of the development, the developer does not have to get a variance. That's granted by the Planning Department. The fence approved in 2019 does no hook up to any development wall.

Chairman Clawson: This is just an extension of that development wall with wrought iron.

Mr. Thompson: Correct.

Chairman Clawson: Are there other questions for staff concerning this? If not, Mr. Dunn, you may present your case.

Applicant Presentation:

Terry Dunn, 11400 Cambridge, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Dunn: What I'm going to present for this is the same as the presentation for the fourth and final request for a variance. I'll go ahead and do that. It really is the completion of the perimeter of the fence and tying it into the house. Our current lot is extremely small with a patio occupying the entirety of our yard. The addition of the yard to the west will provide needed green space for our grandkids. Rather than being considered a side yard, it is the only yard, which makes it very unique. We plan to landscape the entire yard and desire to install a 4' wrought-iron fence in front of our build line that would be connected to the developer's fencing along Overbrook Road. It really is the completion of the fencing that we are requesting. This fence placement would ensure a safe and secure play space for our grandkids. Certified letters have been mailed. There are no adjacent property owners at this time. The landscape architect for the developer has approved our proposed landscape plans and fence placement. The developer has provided a letter stating he is very satisfied with the plan. He feels it would benefit the whole neighborhood. Without the variance, we would not be permitted to locate the fence in front of the front build line or connect to the fence on Overbrook Road. Requiring us to place the fence on the build line would greatly reduce the green space. In addition, if future neighbors install a fence on their property line, there may be a gap between the two fences, creating maintenance issues. Since the fence placement will

provide a continuous barrier for our grandkids when they're in our yard, their safety will be greatly enhanced. In addition, this will not be a concern for the general welfare for the public. We are proposing a 4' wrought-iron fence, keeping in the style that is on our current patio. Along with the proposed landscaping, it will provide a beautiful, secured green space and achieve the openness that Leawood values. The presentation is the same for both this variance and the last request.

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

Ms. Tomasic: I don't think so.

Chairman Clawson: We'll need to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five. The first is Uniqueness.

Dr. Peppes: I think the property is unique. We've stated that it is unique with a side property next to it.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. Letters have been mailed out. Other comments?

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Hardship.

Mr. Dunn: My comments would be the same as in the prior cases. It has been met.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: Enclosing this property on the end of the lot that runs parallel to Overbrook Road would create a safer environment.

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met in continuing with the fence the same size and with the landscaping.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

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

A motion to approve Case 05-2021 Terry Dunn - Request for a Variance to the side yard 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 RP-2 District for property commonly known as 11400 Cambridge Road – was made by Hawk; seconded by Dunn. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Case 06-2021 Terry Dunn - Request for a Variance to the front build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an RP-2 District for property commonly known as 11400 Cambridge Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the yard with a 4’ tall wrought-iron fenced to match the developer’s fence. Due to the placement of the home and the odd shape of the lot, a variance for 30 feet is required to place the fence on the property line. On the screen, it is the pink line.

Chairman Clawson: Which would actually be in the same location as the front of the house.

Mr. Thompson: Yes, and the fence they want to construct would come off the side of the home and angle down and then take off to the west, ending at the developer’s existing fence.

Chairman Clawson: Does the board have questions for staff? If not, Mr. Dunn, you may present your case.

Applicant Presentation:

Terry Dunn, 11400 Cambridge, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Dunn: It’s the same information I presented on the third case. It is the same statements and logic. It addresses all five of your criteria.

Chairman Clawson: Is there anyone who wishes to speak for or against this application? There are none. We can evaluate the five factors. The first is Uniqueness of the Property.

Mr. Dunn: I'd like to point out that this is an example of why you need this process. This property just does not fit our ordinances. By that very fact, it makes it unique.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Rights of Adjacent Property Owners. Letters have been mailed out.

Mr. Thompson: That is correct.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Hardship.

Mr. Hawk: If we deny the request, we reduce the usable space. That's something we certainly don't want to get into.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Public Safety and General Welfare. I presume the comments made previously would also apply to this variance.

Mr. Thompson: That is correct.

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Chairman Clawson: Spirit and Intent. Any new comments?

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, 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 06-2021 Terry Dunn - Request for a Variance to the front build line for the placement of a fence in accordance with the LDO, Section 16-4-9.3(A) in an RP-2 District for property commonly known as 11400 Cambridge Road – was made by Farrington; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Mr. Dunn: I'd like to thank the commissioners for their service to the community and their leadership. I also want to thank staff. They were very professional in assisting us and helping us through this process.

Case 07-2021 Aaron Tobaben/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 8029 High Drive.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an older 6' wooden fence with the same. The request for the 6' fence only applies to the north side of the property.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: We're just talking about the north side. Have we got a picture or drawing that shows the other sides?

Mr. Thompson: Not really. This is an odd situation. The property owner to the north went to the BZA and received an exception for the 6' fence, but this fence is not part of that section. It was hard to see the other fences from the road. I don't know if the applicant has more pictures to share or not, but what you have is what I was able to take from the road. You can see a 4' tall picket on the front side, and you can see the back side of the fence in question.

Chairman Clawson: A Plot Plan would be handy to visualize this.

Aaron Tobaben, 8029 High Drive, appeared before the Board Zoning Appeals via Zoom and made the following comments:

Mr. Tobaben: I don't have a Plot Plan or additional pictures of the fence. It was existing when we purchased the home in 2012. The home immediately adjacent to us to the north is somewhat blighted. Really, the idea of replacing this privacy fence with a new privacy fence is just that it will limit the adverse impact on our property in terms of the utility of our back yard as well as the marketability and property value, as it obscures, at least partially, the blighted property to the north.

Dr. Peppes: In other words, he's replacing a fence. Is his fence on the property to the north? Is it on his property that he's replacing and he's just going to replace that one?

Mr. Thompson: He's just going to replace the fence on the north. That fence does have a permit that was issued by us in 1989. We allowed the fence to be 6' then. To replace it, he needs the exception.

Chairman Clawson: So, the fence in the picture that shows the side yard is the fence to be replaced?

Mr. Thompson: Yes, the tall fence behind the picket.

Chairman Clawson: And it's on the property line?

Mr. Thompson: Yes, sir.

Mr. Hawk: This is just a new fence replacing the existing fence with no change in height or type?

Mr. Thompson: That is correct. It will just be a brand new fence where the existing fence is.

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

A motion to approve Case 07-2021 Aaron Tobaben/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 8029 High Drive – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Case 08-2021 Penny Burton/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 9634 Overbrook Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace the existing fences and enclose the rear yard with a 6' tall cedar privacy fence. As you can see by the pictures in your packet, there are several types of fences in the rear yard.

Chairman Clawson: We're just concerned about the rear yard and the 6' fence, correct?

Mr. Thompson: Yes, this is a fence height exception, not a variance.

Chairman Clawson: Are there questions?

Applicant Presentation:

Penny Burton, 9634 Overbrook Road, appeared before the Board of Zoning appeals via Zoom and made the following comments:

Ms. Burton: This is a corner lot. There is a lot of pedestrian traffic as well as vehicular traffic. I have two St. Bernards, and on a pretty regular basis, I have people come up to my fence to want to pet my pups. As a result of that, I stay out in the yard and very seldom leave them alone. They are unique dogs, and I understand that's my problem; however, it does cause for a hardship in terms of making sure people don't put their

hands over the fence. Emma and Tucker are very good dogs, but they're very large. I believe I have the support of the property owners that surround me on all sides. I have pets on two sides. Tucker has been injured, and my dog has been injured for trying to talk to each other by jumping up. This is normal for pets, and I understand that. It does cause a hardship on us. I also have a little boy named Timmy who lives on the west side of the house. This fence didn't exist until I moved in to the property in 2018. There used to be a pond back there. Timmy tells me he will climb the fence and visit Emma and Tucker. Emma and Tucker aren't going to hurt him, but it would scare him. Consequently, when he's in the yard, we have to watch out. Only part of the fence will be visible from the front of the property. The open concept will be maintained from the street. There's little change to the property. It's just adding the 6' fence.

Chairman Clawson: You're going to use a 6' fence all the way around.

Ms. Burton: Yes. There are fences already there. This is just replacing what is currently there with a 6' fence to protect the pets and pups and everybody involved.

Chairman Clawson: Are there questions for the applicant? I think we understand the situation.

Ms. Burton: I love my pups. They've had a little adjustment.

Chairman Clawson: We all love our pups.

Ms. Burton: And my neighbors love their pups and their kids, too.

Chairman Clawson: Is there anyone who wishes to speak for or against this application? Have any comments been received?

Mr. Thompson: I do have one. He actually did Zoom in at the beginning of the meeting and wanted to say that he's in support of the request. He then signed off.

Chairman Clawson: That's your neighbor, Mr. Bloom.

Ms. Burton: Yes, and he's the one with the beagles. Chase's ear has been damaged because he jumped up to try to see Tucker, and the fence hurt him.

Chairman Clawson: I think we're ready for a motion.

A motion to approve Case 08-2021 Penny Burton/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 9634 Overbrook Road – was made by Farrington; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Case 09-2021 Justin Stuit/Representative - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 2503 W. 91st Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to raze the existing home and construct a new home on the lot. The applicant wants to raise the elevation a total of 3.3 feet on the west side of the home. A variance for 2.3 feet is being requested. A permit for a 1' increase can be issued now without board action.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Since this is a tear-down / rebuild, has there been a study done about the drainage and runoff?

Justin Stuit appeared before the Board of Zoning Appeals and made the following comments:

Mr. Stuit: We have had a stormwater study done, and they have determined that there is no hardship for the homeowners the east or to the west of this property. There were comments that made it back from Public Works that they wanted to take it a step further and create grading in such a way that it limited even more the amount of runoff that could happen to the neighbors. Our surveyor has addressed that as well.

Brian Scovill, City Engineer, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Scovill: City staff has reviewed the grading plan. We received a revised plan, but we have not reviewed or commented on that plan. I just verified that today. The previous grading plan met it, so I'm anticipating this plan will. There is some question regarding how the drainage will occur in the area of the driveway and the retaining wall where this increased raise in grade is planned to occur. We still need to work that out, but I do not anticipate that to be an issue here tonight; it is just a matter of showing the proper drainage pipes on the plan.

Mr. Stuit: our anticipated solution was to put a drain in the drive and spit it out on the bottom side so it comes out the back yard rather than running off the side of the drive into the neighbor's lot.

Chairman Clawson: Was that drainage study performed by a professional engineer?

Mr. Stuit: Yes, sir.

Chairman Clawson: We've had issues with these types of variances before, where grade raises were permitted, but we ended up with problems with adjacent property. We tend to be very careful in these types of situations. You're requesting this variance because I presume that the flood elevation is probably getting close to your basement elevation. Is that correct?

Mr. Stuit: That's correct. The existing structure does not meet Public Works requirements for basement elevation to be 2 feet above a floodplain. During the application process, there was a request that we raise the new structure 1.3 feet, which caused even more significant change from the 1' variance that's allowed for grading.

Chairman Clawson: So, the city requested that you raise it at least 1.3 feet. Did I read somewhere that the existing home now sits 7.5 inches above the floodplain. They want you to raise it enough to get it 2 feet above the floodplain?

Mr. Stuit: Yes.

Chairman Clawson: But you're asking for 3.3 feet.

Mr. Stuit: That's correct. The structure that we proposed has two side-entry garages and one straight-on garage. For the surveyor's purposes, to get the driveway to work in such a way that the drainage comes away from the building structure but still stays on the lot itself, we're presented with a corner right by the drive that goes straight in. There's an elevation change of 3.3 feet.

Chairman Clawson: Are you raising the elevation on the west side, too, or just the east side?

Mr. Stuit: The east side will all be within the 1' variance. The northwest side is the only area we're concerned about at this point.

Chairman Clawson: Can we see a plot plan?

Mr. Thompson: (*Shows the plan*) The shaded yellow is where the majority of the variance would apply.

Chairman Clawson: Can we see where the adjacent house is? It's close, right?

Mr. Thompson: As you can see, the neighbor's driveway is right on the property line. We're afraid that the water is going to cascade down the driveway and pool on the driveway on the west side of this home.

Chairman Clawson: There is a modular-block retaining wall proposed on the northwest corner, correct?

Mr. Stuit: Correct. The intent was to slope away from the entry into the garage but then create a little bit of a swale on the outside corner where the retaining wall is, filtering all the water to the far south end of the driveway where it meets the surface area drain, for lack of a better term.

Chairman Clawson: Has the city reviewed the drainage study?

Mr. Scovill: The city has reviewed the drainage study. We need additional details to show how they intend to drain the driveway. As Wade indicated, it looks like water will flow down the driveway and pool. I don't know if the driveway elevation is at the same height as the retaining wall such that the water will go over the wall or if it's somehow captured in a device or drainage inlet and then taken out the back. It sounds like the applicant intends to capture the water and take it through a pipe. Unfortunately, that's not shown on this current plan. Otherwise, it does appear that they have adequate drainage around the sides of the house on the east side. The west side has the wall so close to the property line that it's unclear how effective a swale will be to drain that side yard. It

appears the side yard will be existing drainage that would normally flow along that path. Anything falling on the driveway would be captured by this inlet structure and the pipe the applicant has mentioned they intend to install.

Chairman Clawson: The driveway will slope to the south.

Mr. Scovill: Yes, toward the garage and toward the wall where they intend to capture that water.

Chairman Clawson: I have concerns about that swale being inadequate, too.

Mr. Scovill: We could ask for clarification regarding the swale outside the wall. I don't know how much room there is. Maybe it's 3 feet between the wall and the property line. It appears the swale would need to carry the water of the side yard, the grass area outside the driveway. It's not a lot of water, but it still would need to carry some.

Chairman Clawson: Is there a possibility there could still be water from 93rd Street flowing down that driveway, too?

Mr. Scovill: We would normally require a rise in the driveway as it comes off the road before it crests and dips down away from the road. That would need to occur here. I haven't seen a profile of the driveway to verify that.

Chairman Clawson: I'd like to see a profile of 91st Street, too. There are some issues to be addressed here. This is a variance, so we have to evaluate the five factors. Would the applicant like to address those, please?

Mr. Stuit: We're proposing to tear down an existing structure and construct a new house on a lot within the floodplain. The existing house doesn't meet the Public Works requirements for the lower elevation of the house to be 2 feet above the floodplain. With regard to hardship, either redesign of the proposed new construction will be required, causing significant delays and initial design fees, or we're going to have to lower the garage elevation, which creates a situation with a large set of stairs within the garage, making it very difficult to have a true three-stall garage and get three cars parked safely within.

Dr. Peppes: The reason I asked about the study is I wanted to make sure everything was considered, and there are still some questions out there even with the studies. For myself to vote for any of the five criteria without that study or our engineer saying that it has been satisfied and they feel comfortable that there will be no flooding on adjacent properties, I hate to do it, but they go back and answer those questions so we can move forward. Does anyone agree with that, or am I out of line?

Mr. Hawk: I'm not satisfied with the contingencies we're looking at right now. I think we need further clarification or substantiation by the city that they have satisfied all their questions or future questions.

Chairman Clawson: Other comments? I'm a little uncomfortable with the fact that we would vote on this case and then even if it had an approval, the city would still have to approve any additional studies before giving their approval. I think the best solution would be for you to do the appropriate analyses on the project to satisfy the city and then come to us for approval of a variance.

Mr. Thompson: I don't even know if we'll go through the votes, but staff feels that the home can be designed on the lot that meets all the ordinances without going to the board for a variance. I don't know if you'll get to the vote at all, but rather than continue the case, I'd personally rather see the request denied.

Mr. Dunn: I'm not as concerned about the floodplain issues because I trust our staff to make sure it's a good plan before it goes forward. I'm concerned on the Uniqueness criteria because I do think putting a new home on the spot where the old home was in a floodplain and has to be changed anyway does make it unique, but I don't think it satisfies the requirement for being unique for the extra height being requested. The only criteria I see satisfying that is that there's already a plan in place. While that's onerous on everybody involved, that doesn't satisfy Uniqueness.

Chairman Clawson: This lot is barely in the floodplain. It's a 1% future flood elevation that just barely gets into the very bottom of the lot. It's not like the whole lot is in the floodplain. It's maybe 15 feet in the very bottom of the lot. I thought that point ought to be made.

Travis Torres, Director of Building and Code Enforcement, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Torres: I don't really personally look at this as a floodplain case that much. It's really a side-entry garage grade change case that I think we've seen go to the BZA several times. It would mostly be on the merits of it you think it meets the criteria that you deem reasonable to grant or not grant. Our intention was to bring a plan that was already approved by Public Works. That was in the works for some time. That wasn't necessarily the fault of the applicant.

Chairman Clawson: We can go ahead and go through the five factors if you'd like us to, or we can continue it.

Mr. Torres: I would let the applicant chime in about what they wish. We would want to have something approvable. That was our intent going in. We had this come up the last couple days with staff that they wanted to take a look at it. We want to make sure it's right. Does the applicant have comments on that?

Mr. Stuit: As far as submitting without approval of all the officials, I was unaware that there were still questions out there. If delaying a vote to make everyone comfortable with

proper officials signing off on it needs to happen, then certainly that's what we'll do. It wasn't our intent to submit without that being done in the first place.

Ms. Tomasic: Just to make sure everyone is on the same page, I think our options at this point are to take a vote as is with perhaps a stipulation that they comply with all Public Works requirements and get all the approvals necessary, or the applicant can request a continuance. I don't think the city or the board can request the continuance.

Chairman Clawson: I think we understand that. It's really the applicant's decision.

Mr. Stuit: I think a vote to continue would be preferred at this point.

Chairman Clawson: The applicant has requested to continue the case until such time as he provides the required analyses and studies to the city.

Case 09-2021 Justin Stuit/Representative - Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 2503 W. 91st Street – was continued to a date pending. Approved with a unanimous roll-call vote of 4-0. For: Dunn, Dr. Peppes, Hawk, Farrington.

Dr. Peppes: I'm going to need to leave the meeting.

Case 10-2021 Wulff Building & Additions, LLC ****CONTINUED**** - Request for a Variance to the Maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8415 Cherokee Lane.

Case 11-2021 Richard Muller/Owner - Request for a Variance to the average front/side yard build line for the placement of a garage in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8600 Mohawk Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition on the north side of the home. A variance for 6 feet, 1 inch is needed to construct the addition.

Chairman Clawson: The build line is due to adjacent houses?

Mr. Thompson: Correct. Since this is a corner lot, they take the average going around the corner. If it were the neighbor, he would be able to go all the way out to the blue line; whereas, because of the average, the red line is going to be the most he can build without a variance. You can see it's just a small green triangle that is going to encroach.

Chairman Clawson: Can we see where adjacent houses are, relative to this house? Do you use the one on the east side of Mohawk, too as the average?

Mr. Torres: The corner lot has to meet the front setback of the house to the west and the front setback of the house to the south. You draw an intersecting line, and that would be where the buildable area is for a house that's turned on the corner. If this house was facing the road in front of it, the side setback would be a corner lot side setback, and you would be able to go out past the line where they want to build.

Mr. Clawson: It's Rinehart Lane on the north.

Mr. Torres: Yes, and if it was exactly parallel with Rinehart, it would be a corner lot side setback. Since it's turned at near a 45-degree angle or around that, it is subject to an intersecting front setback for new construction or additions.

Chairman Clawson: This is a variance of 6 feet.

Mr. Thompson: Correct.

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

Applicant Presentation:

Rich Muller, 8600 Mohawk Road, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Muller: I know that the human-interest side of things doesn't really have a place in these proceedings, but as background, since the home was built in 1959, my family are just the second owners. We've lived here and have raised our family for the last 20 years. We love it here. If there ever was such a thing, this would be a forever home for us. We're not an investor or a builder who wants to come into a $\frac{3}{4}$ -acre lot, raze what is there, and put in the biggest box they can. That's not our interest. What we're really trying to do is simply preserve what we have, preserve the neighborhood fabric. We love the old original ranch houses around here. We'd love to be able to add on in a way that keeps up with the way our family is growing. We've got three young men who are of driving age now. I'd like to rifle through the five criteria if I may. In many ways, a lot of the corner lots in Leawood all have unique characteristics. In many ways, that's because they were all built under different rules than are in place today. In some cases, the site's original flexibility has been unintentionally and maybe unnecessarily restricted by changes to those rules. In any cases, those rules are really applicable to new construction. I can certainly understand the need to apply to additions as well. In our case, since the home was originally built, we've had our building setback lines reduced at least two times since it was built, reducing the buildable area of our lot. The net result of all of that is a structure that is legal, nonconforming due to the changes in the LDO. As it relates to adjacent property owners, at the time we made application, we made personal contact with everybody within that 200-foot radius. We have included letters in your packet from 9 of the 12 neighbors. A couple are out of the country and didn't probably know that the letter arrived. We have wholehearted support of everybody who touches our property line and can see our house. Lastly, the landscape plan that we have for the project heavily

landscapes along Rinehart Street front to help screen this from public view. As it relates to hardship, this is an interesting one because changes in the LDO since the project was originally built and the orientation of the house make it so that we're physically unable to sensibly add a modest single-car garage to a site that's this size. It isn't that there isn't enough land; there is. It's a giant lot. We love all the green space, but because of how the house is oriented, all the available land for additions like this are either in the front yard or the back yard. What I mean is that to add another garage in a way that's compliant with the strict application of the LDO and that is still somewhat architecturally sensitive to the character of the Leawood ranch, it requires that we impair the functionality of the existing house by covering up windows and, in some cases, depending on the configuration, we'd have to tear down part of the house that we've already renovated and rebuild it to make sure we can put it back behind the current build line. This doesn't make an awful lot of sense to us. We have three boys who drive, and sometimes the front yard looks like a used car lot. In our neighborhood, as well as others, car break-ins are becoming more and more of a thing. Our kids are well coached; there is nothing in view, but to the degree that we can take some cars off the circle drive and put them in a garage, all the better to my way of thinking. I guess to put a fine point on it, we're not looking to build any closer to the street than the garage already projects. We're not really impeding sight lines or pedestrian traffic. We get that the LDO is clear. The ordinance is there to maintain the existing streetscape with building separation and green areas in residential neighborhoods. As it was originally designed, our house sits a little closer to Rinehart than it does to Mohawk. It has a different relationship to the Rinehart neighbor than it does to Mohawk neighbor. Candidly, that variation in the streetscape is really what we're going for. We think that's terrific, and we're not looking to change that. I'm happy to stand for questions.

Chairman Clawson: I presume you have an existing two-car garage.

Mr. Muller: Yes.

Chairman Clawson: So, you're adding a one-car garage?

Mr. Muller: Yes, sir.

Chairman Clawson: Are there questions for the applicant? In that case, is there anyone here who wishes to speak for or against this application? We'll need to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five. The first is Uniqueness.

Mr. Dunn: As I understand it, we have a legal, nonconforming structure on a corner lot that is protected by the LDO that requires taking into account the two structures on each side of it on the other streets. I think that's correct. To me, that satisfies the Uniqueness requirement. I'm sure other things come into play, but it satisfies it to me.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Hawk: We have many letters of support in our packets for this project.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Hardship.

Mr. Dunn: For the same reasons I stated that it's unique, I think this would create a real hardship for the owner if they were to meet the extra distance requirements caused by the surrounding structure for the setback.

Mr. Hawk: I think we probably should try to allow homeowners to have space for vehicles if possible. We can see that they do have a need, and most people do have a need so they don't have so many vehicles parked on the outside of a home.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: As the applicant has stated, this is an effort to stick as much as possible with the original intent and design in Old Leawood. I can't imagine how that would be adversely impacting the public.

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 3-0. For: Dunn, Hawk, Farrington.

Chairman Clawson: Spirit and Intent. They've tried to design a small addition to meet it.

Ms. Farrington: I would agree that it could be designed various ways, but you can tell that the homeowner made a strong effort to keep the spirit of the neighborhood and fit the addition into the existing design itself. I think it's met.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 3-0. For: Dunn, Hawk, Farrington.

Chairman Clawson: All five factors have been approved; therefore, we can support a motion for approval.

A motion to approve Case 11-2021 Richard Muller/Owner - Request for a Variance to the average front/side yard build line for the placement of a garage in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known

as 8600 Mohawk Road – was made by Hawk; seconded by Dunn. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Case 12-2021 Stewart Jensen/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 8452 Meadow Lane.

Mr. Muller: Thank you very much, and like Mr. Terry Dunn's comments, I appreciate the board's service and leadership. I'd like to give specific thanks to Mr. Torres and Mr. Thompson for making a fairly intimidating process very understandable.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace the fence that encloses the rear yard. The fence that runs parallel to Belinder Street is on the southern property line. To reconstruct the fence, a variance for 30 feet is necessary.

Mr. Dunn: Just so we're clear, what you're saying is there is already a fence. They're proposing to replace it, but they need a variance because the fence that is there is not in compliance.

Mr. Thompson: That is correct. Right now, it is considered legal, nonconforming, but once they tear it down and replace it with a new one, it does have to comply with today's ordinance.

Mr. Hawk: Is the new fence 4 feet also?

Mr. Thompson: Yes, it will look exactly like what is currently there.

Chairman Clawson: I looked at this property on Google Earth, and there is a fence almost identical to this on the other side.

Mr. Thompson: Yes, and it will be considered legal, nonconforming as well. Unfortunately, once they go to replace it, they'll have to come before you.

Chairman Clawson: For this to be a legal fence, it would have to come off the corner of the house. You said that's 30 feet.

Mr. Thompson: Yes, the red line is the build line and is where it can be legally placed. The blue line is the property line.

Mr. Hawk: Do we have to be specific as to the type of fence that goes in?

Mr. Thompson: You do not because they're just getting a variance for the placement and are not asking for a fence height exception.

Chairman Clawson: Other questions? Is the applicant online?

Applicant Presentation:

Stewart Jensen, 8452 Meadow Lane, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Jensen: My wife and I moved in about a year and a half ago. As we've been making some improvements here and there throughout various parts of the property and the home, one of the spots that quickly needed addressing was this fence along Belinder Avenue. It's clearly in a pretty dilapidated state and doesn't look great for the neighborhood. In addition, we have a dog that continually gets out throughout multiple places in the rotted parts of the fence. That's why we're here today.

Chairman Clawson: It appears that if you provide the fence in the location for the build line, you would have a tree that would have to come down.

Mr. Jensen: That is correct. We have two very large old Pin Oak trees that are probably around the same age as the house, which was built in 1948. If we comply with the LDO, we would lose one of those trees. It would be on the outside instead of the inside, and it would significantly reduce the usable space of our fenced-in back yard. This is where we plan to start and raise a family. The last thing we want to do, especially with Belinder as it cuts through to Lee Boulevard with high traffic, is to ignore the safety factor. We have such a large side yard that isn't usable.

Chairman Clawson: You've probably heard that we have to go through the five factors. The ones that usually cause problems for the applicant are Uniqueness and Hardship. Would you care to address those?

Mr. Jensen: As has been alluded to from previous applicants, Old Leawood has corner lots that each lend their own uniqueness to begin with. As I alluded to, this particular corner, as it sits between Meadow, Belinder, and Lee Boulevard, is part of a bike loop and is a high-traffic corner. With the condition of the existing fence and with how far it already is off Belinder, we feel there is a uniqueness there in the fact that it's a very high-traffic cut-through street through our residential neighborhood. As I mentioned, this is the house we plan to be in long term and raise a family in. We're approaching the due date for our first this weekend. We want to be here long term, and the last thing we want to do is be sacrificing part of our back yard and the usable space. It's not practical for the lot to have the fence that far set back. We really feel that we'd be sacrificing a good deal of our usable property.

Chairman Clawson: Are there questions for the applicant? Is there anyone here who wishes to speak for or against this application? Letters have been sent out. Any comments?

Mr. Thompson: No calls or complaints.

Mr. Jensen: We have had conversations with surrounding neighbors, and there has been no objection to us putting in a new fence in the exact location as the existing fence.

Chairman Clawson: We'll need to review the five factors. In order to support a motion for approval, we must vote in the affirmative on all five. The first is Uniqueness.

Mr. Dunn: This is a difficult one, but I think I fall on the side of supporting it simply because Leawood has properties of a wide variety of ages, many of which, like this, have structures that don't meet current legal requirements, and we're not really sure the history of that or how it happened. The fact that this fence has been in place in the same configuration this homeowner wants to replace, I'm going to say it satisfies my need for the Uniqueness criterion.

Mr. Hawk: The fact that we're going to improve the look by making a fence that is up to today's standards as opposed to something that was built many years ago makes a lot of sense visually.

Uniqueness criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Rights of Adjacent Property Owners. All letters were mailed with no complaints or comments. By the way, this fence could have been there 30 years.

Mr. Thompson: It's been there at least 25 years. I was able to go back that far. Then the photos start to get sketchy.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Hardship.

Mr. Dunn: For the same reasons I stated it is unique, I see significant hardship applying the new standard to an existing fence.

Hardship criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

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

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

Chairman Clawson: Spirit and Intent. Comments?

Ms. Farrington: This meets it, especially since it has been in place like this for the last 25 years.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

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

A motion to approve Case 12-2021 Stewart Jensen/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 8452 Meadow Lane – was made by Dunn; seconded by Hawk. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Clawson.

MEETING ADJOURNED.