

**City of Leawood  
Board of Zoning Appeals Minutes  
April 28, 2021 – 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 April 28, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

**MEMBERS ABSENT:** Dunn

**STAFF PRESENT:** Thompson, Tomasic

**APPROVAL OF MINUTES:**

Chairman Clawson: It's my understanding that the minutes need some corrections.

Mr. Thompson: That is correct. The corrections have been made. I'll include them in next month's meeting so you have a chance to read them.

**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](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 913-339-9173 or emailing [wadet@leawood.org](mailto:wadet@leawood.org) on or before Friday, April 23rd at 5:00 p.m. Public comments will only be accepted during the public hearing portion or 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 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: We have several cases tonight in New Business.

**NEW BUSINESS:**

Case 19-2021 Lauren Conderman/Owner **\*\*WITHDRAWN\*\*** - Request for a Variance to the requirement that the lowest floor be elevated 2 feet above the base flood elevation in accordance with the LDO, Section 16-2-8.2(G) 2 a in an R-1 District for property commonly known as 3023 W. 82nd.

Case 20-2021 Breanne Pickering/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 9709 Ensley Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to complete the enclosure of the rear yard with a 6' tall fence. The fence is requested to help contain the family dog.

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

**Applicant Presentation**

Breanne Pickering, 9709 Ensley Lane, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Ms. Pickering: This is our dog, Penny Lane. She is a sweetheart, and we love her, and she is wonderful; however, she is a jumper. She will 100% get out of a 4' fence. We lived in Brookside prior to this house, and we had a 6' fence. We lived there for 3 ½ years, and she never got out once. The house we lived at beforehand had a 4' fence, and I think she got out 20 times. It got to the point where we just had to be back there with a leash on her so she wouldn't jump the fence. She just loved to go out and go on joy rides, as we called it. I also have a 1-year-old, and I also own my own business. My husband works full time, so this has been very hard not to have a 6' fence just because we have to take her on so many walks during the day currently. We're hoping we can get a 6' fence so we can keep her safe. I'm doing my due diligence as a pet owner to keep her safe and to keep any other dogs in our neighborhood safe as well. Some animals are on leashes, but if my dog gets out and maybe they don't like each other or anything like that, I just want to make sure that I'm being responsible as a pet owner and that she is safe in our back yard. With that being said, I have gone around to all of my neighbors that would be connected in any

way with my yard or that can directly see my fence from their location. I submitted that to Wade Thompson. It is basically their signatures, stating they are totally fine with the fence. I spoke with them all personally, and they were happy for us to get that 6' fence. I tried my best to be neighborly and chat with everyone. They seemed fine with it. I think that's my whole case.

Chairman Clawson: Are there questions?

Dr. Peppes: Wade, could you put the AIMS map on and help me understand where the fence will be? Also, can I see adjacent neighbors' fences? I understand there is a pool next to them.

Ms. Pickering: My neighbor, who is to the north of me, is actually in Overland Park. He does have a 6' fence currently, and he has a pool. My neighbor to the south has a 4' wooden fence. My neighbors to the east don't currently have any type of fence. To the northeast, they have probably 3 feet of a chain-link 4' fence.

Mr. Thompson: (*refers to display*) If you look at the map, you can see that she described it perfectly. The dark black line is the 6' tall wood fence to the north. The property to the south has a 4' wood fence. There is nothing to the east.

Chairman Clawson: Would you replace the 4' fence on the south?

Ms. Pickering: I would just put an adjacent fence. That is my neighbor's yard. As I understand from our fence person, there is actually a bit of a gap with our property lines. It wouldn't be right next to it. It would probably have maybe 1 foot between. To the other 6' fence due north, we would probably run that fence up to the fence line and then just keep their fence and not put anything right there. Due east to the back of our yard, we would just connect to their 6' fence and then run it all the way across to the south.

Chairman Clawson: Wade, do you see any issues with that?

Mr. Thompson: No, sir, as long as the grass between the two fences on the southern property line can be maintained. They may be pushing it off on that neighbor since it would be a shorter fence and they could get to it more easily.

Ms. Pickering: We have landscapers and lawnmowers that we personally pay, and I know my neighbors do as well. I know that would be no issue. We would just let them know that they need to make sure that it's maintained, and we would obviously make sure they are doing that.

Mr. Munson: Ms. Pickering mentioned that the gap between her fence and the adjacent fence would be a factor with the dog getting between the fences.

Ms. Pickering: There's not a gap. It's just a gap between ours and theirs but not an actual gap in the fence line. I would be using the same company who did our last fence in

Brookside. We were there for three years, and she never got out once. I don't imagine that there would be any type of issue.

Mr. Munson: I was wondering since this fence is being predicated upon a dog, should we have the dog bark for ID for this case.

Ms. Pickering: I'm sorry. I think I misunderstood the question.

Mr. Munson: I was asking to have the dog bark to identify herself for the case.

Ms. Pickering: I'm sure she'd be very fine with that.

Chairman Clawson: I have a comment. Would you be agreeable to replacing the 4' fence if your neighbor would let you do it and then put it on the property line?

Ms. Pickering: I would be happy to do that. Our fence provider looked at the fence lines, and our properties are not next to each other from my understanding.

Chairman Clawson: If you had two fences with a small gap between them, it creates maintenance issues. If you could avoid that by having a discussion with your neighbor, perhaps it would be a good solution.

Ms. Pickering: We're happy if we can have the fences next to each other so there's not a gap between them. I just didn't know if we were able to do that since our property line doesn't go over that far.

Chairman Clawson: You can't build a fence past your property line.

Ms. Pickering: Exactly. I'm happy to do what they want to if they want to connect to our fence. For whatever reason, they didn't just take their fence all the way over to the property line. There is a gap currently where it would have our fence, grass, and then their fence.

Mr. Thompson: It does look like the neighbors' fence is inside their property line. The applicant would not be able to build a fence on their property.

Chairman Clawson: Are there questions for Ms. Pickering? Is there anyone online who wishes to speak for or against this application? Is there a motion?

**A motion to approve Case 20-2021 Breanne Pickering/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 9709 Ensley Lane – was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 21-2021 Millennium Properties/Contractor - 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 8904 Cherokee Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 6' tall fence to enclose the rear yard. The fence is requested to provide safety for family and pets as well as screen the neighbors' home.

Chairman Clawson: Are there questions for staff? I had the wrong AIMS map for this case. Do you have the AIMS map?

Mr. Thompson: (*displays on monitor*)

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

**Applicant Presentation:**

Shannon Roganovic and Nolan Wagner, Millennium Properties, 6335 W. 110<sup>th</sup> Street, Overland Park, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Ms. Roganovic: We are here on behalf of Michael Long, who wants to construct a privacy fence at the 6' height for reasons that Wade stated. There is an elevation in the back yard, so there is nothing directly behind the house. In addition, they actually have a hot tub in the back yard, but it exceeds the 3' code. That's why we're speaking to you. We want to make sure we get the proper approval. Those are a couple of the reasons Michael wants to do this. He wants to shield aesthetically. The elevation doesn't provide privacy for his family or his neighbor's yard. In addition, there is a lot of trash and debris coming from his neighbor's yard to his because of the elevation. Right now, he has an aluminum black fence, but it doesn't provide the shield he needs between the two yards.

Mr. Wagner: We provided pictures of what type of fence that we are going to construct for him. It goes really well with his home and will look very nice once constructed.

Chairman Clawson: Your proposed fence would replace the metal fence and enclose the back yard and side yards, too?

Mr. Wagner: It will just run along the back yard. It will replace the back side of the fence that is already there.

Chairman Clawson: Are there questions for the applicant?

Mr. Bussing: Wade, I notice a picture in the packet of 8905. Are there any code violations there? Has the city been called out to address anything on that property?

Mr. Thompson: Yes, this was referred to the code enforcement officer in that area. No infractions were found. The picture in your packet of the back yard shows no issues.

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

**A motion to approve Case 21-2021 Millennium Properties/Contractor - 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 8904 Cherokee Lane – was made by Bussing; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 22-2021 Brigid Flynn/Owner **\*\*WITHDRAWN\*\*** - 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 9320 Mohawk Lane.

Case 23-2021 Jonathan Hill/Owner - Request for an Exception to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8044 Sagamore Road.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to add a new addition to the rear of the home. The new addition would extend off the back wall of the existing home and would be 14 feet, 3 inches from the property line. A request for 9 inches is needed to construct the addition as shown on the plan.

Chairman Clawson: It meets the requirements for an exception, and it's only a distance of 9 inches. Are there any questions for staff?

Mr. Munson: This looks like a reasonable request and amount of space requested for a very minor addition.

Chairman Clawson: Any other comments? Is the applicant online?

**Applicant Presentation:**

John Hill, 8044 Sagamore Road, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Hill: Thanks for your time. I'll read off the application to give everyone context. My wife and I have lived in Leawood our entire lives. We moved into the house three years ago. We loved the area. We have one kid and have two on the way. We love the structure of the house. We love the overall neighbors. Now, we're getting a little cramped in there. We're obviously trying to keep the ranch style of the house structurally sound with the

neighboring houses. We're just looking to add on directly back to the existing house line. We'll use the same materials, same windows as the existing structure. It will be the same color. All of our neighbors to the south have a similar addition. He's happily okay with it. The guys on High Drive have all done similar additions. Just looking to maximize the space in our house and obviously stay here as long as we can. We love the neighborhood and love the neighbors. That is it. I won't go into details unless you all have questions.

Chairman Clawson: Questions for the applicant? Is there anyone online who wishes to speak for or against this application? If not, is there a motion?

**A motion to approve Case 23-2021 Jonathan Hill/Owner - Request for an Exception to the required side yard setback in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8044 Sagamore Road – was made by Munson; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 24-2021 Edward & Rochelle Kanter/Owners - Request for a Variance to the 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 R-1 District for property commonly known as 12700 Fontana Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing 4' tall wooden fence. The current LDO requires a 35' rear build line. The fence was constructed on the platted 30' build line. The new one will be as well. A variance of 5 feet is being requested.

Chairman Clawson: Are there questions for staff?

Mr. Bussing: Was this built in accordance with the LDO at the time?

Mr. Thompson: The LDO that this fence was built under did not include through fence rules, so yes, the fence was legally placed at 30 feet.

Mr. Bussing: It is legal and conforming.

Mr. Thompson: Yes, sir.

Mr. Hawk: About what year would that have been?

Mr. Thompson: The home was constructed in 1986. I'm assuming the fence was as well.

Chairman Clawson: There are other fences along this stretch of road, aren't there?

Mr. Thompson: They are. They zig-zag. The neighbor to the east does not have a fence at all. The neighbor to the west has a fence in the same place. When it comes up for

replacement, they'll have to come before the Board as well. There are several other fences along 127<sup>th</sup> Street.

Mr. Bussing: This is really an odd-shaped lot.

Mr. Thompson: Very much so.

Chairman Clawson: Is the applicant online?

### **Applicant Presentation**

Ed Kanter, 12700 Fontana, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Kanter: It's already been stated that our fence is there. It is getting close to the time that we need to replace it due to wear and tear over the years. We've come to find out from Mr. Thompson that we need to bring it in 5 feet, which will cause us to lose 5 feet of our back yard landscaping that we've spent money on. The irrigation for our entire back yard is just on our side of the fence. We have an invisible fence attached to it to keep our dog in. We would just like to replace the entire fence all at once and not just sections at a time so it looks nice for Leawood. We have discussed this with our adjoining neighbors, and they're all fine with what we plan to do.

Chairman Clawson: Everyone has been notified as required?

Mr. Kanter: Yes, I sent out 18 certified letters to residents from a list Mr. Thompson gave me. I've gotten responses back from all of the certified mail. They've all received notification of tonight's meeting.

Mr. Thompson: I have received several phone calls on the request, none of which had a problem with either request. One was going to attend the meeting. He'll have a similar case because his fence needs to be replaced. No complaints have been received.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. The ones we have trouble with sometimes are Uniqueness and Hardship. Could you address those issues?

Mr. Kanter: Hardship is an entire investment in the landscaping and irrigation for our entire back yard. We need a place for our dogs and grandkids to play in the back yard.

Chairman Clawson: Are there trees that would be impacted if you had to move the fence?

Mr. Kanter: There are trees in our back yard.

Chairman Clawson: What about the Uniqueness criterion? Your lot is oddly shaped; that is true.

Mr. Kanter: Yes. I'm not sure what your question is.

Chairman Clawson: We have to evaluate the five factors, which are Uniqueness, Rights of Adjacent Property Owners, Hardship, Public Safety and General Welfare, and Spirit and Intent. Uniqueness is one of the factors we have to evaluate.

Mr. Kanter: I'm still not sure what falls under Uniqueness. Our fence does adjoin our neighbor's fence.

Chairman Clawson: Usually, it would entail a case where your property is unique, relative to all the other properties in the vicinity.

Mr. Thompson: If I could step in here, he didn't put anything under Uniqueness on the application, but as the Staff Report points out, it is an odd-shaped lot. It has an originally platted 30' rear build line, which is where the fence is. I think that contributes to the uniqueness. It's been in place since at least 1996. It is very possible that it was built in 1986 when the house was built.

Chairman Clawson: Thank you. Are there any other questions for the applicant? Is anyone online who wishes to speak for or against this application? In that case, we will have to evaluate the five factors since this is a variance. We have to vote in the affirmative on all five to support a motion for approval. The first is Uniqueness of the Property.

Mr. Hawk: As Mr. Thompson pointed out, the lot is oddly shaped. The fence has been there since 1986. It adjoins the property to the west, and this is also a through street.

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

Chairman Clawson: Rights of Adjacent Property Owners. Staff notes that all the letters were mailed and that there were no complaints.

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

Chairman Clawson: Hardship.

Dr. Peppes: I think it has been met. First, this was legal and conforming back in the time when it was built. Now he wants to replace it in the same fashion. If not, the fence has to come in with significant landscaping. Also, we want to state that it is a through lot, and we've been through a lot of these cases with through lots where back yards have been cut short because they are in a cul de sac with streets on both sides.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that approval or denial will not affect this factor. Any other comments?

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

Chairman Clawson: Spirit and Intent.

Dr. Peppes: I think it has been met because by keeping the fence where it is, the streetscape will line up with the ones that are next to it, as opposed to keeping the zig zag. The streetscape is one of the things in Leawood that we are proud of.

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

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 24-2021 Edward & Rochelle Kanter/Owners - Request for a Variance to the 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 R-1 District for property commonly known as 12700 Fontana Street – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 25-2021 Edward & Rochelle Kanter/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 12700 Fontana Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing 4' tall wooden fence. They would like to raise the height to 6 feet because the property backs up to 127<sup>th</sup> Street, which carries a lot of traffic.

Chairman Clawson: Are there questions for staff?

Mr. Bussing: Is this 6' portion just across 127<sup>th</sup>, or will it be the entire fence?

Mr. Thompson: As I understand it, it is just the portion on the rear yard.

Chairman Clawson: Any other questions for staff? Mr. Kanter, are you online?

**Application Presentation:**

Ed Kanter, 12700 Fontana, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Kanter: Thank you for the earlier decision. The traffic on 127<sup>th</sup> has gotten busier than when we moved here 35 years ago. There are more walkers with dogs going back and forth. Our dog sees the dogs and likes to bark at them. He won't jump the fence because we have an invisible fence, but we would like to increase the height for more privacy and to cut down on noise just along the 127<sup>th</sup> Street side, not the entire fence. We don't want to block off our neighbors because we're friendly with all of them. We would just like the portion across 127<sup>th</sup> Street to be higher. We've driven around and have seen a lot of houses in the neighborhood that also have higher fences. Some of them have pools; some of them don't. That is our reasoning. There are people that walk on both the south and north side of 127<sup>th</sup> Street, even though the sidewalk is on the north side. They still jog there. We feel that, if we had a higher fence, it would give us more privacy.

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

**A motion to approve Case 25-2021 Edward & Rochelle Kanter/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 12700 Fontana Street – was made by Munson; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Mr. Kanter: When we do replace the fence, which will probably not be for a few months, do we need to notify the city of the fence? I'm sure the company that puts it in will apply for a permit. Is that all that needs to be done?

Mr. Thompson: Yes, a permit application will need to be filled out. If there are any other items that they need, they'll let you know at that time.

Mr. Kanter: Thank you very much, everyone.

Ms. Tomasic: Before we adjourn, I just wanted to give everyone a heads up that at the next meeting in May, we will review the Bylaws and approve them. We'll also have the election of Chair and Vice Chair. We're supposed to do that in May of every year. Last year got a little crazy because of the pandemic, so we didn't follow that schedule, but we will have that on the May agenda.

Chairman Clawson: That will be the last agenda item?

Ms. Tomasic: I don't know what they've done in the past.

Mr. Thompson: I believe we did it first, but I don't think it would matter. It would probably be best if we could do it at the end. That way, no one has to sit through the discussion.

Ms. Tomasic: Planning Commission recently did it at the beginning, but I don't think it would matter. It just needs to be at the main meeting, so we can do it at the very end of the meeting in May.

Case 26-2021 Caleb George/Chris George Custom Homes - **\*\*CONTINUED\*\*** Request for a Variance to the requirement that the lowest floor be elevated 2 feet about the base flood elevation in accordance with the LDO, Section 16-2-8.2(G)2 a in an R-1 District for property commonly known as 3211 W. 82nd Street.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to

*MEETING ADJOURNED.*