

**City of Leawood
Board of Zoning Appeals Minutes
May 26, 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 May 26, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: None

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the March 24, 2021 and the April 28, 2021 Board of Zoning Appeals meetings

Chairman Clawson: I understand there were some errors found on the April 28th meeting.

Mr. Thompson: Those changes have been made, and the minutes are correct.

A motion to approve the minutes from the March 24, 2021 and April 28, 2021 Board of Zoning Appeals meetings was made by Bussing; seconded by Dunn. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, 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 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 on or before Friday, May 21st 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. 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 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 Old Business and has been withdrawn. Apparently, it has been resolved.

OLD BUSINESS:

Case 26-2021 Caleb George/Chris George Custom Homes VARIANCE
****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) 2a in an R-1 District for property commonly known as 3211 W. 82nd Street.

Ms. Tomasic: The live stream is not on YouTube, so could you please wait to call the case? Okay, IT says it's going, so you can go ahead.

NEW BUSINESS

Case 27-2021 Brad & Lindsey Haymond/Owners - Request for an Exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3625 W. 122nd Street, Leawood, Kansas.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition on the southwest portion of the home. The new addition would place the total square footage at 7,777 square feet, which is 14% and 961 square feet over what is permitted using the formula in the Leawood Development Ordinance.

Chairman Clawson: Are there any questions for staff? It is my understanding that it's an exception because it is less than the 20% that is required for a variance.

Mr. Thompson: That is correct, and they are 6% under the threshold.

Dr. Peppes: All setbacks are okay?

Mr. Thompson: Yes, this was reviewed by the Plans Examiner, and that was the only issue that the project had.

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

Applicant Presentation

Brad and Lindsey Haymond, 3625 W. 122nd Street, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Haymond: We appreciate you hearing us tonight. We are looking to do an addition on the house that would then include a couple of garage stalls as well as a lower-level play/court area for the kids to play in. Ultimately, we looked at this addition. We complied with all the side and rear setbacks. We are over the allowable square footage but are under the maximum cover ratio by a pretty substantial percentage. The way that the ordinance reads is that the property is calculated by the lot width at the front of the house, which ours is a pie-shaped lot. If this were a more rectangular-shaped lot, it wouldn't be an issue. It is just because the width looks much smaller because our house sits closer on the pie-shaped lot. Therefore, the calculation is much smaller than what it would typically be on a lot of our size with a different shape. That is why we are here tonight. We're here to answer any questions.

Mr. Munson: Is this the Oxford Hills subdivision?

Mr. Haymond: No, it is Bradford Place.

Chairman Clawson: Are there any other questions for the applicant? Has anyone notified the city about this application?

Mr. Thompson: I did hear from one neighbor and was able to talk to him. He wanted to talk to the neighbor before he decided whether or not to attend the meeting. We sent out the invite for the meeting. I don't know if he's listening or not, but the applicant may have more to say. He didn't express any issues with the request with us.

Chairman Clawson: Any other questions? Is anyone online that wishes to speak for or against this case? Is there a motion?

A motion to approve Case 27-2021 Brad & Lindsey Haymond/Owners - Request for an Exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3625 W. 122nd Street, Leawood, Kansas – was made by Munson; seconded by Dunn. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 28-2021 Jake Vossen/Owner - Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 8841 Cherokee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace the existing 6' tall privacy fence that encloses the rear yard. The fence is requested to provide security and privacy for a pool in the rear yard. A variance for the fence to remain 33 feet from the curb is requested.

Chairman Clawson: This has a 30' build line, correct?

Mr. Thompson: Yes, sir.

Chairman Clawson: How far would they have to move the fence back?

Mr. Thompson: They would have to move it probably around 8 feet to come into compliance.

Chairman Clawson: Are there questions for staff?

Mr. Dunn: They're proposing to put a 6' fence in the exact location of an existing 6' fence?

Mr. Thompson: That is correct.

Mr. Bussing: Wade, you note that the fence was replaced in 1994 with a permit issued by the city. Were the setbacks different in 1994?

Mr. Thompson: Yes, they were.

Mr. Bussing: At that time, it was a legal fence.

Mr. Thompson: Yes, and it is still considered a legal, nonconforming fence.

Chairman Clawson: So, essentially, a fence has been in this location since 1973.

Mr. Thompson: Correct.

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

Applicant Presentation

Jake Vossen, 8841 Cherokee Lane, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Vossen: As stated, I just want to replace a failing wood privacy fence with a new one in the same location. I can share pictures of it if you'd like.

Chairman Clawson: Sure, go ahead.

Mr. Vossen: (*Shares screen*) The pictures show the fence as it stands today. Basically, to meet the setback, it would have to go in the middle of the sidewalk that is on the back side of the fence. There is a small patio there as well. I also have a letter from the adjacent neighbor behind me that supports me replacing the fence as well. It is from Michael Newbold from 8932 Ensley Court. They live directly behind me. It was sent to Wade Thompson as well for this case. But yes, the fence is failing, and I want to replace it with a new, better-looking fence that will serve the neighborhood and myself well.

Chairman Clawson: With a fence in this location for so many years, to try to move it to meet the LDO requirements would be somewhat difficult. Is that correct?

Mr. Vossen: That is correct.

Chairman Clawson: This is a variance, and we have to go through the five factors. Could you touch on those briefly and justify how you would meet those requirements?

Mr. Vossen: Yes, if I had the five factors in front of me, I would go through them.

Chairman Clawson: The ones we usually have trouble with are Uniqueness of the Property and Hardship.

Mr. Vossen: I would have to remove landscaping, sprinkler system, and also a patio to comply with meeting the actual replacement per the LDO. That's the first one from a hardship perspective.

Chairman Clawson: Are there any questions for the applicant?

Dr. Peppes: Do we have a picture so we can see adjacent neighbors and where this house sits relative to them?

Mr. Vossen: (*shares screen*) You can see the neighbor's house and the next house down. I live on a corner, so those are the only neighbors. Mr. Newbold behind me is really the only neighbor that this impacts.

Mr. Thompson: (*refers to photo on screen*) This picture is taken from the neighbor's driveway looking west. It shows what the neighbors have to look at.

Dr. Peppes: Wade, we're looking at it from the neighbors' driveway. This fence that we see is his side by his driveway and his back fence? I'm trying to get a grasp of the encompassed fence total.

Chairman Clawson: Wade, can you point out where the corner of the fence is?

Mr. Thompson: (*refers to photo*) That would be the corner of the fence as one side heads north and the other heads west toward the blue vehicle. This is just a rough sketch. You can see the corner of the fence. It heads east.

Chairman Clawson: So, again, it's a little in front of the neighbor's build line.

Mr. Thompson: Yes.

Chairman Clawson: Are there any other questions for the applicant? Is there anyone online who wishes to speak for or against this application? Cards and letters went out to everyone?

Mr. Thompson: Yes, all the letters were mailed, and one email was included in your packet.

Chairman Clawson: In support of the application. In that case, this is a variance, so we have to evaluate the five factors. We have to vote in the affirmative on all five factors to support a motion for approval. The first factor is Uniqueness of the Property.

Mr. Dunn: First, this is a corner lot, which adversely affects setbacks, as we all know. We have used it as a factor to consider this in the past. Also, this is a situation in which not only was the legal fence built in 1973; it was replaced in 1994 and was done in accordance with existing ordinances at that time. I'm trying to articulate how that makes it unique to me. It does seem that it is an unusual situation that someone has to come for a variance to do something that was within the rules and approved at the time it was originally done. They've lived in this place for long enough to have built a home, yard, and lots of structures based on that location of the fence. All of this makes it unique.

Mr. Munson: I'd like to add that it seems that these properties that were built before the current LDO was passed are unique from the standpoint that they're trying to do something and really can't within the LDO. I feel that the interaction of the existing development makes it somewhat unique.

Uniqueness criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Rights of Adjacent Property Owners. All the letters were mailed.

Mr. Munson: The adjacent property owner was in favor of it. That condition has been met by his neighbor.

Rights of Adjacent Property Owners criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Hardship.

Mr. Dunn: I certainly think it creates a significant hardship to take a property that was basically laid out and created based on existing law and would have to be reconfigured significantly to comply with the application of the existing code. I believe it has been met.

Mr. Hawk: We're always looking for opportunities to upgrade any property in the City of Leewood. Just a newer fence certainly falls into the area of improvement for the neighborhood and for Leewood.

Hardship criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Public Safety and General Welfare. Staff noted that approval of this request should not affect this factor. Any other comments about it?

Public Safety and General Welfare criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Spirit and Intent.

Mr. Dunn: I agree with staff's comment that the intent of the ordinance is to protect the unique look and character of the neighborhood. Replacing a 6' fence with a better-constructed 6' fence will only enhance the unique character of the neighborhood.

Spirit and Intent criterion satisfied with a unanimous roll-call vote of 6-0. For: Munson, Dunn, 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 28-2021 Jake Vossen/Owner - Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 8841 Cherokee Lane – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 29-2021 Tally & JoLynn Hobbs/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 8309 Lee Boulevard.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants are in the process of replacing an existing fence as it was constructed in 2012. They need approval for 38 feet of 6' tall cedar fencing on the north side of the home.

Chairman Clawson: Was the existing fence a 4' fence?

Mr. Thompson: I believe the portion they're in front of you tonight for was 6' tall. They attempted to replace it as it was, and the inspector saw that this portion was 6' tall. That's why they're here in front of you tonight.

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

Applicant Presentation

Tally and JoLynn Hobbs, 8309 Lee Boulevard, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mrs. Hobbs: Thank you so much. We appreciate you taking the time this evening to consider our request. We have resided at our address since 1996. In 2012, we contacted Burge Fence Company to replace our cedar fence. At that time, a permit was approved by the city. Burge Fence built a fence around our property. The majority of the fence is 4' tall. The 6' fence is around the patio areas. As wood fences do, it started to deteriorate, so we contacted Burge Fence again. We asked them to recreate and rebuild the fence based on the fence that was there. It was deteriorating, and I was worried it would be a safety hazard. Burge Fence pulled a permit with the city this year. They began the job, and we had some issues with the fence crew. I felt like the 4' fence seemed a lot taller, so I contacted Travis Torres. I talked with Travis, and he suggested that Ron Jones could come out and take a look because we wanted to make sure that we were in compliance. Ron looked at the fence. There were sections of the 4' fence that he felt was a little high, so we had the Burge company come back in and tear down the fence and reframe it to make sure we were complaint. When Ron was onsite, he noticed the 6' sections that were framed out. They weren't filled in with pickets, but they are framed. He said it couldn't be approved because it wouldn't meet code. I was surprised because we were replacing the exact same fence we had. We were just replacing it because the wood fence had deteriorated. The issue is that Ron shared that you can have a 6' fence around the patio; however, between the edge of the patio and the edge of your fence can't be more than 3 feet. That was the issue. From the edge of the patio to the fence line is where the issue is. It's just a little too far away. Ron told us about the process. I contacted Travis Torres again. The permit had been approved, so we didn't realize that there was a problem until the inspector came out. We're just asking for consideration to put the exact same fence back that was standing. One of the reasons we really enjoy the 6' fence is we do live in the historic district in North Leawood. Our homes are pretty close together, and our neighbor to the north has an elevated patio. It is on the south side of their property, and our patio is on the north. The patios are very close in proximity with each other. We've enjoyed the 6' fence. It separates the spaces and allows our neighbor and ourselves privacy. I hated to take that away from them. We're asking for consideration to please reinstall the fence exactly the way it was previously approved in 2012. After I wrote the

letter to the BZA, I was curious and contacted Debbie, asking her to pull our permits. We actually had the first Burge fence built in 2001. This is the third fence we're building on this location, but it's always been the exact same fence. It's the same fence company, same cedar, same design. We would like to respectfully ask if the BZA would approve us to go ahead and recreate the existing fence. The 4' section has been completed, and around the patio where the 6' fence is in question, the Burge Fence Company has put in a temporary chain link fence until the city makes a decision. In closing, I want to thank you for your consideration and your time this evening. I also wanted to take just a moment to commend Wade and Debbie. We have not gone through the BZA process before. Wade and Debbie were just so helpful guiding us through the process. I wanted to take a moment and thank them for all their assistance.

Chairman Clawson: Thank you for those comments. Are there questions for the applicant by the board? Is there anyone online who wishes to speak for or against this application? Is there a motion?

A motion to approve Case 29-2021 Tally & JoLynn Hobbs/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 8309 Lee Boulevard – was made by Farrington; seconded by Bussing. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 30-2021 Robert & Ingrid VanBiber/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 10512 Manor Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants want to replace an existing fence with a 5' tall fence. The fence requested is to help contain two large dogs. The existing fence, as are the majority of the fences in the neighborhood, is a 4' tall chain link fence. They will go back with a chain link 5' tall fence.

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

Applicant Presentation:

Ingrid and Robert VanBiber, 10512 Manor Road, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mrs. VanBiber: We just moved here and started this process with the prior owner, so you may see another name on the application. There is a current link fence that surrounds the back yard of the property that actually measures about 3 ½ feet tall. We have two large dogs, one of which is a greyhound. I'm not as high tech as the gentleman earlier, so I just printed a couple pictures. (*shows picture of dog and fence*) As you can see, he's very tall. We haven't seen him try to jump the fence, but we come from a house that had a 6'

privacy fence. We do back up essentially to Lee Boulevard and the overpass for 435. I think if you have the materials from the packet, you'll see a couple photos or maps of where we are that show our property with the highway. That's a particular concern for us and for our dogs and having them potentially get up there and have injury. We have spoken with the neighbors since we moved in, including the two beside us and the one behind us, who would obviously be most impacted by the raised fence. They all expressed their support for us. We have not spoken to other neighbors in the neighborhood yet, but I am not aware of any opposition. We would keep it looking primarily the same with the chain link fence to keep that openness. We certainly want to meet our new neighbors and talk with them. I think that's the point of the chain link. We already put in a schedule with Slagle Fence for whatever height we can get approved tonight. We are looking at the black vinyl chain link fence. It seems to have a nicer look than the silver galvanized fence. We would just ask that you consider that. I think there is a little bit of a safety issue for our dogs. I don't think there are any negative issues here. We just ask that you support the exception.

Chairman Clawson: Thank you. Are there questions for the applicant?

Mr. Hawk: I've seen the property, and it appears that there are quite a few properties that have 4' high chain link fences already. Will another foot taller make any difference, or will we be looking at other neighbors coming forward, expressing interest in a higher fence?

Mrs. VanBiber: I'm not sure I understand the question.

Mr. Hawk: You're looking at a very nice 5' fence. Currently, it looks like several of the neighbors have 4' high chain link fences in the neighborhood.

Mrs. VanBiber: That is correct.

Mr. Hawk: And this is an improvement, based on what I'm seeing.

Mrs. VanBiber: We hope so. That is our intent.

Chairman Clawson: Are there other comments?

A motion to approve Case 30-2021 Robert & Ingrid VanBiber/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 10512 Manor Road – was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Dropped off the Zoom call: Munson.

Case 31-2021 Shea & Derek Stevens/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 10312 Ensley Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing structure/cover over the patio. The new structure would be 10 feet 8 inches from the southwest property line. A request for 4 feet, 4 inches is needed to construct the covered patio as shown on the plan.

Chairman Clawson: Are there questions for staff?

Mr. Bussing: Do we know if this structure was built with the original construction of the home or if it was an add-on?

Mr. Thompson: To be honest, I'm not sure. It wasn't shown as having an additional permit later on.

Dr. Peppes: The picture we have in here is the existing structure?

Mr. Thompson: That is the current structure.

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

Applicant Presentation;

Shannon Marcano, Local Lot, LLC, 9931 Fontana Lane, Overland Park, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Ms. Marcano: I am representing Mr. and Mrs. Stevens, who are also on the call this evening. We appreciate the opportunity to come before you and present their situation and ask for your approval on this exception. I'm happy to go through. We had the opportunity to review the Staff Report and agree with the points made in the analysis. I would point that one of the items you need to look at is if the exception would cause adverse impact on neighboring property owners. Mr. and Mrs. Stevens did meet with their neighboring property owners, and in fact, they received a few letters in support of the application. I asked Wade to include those letters or distribute them. Hopefully you've seen them. Really, the closest neighbor on the south side is very much in support of this application. They have continued to improve this property, and this is the latest in their ongoing improvements. They're really excited to get this project underway. We're happy to answer any questions you might have, and we respectfully ask for your approval tonight.

Chairman Clawson: Are there questions for the applicant? This structure will be designed and sealed by a structural engineer; is that correct?

Ms. Marcano: That is correct.

Chairman Clawson: Other comments or questions? Is there anyone online to speak for or against this application? Is there a motion?

A motion to approve Case 31-2021 Shea & Derek Stevens/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 10312 Ensley Lane – was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Dropped off Zoom call: Munson.

ADOPTION OF THE LEAWOOD BOARD OF ZONING APPEALS BYLAWS

Chairman Clawson: As I understand, we have to approve this every year. Is that correct, Wade?

Mr. Thompson: That is correct.

Chairman Clawson: Is there a motion?

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

Chairman Clawson: These are approved, and we have to sign them.

Mr. Thompson: That is correct.

ELECTION OF OFFICERS

Chairman Clawson: We have to do this once a year.

Ms. Tomasic: That is correct. The Bylaws and election of Chairperson and Vice-chair is required every May. It was a little off last year because of the pandemic and moving some of our meetings around. I think we adopted the Bylaws in the fall, so we waited to do the election today. It is required every year.

Chairman Clawson: I guess the position of Chairman is open for nominations.

A motion to nominate Bill Clawson for Chairman was made by Dunn.

Chairman Clawson: Are there any other nominations?

Motion seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Dropped off Zoom call: Munson.

Chairman Clawson: Nominations for Vice-chair are open.

A motion to nominate Mel Hawk for Vice-chair was made by Dunn.

Chairman Clawson: Are there any other nominations?

Motion seconded by Bussing. Motion carried with a unanimous roll-call vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Dropped off Zoom call: Munson.

MEETING ADJOURNED.