

**City of Leawood
Board of Zoning Appeals Minutes
June 23 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 June 23, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

MEMBERS PRESENT: Dunn, Clawson, Hawk, Farrington, Bussing

MEMBERS ABSENT: Munson, Dr. Peppes

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the May 26, 2021 Board of Zoning Appeals meeting

A motion to approve the minutes from the May 26, 2021 Board of Zoning Appeals meeting was made by Hawk; seconded by Dunn. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Bussing.

Chairman Clawson: We have one case in New Business.

NEW BUSINESS:

Case 32-2021 John Patton/Owner - 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 4301 W. 126th Terrace.

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 original fence was constructed approximately 18 feet from the property line. A variance of 17 feet is requested to replace the fence at its current location.

Chairman Clawson: Are there any questions for staff?

Mr. Bussing: Was the location according to code when it was built?

Mr. Thompson: I can't answer that. There was no record of a building permit for the fence, so it was probably constructed with the house. It's possible that it was.

Mr. Dunn: I know it's contiguous with the other neighbors' fences. Are they relatively similar as far as being over the build line?

Mr. Thompson: They're going to be in the exact same spot. The house to the west also has a 4' fence. The house to the east has a pool, so it has a 6' tall fence. They are in the same spot.

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

Applicant Presentation

John Patton, 4301W. 126th Terrace, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Patton: Good evening. I moved into the property in October, 2019. I do believe the fence is original to the home. I've been making improvements to the property over time. The replacement of the fence is something I have allotted a budget for, and I now have that available to be able to complete. The fence is in disrepair. I simply want to replace the fence in its current location. I have four letters of support from my surrounding neighbors to do that. I also have photos of the fence in its current condition as well as the location from 127th, as well as surrounding the home (*shows photos*). The property to the right of me has a 6' fence around a pool. The previous owner of the home may have been the original owner. I have noticed there are numerous nails and maybe some replacement boards here and there, but it is pretty much the original fence. The fence will be the same height and style as is currently there with the same type of materials.

Chairman Clawson: Do you have a photograph showing the inside of the fence? I'm curious about what vegetation you have on that side.

Mr. Patton: This isn't a very good picture that represents vegetation. I removed a tree. Essentially, along the property line are shrubs that I either share with my neighbors or that back up to 127th as well as flower beds and things of that nature. I also have letters from my four neighbors if you'd like to see those as well.

Chairman Clawson: You submitted letters to your adjacent property owners as required.

Mr. Patton: Yes, roughly 18 neighbors were within 200 feet. I sent certified letters and personally went to the four neighbors surrounding the property and asked if they supported the project.

Chairman Clawson: And they were supportive?

Mr. Patton: Correct.

Chairman Clawson: Are there any questions for Mr. Patton? This is a variance, so we have to evaluate the five factors. Sometimes, we have trouble with Uniqueness and Hardship. Could you discuss those briefly?

Mr. Patton: Maybe you could define what you mean by those. What would it need in order to grant me the variance is essentially what you're asking?

Chairman Clawson: Uniqueness is a criterion we have to evaluate. I think the requirement is, to justify a variance, it shouldn't be granted for cases that you see every day. It should be for situations that are fairly unique to the City of Leawood or even to the area your house is in. Are there any other comments?

Mr. Dunn: The fact is that this fence has been in place since 1996.

Mr. Patton: 1987, I believe.

Mr. Dunn: The fences of your neighbor all line up with this fence, and your property is shaped such that, if you moved it another 17 feet in, you create all sorts of difficulties. I think those factors, from my point of view, make this unique.

Mr. Patton: Thank you.

Chairman Clawson: Hardship is another criterion. What would that mean to you if this was not granted?

Mr. Patton: Hardship would essentially mean that the livable and usable space of my property would be tremendously cut down, as the fence line would now be much closer to my home. The yard was part of the reason we bought the home. The green space would be tremendously curtailed.

Chairman Clawson: Many times, having to move a fence could significantly impact the vegetation you've planted. That would be considered a hardship. Are there any other comments from the board? Any other comments or questions for the applicant? In that case, we appreciate your presentation. As a board, we'll evaluate the five factors. I assume there is no one here to speak for or against this application. We'll proceed with our analysis. The first factor is Uniqueness of the Property.

Mr. Dunn: I said before that this is unique because the fence has been in place for approximately 40 years, and it lines up with the existing fences. I think it's obvious it was placed there based on the shape of the lot.

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

Chairman Clawson: Rights of Adjacent Property Owners. All letters have been mailed, and no complaints according to the information presented. The applicant has indicated that the four adjacent neighbors are supportive. Are there any other comments?

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

Chairman Clawson: Hardship.

Ms. Farrington: Looking at this case, this fence has been in place nearly 40 years. If this were to be moved in, it would create a hardship with existing vegetation. The slope is also inverted from the street, so it would create a hardship with building in a different area. It would create different build lines that wouldn't line up with neighboring fences.

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

Chairman Clawson: Public Safety and General Welfare. Staff has noted that approval or denial should not affect this factor at all. Other comments?

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

Chairman Clawson: Spirit and Intent.

Mr. Dunn: I think staff adequately points out in this report that, if the fence had to be moved, it would create an unsightly jog in the fence line, disrupting the character.

Mr. Hawk: Also, this fence is in disrepair. The newer fence would add to the appeal of the home and the neighborhood.

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

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

A motion to approve Case 32-2021 John Patton/Owner - 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 4301 W. 126th Terrace – was made by Dunn; seconded by Hawk. Motion carried with a unanimous roll-call vote of 4-0. For: Dunn, Hawk, Farrington, Bussing.

MEETING ADJOURNED.