

**City of Leawood
Board of Zoning Appeals Minutes
August 25, 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 August 25, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Munson

STAFF PRESENT: Thompson, Tomasic

Chairman Clawson: We have a long agenda tonight, so I'd like to ask the applicants to limit their presentations to five minutes.

APPROVAL OF MINUTES: Approval of the minutes from the July 28, 2021 Board of Zoning Appeals meeting

A motion to approve the minutes from the July 28, 2021 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: We have two cases tonight in Old Business.

OLD BUSINESS:

Case 34-2021 Katie Trenkle; David & Lauren Slocum/Owners - Request for a Variance to the rear build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3216 W. 83rd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new screened-in porch on the rear of the home. The home was constructed with an average rear setback of 29.31 feet. The new addition will be 20 feet, 4 inches. The Leawood Development Ordinance (LDO) requires 30 feet. A variance for 9 feet, 8 inches is necessary to construct the addition as shown on the plan.

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

Applicant Presentation:

Katie Trenkle, architect, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Trenkle: This project is located in the cloister section of Leawood at about 83rd and Mission. It's located in a cul de sac. As you can see with the site plan, it's located on an irregular-shaped lot, and in addition, the existing house is set at an angle to the rear property line. Because of that, we would like to apply for an exception to the LDO, Section 16-2-5.3(D). What we're asking for is, because it's on an irregular lot shaped as defined in the LDO, *inaudible comments*. That puts that house at the average rear setback of 29.31 feet. In this, it says that the average depth of the area enclosed must be equal to or greater than 30 feet. We're just right underneath at 29.31 feet. If it was at 30 feet, we could build up to 15 feet from the rear property line. What we're asking for is a small screened-in porch. It's about 16x16. It's going to be in the footprint of their existing rear brick patio that is falling apart. It's going to sit 20 feet, 4 ½ from the property line. If this house was defined as 30 feet, which it's 29.31 feet, which is less than 30 feet, we could build to that rear property line according to the regular lot rear setback within the LDO. Because it's 29.31, we're not able to do that. You can also see the existing house, which is *inaudible comments*, which is way less than the existing 30' rear setback. We're asking for an irregular lot rear setback exception.

Chairman Clawson: So, this is a variance and not an exception.

Ms. Trenkle: Well, it's a variance using the irregular lot rear setback exception within the LDO.

Chairman Clawson: This calculation is extending the edges of the house back to the property line, correct? And then you calculate the area and divide it by the length. If your screened portion would have been shortened, it wouldn't have changed the calculation at all.

Ms. Trenkle: No, not at all.

Chairman Clawson: That little rectangle increases the area, so it makes the average setback 29.31. The new addition does what?

Ms. Trenkle: It will increase the area.

Chairman Clawson: Is that correct, Wade?

Mr. Thompson: Yes.

Mr. Dunn: What we're saying is that, according to this irregular lot rear setback provision, if your proposed plan left the average distance of 30 feet, this would allow you, in places, to come within 15 feet.

Ms. Trenkle: That's correct, and we're not even getting close to 15 feet.

Mr. Dunn: But because the average is 29.31, you can't come any closer than 30 feet. Is that correct?

Ms. Trenkle: That's how we understand it.

Mr. Thompson: Yes, sir.

Mr. Dunn: Is it 1 inch or less than 1 inch?

Ms. Trenkle: Less than 1 inch.

Chairman Clawson: Wade, what's the purpose of the last sentence about, "In no case shall the structure be located less than 15 feet from the property line? If the previous sentence said, "This will give the average depth of the area enclosed, must be equal to or greater than 30 feet."

Mr. Thompson: As long as what you're granting is more than 15 feet, you can do it. It just says that it can't be less than 15 feet from the property line.

Chairman Clawson: I guess there could be a weird case that was really skewed with a calculation of 30 feet, but part of the one corner of the structure could be less than 15 feet.

Mr. Thompson: Sure, as long as it added up to 30 feet when it was built, it would be okay. Right now, this home is considered legal, nonconforming. It doesn't meet the requirement right now.

Ms. Trenkle: One other thing to point out is that we're covering their existing patio. We're not adding any additional impervious surface. If you're interested in seeing a photo of the back of the house or of the proposed design, I'm happy to share that as well.

Chairman Clawson: I don't think we need to see it. Are there questions for the applicant? This is a variance, so we have to evaluate the five factors: Uniqueness and Hardship are sometimes the ones that are most difficult. Could you address those?

Ms. Trenkle: The property is unique in that it's not a regular shape as defined by the LDO. The house sits at an angle, which puts us in this situation.

Chairman Clawson: Is this lot unique to the area as far as dimensions?

Ms. Trenkle: One of the side dimensions is 150 feet, and the other is 100. It's isn't a rectilinear lot. Most of the other lots are rectilinear. This is unique in that it's on a cul de sac and backs up to a cemetery.

Chairman Clawson: What about Hardship?

Ms. Trenkle: The way this house was built is already nonconforming, so we don't have an option to add to the back of the kitchen and family room as we would any other rectilinear lot with a depth of a back yard that most Leawood houses have.

Chairman Clawson: Staff made a comment here that if the request is denied, a screened-in porch could be constructed with a redesign on the west side of the home without board action.

Ms. Trenkle: That's correct. It wouldn't have the connection to the kitchen or the family room, which we would really like for the performance of the screened-in porch.

Chairman Clawson: Other questions? Thank you. This is a variance, so we'll have to evaluate the five factors. We have to vote in the affirmative on each factor in order to support a motion for approval. The first is Uniqueness of the Property.

Mr. Dunn: I feel that due to this property being located on a cul de sac, the unique shape of the lot, and the orientation of the home on it make it unique. We've had other cases similar to this, and I believe we felt they were unique. I think in this case, I would be in favor of saying it does make it unique.

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

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: I did receive one phone call from a neighbor in Prairie Village who was okay with the project.

Chairman Clawson: By the way, is there anyone online who wishes to speak for or against this application?

Ms. Tomasic: The homeowners are online. I don't know if they want to speak.

David Slocum, 3216 W. 83rd Terrace, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Slocum: I would just like to thank the board for their time and thoughtful consideration of our request. It's obviously something that we would like to do to add, and it would be a nice aesthetic to the area and add functionality to the home. Thank you for your time and consideration of the request. I think Katie did a great job of laying out the basis for our request. That's all we would say at this time.

Chairman Clawson: Rights of Adjacent Property Owners. Wade, you mentioned that letters were mailed out with no complaints and one Prairie Village resident who was supportive.

Mr. Thompson: Yes, behind them.

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

Chairman Clawson: Hardship.

Dr. Peppes: I feel it has been met with this irregular lot and not that it is just irregular. It is legal, nonconforming, even though the rear of the house is the legal, nonconforming part of it. They're dealing with something that was put there in the very beginning, and now they want to add to it. I believe the screened-in porch fits within the realm and feel that Hardship has been met.

Mr. Dunn: I would agree. I'd just say that I think it would be an undue hardship to either build a new entrance to the kitchen or to not be able to utilize the current entrance to the kitchen.

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

Chairman Clawson: Public Safety and General Welfare.

Ms. Farrington: The uniqueness of the property lends to the fact that it has a cemetery on the back side, which is not a typical situation. I don't see that approving this would go against public safety and general welfare, considering the neighboring property to the back.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I think it lends well to what I just stated about public safety and general welfare. The intent of the ordinance is to maintain safe distance between structures and ensure the privacy of neighbors is preserved. Since this is on the back side of the property and it's neighboring a cemetery, I don't see that it disrupts the spirit and intent of the ordinance.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: 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 34-2021 Katie Trenkle; David & Lauren Slocum/Owners - Request for a Variance to the rear build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 3216 W. 83rd Terrace – was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 36-2021 Joseph Kern & Megan Jameson/Owners - ****CONTINUED**** Request for a Variance to the build line in accordance with the LDO, Section 16-2-5.3(D) in an R1 District for property commonly known as 2813 W. 127th Street.

Case 38-2021 John Stafford/Owner - Request for a Variance to the landscaping requirement for a sports court in accordance with the LDO, Section 16-4-1.3(B) 6 h in an R-1 District for property commonly known as 3209 W. 91st.

Staff Presentation:

Ms. Tomasic: Mr. Chairman, there is no one here on this case, either online or in the lobby area. My suggestion would be for the board to make a motion to continue this, have the board vote on continuing this. Staff will contact him to see if he still wants to proceed with this application. If it's not acted on at the next meeting, it could be withdrawn rather than voting on the actual case tonight with no applicant here to present.

Chairman Clawson: We've been informed that there is no one here to present for Case 38-21; therefore, it was suggested that we continue this to the next meeting.

Dr. Peppes: Point of order: how did it get on the agenda?

Ms. Tomasic: He had two variances on the last meeting. He requested a continuance to this one to determine what he was going to do and whether he wanted to pursue this. It is my understanding that there's been no contact with him since that last meeting.

Chairman Clawson: There has been no contact?

Mr. Thompson: That is correct. He was expected to be at the meeting, but I did not receive a phone call that he wasn't going to be here.

Mr. Hawk: Do we contact him to see if he wants to continue, or do we drop it?

Mr. Thompson: I'll call him tomorrow.

Motion to continue Case 38-2021 John Stafford/Owner - Request for a Variance to the landscaping requirement for a sports court in accordance with the LDO, Section 16-4-1.3(B) 6 h in an R-1 District for property commonly known as 3209 W. 91st - was made by Dunn; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

NEW BUSINESS:

Case 39-2021 Evan & Kari Duede/Owners - Request for an Exception to the average front setback in accordance with the LDO, Section 16- 2-5.3(D) in an R-1 District for property commonly known as 2505 W. 84th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a covered entryway to the front of the existing structure. The new addition will be 8.8 feet by 6 feet for a 52.8 sq.-ft. structure. The average front is calculated to be 47 feet, 6 ½ inches. The applicants are asking for an exception to the front average for 18.4 to construct the entryway as shown on the plan. This actually started out as a variance, but we reviewed the plan, and it meets all the criteria laid out on the last page for an exception. We changed it from a variance to an exception.

Chairman Clawson: Our amended agenda calls it an exception, where the previous agenda listed it as a variance.

Mr. Thompson: Correct. Just so you know, you don't have to go through the five factors. You'll just have to go on the last page and evaluate factors for the exception.

Mr. Hawk: The previous applicant looks like she has a question.

Mr. Thompson: She'll be presenting this case as well.

Chairman Clawson: Wade, do you have any other comments to make about the case?

Mr. Thompson: I think I have it laid out.

Chairman Clawson: When I read this originally, I thought that these are usually exceptions.

Mr. Thompson: Based on the size, this one met the criteria, and the structure was legally constructed. Because the houses next door create an issue with the front yard average, we were able to redefine this as an exception.

Chairman Clawson: Good. Other questions for staff? Do we have a representative for this case?

Applicant Presentation:

Katie Trenkle, architect, 2505 W. 84th Street, appeared before the Board of Zoning Appeals and made the following comment:

Ms. Trenkle: The homeowners are Evan and Kari Duede. This is a house that is completely under construction on the interior. They'd like to add a small front porch to the exterior. It's going to be 6 feet deep and 8 feet, 8 inches wide. They'd like to cover that front porch. You can see the neighbors on either side. This house sits 35 feet back from the front property line. It's legal, but the houses next door sit 39 feet. The other house is at an angle. If you take the average of the two front points of that house, it's actually 55 feet, 1.5 inches. If you take that and average it with the 39 feet, 11 ½ inches, it puts the front setback for this house at 47 feet, 6 inches. The front of this house sits at 35 feet at the build line. It's already sitting in front of the setback based on the LDO setback requirements. Per the LDO, if the existing structure was legally constructed and the structure meets the required front setback, which it does, this entryway addition is no larger than 75 square feet. This will be 51.96 square feet. The proposed entryway addition will be architecturally attached and will be constructed with the same materials as the primary residence. The exception is necessary to allow for the entryway improvement to be made. Because the interior of this house is under construction, we're moving the stairway on the inside. The entryway gets changed, so the front door for this house will be relocated. The front porch also has to be relocated. We're going to be building the front porch anyway, so we'd like to cover it as part of this for safety and also for aesthetics. I have a picture of the home if you want to see it and also the proposed design. (*shows picture*) It's a typical Leawood Cape Cod house. The blue front door is moving over. In addition, the existing brick is falling apart, so this will make it nicer. It's

a pretty simple covered entry. I think we counted eleven of them very similar to this within the square block they live on.

Chairman Clawson: The house now is considered legal, nonconforming?

Mr. Thompson: Not really because it exceeds the 35' front build line. Because the two houses next to it skew the figures, they have to meet the front yard average. It exceeds the 35' setback now.

Chairman Clawson: Staff has concluded it meets these requirements.

Mr. Thompson: Yes, sir.

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

Motion to approve Case 39-2021 Evan & Kari Duede/Owners - Request for an Exception to the average front setback in accordance with the LDO, Section 16- 2- 5.3(D) in an R-1 District for property commonly known as 2505 W. 84th Street – was made by Hawk; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 40-2021 Andrew & Jessica Koebbe/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 9600 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition to the northwest side of the home. The existing structure was constructed 10.8 feet from the property line. The new addition would be 8 feet, 3 ½ inches from the property line as shown on the plan. A variance for 6 feet, 8 ½ inches is needed to construct the covered entryway as it is designed.

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

Applicant Presentation:

Katie Trenkle, architect, and Andrew Koebbe, 9600 Meadow Lane, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Trenkle: They actually have a pretty large property, but the existing home was constructed 10.8 feet from the north property line. They are building an addition that will primarily serve as a piano studio for Andrew's wife, who is a piano teacher. We set that 15 feet from the property line. They would really like a covered entry to that space for safety and aesthetics to that side of their house. We are asking for a variance for the covered porch. The covered porch will be 4 feet by 6 feet, so it won't be very big, but

they would like to have it covered for safety reasons. As a part of the addition process, we are removing two entries to their house (*refers to plan*). You can see the two dots. We're adding an entry to the side. The small front porch will sit behind the 10'8" setback of the existing house, which is an exception within the code. We need five risers because of the grade change to get up to that entry, so those five stairs are what exceed the 10'8" setback. We're asking for a variance for the covered entry and also for the five stairs needed to get into that portion of their addition.

Chairman Clawson: Are there questions? I have a comment. In my time on the board, we have not allowed encroachment of less than 10 feet on side yard setbacks. Is there an alternative location for this entryway?

Ms. Trenkle: We would really like for the entryway to be on this side of the house due to convenience of entry and because that's where the other two entries to the current house are being lost. The foundation of the front porch sits behind the 10 feet, 8 inches. It is the stairs that encroach. In the LDO, it says, "The following are allowed to encroach in all required setbacks, which include the side: steps necessary for access to a building." The structure of the building is actually within the setback; it's the stairs that go over.

Chairman Clawson: You've provided a landing, though, and it's covered.

Ms. Trenkle: And all that is behind the 10'8" mark. It is actually more than that at 12'1".

Chairman Clawson: It is just steps?

Ms. Trenkle: It is the 2 ½ stairs that exceed it.

Chairman Clawson: And a landing?

Ms. Trenkle: And the sidewalk that approaches it, yes.

Ms. Farrington: Are you thinking the 15' setback is being encroached, or are you referencing the 10'9"?

Chairman Clawson: The 10'. Traditionally, we have been pretty strict on not exceeding the 10' setback.

Ms. Trenkle: But it's 2 ½ stairs that we're asking for, and it says in the LDO that stairs are allowed to exceed that on all required setbacks.

Chairman Clawson: Do you have a plan view?

Ms. Trenkle: (*shows floor plan*) It's 2 ½ stairs.

Mr. Thompson: The landing itself and the sidewalk would be okay.

Dr. Peppes: If there weren't stairs and the landing was right on the ground, this would probably be an exception because we're already legal, nonconforming on the setback.

Mr. Dunn: You had reference to the ordinance with regard to stairs. Could you put that up?

Ms. Trenkle: *(displays reference)*

Chairman Clawson: If this is the case, why wouldn't this be considered an exception?

Mr. Thompson: It might be able to be considered an exception. These were referred by the plans examiner. He felt it was a variance.

Mr. Dunn: I think this language is pretty clear.

Chairman Clawson: This is the current version of the LDO?

Mr. Thompson: Yes.

Mr. Dunn: Can I ask our counsel: do you know if this is the current version of our ordinance?

Ms. Tomasic: Let me review it.

Ms. Trenkle: This is the first time I've presented three times in one night.

Chairman Clawson: And probably the last.

Ms. Trenkle: I hope not.

Mr. Dunn: Our ordinances are easier to read than a lot of cities' ordinances.

Ms. Trenkle: I really do like the LDO.

Chairman Clawson: We appreciate when professionals read the requirements of the LDO.

Ms. Tomasic: As far as I'm aware, this is identical to the current version of the LDO. I'm not aware of that changing recently, but it is definitely what is on the website.

Chairman Clawson: Ashley, is it your opinion we could treat this as an exception?

Ms. Tomasic: If staff and the board and the applicant all believe the action can be done as an exception instead, I think it can be amended to an exception and voted on that way.

Chairman Clawson: Okay. Is there anyone online who wishes to speak for or against this application?

Doug Hardy appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Hardy: I am the neighbor to the north. I sent a letter, but I'll also say that I'm fully supportive of their proposal for the exception.

Chairman Clawson: Is there a motion? It might be good to mention that our discussion has suggested that we treat this as an exception.

A motion to approve Case 40-2021 Andrew & Jessica Koebbe/Owners - Request for an exception (amended from a variance) 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 9600 Meadow Lane – was made by Bussing.

Mr. Dunn: Would it be better to have the applicant amend it to an exception?

Ms. Tomasic: I think you can ask if they consent to it, and it can be noted as part of the motion. If you would feel more comfortable asking them, it is fine. Either is fine as long as it is noted it is with the consent of the applicant.

Motion seconded by Dunn.

Chairman Clawson: We have a motion for treating Case 40-2021 as an exception due to evaluation and analysis by the board and by our attorney. Does the applicant agree with this?

Ms. Trenkle: Yes.

Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 41-2021 Timothy B. Cavanaugh & Linda L. Cavanaugh/Owners - Request for a Variance to the maximum height for a wall in accordance with the LDO, Section 16-4-1.2(B)2 in an RP-1 District for property commonly known as 11644 Pawnee Court.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 10' retaining wall 1 foot from the rear property line in order to move a swimming pool closer to the rear property line.

Chairman Clawson: The first is for the height; the second is for the setback?

Mr. Thompson: The first is for the placement of the 10' wall. They're able to build the wall; they would have to move it in. For every 1 foot above 6 feet, they have to move it in.

Chairman Clawson: What is the reason for that?

Mr. Thompson: Safety or appearance.

Chairman Clawson: Questions for staff? Is the applicant here?

Applicant Presentation

Tim and Linda Cavanaugh, 11644 Pawnee Court, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Cavanaugh: Wade, do you want us to tie these together or do them separately?

Mr. Thompson: No, we have to do them separately because one could pass and one could fail.

Mr. Cavanaugh: So, the wall is first. If you've seen all the materials, I'll summarize. The issue is that we're in a location where the lot is deep but very narrow and very sloped. We have 30 feet of fall from front to back and 130 feet of depth of the lot, which is really unusual for Kansas. It's in Tomahawk Creek Estates, which has been an existing neighborhood for 20 years. Back when all those homes were built, the setback was 30 feet from the street, and now it's 35 feet. It's the only lot in the neighborhood that's built that way. We started the job and built it with the 35' setback. What's happened is that it's a very sloped lot with a lot of rock. We're trying to build this house to be ADA compliant because I have several issues that are going to be issues in the future, so we need it to have no steps. We encountered a rock ledge as we excavated that has made us make the house 1 foot higher than we wanted it to be. We've had to add some piers, but we couldn't blast through this rock ledge. Having said that, the retaining wall now has to be higher than we expected. In retrospect, had we known that, we would have applied for a variance to move everything 30 feet in the first place at the front, and we wouldn't be having this conversation about the back. Now, we're trying to make a flat lot with a retaining wall so we can put a pool in. As it exists, the location of the retaining wall being 4 feet in with the compliance the way it is now only gives us about 4 feet between the edge of the pool and the edge of the house. It makes the pool very, very narrow at almost 10 x 40, which is ridiculously narrow.

Mrs. Cavanaugh: Everything is all on one floor, and when we hit that ledge, it forced us to put steps in the back. That pushed our yard farther. I know expense doesn't tie in with the variance, although it has created some hardship. We had to have everything re-engineered for the house. We hit groundwater, so we had to add water drainage. The bigger thing with regard to the distance and the space we have is that we had to add steps. Our garage and everything in the house is ADA compliant. That pushed us back also. When we were talking about short distances, those couple of feet made a big difference.

Mr. Cavanaugh: The reason that is important is since we do have some steps, we're trying to make room for ramps as well. If the retaining wall is in, we don't have room to do that as well. Really, what we're asking for is a variance to allow the retaining wall to be pushed farther back toward the property line. We're not asking to go to the property line because we need footings on the retaining wall. We're set 1 foot back from the property line to allow for those footings to be at the property line, underneath the ground, supporting the retaining wall. On the maps I've given, you'll see the lot has nothing behind us. We have 60 feet of woods between the houses on either side. There's nothing but Tomahawk Creek Park and the creek behind us. Then, going straight west from our house, the first house is west of Rosanna Square, west of Metcalf. It's three miles away to the next person behind us. We really don't think this variance will impact anybody except for the deer and the coyotes.

Mrs. Cavanaugh: We also chose a stone color because we don't want a big albatross back there when leaves fall off in the winter. We want it to blend in.

Chairman Clawson: Will the retaining wall be reinforced concrete?

Mr. Cavanaugh: No; it's a stacked stone (*shows picture*). It's called Cota Stone from Rosetta. It's a little greyer than the picture.

Chairman Clawson: How long will the wall be?

Mr. Cavanaugh: Oh, it's long. It runs most of the length of the back yard. The pool is 40 feet long. It's probably 100 feet. It's big, but it has to be because of the slope of the lot.

Mrs. Cavanaugh: Our house is very wide but very shallow.

Chairman Clawson: You'd probably run past the pool and taper down.

Mr. Cavanaugh: No, it will run past and then come forward to the front and taper underground. The other thing that is part of this variance is that there's a slight difference in elevation between the north and south end of the back part of the lot because no lot is flat. If you stick with the strict 10' high retaining wall, it requires the wall to be stepped because of the variation in slope. This will have a fence to protect the pool and people from falling off the wall. It will look terrible to have a stepped wall and a stepped fence. We will also ask not only to have it pushed back but to let us make a straight wall that is flat on the top and back. It will also help with construction costs as well if we don't have to do all these iterations with the wall. The pool is a different part.

Chairman Clawson: You're asking for a 5' variance.

Mr. Cavanaugh: It's 3 feet.

Chairman Clawson: Where is the face of the wall from the property line?

Mr. Cavanaugh: The face of the wall will be 1 foot from the property line with what we're requesting instead of 4 feet. It's a 3' difference. We can build a 6' wall at the property line. For every foot higher that the wall has to be, we have to come in 1 foot.

Chairman Clawson: Is that your understanding, Wade?

Mr. Thompson: Yes, sir.

Mr. Cavanaugh: We could build a 6' wall on the property line with current regulations. The fact that our wall needs to be 10' high means that we have to pull it in 4 feet. We're asking to put it at the 1' line instead of the 4' line, so it's only a 3' difference. We wouldn't have to do the steps then.

Chairman Clawson: To build a wall like that, I think you'd have to have a construction easement from the City of Leawood.

Mr. Thompson: That's a question I couldn't answer. I'd say they'd have to do it all from their side.

Mr. Cavanaugh: We've got plenty of room on the lot. It's 240 feet wide. We have not encroached on anybody else's space. In fact, we've not even encroached into the wooded areas between the house.

Chairman Clawson: What I'm saying is you could build that wall without getting back on the other side?

Mr. Cavanaugh: Absolutely.

Mrs. Cavanaugh: Are you asking if they'll be on the park side?

Mr. Cavanaugh: We can build it without that. They may be standing a little bit on the edge, but they're not going to take trucks through there. They'll come from our side. We cleared hundreds of trees.

Mrs. Cavanaugh: We keep getting delayed with this.

Mr. Cavanaugh: We're in it a year already.

Mrs. Cavanaugh: We were hoping to get this done before winter weather and erosion. It's just sitting there. We'd like to move forward and make it more attractive. In fact, they've engineered as much as they can, but they can't finish the engineering until we know where it's going.

Chairman Clawson: Questions for the applicant? Is anyone here who wishes to speak for or against this application?

Ms. Tomasic: Mr. Hill, do you want to speak?

Todd Hill, Todd Hill Homes, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Hill: I'm building for the Cavanaugh's, so if anyone has questions, I'm happy to answer. I can confirm that the wall can be built without getting on adjacent property. The Cavanaugh's have requested that we put an orange construction fence as well to make sure we preserve all the trees and stay on our property.

Chairman Clawson: How deep will this pool be?

Mr. Cavanaugh: Probably only about 5 feet in the center, sloping back up to 3 at the edge. It's mostly for a lap pool for grandkids when we have them. For me, it's the exercise I need to be able to do because of some physical restrictions.

Chairman Clawson: The retaining wall be designed to resist the lateral load imposed by the pool?

Mr. Cavanaugh: Absolutely, and that's part of the second variance that we'll talk about as well. It's being designed by Van Deurzen and Associates.

Mrs. Cavanaugh: Judging by what we've seen so far, I think the World Trade Center could have survived on top of this wall. It's pretty significant.

Mr. Cavanaugh: I don't know if you guys would be interested, but we have a letter from Dennis Eskie, who developed Tomahawk Creek 20 years ago. He did a letter of support for this in response to the notification. We didn't ask for it, but he put one out. I can read it if it makes a difference. He was the original developer and was very familiar with the lot.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. Uniqueness and Hardship are difficult to approve. Would you care to provide information on those?

Mr. Cavanaugh: When we first put this together, we were directed to do it as an exception, which didn't have the five factors. The pool was originally done as a variance. From the hardship standpoint, I said it was a financial hardship because of the unexpected things we've hit. Also, varying the height of the wall and doing the steps up and down will make it financially more difficult. There's a safety hardship with everything crowding toward the house. There is one area we're concerned about from the corner of the house to the corner of the pool with a danger that people may trip and fall in. We're worried about that.

Mrs. Cavanaugh: Also hitting the rock.

Mr. Cavanaugh: There's also a disability hardship that we've talked about as far as having the ability to have the ramps. Crowding makes that more difficult and also limits the width of the pool. We'll talk about that more with the pool, but as my doctors have recommended swimming laps, I need about 40 feet to do that. As it exists with the crowding, the pool will be 12 x 40, and we'd like to make it wider.

Mrs. Cavanaugh: You shared the medical documents.

Mr. Cavanaugh: Please keep that confidential in this chamber. There are things I'm dealing with that will not get better as I age.

Chairman Clawson: Additional questions?

Mrs. Cavanaugh: Do you want us to go through all of them?

Chairman Clawson: The ones we typically have trouble with are Hardship and Uniqueness.

Mr. Cavanaugh: Uniqueness is the steep slope and shallow depth. That lot has sat empty for 20 years. In a location at 116th and Mission, why wouldn't you build on that lot? We're finding that it's really challenging, but we're willing to do it. It's where we live. We've lived in Leawood for 27 years. It's our neighborhood. It's a very unique situation with a difficult slope and vast slope on that lot.

Mrs. Cavanaugh: More than we anticipated. We've really changed gears and redesigned the house to fit it. We've hit more challenges.

Chairman Clawson: Thank you. We will evaluate the five factors. We have to vote in the affirmative on all five factors in order to support a motion for approval. The first is Uniqueness.

Mr. Hawk: The elevation change certainly makes this lot unique.

Uniqueness of the Property criterion satisfied with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Rights of Adjacent Property Owners.

Mr. Thompson: No calls or complaints have been received. He mentioned the letter from the developer.

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

Chairman Clawson: Hardship.

Mr. Bussing: As the applicant has described the issues he's dealing with and the need to have ADA access, I think not allowing the variance would prohibit his ability to enjoy the property as necessary. I believe it has been satisfied.

Mr. Dunn: I'd just add that I know the standards say that personal difficulties do not create a hardship, but on the other hand, from what I've seen, given the situation they're dealing with, this will ultimately result in the ability to use the property effectively for their purposes sometime down the road.

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

Chairman Clawson: Public Safety and General Welfare. Staff says that placing the wall 1 foot from the property line would make weed control and mowing difficult. Does anybody mow that now?

Mr. Thompson: No.

Chairman Clawson: So, it's really not that much of a factor.

Mr. Thompson: In this case, maybe not.

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: The proposed request meets this because it is unique where it sits and backs up to the forest property. It shouldn't be seen, but in the wintertime, if it is seen, it goes with the natural landscape. There's rock and stone all throughout the park.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: 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 41-2021 Timothy B. Cavanaugh & Linda L. Cavanaugh/Owners - Request for a Variance to the maximum height for a wall in accordance with the LDO, Section 16-4-1.2(B)2 in an RP-1 District for property commonly known as 11644 Pawnee Court – was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 42-2021 Timothy B. Cavanaugh & Linda L. Cavanaugh/Owners - Request for a Variance to the rear setback for the placement of a pool in accordance with the LDO,

Section 16-4-1.3(B) 5 b in an RP-1 District for property commonly known as 11644 Pawnee Court.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a swimming pool in the rear yard 1 foot from the rear property line. The LDO requires a pool to be 10 feet from the rear property line. A variance of 9 feet is needed to construct the pool as shown on the plan.

Chairman Clawson: Questions for staff?

Dr. Peppes: They've got the retaining wall, so it's got to be farther away than 1 foot.

Mr. Thompson: Actually, it's going to be right in line. It will be right at the wall.

Dr. Peppes: So, they'll have the wall, which may be 2 feet in from the property line, and then the pool adjacent to it.

Mr. Thompson: Yes.

Mr. Hawk: We've also approved a variance of 5 feet back on August 19th. We're not talking about 9 feet; we're talking about another 4 feet, right?

Mr. Thompson: That variance was for the front. That let them move the house 5 feet forward.

Applicant Presentation:

Tim and Linda Cavanaugh, 11644 Pawnee Court, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Cavanaugh: For clarification, in hindsight, we would have asked for everything to move forward. We just moved a little section of the garage so we could fit a three-car garage. Most of the houses have six-car garages. All the other houses have the 30' setback. Ours was the only one to have a 35' setback.

Chairman Clawson: So, that was just the garage?

Mrs. Cavanaugh: Yes, so we would have moved everything forward.

Chairman Clawson: Are there any more questions for staff? You may present your case.

Mr. Cavanaugh: It's really the same as the other case in that the arguments are the same: shallowness and steepness of the lot, having the pool away from the house for safety issues, needing a wider pool, etc. You asked about the wall and pool. If we could do the pool back where the retaining wall is, then the wall of the pool helps support the retaining

wall. We talked to the pool contractor, and it will not only be less expensive but also structurally more sound to have that abut the wall. Also, I assume the city's ordinance is because you don't want a pool too close to the property line to keep kids from adjacent neighborhoods falling in. We don't have that worry because of the retaining wall. As it exists, if we have 1 foot from the property line for the retaining wall, and it will come in 9 feet where the pool is, then we'd have to have something between and another retaining wall in the back. It will look terrible, jutting in, and it will also crowd everything toward the house. It will also add more expense. We're asking for everything to be lined up and have adequate room for ramps and passage between the house. The only way to make adequate room now is to narrow the pool down, and it will look like a landing strip. It's not really usable or aesthetically pleasing. We're just asking for the pool to be pushed toward the back. It's not an infinity pool. It will have a stone wall on the back and will tie in to the retaining wall. I think the overall aesthetics will be a lot better. From the front, it will have the appearance of an infinity pool because beyond the pool, all you'll see is the woods. I don't know if you want me to reiterate some of the arguments for the wall, but it's really an identical argument to what we had.

Chairman Clawson: I'm guessing the LDO requires a buffer between adjacent properties for when there are back yards next door.

Mr. Thompson: Correct.

Mr. Bussing: We've had numerous instances in my neighborhood with a variance granted because there is a creek behind it with no opposing homeowners. We've allowed those homeowners to go all the way to the property line. I think there's ample precedence for granting variances that go all the way to the property line when there is no adjacent property behind it.

Mr. Cavanaugh: The closest non-commercial property to us is over three miles to the west. The closest commercial is the Leawood Police Station. It is really the same argument about hardship, and even more so with the requirement to have an adequate pool and passage for safety.

Chairman Clawson: Will your pool be a Gunite pool?

Mr. Cavanaugh: I don't know if we've gotten that far yet. Maybe Todd could answer that.

Mr. Hill: As of now, it's a Gunite pool. I also might mention as well that more than likely, no one is going to see the retaining wall from the back side. If, for some reason, they did, the stone they selected blends in very well with nature in that area. With the retaining wall being there and the way the topography is, nobody from the west can even see the pool.

Chairman Clawson: Are there other questions? If not, is anyone online who wishes to speak for or against this application? We had no letters?

Mr. Thompson: Just the one from the developer in support of the request.

Mr. Cavanaugh: I do have letters from all the adjacent neighbors in support of both if you need to see them.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Dunn: As in the previous case, the challenges of this lot and the steep grade make it unique.

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

Chairman Clawson: Rights of Adjacent Property Owners. Letters were mailed, and no calls were received in opposition.

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

Chairman Clawson: Hardship.

Mr. Dunn: I would like the record to reflect that my comments about Hardship from the preceding case apply equally to this case.

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

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

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

Chairman Clawson: Spirit and Intent.

Ms. Farrington: I would also like to refer to my comments in the previous case and apply those comments to this case regarding this criterion.

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

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

A motion to approve Case 42-2021 Timothy B. Cavanaugh & Linda L. Cavanaugh/Owners - Request for a Variance to the rear setback for the placement of a pool in accordance with the LDO, Section 16-4-1.3(B) 5 b in an RP-1 District for property commonly known as 11644 Pawnee Court – was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

MEETING ADJOURNED.