

**City of Leawood
Board of Zoning Appeals Minutes
September 22, 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 September 22, 2021 Board of Zoning Appeals Meeting. Could I have a roll call, please?

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

MEMBERS ABSENT: Farrington

STAFF PRESENT: Thompson, Tomasic, Torrez

APPROVAL OF MINUTES: Approval of the minutes from the August 25, 2021 Board of Zoning Appeals meeting

A motion to approve the minutes from the August 25, 2021 Board of Zoning Appeals meeting was made by Dr. Peppes, seconded by Hawk. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Chairman Clawson: We have a very long agenda tonight, so I'd ask the applicants to limit their presentations to five minutes. Our first case tonight is in Old Business and the rest are New Business.

OLD BUSINESS:

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

Staff Presentation: Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to construct a new patio on the rear of the home that would include a pergola and a wood burning fireplace. The plan shows the fireplace 7' from the southeast property line. To construct the patio as shown in the plan, a variance of 8' is needed. I did lay some new information that I received today at your spots if you could review that.

Chairman Clawson: Is this a revised layout?

Mr. Thompson: Yes. He's been working with his architect and the Fire Marshall.

Chairman Clawson: Are there any questions for staff about this new information or the case?

Mr. Bussing: It's my recollection that we approved everything in this case other than the fireplace, is that correct?

Mr. Thompson: To be honest, I don't remember. I don't think we voted on all the factors.

Chairman Clawson: Are there any other questions for staff?

Applicant Presentation: Joseph Kern, property owner, 2813 W. 127th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kern: We're still trying to get the variance approved for essentially the fireplace because the pergola and the standard concrete that we're putting in are within code. The last time that we spoke, the issue was public safety. What we're looking to do is get the Fire Marshall to weigh in on the fireplace. The insert that Dana was referencing was actually a gas insert, which are not actual inserts into the chimney, so I was trying to clarify that. A gas insert is not doable for us.

It's significantly more money and would require the expense of running a new gas line and buying an actual gas-insert fireplace, which we can't afford. We aren't looking to use the fireplace that often so our goal is to have a wood burning fireplace. To achieve that, we worked with the Fire Marshall to determine the exact location of the fireplace in relation to the property line. What was previously measured was 7' from the firebox. This is really 9½ feet from the fireplace. The firebox is an extension off of the fireplace, which is a little different and it's actually at 10' if you measure from the opening of the fireplace to the property line. We also worked with the Fire Marshall to ensure that we would have the appropriate water hose and fire extinguisher on hand in the event that something happened. The Fire Marshall also confirmed that we have the correct chimney cap, which would reduce any ash emitted from a fire. It's my understanding that, after the updates that we provided, the Fire Marshall was going to recommend that this is within code and would resolve any issues with public safety. The last time I was here, we were going through the five factors and we got hung up on the Public Safety factor so I asked for a continuance.

Chairman Clawson: This latest drawing that was given to us shows that the corner of the fireplace is at 9'5" from the property line, correct? That was provided to the Fire Marshall?

Mr. Kern: Yes.

Mr. Thompson: You should have a memo in that packet from the Fire Marshall.

Chairman Clawson: The Fire Marshall accepts the drawing that was presented and agrees that it would be satisfactory?

Mr. Thompson: Correct.

Chairman Clawson: Any questions for the applicant?

Mr. Thompson: With the new measurements, a variance of 4'7" would be required, assuming that is accurate. We still haven't received a survey yet to confirm that it is 9'5" from the property line.

Chairman Clawson: Actually, it's closer than 9' if you draw it to the closest point on the property line.

Mr. Kern: How are you getting that?

Chairman Clawson: It appears that the measurement is from due north, right?

Mr. Kern: Yes, but I still don't understand how you're getting that. It's more than 9.5 feet.

Chairman Clawson: It's less than 9'5".

Mr. Kern: I don't understand how you're getting to that conclusion. You're assuming that the diagonal drawing is less than the straight line drawing?

Chairman Clawson: If this plan drawing is correct, and you take the corner of your fireplace and go to the nearest point on the property line, it's closer than 9'5".

Mr. Kern: I don't know if that's necessarily true. My apologies, but I believe that's an assumption unless we've done the math. We walked to the closest point on the property line and measured it that way. I didn't literally draw a radius, but you're making an assumption.

Chairman Clawson: I'm not making an assumption, I'm just telling you that the distance from the corner of that to the nearest point on the property line is less than 9'5".

Mr. Kern: That's an assumption because, geometrically, you're going at a diagonal that you believe is farther because of the way it's portrayed on this, but I can tell you that you're moving farther away. We went to the closest point. We can go back and do the math again, but I can prove that you're making assumptions on that. You're assuming that, because you're moving diagonally, it's closer. However, when moving diagonally, that point is farther. It's simple geometry. I could go home and start mapping it out for you. I understand how you're coming to that conclusion now, but it's not true.

Chairman Clawson: Wade, what's your comment?

Mr. Thompson: Counting the squares, I think it is closer.

Chairman Clawson: So, the Fire Marshall looked at this and he's okay with it?

Mr. Thompson: Correct.

Mr. Hawk: There is one sentence there that bothers me. "Leawood Fire Department does not have a significant objection to this installation." Significant? Does that mean it's a minor concern?

Mr. Thompson: That's the way I would read it, without actually having him here to answer the question.

Travis Torrez, Director of Building and Code Enforcement, appeared via Zoom and made the following comments:

Mr. Torrez: In my conversations with him, he was okay with this plan that's before you, from a public safety standpoint. We would demand that the lines be staked so that we can confirm that distance, if it were approved. That would be the case even if it were going to be right at the 15' setback that's required. We do that on pools, sport courts, or anything else that would be right along the setback.

Mr. Kerns: Who would do the staking?

Mr. Torrez: It would be the property owner's responsibility to have that area surveyed or to find existing survey stakes.

Mr. Kerns: The fence that's currently on our property line is the stake line.

Mr. Torrez: That fence may or may not be on the property line. That would be a good way to find out where the existing stake survey pins in the ground are, but we would not rely on just someone stating that the fence is in the correct location.

Mr. Dunn: May I ask the applicant a question, Mr. Chairman?

Chairman Clawson: You may.

Mr. Dunn: The factors that always trouble us on variances are Uniqueness and Hardship. What is your take on these factors? How is your property unique?

Mr. Kerns: There are multiple properties within the *inaudible* and Highland Ranch subdivisions that have very unique backyards in situations where the house is actually sitting on the property. However, within these 2 subdivisions, ours is the house that sits closest to the back line. I've used Google Earth to verify this fact. You could also check Zillow or your online tax maps. The hardship that it creates is that since our home sits so close to the rear property line, we don't have the ability to add value to our home by creating an outdoor space like every other property owner nearby. It creates a hardship

since we have to request a variance in order to just have something similar. Without being able to add value and have a usable outdoor space, this can turn into a decrease in not just our property value, but the subdivision's as a whole, which could be a hardship.

Chairman Clawson: Is your lot an unusual shape?

Mr. Kerns: The lot is not necessarily an unusual shape. It's the location of the home on the lot that makes it unique.

Chairman Clawson: Did you build the home?

Mr. Kerns: We did not. We are the second owners. It's just set very far back. Because of the particular spot our house was built on, it doesn't allow for the addition of a pool, fireplace, etc., whereas neighbors can do that without asking for a variance. If we were to try to sell our home, we would be at a disadvantage compared to other homeowners in the area that have the ability to add on to their yards. In full transparency, this is why we got such a reasonable deal on this home. The previous owners said that they didn't want to have to go through this process.

Chairman Clawson: In reading the letter from the fire department, they must have measured the property using the plan view that you provided to them because they measured it at 7.5 feet. From the corner to the actual closest point it's 7.5 feet.

Mr. Kerns: The Fire Marshal confirmed that it is 7.5 feet from the corner of the fire box, which is an extension of the fireplace.

Chairman Clawson: No. He said that the nearest point of the proposed outdoor fireplace is approximately 7.5 feet from the adjacent property line. He stated that if you take into account the depths of the walls, etc., of the plan proposed, the open flames would likely be at least 8.5 feet from the adjacent property line. Apparently he is okay with that.

Mr. Kerns: I guess that is true. Technically, if you go from the corner of the firebox, where wood is stored, it would be 7.5 feet. I can't argue that.

Chairman Clawson: Although, he's referencing the September 21st drawing, and this drawing doesn't have a date on it.

Mr. Thompson: This is the September 21st drawing. We just received it.

Chairman Clawson: Are there any other questions for the applicant? Okay. This is a variance, so we'll have to evaluate the five factors. We can vote for either a Motion for Approval or Denial. The first is Uniqueness of the Property.

Mr. Munson: The staff report on the Uniqueness of Property indicates that it is not unique. I haven't heard anything here that changes my mind on that. I don't think it's unique.

Chairman Clawson: Are there any other comments about uniqueness in this case?

Mr. Bussing: Mr. Chairman, I would disagree with Mr. Munson. I think that the location of the house on the property is unusual and constitutes the uniqueness of the situation.

Chairman Clawson: Are there any other comments about the Uniqueness factor?

Uniqueness criterion satisfied with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson

Chairman Clawson: Rights of Adjacent Property Owners. All letters were mailed and no complaints or comments were received, correct?

Mr. Thompson: Correct. No calls whatsoever.

Rights of Adjacent Property Owners criterion satisfied with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson

Chairman Clawson: The third factor is Hardship.

Mr. Bussing: Mr. Chairman, in keeping consistent with the uniqueness of the house's location on the property, it would appear to me that a strict interpretation of the variant would create a hardship with regard to the useability of the backyard. The property owner did not construct this house and had nothing to do with the original position of the house on the lot. He is only trying to improve the property to the best of his ability.

Chairman Clawson: Other comments about hardship?

Hardship criterion satisfied with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson

Chairman Clawson: The fourth factor is Public Safety and General Welfare.

Mr. Munson: Mr. Chairman, our board has been pretty diligent in the past with flood issues and I'd like to see the same kind of caution exercised on wood burning fireplaces and their possibility for creating fire hazards.

Chairman Clawson: Any other comments about Public Safety and General Welfare?

Dr. Peppes: Mr. Chairman, I would like to say that my big hangup with this was about what the Fire Marshal was saying and now that we've got a letter that satisfies the Fire Marshal, I feel that public safety and general welfare have been met.

Chairman Clawson: Before we vote on that, I have one question. If this is approved, how will the inspector check the proposed location of this fireplace with relation to the property line?

Mr. Thompson: He will measure from the firebox to the staked property line.

Chairman Clawson: He'll be measuring what dimension from the edge of the fireplace itself?

Mr. Thompson: He put 8'5".

Dr. Peppes: Can I address that also? Possibly in the Motion of what we vote on tonight, doesn't that need to be changed from 7 feet to 8½ feet?

Mr. Dunn: Just so that there's no confusion, I'd like to point out that the 8½ feet refers to the distance from the flame, not the fireplace itself. In his letter, he stated that the fireplace itself would be approximately 7 ½ feet from the property line.

Chairman Clawson: I think that the Fire Marshall's understanding is that the distance from the very corner of the fireplace to the nearest point on the property line cannot be less than 7½ feet.

Mr. Thompson: Yes. You can have him put that in a Motion.

Mr. Munson: I have one more question on this. What liability does the property owner have if there is a fire that can be traced to this wood burning fireplace?

Mr. Kerns: Thank you for asking that. I happen to work in insurance and specialize in general liability insurance. Anything that stems from our premise and results in property damage or bodily harm to another person is our liability. We do have current insurance policies in place, not only for possible property damage/loss, but also for bodily injury.

Chairman Clawson: Any other questions regarding public safety and general welfare?

Public Safety and General Welfare criterion satisfied with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson.

Chairman Clawson: The fifth factor is Spirit and Intent.

Mr. Bussing: Mr. Chairman, I think that the Spirit and Intent criteria has been satisfied. In broad terms, that rule is intended to ensure that homeowners maintain and continue to enhance the value of their properties.

Spirit and Intent criterion satisfied with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson.

Chairman Clawson: We have voted in the affirmative on all five factors; therefore, we can support a motion for approval. I think that the motion should include any references of distances from property line to nearest point on fireplace structure.

A motion to approve Case 36-2021-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, with the understanding that the motion includes conditions as set forth by the Fire Marshall of Leawood in his letter dated September 20, and that all conditions of that letter are satisfied by homeowner-was made by Bussing. Motion carried with a vote of 4-1. For: Dunn, Dr. Peppes, Hawk, Bussing. Against: Munson.

NEW BUSINESS:

Case 43-2021 Anders & Jennifer Meyer/Owners-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 2919 W. 92nd Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace the existing 4-foot tall wooden fence with the same, in the same location. The fence has been in place for over 43 years. At its closest point, the fence is just over 2 feet, 11 inches from the property line. A side yard setback of 30 feet and a variance for 27 feet, 1 inch is needed to reconstruct the fence in the same location.

Chairman Clawson: Any questions for staff? Is the applicant here?

Applicant Presentation: Jeff Perkins, contractor for the fence company, 3701 W 47th Place, Roeland Park, and Anders Meyer, property owner, 2919 W. 92nd Street, appeared before the Board of Zoning Appeals via video conference from separate locations and made the following comments:

Mr. Perkins: This fence has been there for 43 years. You can look at Automated Information Mapping System (AIMS) images from the last 20 years worth of aerial maps and see that it hasn't caused any harm. A previous photo from 5 years ago represents the fence as being 30 feet from the curb and that's what this would look like. It doesn't appear to have any site restrictions or problems on AIMS. They just want to rebuild it the way it is. If they followed the new build lines, it would cut their yard in half diagonally. It doesn't make sense to do that with the way their yard is laid out. It would make it appear very ugly.

Mr. Meyer: My wife and I are here as well, if we can answer any questions.

Chairman Clawson: Do we have any plan views that we can look at?

Mr. Thompson: I don't have any plan views. *Shows diagram of property layout.* I just have this image that was drawn up by our plans examiner to give you an idea of where the fence is.

Mr. Perkins: They didn't give you an aerial view? I'm sorry. I was not aware until shortly before this meeting that I was going to be representing the applicants.

Mr. Thompson: *Shows aerial image of property* That black line shows where the current 4-foot, wooden, cedar fence is.

Mr. Perkins: The black line is where their current fence is, correct. It's been there as a permanent structure for 30 to 40 years. The fence is pretty old.

Dr. Peppes: So this fence doesn't go around the house, it's just on the side of the house? I understood that it went all the way around.

Mr. Thompson: No, the only portion that they're here for is that black line; it encroaches the front build line. That blue line is the property line and then you can see where the street is at. There is considerable distance between the street and the fence but technically it would have to be 30 feet from that blue line.

Dr. Peppes: Got it.

Chairman Clawson: So where is the build line? Back somewhere near the middle of the house?

Mr. Thompson: It would be 30 feet behind that blue line and would follow the diagonal, cutting off their side yard.

Mr. Perkins: Imagine taking that black line and moving it 30 feet back towards the middle of the yard; it would cut their entire yard in half.

Chairman Clawson: We don't have any photos of the fence?

Mr. Thompson: No, sir.

Dr. Peppes: What does the adjacent house, 9101 have next to it? Does it tie into that in any fashion?

Mr. Perkins: It doesn't tie into the back corner of their neighbor's house.

Chairman Clawson: It'd be nice to have a picture of the fence.

Mr. Meyer: I'm sorry. This is our first time doing such a thing. The neighbor to the south of us, The Jones', have a fence that is duplicated by our fence. Our fence is what divides our yard from our neighbors to the west of us, Mark and Maureen.

Chairman Clawson: Basically, in order to provide a legal fence, you'd have to move it back 27 feet?

Mr. Meyer: Yes. It would make our yard miniature and would cut into our deck. It would look very strange and would decrease our property value, as well as those of our neighbors.

Mr. Thompson: That's just a rough estimate of where it would be?

Mr. Perkins: That's correct.

Chairman Clawson: I actually got on Google Earth and was able to look at the fence. It's red, correct?

Mr. Meyer: Yes, it's a red fence that's in disrepair right now.

Chairman Clawson: It's a 4-foot fence that needs to be replaced.

Mr. Meyer: Yes, sir.

Chairman Clawson: I'm guessing that in addition to your deck, you'd also have landscaping in the way if you had to move the fence back 30 feet. Is that correct?

Mr. Perkins: Yes, there are trees in the way.

Chairman Clawson: If there are no further questions, I'd suggest we go through the factors. The first is Uniqueness of Property.

Mr. Dunn: Mr. Chairman, we've faced some of these before, but the fact that this 40 year-old fence was installed legally when it was originally built and now they're faced with needing a variant just to simply replace it makes it highly unusual and unique.

Chairman Clawson: Any other comments about the Uniqueness factor?

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

Chairman Clawson: Rights of Adjacent Property Owners. All letters have been sent out and we haven't received any complaints, correct?

Mr. Thompson: That's correct.

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

Chairman Clawson: We've voted affirmatively on the second factor. Now for the third factor, Hardship.

Mr. Dunn: Well, Mr. Chairman, I think you all have explored the Hardship factor very completely. They would lose half their yard and need extensive landscaping if they placed the new fence where the build lines are. I think that qualifies for hardship.

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

Chairman Clawson: Public Safety and General Welfare. Staff notes that the approval of this particular request should not affect this factor.

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

Chairman Clawson: The last is Spirit and Intent.

Dr. Peppes: Mr. Chairman, I think that Intent has been met, since the fence has been there for over 40 years.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, 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 43-2021 Anders & Jennifer Meyer/Owners -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 2919 W. 92nd Street, was made by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 44-2021 David & Charlotte Linn/Owners-Request for a Variance to the rear build line for the replacement of a deck in accordance with the LDO, Section 16-2-5.5(D) in an RP-2 District for property commonly known as 12718 Linden Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing screened-in deck that was built in 1994. The deck was constructed in 1994 by a builder who had a permit and was granted a variance to the rear build line for placement of said deck.

Dr. Peppes: Is this a request for a variance because the deck was given a variance back in 1994?

Mr. Thompson: Correct. They are also wanting to increase the amount of the encroachment with the height of the screen structure and roof.

Chairman Clawson: Any other questions?

Applicant Presentation:

David and Charlotte Linn/Owners1, 2718 Linden Street, made the following comments:

Mrs. Linn: I've had a screened-in porch in each place I've ever lived, including before moving to this property. However, I was unaware until moving to this home that wasps desperately love stucco, which is what the exterior of our house is made of. There are constantly wasps there. I'm highly allergic to them and have to be highly cautious every time I go outside. We need a screened-in area so that I'm able to go out and sit on the deck.

Chairman Clawson: Do you have any building plans that you can show us?

Mrs. Linn: Yes. *Presents a photo of the proposed structure.*

Chairman Clawson: You're not looking to bump the deck out any farther than it currently is; you're just looking to make it a little bit taller with that roof, correct?

Mrs. Linn: The deck will actually be a little bit smaller, but we'll need to build up into the air space a bit for the roof on it.

Chairman Clawson: How are we treating this? As a deck or a screened-in porch?

Mr. Thompson: They're going for the rear guard buildline variance.

Chairman Clawson: If the roof wasn't extending out any farther, do they even need a variance?

Mr. Thompson: If they were just replacing the deck, no. They already have a variance approved for that. Since they're looking to increase the amount of space that's being encroached upon with the roof structure, they would need a variance for that.

Mr. Dunn: Just so that it's clear, are they increasing space because the roof extends beyond the outside limit of the deck itself?

Mr. Thompson: No, it's just because the roof is being placed on the deck. The deck is approved. The roof was not.

Mr. Bussing: We're looking at vertical space, not horizontal space.

Chairman Clawson: I'm trying to understand how that makes it encroach more. The city staff has determined that a variance is required?

Mr. Thompson: Correct, and I am not that city staff person.

Chairman Clawson: Okay, well go ahead and present your case.

Mrs. Linn: Basically, we have a print of what the screened-in porch will look like and we're just asking for permission to build it.

Chairman Clawson: When I looked at this case information, I was wondering why they needed a variance in the first place. This was a long time ago, so I didn't see any information in the packet about that. I got on the AIMS map to look at this property.

Mr. Thompson: *Shows an AIMS aerial view of the property* Actually, this picture in the packet does show the measurements. I got on the AIMS website as well to measure, and there are 133 feet from their structure to the next one.

Chairman Clawson: I printed this one off because I was curious about how this was laid out and with the RP-2 classification. Your house is outlined in blue there. The vacant land behind it is owned by the Homeowners Association (HOA), I believe. Is that correct?

Mr. Linn: Yes. There's close to 100 feet of green space behind our property.

Chairman Clawson: There's basically nothing behind it.

Mr. Bussing: There's a creek and a tree line back there. I could give you at least eight addresses along Linden, both north and south of 128th Street, where we have approved this exact request.

Chairman Clawson: I looked online. I could see a couple of houses nearby that had screened-in porches.

Mrs. Linn: There are quite a few.

Chairman Clawson: There's nothing behind it. I measured from the edge of your house to the nearest house, and it was close to 140 feet. We have to go through the five factors in order to approve a variance. Uniqueness is one of them, as is hardship. Could you address those quickly?

Mrs. Linn: I don't understand the uniqueness factor. I don't know that this would be considered such. I don't know how to address that. As for hardship, I can't go out onto the deck because of the wasp problem. We can't spray every single time we go outside. I don't get to enjoy that portion of my property because we don't have a screened-in porch. We're not doing this to improve the value of our home. We're doing it to

improve the quality of our lives while there. This will probably be the last home I live in and I'd like it to be comfortable and enjoyable for us. I know that there are several homes in the Normandy subdivision that have screened porches, too.

Chairman Clawson: I think that one of the Uniqueness factors would be that you have all of that green space back there.

Mrs. Linn: I would like to watch the ducks land in the creek, but I don't even take my chances out there without having a screened in area.

Chairman Clawson: Alright. Are there any other questions or comments for the applicant? We'll evaluate the five factors and make a decision on how we can address this. The first factor is Uniqueness of Property.

Mr. Bussing: Mr. Chairman, as the staff report indicated, the property is unique because of the wide green space that exists between their property and the homes to the west.

Mr. Hawk: There are very few homes in Leawood that would have this same exposure for people's enjoyment.

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

Chairman Clawson: Rights of Adjacent Property Owners. Is there anyone here or online that is going to speak for or against this application?

Mr. Thompson: All of the letters went out and no calls have been received.

Ms. Tomasic: Nobody else is here for this case that I'm aware of.

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

Chairman Clawson: The third factor is Hardship.

Dr. Peppes: Mr. Chairman, I think the hardship factor has been met because the deck has had a variance placed on it. Not being able to build on that variance would be a hardship.

Chairman Clawson: Are there any other comments on hardship?

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

Chairman Clawson: The fourth factor is public safety and general welfare.

Mr. Bussing: Mr. Chairman, I think the public safety and general welfare criteria have been met by improving the property with the new construction.

Chairman Clawson: Other comments?

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

Chairman Clawson: The fifth factor is spirit and intent.

Dr. Peppes: Mr. Chairman, I feel that the intent criteria has been met since there is so much green space beyond the structure that will still be there. That will fit in with what Leawood likes to see.

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

A motion to approve Case 44-2021 David & Charlotte Linn/Owners-Request for a Variance to the rear build line for the replacement of a deck in accordance with the LDO, Section 16-2-5.5(D) in an RP-2 District for property commonly known as 12718 Linden Street-was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 45-2021 Thomas & Kelly Riordan/Owner VARIANCE Request for 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 8016 High Drive.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants have constructed a new deck on the rear of the home with a plan that was approved by the city. Along the way, they made changes to the approved plan and added another set of stairs to the side of the deck. That change placed part of the deck and stairs in the setback. Therefore, a variance of 3.8 feet is needed to keep the stairs and deck in its current location.

Chairman Clawson: You provided some additional documentation here, correct?

Mr. Thompson: Correct. I've been receiving emails from neighbors both for and against the request.

Chairman Clawson: Are there any other questions for staff?

Applicant Presentation:

Thomas & Kelly Riordan/Owners, 8016 High Drive, appeared and made the following comments:

Mr. Riordan: *Shows a picture* Did you receive the images I shared? Currently, as built, a set of five stairs are 46” inside of the 15-foot setback guideline on the north side of the property. The stairs were moved to the current location unknowingly in violation of the rule for the following reasons: We wanted to provide a safe passage of aging family members from the side yard to the back connecting with the sidewalk and access to the house. We wanted to allow emergency fire exit if needed from the deck per Kansas fire marshal guidelines. We also wanted to allow for adequate use of our deck space as built. Although the location was different from the approved drawing, we believed after numerous visits from the city to inspect the piers prior to pouring them in the new location (which was ultimately approved), that this meant that the adjustment was okay. It’s also important to note that it took 15 months for the permitting process and 4 months for the Homeowners Association (HOA) evaluation process to be completed, during COVID, while we were waiting for this to get approved. After we were notified of the potential infraction, we completed our own research and discovered that, per article 2 (16-2-4.3) of the Leawood Development Ordinance (LDO) that the stairs are part of an exception and are allowed to encroach on the side setback as they are necessary to gain entry into the house. *Shows slide of LDO and reads the aforementioned article.* I think we qualify for the exception. *Shows slide of Kansas Building Fire Safety Handbook.* The fire safety information that I read about requires that you have two exits of a building in an R-1 district, which our house is located in. Here are some supporting details. From how we interpreted the guidelines, it is intended to maintain the integrity of the neighborhood by keeping the distances between houses adequate and to not go outside the current look of the neighborhood. We feel very strongly that we did not affect any of the above points. The area in question is a staircase, not a solid structure or new shed. Simply stairs that provide natural access and connect to the sidewalk on the north side of the house. As noted in the LDO, stairs are allowed to encroach on any setback. The variance will allow for all of these points to be followed. The intention all along was to improve the house, the street, and ultimately make everything better for those most closely related to the neighborhood. We feel that we accomplished this with the build. I have attached a picture of the house to the north of us, which is the house most directly affected by us. It shows that the measurement from the staircase to their house is 30 feet. Additionally, one of the other structures allowed to encroach on the 15-foot setback is egress windows. I think our stairway structure is very similar in look and size to this already-approved structure. The area in question is not a solid structure, but a railing with a 12” fascia board similar to an egress window, which are commonly seen on High Drive. We have a history of following rules, which includes a 988-gallon retention tank. We have not escaped any rules, yet our issue is the fact that we were unaware of this 15-foot guidance. We’ve received numerous support from neighbors. We have letters that we’ve provided copies of for you. The most important one is from our neighbors that this new structure is closest to, the Herwigs. We are asking for a variance to the 15-foot setback rule for this small portion of our deck. We have a good record of following guidelines and rules. We acknowledge our error by not getting the adjustment approved. However, we thought that the minor adjustment of the location of the stairs did not affect the scope of the project. We are ultimately simply asking for approval of a variance for this small section as we feel that it doesn’t negatively impact the spirit of the setback guidelines or upset any of the neighbors on High Drive, specifically the Herwigs. We

love where we live and desperately want to enjoy our new deck with our young family. Will we have a chance to address the five factors?

Ms. Tomasic: We are 2 minutes past the 5-minute mark.

Mrs. Riordan: I completely understand and respect that. Unfortunately, we were not made aware that we would only be allowed 5 minutes to present and my husband worked very hard to answer your 5 questions. Had we been made aware of this in advance, we could have redirected our PowerPoint.

Mr. Riordan: Could you please give us 30 seconds of your time to go through questions 1 and 3?

Chairman Clawson: Go ahead.

Mr. Riordan: Thanks. Question one, which I'm sure you'll debate, is Uniqueness. The property is unique. The house requires an elevated deck because of the original build layout from 2008. We did not build the house. There is a picture in there of the original house. You can see that the small deck that existed there was very unsafe. It was hardly nailed to the wall and quite frankly it was a safety hazard and we needed to extend the property. There is a second exit there which is in line with the fire code. We are simply completing the necessary adjustments. It is unique to the neighborhood as it is the only house on the street that requires an elevated deck. Fire safety, although it may sound silly, is a focus. As a former Eagle Scout, I have always paid attention to that. We believe we need two exit points and we need stairs to connect to that second exit point. For number 3, the Hardship factor-if the variance isn't approved we would have to demolish the already-built structure. That means we would incur emotional hardship as well as great financial hardship. This would be devastating to our young family.

Mrs. Riordan: I want to add that the permitting process went from May of 2019 to December of 2020. Then we had to incur another 4 months time trying to get through our HOA approval. That almost pushed our contractor off the job. Then, having COVID hit through the middle of this process, prices elevated. Our project increased 20 thousand dollars. Prices were continually increasing. We didn't realize that the side where we moved the stairs was going to be a hot topic issue. It was never discussed in the 3 different calendar years that the planning process took place. We unknowingly broke a rule, and we feel terrible about that. To correct it and start over would be very challenging and would be devastating to us emotionally and financially.

Mr. Riordan: You can tell by the emotion in our voices that this has been a long journey. I don't feel like the encroachment of this 46" impacts anyone negatively. It was a mistake, but at the end of the day it's just a staircase.

Chairman Clawson: As a board, I think we understand. I'd like to see a plan view of the deck as it was constructed.

Mrs. Riordan: I'm sorry. Did you want to go back to that first picture?

Mr. Thompson: No, I don't have a plan from the building department here.

Mrs. Riordan: We did all the surveys. *Inaudible.*

Chairman Clawson: I was hoping to see a plan view. How far is it from that top step back to the edge of the deck?

Mr. Riordan: I believe it's 8 feet. No bigger than 8 feet.

Mrs. Riordan: We have a survey that would show all of this.

Mr. Riordan: Numerous surveys, quite frankly.

Chairman Clawson: Okay. You mentioned that the deck is required. Why is that?

Mr. Riordan: Because we have elevated doors on the outside of our property that need to be connected somehow.

Mrs. Riordan: The deck that was out there before was in terrible condition. It was rotting and falling away from the house. Our neighbors on that side, The Herwigs, were concerned about our safety and that of our three young children that would go out there.

Mr. Riordan: Not only was it unsafe for our children, but also our parents and any visitors we had over. The intent of the whole building of this structure was to complete the house.

Mr. Thompson: The picture on your screen now is of the plan that was approved. You can see the stairs were incorporated into the side. They do have some stairs on the other side of the deck that you can see.

Mr. Riordan: The plan always had stairs; we just moved the stairs out. That was our error.

Mrs. Riordan: This all came about because our focus was on the screened-in porch side for 2 years of this planning and approval process. We had kind of stopped focusing on the other side because that wasn't the area in question. When they spray painted the spots where our piers would go, we noticed that we couldn't have our kitchen and put a table there. There would be no room to pull out chairs. That is why we decided to extend our deck on the side where we don't have a roof.

Chairman Clawson: Are there any questions for the applicants? Is anyone here that wishes to speak for or against the application?

Ms. Tomasic: There are a number of them here. I believe that there are 2 people on a Zoom call but I don't know if they wish to speak.

Zach Firl, applicant's neighbor, 8020 High Drive, appeared on a Zoom video call and made the following comments:

Mr. Firl: I live directly south of the Riordans. Just to keep it short and sweet, I am in support of the variance they are requesting. Regarding the Rights of Adjacent Neighbors and of Spirit and Intent, I walk by the property every morning with my dog and have never noticed that anything looked out of the ordinary. I was surprised when I got a letter regarding the variance. I think that the hardship that would ensue if they were asked to adjust the completed construction far outweighs any negative effects of the current construction.

Chairman Clawson: Thank you for your comments. Is there anyone else online that wishes to speak for or against this application?

Andrew Herwig, applicant's neighbor, 8012 High Drive, appeared via Zoom video call and made the following comments:

Mr. Herwig: With us being directly next to this property and structure, we are in full support of the variance. Having to make any changes to it would hinder our view of the property and would change things for the worse. There's absolutely no reason that you shouldn't approve this variance request.

Chairman Clawson: Is there anyone else online that wishes to speak?

Ms. Tomasic: There are no more people online, but there is a gentleman at the door that wishes to speak.

Bruce North, applicant's neighbor, 8025 Lee Boulevard, appeared and made the following comments:

Mr. North: The point I'd like to make is twofold. Number one, they had plans that were approved by the city and the HOA. They had stairways on both sides of the deck in their original plan. While this one particular stairway is part of the variance, I am asking you to consider that there is an extensive amount of deck associated with that staircase. They also added a sidewalk and extended the patio on the opposite side beyond the setback limit, so there has been and continues to be concern over stormwater drainage from their property. They did all of this work without consulting the city, nearby homeowners, or the homeowner's association. The HOA depends on the city and the BZA for controlling the setbacks.

Chairman Clawson: Are you on the HOA committee?

Mr. North: I used to be Chairman of the architectural board, but I'm now on the HOA board handling trees. However, I was very involved in the initial development of the architectural guidelines for Leawood Homes Association. We knew that the city had these setback limits. We built our guidelines around the fact that those setback limits are there. Now this deck that they have goes all the way around the back. It's oversized for north Leawood and it's intrusive. I'm just going to leave it at that.

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

Catherine Richardson, applicant's neighbor, 8025 Lee Boulevard appeared and made the following comments:

Ms. Richardson: I feel that it's important to note that this particular house is considerably oversized for the area and is actually built beyond what the HOA determined to be the maximum size, especially since they added a screened in porch. Now they want a variance. The house next door to the north of them is new. However, the house to their south, the house to their west, the house behind the Herwigs', and our house have all been completely remodeled. None of them required a variance. This is the only house that is so overbuilt for the area that they had to bump out into the side setback, when they could have just added the stairs off the deck where the original plan had them. Now, there's a lot more noise from children's feet echoing off the deck and stairs and a larger area for stormwater runoff. We've already had one minor flood. I don't see any reason for this variance to be approved. They had the opportunity to get this approval prior to their construction, but they chose not to.

Chairman Clawson: Is there anyone else here that would like to speak for or against this application?

Andres Vicuna, applicant's neighbor, 8017 Lee Boulevard, appeared and made the following comments:

Mr. Vicuna: When their case was brought to the HOA committee for approval, my only question was, if this is just an improvement to the property and they meet all of the criteria, why would they need to add a detention basin? In my opinion, it's because they were probably going beyond the requirements. I had questions for the HOA regarding why the basin was even needed if we have clay soil and who would maintain it, etc. Regardless, plans were approved and I was happy for them. Then, this letter came out stating that they were requesting a variance because they overbuilt past the setback. I never wanted to have to vote against my neighbor, but that's what it came to. It's unfortunate and I don't know what the right solution is. Thank you.

Chairman Clawson: Any more comments?

Mr. Riordan: I think we have to remember that the focus today is not on water. We have achieved everything that Public Works asked for. Mr. North is part of the reason that this

has taken two years. I understand the concerns about water drainage, but that is not why we are here today.

Chairman Clawson: Now we have to go through the five factors.

Mr. Bussing: Mr. Chairman, I have a question first. Mr. Riordan indicated that he found in the ordinances where stairwells were specifically excepted to the side yard setbacks. Can you comment on that?

Ms. Tomasic: Yes. We had a completely different application in August where there was a question like this that was brought up at the last minute and changed to an exception. In further discussions with Mr. Torrez after that meeting, that provision is for steps necessary for entry into the home. The definition of ‘necessary’ means there can’t be any other way into the home if the steps aren’t approved. It is the city staff’s position that the steps in this case are not considered necessary for home entry, which is why that “ you can encroach” provision does not apply in this situation. They have a front entrance, a garage entrance, and a separate deck entrance on the other side of the home.

Chairman Clawson: If there are no other questions, we will evaluate the five factors. The first factor is Uniqueness of Property. I believe that staff noted that they felt there was nothing really unique about it, presumably with regard to the size of the lot compared to lots around it. Is that correct?

Mr. Thompson: Correct. Uniqueness usually applies to something like a creek or sewer line. This is your standard, run of the mill lot.

Chairman Clawson: Are there any other comments about Uniqueness?

Uniqueness of the Property criterion unsatisfied with a unanimous vote of 0-5. Against: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. We’ve received comments for and against and we had a number of people attending the meeting.

Rights of Adjacent Property Owners criterion satisfied with a vote of 4- 1. For: Munson, Dr. Peppes, Hawk, Bussing. Against: Dunn

Chairman Clawson: The third factor is Hardship.

Mr. Dunn: Mr. Chairman, for the record, I would like to note that the applicants have done a good job of explaining their personal hardships in this case. However, as we’ve learned many times on this board, our job is to determine whether it meets the legal standards of Hardship.

Hardship criterion unsatisfied with a unanimous vote of 0-5. Against: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Chairman Clawson: Public safety and General Welfare. Any comments about the fourth factor?

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

Chairman Clawson: The final factor is Spirit and Intent. I think staff notes that the purpose of the ordinance is to protect the privacy of neighbors and to prevent crowding of structures.

Spirit and Intent criterion unsatisfied with a vote of 1-4. For: Dunn. Against: Munson, Dr. Peppes, Hawk, Bussing.

Chairman Clawson: We've evaluated the five factors. As a board, we felt like the criterion of the Uniqueness, Hardship, and Spirit and Intent factors were not met. Therefore, we must support a motion for denial in this case.

A motion to deny Case 45-2021, Thomas & Kelly Riordan/Owner, Request for 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 8016 High Drive, was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 46-2021 Renee Stevenson/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 2923 W. 94th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing 6-foot cedar fence with the same. The existing fence was constructed in 1987 with a city-issued permit.

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

Applicant Presentation:

Renee Stevenson, 2923 W. 94th Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Stevenson: My husband is retired and has lived at this address for over 45 years. We've been married for 25. Several years ago, he had an injury accident while biking. He lives with the effects of these severe injuries every day. It has affected his short-term memory the most. Our traveling days are basically over, but our home is a source of

comfort and familiarity. Privacy is very important to us and the days spent on our back patio are priceless. A 6-foot fence might sound insignificant, but it's important to both of us and I hope you understand.

Chairman Clawson: Can we look at a plan view? *Picture shown.* It will just replace the existing fence? Everyone's been notified?

Mr. Thompson: Letters were sent out. We've received two letters in support of this exception request and none against it.

Chairman Clawson: Any questions?

A motion to approve Case 46-2021-Renee Stevenson/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 2923 W. 94th Terrace-was made by Dr. Peppes; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 47-2021 Kurt & Lisa Kuhnke/Owners-Request for a Variance to the front build line for the placement of a covered entryway in accordance with the LDO, Section 16-2-4.2 in an R-1 District for property commonly known as 9928 Ensley Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to remove the old, dated copper overhang placed above the front door with a new stick-built covered entryway. A variance of 15'5" is needed to place the new entryway 19.5' from the front property line.

Mr. Bussing: Mr. Chairman, a question. Wade, your notes here indicate that the front build line was 25 feet but with existing ordinances, it has moved to 35 feet. If we looked at the 15½ feet needed to place the new entryway 19½ feet from the front property line, no variance would've been required under the old ordinance because they would've been right at the property line.

Mr. Thompson: Yes. It even has a platted buildline.

Chairman Clawson: Any other questions for staff?

Applicant Presentation:

Kurt Kuhnke, owner, and Greg Schmidtberger, builder/engineer, 9928 Ensley Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kuhnke: The house was built in 1959 by the Kroh brothers and the overhang had that old metal that you see in the picture. It began to leak recently. Another issue is that the metal overhang didn't cover the original stoop that it was placed above. We get ice

and snow on it during the winter. We'd like to put two columns and an updated, more attractive overhang in place of the old one. We are not removing the original stoop; we'd just like to cover it in an effort to be safer.

Chairman Clawson: Is this in a cul de sac? I think we've had some similar applications in the past and I'm wondering if this shouldn't be an exception instead.

Mr. Thompson: Yes. With the original 25-foot build line, the new overhang would've been okay, but the change with the LDO requires a setback of 35 feet.

Chairman Clawson: The cul de sac is a factor. This house is pretty much in line with the rest of the houses on the west side of the street. The cul de sac comes around, though, so that distance is shorter. Could you address the uniqueness and hardship factors?

Mr. Kuhnke: I think the uniqueness is that it's leaking and needs to be replaced. Even if we wanted to replace it with craftsmanship like the original, I don't think we could. The hardship lies in currently not being able to keep the ice and snow off of the original stoop.

Chairman Clawson: I think that the original house was built with different standards than those of today, which makes it unique. Aside from that, you're on a cul de sac and that gives it some unique geometric issues.

Mr. Thompson: It would be impossible to replace a covered entryway without a variance. If you don't approve it, they could remove it but wouldn't ever be able to replace it.

Mr. Hawk: We've always approved of covered entryways, as long as they meet the criteria.

Mr. Dunn: They've almost always been exceptions, I think.

Chairman Clawson: I think we understand the situation. Is there anyone here for or against the application that wishes to speak? Presumably all letters were sent out?

Mr. Thompson: Correct.

Mr. Kuhnke: I've provided a signed letter from all the property owners whose property surrounds mine.

Chairman Clawson: We will evaluate the five factors. The first is Uniqueness.

Mr. Dunn: Mr. Chairman, I agree with your interpretation of the cul de sac being a unique situation.

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

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. All letters have been mailed out and no complaints have been received.

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

Chairman Clawson: Hardship.

Mr. Bussing: Mr. Chairman, as Mr. Thompson mentioned, if the variance is denied then they wouldn't be able to replace it. That could result in a hardship for the owners.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: Mr. Chairman, if there were no issues with public safety and general welfare with the existing roof covering, then I can't see how there would be with the proposed replacement.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: Mr. Chairman, as staff indicates, replacing the covered entryway that matches existing architecture should not disrupt the current streetscape. I believe that Spirit and Intent have been met.

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

A motion to approve Case 47-2021 Kurt & Lisa Kuhnke/Owners- Request for a Variance to the front build line for the placement of a covered entryway in accordance with the LDO, Section 16-2-4.2 in an R-1 District for property commonly known as 9928 Ensley Lane was proposed by Dunn; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 48-2021 David Morales; Austin & Megan Gilmore/Owners-Request for 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 2741 W. 131st Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to add a roof over the existing deck that needs to be replaced. The deck was legally built at 13 feet, 4.75 inches from the property line in 1989. A variance for 1 foot, 5.25 inches is needed to construct the project as shown on the plan.

Chairman Clawson: Are there any questions for staff?

Mr. Dunn: Why does a roof cause an encroachment to the setback when the deck doesn't cause an encroachment to the setback?

Mr. Thompson: The deck does encroach on the setback, but it was built legally at the time and the city issued a permit, but things have changed since then.

Applicant Presentation:

Megan Gilmore, homeowner, and David Morales, builder, 2741 W 131st Terrace, appeared before the Board and gave the following statements:

Ms. Gilmore: We are looking to replace the existing deck which is falling apart and is unsafe for our kids. We live on a cul de sac, so the property line is a bit odd. The deck was already there when we bought the property, but redoing it and adding the roof requires a variance because the property ordinances have changed since then. There is a huge hedge row in our backyard that drops hedge apples, which have largely contributed to the wear and tear of the deck. This is one of the reasons why we want to add a roof.

Chairman Clawson: Was the house built over the setback line?

Ms. Gilmore: No, it was not. Because we're on the corner of a cul de sac, as our house goes straight back, it gets closer to our side neighbor's property because they're at a diagonal from us. It's really just the very back corner of our deck that starts to encroach.

Chairman Clawson: *Views picture of plans* I see. It would just be a portion of the back half that would encroach. Are there questions for the applicant? We will have to address the five factors. The ones we sometimes have issues with are uniqueness and hardship. Could you address those?

Ms. Gilmore: As far as uniqueness goes, I think being in a cul de sac makes the lot more difficult. Having the row of hedges behind us at such an angle is also unique. Regarding hardship-if we have to change the layout of the deck, we would likely have to change how our windows are since they jut out that way. We would like to keep the original footprint instead.

Chairman Clawson: The new deck will be roughly the same size as the current deck, correct? If they were to just tear down the deck and build a new one without a roof, it wouldn't need a variance?

Mr. Thompson: The new deck is the same size. It would need a variance, though, because the original permit was from 1989. The new deck would have to meet today's standards.

Chairman Clawson: Are there any other questions or comments for the applicant? Is anyone here that wishes to speak for or against the applicant? We have to evaluate the five factors. The first is Uniqueness.

Dr. Peppes: Mr. Chairman, when this deck was originally built, it was within the guidelines. I think that, considering the slight change since then to the LDO, this is enough to make their situation unique.

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

Chairman Clawson: Rights of Adjacent Property Owners. Staff indicates that letters went out and we have not received any concerns.

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

Chairman Clawson: Hardship. Any comments?

Mr. Dunn: Mr. Chairman, it appears to me that if the request is denied and they have to reconstruct the deck to be farther north, it would interfere with their home structure as well as current landscaping.

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

Chairman Clawson: Public Safety and General Welfare.

Mr. Dunn: Mr. Chairman, any time you're replacing an old rickety structure with a new solid one, I think you're improving public safety and general welfare.

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

Chairman Clawson: Spirit and Intent.

Mr. Bussing: As the staff report indicates, this structure has been in place for decades. Adding a roof should not affect this factor.

Spirit and Intent criterion satisfied with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, 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 48-2021-David Morales; Austin & Megan Gilmore/Owners Request for 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 2741 W. 131st Terrace-was made by Dr. Peppes; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 49-2021 NSPJ Architects; Russel & Sherri Lindmark/Owners-Request for a Variance to the calculated rear setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 9117 Lee Boulevard.

Chairman Clawson: In an effort to save time, what we're going to do for these next two cases is listen to them both simultaneously, but vote on the five factors of each case separately. Does the staff have a report, please?

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: For the calculated rear setback, the property owners want to raze the current structure and construct a new one. The LDO's formula places the rear setback 264 feet from the rear property line. The property owners are requesting a 228'8" variance to place the rear build line 35'4" from the rear property line.

Chairman Clawson: This is a case where, if you adhered to the LDO requirements, they couldn't build anything on the line.

Mr. Thompson: No, and they'd be forced to build the structure on the lowest portion of the property, down in the creek.

Chairman Clawson: Okay, would you like to discuss their second case, number 50-2021?

Mr. Thompson: The property owners want to raze the existing structure and build a new home. Due to the odd shape of the lot, sheer size, and other factors, the property owners want to move the home toward the rear portion of the property to a more conducive building location.

Chairman Clawson: The applicants can go ahead and present their cases.

Applicant Presentation:

Tim Homburg, NSPJ Architects, 3515 W. 75th Street, Prairie Village; Russel & Sherri Lindmark/Owners, 9117 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Homburg: I'm here with Sherri and Mark Lindmark to help answer any questions. I have a graphic here that kind of explains it all. The hatched area in purple on there shows the footprint of where we're looking at building the home. We're looking for these two companion ordinances to be allowed a variance so that we can create an area to build a home.

Mr. Bussing: Mr. Chairman, if I could. Is this going to require a significant amount of grading?

Mr. Homburg: With the design of the house, we're going to absorb the house into the contours. One of the things that seems misrepresented on the contours is their size. They are 1-foot contours, not 5-foot contours. While there are a lot of lines close together, it's not pitched quite as steeply as it seems. We're actually going to taper the house down a hillside to absorb the hill as much as possible.

Chairman Clawson: Could we get that graphic back up again, please? Are these contours at every 5 feet or 10 feet?

Mr. Homburg: Every 5 feet.

Chairman Clawson: What questions does the board have for the applicants?

Mr. Bussing: What are the plans for the existing house, assuming it's going to be razed?

Mr. Homburg: We have a demolition permit request with the city currently. The space that it's currently on will just be left as open space. We will reseed with grass, take down some problematic trees that are in the flood zone, and just clean up that whole north frontage of the property.

Chairman Clawson: This is the type of cases that variances are for. If there are no additional questions, we will vote on the five factors. I think we can go through the five factors covering both cases, but when we make a motion, it has to be specific to each case. Is that correct?

Ms. Tomasic: Yes. You can vote on the five factors one time and then vote on each case separately for the ultimate motion.

Chairman Clawson: We will proceed in that manner. The first factor is Uniqueness of Property.

Mr. Dunn: You said it, boss.

Chairman Clawson: There's probably no other property like this in Leawood.

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

Chairman Clawson: Rights of Adjacent Property Owners. Is there anyone here that is for or against this application? Did we receive any phone calls or concerns?

Mr. Thompson: I did receive one phone call today from a gentleman who was concerned about the side yard. He wanted to make sure that they were going to adhere to the 15-foot side yard setback ordinance. I explained that these variance requests only pertain to the front and rear, so he was okay with the project.

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

Chairman Clawson: Hardship.

Dr. Peppes: Mr. Chairman, the hardship criteria has been met because of the limit on where this structure can be placed with regards to the creek, sewer, etc.

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

Chairman Clawson: Public Safety and General Welfare. Staff has no issues with this factor.

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

Chairman Clawson: The last is Spirit and Intent.

Dr. Peppes: Mr. Chairman, I believe the criteria for this has been met because of the size of the lot and the placement of the new structure being able to provide privacy for any neighbors.

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

Chairman Clawson: We have voted in the affirmative on all five factors. Therefore, we can support a motion for approval in both cases. We will start with the first one, case 49-2021.

A motion to approve Case 49-2021 - Request for a Variance to the calculated rear setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 9117 Lee Boulevard - was made by Bussing; seconded

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

Case 50-2021 NSPJ Architects; Russel & Sherri Lindmark/Owners-Request for a Variance to the calculated front setback in accordance with the LDO, Section 16- 2- 5.3(D) in an R-1 District for property commonly known as 9117 Lee Boulevard.

Chairman Clawson: The next case is 50-2021. Is there a motion in this case?

A motion to approve Case 50-2021 - Request for a Variance to the calculated front setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 9117 Lee Boulevard- was made by Hawk; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

MEETING ADJOURNED

