

**City of Leawood
Board of Zoning Appeals Minutes
October 27, 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 October 27, 2021 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Dunn, Hawk

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the September 22, 2021 Board of Zoning Appeals meeting

A motion to approve the minutes from the September 22, 2021 Board of Zoning Appeals meeting was made by Bussing; seconded by Peppes. Motion carried with a unanimous roll-call vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: We have seven cases in New Business tonight; all of which are Variances. I'd like to ask the applicants to limit their presentations to 5 minutes, if possible.

NEW BUSINESS:

Case 51-2021 Katie & Joseph Clifford/Owners-Request for a Variance to the build line for the placement of a sport court in accordance with the LDO, Section 16-4-1.3 (B) 6 c in an R-1 District for property commonly known as 10500 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants have started the construction of a sports court without a permit. The court was placed one foot from the property line. A variance for nine feet is requested in order to keep the court in its current location.

Applicant Presentation:

Joseph and Katie Clifford, 10500 Meadow Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Clifford: We have a great vision for our backyard that started with a pool for our three children a couple of years ago. Then COVID taught everyone the importance of being able to spend time at home with your family and having a home where you can enjoy things you like with those you love. We started planning for the pool and then thought it would be great to build a sports court where we can all play pickleball and the kids can shoot baskets, etc. The pool company said that there was plenty of room and that they would work on it. They did the permitting for the pool and when they came to pour the concrete for it, they weren't ready for it to be poured there yet. Therefore, they decided to pour the concrete for the sports court and said that when the concrete guys were ready next time, they'd get the pool done. We were very excited that things were moving forward, but we failed to do our due diligence in making sure that proper permits were attained. We got a citation from the City and worked quite a bit with Wade and his office staff to get the landscaping plan and documentation. We talked with all of our neighbors, who were all very excited about the project. It's been halted because we've made mistakes and because we didn't check with the pool company and the permitting like we should have. We're asking for a 9-foot variance, but when you see the way it's laid out, it doesn't seem like it's invading anyone else's space because of the angle. In fact, our neighbors were very excited about it and said it brought a sense of community. If the variance isn't granted, we will most likely have to get into some sort of legal battle with our pool company, which would definitely create a hardship for us and them. It also doesn't seem like an efficient way to move forward in life. We recognize that we've made some mistakes in this process but we are very hopeful that the small variances will be granted so that we can move forward.

Mr. Clawson: Are there any questions for the applicants?

Mr. Munson: Mr. Chairman, I have some questions. What types of activities do you anticipate happening on the sports court?

Mrs. Clifford: We have a 14-year-old who loves to play basketball so we anticipate that he and his younger sisters will be playing that a lot. We have recently gotten into pickleball and we play a lot at Meadowbrook Park. I've heard horror stories elsewhere about neighbors having issues with noise at all hours of the night. We have a pretty strict routine and are not up late at night. We have a very kind neighborhood and have assured our neighbors that we intend to use it for courteous recreational sporting activities.

Mr. Munson: You mentioned that your 14-year-old will be out playing basketball, and I assume that soon others will be joining him. Will there be any nighttime activities taking place on the sports court or swimming pool?

Mrs. Clifford: I think that the swimming pool and sports court will be used during the daylight. We aren't putting any lighting up for night use. I think it will be used within reasonable hours, like when others would be mowing their lawns or engaging in other normal backyard activities. We plan to be very courteous and wouldn't allow a gaggle of teenage boys out there late at night, much like we wouldn't allow it if they were just playing in our driveway.

Mr. Munson: Where is the basketball goal itself located on the sports court, in terms of the encroachment?

Mrs. Clifford: *Refers to picture* There's a small pad for it about a third of the way over from that corner that's circled. It's such an odd angle and may be difficult to see here, but it's about ten feet away from that fence. The corner of the sports court itself is obviously very close to that fence.

Mr. Munson: I'm looking at the drawn plan that shows your new pool, pool patio, and red lines that show where the side yard is supposed to be. Could you show us on that particular plan where the goal is? If the goal is too close to that fence, what kind of problem would that create?

Mr. Thompson: If you look at your screen, right under 43 is approximately where the goal will be placed.

Ms. Farrington: Mr. Chairman, was this plan that's being shown on the screen now drawn prior to the actual pouring of the concrete, or post?

Mr. Thompson: Post. This was drawn after the inspector went out and found the sports court in place.

Ms. Farrington: Who drew them? The pool company?

Mr. Thompson: This drawing was provided by our Plans Examiner.

Ms. Farrington: The New Pool Plot Plan was the only thing that was submitted to the City for approval, correct?

Mr. Thompson: Correct. That is the approved plan.

Ms. Farrington: On that plan that's approved, it says there was an existing patio and proposed pool decking. Was the sports court planned after that approval?

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

Mr. Torrez: You're looking at the original plan that was submitted for the pool and subsequently approved. It was discovered afterwards that even the pool was located differently than what was shown on the plan. The other plan was a revised one that they submitted to the City for review and for this hearing. The new pool location has been approved because it needs setbacks and was reoriented, plus they added that sports court. The sports court wasn't something that we could administratively approve.

Ms. Farrington: So the plan that's showing on the screen right now was the plan that was submitted after the pool portion was approved, yet it's showing the sports court as well?

Mr. Thompson: Correct. This was submitted after the Inspector found the sports court in place.

Mr. Munson: I have a couple more questions. What's behind the fence along the back lot line and how tall is that fence?

Mr. Thompson: It's a 5-foot fence.

Mr. Munson: What's the distance from the edge of that sports court to that house shown in the picture? Is the noise created on the sports court going to be a cause for concern for the occupants of this house?

Chairman Clawson: Are there any other questions for the applicant? Is there anyone online or here in person that wishes to speak for or against the applicant?

Ms. Tomasic: Not that I'm aware of.

Chairman Clawson: This is a variance request, which means we will have to go through the five factors. The two factors that we typically get caught on are Uniqueness and Hardship. Regarding the uniqueness of your property, it doesn't appear to differ in size or layout from others in your neighborhood. Could you address that?

Mrs. Clifford: Yes. I think the uniqueness is in the way the house is positioned. Also, being on a corner lot, we have a significant amount of greenery in the front of the property rather than the back., like the other properties in our area.

Chairman Clawson: Okay. Could you address the Hardship criterion?

Mrs. Clifford: We recognize that we played a role in this and are somewhat responsible for the position we're in, however the hardship would come from having to remove the concrete that's already been poured, as well as getting into a legal battle with the pool company. The hardship is really all of the stress, legal matters, and the money that would be involved.

Mr. Clifford: We had a level of trust with the contractor that maybe we shouldn't have. Had we known all of the ins and outs of it to start with, we would have approached things differently. We trusted their professional judgement. We thought that the timing of their concrete installation was part of the approved plan, so we were a little in the dark throughout the process because we trusted them.

Dr. Peppes: Mr. Chairman, I have a comment. We keep referring back to the pool company, but we're not here to make an exception for contractors that come into the City of Leawood and can't follow instructions. These contractors knew that the pool was

going to be different from the plan that the City had already approved and permitted. If you're going to change things, that means you'll need to go back through and get another approval and permit. They've saved you money by not doing that, and now you're in front of us asking for forgiveness for the deed that was done by them. Ultimately you're responsible, because they work for you. You need to also think about your neighbors. Even though your neighbors said that everything is okay right now, they may not be here in 5 years. That 10-foot buffer that we put back there allows you to put landscaping, a sports court, etc. If you take ten feet and put a lot of landscaping in that area, your neighbors wouldn't care a bit about who's there or which neighbor it is. However, in the current situation, the Leawood Development Ordinance (LDO) doesn't allow us to change this. When the LDO says something, we've got to follow it. I'd love to have a sports court myself, right up to the fence, but it's not right for your neighbors or the people around you.

Chairman Clawson: Any other comments from our Board? We will go through the 5 factors and make a decision on the variance. The first factor is Uniqueness of the Property.

Mr. Munson: Mr. Chairman, reports from staff seem to show that there's nothing really unique about the property in relation to similar properties and I concur wholeheartedly on that one.

Ms. Farrington: I would like to add that there are many corner lots in our city and when homeowners purchase those types of properties, they typically know that there are certain constraints on having two lot lines there to deal with. That doesn't make this particular property unique.

Uniqueness of the Property criterion not satisfied with a unanimous vote of 4-0. Against: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: Rights of Adjacent Property Owners. Discussion by the Board.

Mr. Munson: Mr. Chairman, with the potential noise issues, I don't think that this factor has been satisfied.

Chairman Clawson: Any other comments about the second factor?

Dr. Peppes: Mr. Chairman, as I mentioned earlier, although we got a letter from the neighbor that said everything seemed to be okay, that doesn't mean that a different neighbor down the line is going to feel the same way.

Rights of Adjacent Property Owners criterion not satisfied with a unanimous vote of 4-0. Against: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The third factor is Hardship. Discussion by the Board?

Mr. Munson: Mr. Chairman, I feel that the hardship here is one hundred percent self-imposed, not by anything that the city did.

Dr. Peppes: Mr. Chairman, if I could clarify that. I feel the same way. A sports court could be put back there if things were done a little differently, and it wouldn't have to encroach that ten feet.

Hardship criterion not satisfied with a unanimous vote of 4-0. Against: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The fourth factor is Public Safety and General Welfare. Comments from the Board?

Ms. Farrington: Mr. Chairman, our staff had mentioned in the report that there's a possibility-with the sports court being within the setback-that the slopes in the yard between the court and the fence could push water. When you have this much concrete being placed in a backyard, it displaces groundwater and could be of concern for the neighboring properties.

Public Safety and General Welfare criterion not satisfied with a unanimous vote of 4-0. Against: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The last factor is Spirit and Intent. Comments for the Board.

Mr. Munson: It's very clear under spirit and intent that the noise created by the court will also impact the neighbors.

Dr. Peppes: I ditto that.

Spirit and Intent criterion not satisfied with a unanimous vote of 4-0. Against: Munson, Dr. Peppes, Farrington, Bussing.

A motion to deny Case 51-2021 Katie & Joseph Clifford/Owners-Request for a Variance to the build line for the placement of a sport court in accordance with the LDO, Section 16-4-1.3 (B) 6 c in an R-1 District for property commonly known as 10500 Meadow Lane, was made by Munson; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Case 52-2021 Katie & Joseph Clifford/Owners-Request for a Variance to the landscaping requirements for a sport court in accordance with the LDO, Section 16-4-1.3 (B) 6 h in an R-1 District for property commonly known as 10500 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: It would be up to the applicant, but since the sports court wasn't approved, I'd suppose that you'd want to withdraw this case as well?

Applicant Presentation:

Katie Clifford, 10500 Meadow Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Clifford: Yes. Please withdraw Case 52-2021.

A motion to withdraw case 52-2021 Katie & Joseph Clifford/Owners-Request for a Variance to the landscaping requirements for a sport court in accordance with the LDO, Section 16-4-1.3 (B) 6 h in an R-1 District for property commonly known as 10500 Meadow Lane, was made by Chairman Clawson. Motion carried with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Case 53-2021 John & Teri Kusek/Owners-Request for a Variance to the build line in accordance with the LDO, Section 16-2-5.4 (D) in an RP-1 District for property commonly known as 12400 Eaton Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a screened-in deck on the rear of the home. The new addition would extend 16 feet off the back of the home. A variance for 24 ½ feet is needed. It will be 6 feet, 6 inches from the rear of the property line.

Chairman Clawson: Are there any questions for staff by the Board?

Mr. Munson: Mr. Chairman, I'm looking at the picture and it looks like the property right behind this one is very close. What would the distance between this property and the proposed porch be?

Mr. Thompson: If the screened-in porch is constructed, it would be approximately 40 feet away from the house. That was just measured on AIMS.

Ms. Farrington: Mr. Chairman, I have a question for the staff. The initial requirement in the Ordinance is that a structure shall not be located less than 15 feet from the property line. So the variance being requested has it sitting at 6 feet, 6 inches from the property line, correct?

Mr. Thompson: Correct.

Mr. Munson: Mr. Chairman, I have a question. How tall is that fence that separates the properties?

Mr. Thompson: That's a 5-foot fence.

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

Mr. Torrez: Regarding Ms. Farrington's question about the LDO and this applicant's request-it has to be no less than 15 feet from the property line, but the average has to be 30 feet. I believe that's why it's stated in the request that they're needing a 24 ½ foot variance.

Chairman Clawson: Any other questions for staff?

Applicant Presentation:

Mr. Kusek, 12400 Eaton Street, appeared and made the following comments:

Mr. Kusek: My wife wasn't feeling well enough to join me here this evening, but basically what we're trying to do is build a very short deck and enclose it with a screen. The deck itself would be 13 inches tall because we have 2 steps from the back door of our living room down to the patio as it sits right now. My wife and I aren't spring chickens and neither is my mother-in-law who visits frequently. It's been a tripping hazard for us in the past and we'd like to be able to just walk out to an even surface. The screened-in portion would just be there to extend our enjoyment at the rear of our house for more months of the year. We're actually thinking about having some infrared heaters installed in the roof of the structure. As far as the variance, I was kind of puzzled when I ran into the need for that because the northern line of where the porch would be built is at the exact location of the existing fence that was back there when we bought the house eleven years ago. That fence has probably been there for decades. We thought that a porch that stayed within that outline would be a piece of cake, but found out otherwise. I do want to acknowledge that there have been a couple of gentlemen in your Code Enforcement office that have really instructed me and walked with me hand in glove throughout this process. Also, the neighbor immediately north of us, across the backyard, has only lived there for 2 months. He's got no problem with this porch and is actually looking forward to smoking cigars with me on it during inclement weather. None of the other neighbors in the area have voiced any opposition. I asked the president of Foxborough Homeowners' Association (HOA) if I should run this by them or the Board of Zoning Appeals (BZA) first, and he mentioned that it doesn't cost anything to run it by the HOA first. Foxborough HOA has conditionally approved this proposal, contingent upon approval of the variance from the Leawood BZA. Foxborough agrees that it meets all of the design standards for the neighborhood. What makes this particularly tricky is that we have a rather bizarre property line on the north edge of the property. It runs almost parallel to the back of the house up until it hits about the middle of it, then it turns about 35 degrees south. That's why the variance that's required is more on the east end of the proposed porch than it is on the west end. I've looked at images of neighboring plots on AIMS and it appears that ours is an aberration and I have no idea what the original purpose was for that. At any rate, we'd just like to improve the safety of the house and the enjoyment of the back yard.

Chairman Clawson: Are there any questions for the applicant?

Mr. Munson: What are the dimensions of the porch?

Mr. Kusek: The enclosed area of the porch would be 16x20". On the east end, I'd like to put in a 6-foot overhang that isn't screened in to use as a barbecue grilling area.

Mr. Munson: You haven't started construction yet, correct?

Mr. Kusek: Correct.

Dr. Peppes: Do we have a picture that shows that overhang?

Mr. Thompson: There is one in your packet. The addition is drawn in red, but here it is. On the bottom you can see that it says 6 feet. *Displays plan drawing.*

Mr. Bussing: Wade, does the variance request come into play where that property line begins to angle? Is the western side of the porch within the LDO?

Mr. Thompson: Yes. Just about all of it would be.

Mr. Torrez: The entire structure is within that 30-foot average because the house is already sitting at that closer than 30 feet.

Chairman Clawson: In general, to strictly follow that ordinance, they couldn't build anything back there, correct?

Mr. Torrez: Pretty much, because it's already at that 30-foot average, if not closer.

Mr. Thompson: Correct.

Chairman Clawson: Are there other areas on the property that you could construct something like this?

Mr. Kusek: That's really the only spot. We don't have enough clearance on the west end between ourselves and the neighbor, and the driveway takes up the east side.

Chairman Clawson: We have to address the five factors to analyze and vote on a variance. You've looked at the criterion, so now we as a Board have to evaluate them as well. The property does have a dog leg shape, true, but the proposed addition is affected over its entire length because of the location of the house. Do you have any other comments about the uniqueness criterion?

Mr. Kusek: No. Other than when I talked to the code enforcement people, they told me it was that dog leg portion that was getting me in trouble when I applied for the permit. That's when I was advised that we'd need to get the variance.

Mr. Munson: Could the applicant point out in the top picture where the entrance is located on the back part of the house? I'm wondering if the porch could be built in such a way that it wouldn't impinge on that dog leg angle. Where is the back entrance to your proposed screened-in porch? Where would you go from inside the house to outside on the deck?

Mr. Kusek: That's about 3 feet east of the chimney.

Mr. Munson: There's no east or west marked on this picture. Would that be towards 124th Street or away from it?

Mr. Kusek: Towards 124th Street. It's those double doors that you can see immediately adjacent to the chimney.

Ms. Farrington: Mr. Chairman, I have a question. The actual structure that would be built would come out to where that existing fence line is shown in this picture?

Mr. Kusek: Correct.

Ms. Farrington: And then you can see the stakes. Is that where the property line is?

Mr. Kusek: Yes.

Ms. Farrington: There is no fence between your property and the property to the north, correct? The fence shown in this picture will be removed and the structure will be put in place, correct? So it will still maintain an open area feel between the two properties.

Mr. Kusek: That's correct. You can see on the right side of this picture that there's a pretty steep grade between the two houses. It's a natural barrier, almost.

Ms. Farrington: Wade, if you could put the AIMS map up again *refers to the picture*, you can see that the dog leg is split in between the two corners of the house, so the question would be- was the house on the north placed prior to this corner lot house and that is what caused the property lines having to be divided this way, to meet setbacks?

Mr. Thompson: Possibly. His house is an RP-1, so it's a 12,000 square foot lot. It's a smaller lot with a larger home on it.

Ms. Farrington: Even the home to the north's placement is affected by it, too.

Mr. Thompson: Correct.

Chairman Clawson: Are there any more questions for the applicant? You may take a seat and we will now evaluate the five factors. The first factor is Uniqueness of Property. Discussion by the Board.

Mr. Munson: Mr. Chairman, I noticed that this house was built in 1987 on a corner lot. The dog leg, to me, is unique. I don't recall having seen anything quite like it in other cases we've had.

Chairman Clawson: Are there any other comments?

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. Letters have been mailed out to neighbors, correct?

Mr. Thompson: Yes. I haven't received any comments one way or another. He did state that the HOA signed off pending your decision, but I don't have any of that in writing.

Chairman Clawson: Other comments?

Mr. Bussing: Mr. Chairman, I think the fact that the HOA has signed off on this is an important ingredient in this formula. That recognizes the rights of the adjacent property owners.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The third factor is Hardship.

Ms. Farrington: Mr. Chairman, I'll speak on the hardship. I think that, due to the uniqueness of this property and this dog leg shape that creates limitations on the back of that property line, you wouldn't be able to build a screened-in deck in any other place without a hardship.

Chairman Clawson: Any other comments?

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

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

Mr. Bussing: Mr. Chairman, I don't think that the addition to this house affects public safety or general welfare.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: Last is Spirit and Intent.

Ms. Farrington: Mr. Chairman, I'll speak on this. Looking at this case, the spirit and intent is met within the city of Leawood. This new patio structure would be within the existing fence line. There's currently no fence between the properties, so it would still maintain an open area.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

A motion to approve Case 53-2021 John & Teri Kusek/Owners-Request for a Variance to the build line in accordance with the LDO, Section 16-2-5.4 (D) in an RP-1 District for property commonly known as 12400 Eaton Street, was made by Farrington; seconded by Bussing . Motion carried with a unanimous vote of 4-0. For: Dunn, Dr. Peppes, Farrington, and Bussing.

Case 54-2021 Julie & David Corley/Owners-Request for a Variance to the build line for the placement of fireplace in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12612 Fairway Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners constructed an outdoor fireplace without a permit. At its closest point, the fireplace is 13 feet, 1 inch from the property line. A variance for 1 foot, 11 inches is needed to keep the fireplace in its current location.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: Mr. Chairman, does this particular case need to go in front of the Fire Marshall?

Mr. Thompson: We did receive a memo from the fire stations stating that it met their minimum 10-foot requirement.

Chairman Clawson: So, this should've been within the 15-foot setback?

Mr. Thompson: It should have been 15 feet away, correct.

Chairman Clawson: I presume that the Ordinance predates the construction of this fireplace?

Mr. Thompson: Yes.

Applicant Presentation: Julie Corley, 12612 Fairway Street, appeared and made the following comments:

Mrs. Corley: I want to start with a story with a fun fact. Our house was built by a couple named Frank and Rebecca Bank in the mid 1990's. You've probably seen Frank on television in the 1950's. He played the role of Lumpy Rutherford on Leave It to Beaver series. Anyway, it's a lovely home on a corner lot. The house sits on an angle with a very expansive setback in the corner. The consequence of that is that the backyard is very narrow. The most narrow part of the backyard is where the patio is, which is original to the home. After living in this home for a few years, we've fallen in love with the patio. At one point, in 2015, we decided to add a fireplace onto the west end of it. We wanted to add character, atmosphere, and another layer of privacy between our house and the neighbors to the west. We look pretty much straight at their garage and driveway, so we surrounded the fireplace with a lot of landscaping to block it and give us privacy. The fireplace on the patio is at an angle to the home. As Wade said, at its closest point it is 13'1" away, but on the other end it's 14'1" away from the property line. We've done extensive landscaping, which I can go into more detail about if you'd like. Our neighbors behind us are comfortable with the fireplace and have sent an email affirming this.

Chairman Clawson: Is there a photograph that we can see of this? Questions for the applicant?

Mr. Bussing: I have a question for Wade. From the AIMS photograph it appears that, while the firepit is only 13 feet from the property line, it is quite a distance from the nearest structure. Any idea what distance that might be?

Mr. Thompson: I sure don't. I wouldn't even want to give you an estimate without knowing.

Mrs. Corley: Could I comment? I've measured. There's approximately 13 feet from the closest edge to our property line. On the other side of the fence line, on the neighbor's property, there is a 15-foot green space and a 34-foot driveway to their house.

Mr. Bussing: Thank you.

Chairman Clawson: Are there any other questions for the applicant?

Mr. Munson: In the staff report, it says that this structure was built without a permit. When was it constructed?

Mr. Thompson: 2015.

Mr. Munson: In 2015 without a permit. In a previous case tonight, one of our Board members mentioned what our responsibility is when it comes to things being constructed without a permit. I expressed my concern in our last meeting about outdoor fireplaces that are built without consideration from the Fire Marshall. Ladies and gentlemen, I'm very concerned about structures that keep coming in without a permit.

Ms. Farrington: Mr. Chairman, I have a question for the applicant. Were you the person who constructed the firepit in 2015, or was that in place prior to you owning the home?

Mrs. Corley: We owned the home when it was installed.

Chairman Clawson: Wade, if that fireplace had been there when the applicant bought the property, what would the situation be then?

Mr. Thompson: I would let the building official answer that one.

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

Mr. Torrez: We would treat it the same. If it hadn't been permitted previously, the new owner would have to get it permitted in order for its approved use.

Chairman Clawson: Other questions?

Dr. Peppes: If the fireplace wasn't there, would the end of that patio still be within that 15 feet requirement?

Mr. Thompson: The at-grade patio would be okay.

Dr. Peppes: But it's got a cover over it, right?

Mr. Thompson: If it has a cover, that's different. If it's an at-grade patio, it wouldn't need a variance. Anything with a roof on it would have to have a variance.

Chairman Clawson: We have to go through the five factors. The factors we have trouble with many times are Uniqueness and Hardship. Hardship can't be self-imposed, either. If you look at your property, you could build a fireplace in various places, right?

Mrs. Corley: I don't know about that.

Chairman Clawson: I mean, there are places on your property that you could build one without needing a variance, so that's one issue. Uniqueness is another somewhat controlling factor that we have to evaluate. Could you address that?

Mrs. Corley: Yes. I think the fact that it's a corner lot and our house is positioned at an angle with, by far, the majority of the property being in the front yard. This leaves us with a very narrow backyard and the narrowest part of the backyard is where the patio, which was poured originally to the home, is located. We just added the fireplace onto the end of the existing patio. I think the challenge with this backyard is that, because it is so narrow, even if we tried to place it in a different spot in the backyard, we would've been within 15 feet of another property line. I think the structure of the lot makes it very

challenging. We certainly didn't realize that there was a 15 foot requirement to be away from the property line. We may have built a fire pit if we'd known that was the case.

Mr. Munson: Mr. Chairman, by example of this being a corner lot, this is actually exactly like many other lots in Leawood. I don't think using that as a testament to its uniqueness satisfies the factor at all.

Ms. Farrington: Mr. Chairman, I have a question. *Refers to AIMS map.* Are those steps on the north end?

Mr. Thompson: They appear to be steps, yes.

Ms. Farrington: So, it's a sloped lot?

Mrs. Corley: It is a sloped lot, yes. We have an *inaudible* on the basement, but the patio comes off of the main floor of the house. In the lower part of the yard, where the steps go down, that's basically a secondary patio that you can get to from the basement. So yes, it's two levels, so to speak, from the backyard.

Chairman Clawson: If there are no more questions, you may have a seat while we evaluate the five factors. The first factor is Uniqueness of Property.

Mr. Bussing: Mr. Chairman, I find the applicant's description of uniqueness compelling. In fact, the house has been placed in such a way on this lot that it makes for a very large front landscape and a very small rear yard. While not the only house in Leawood like that, I think this is somewhat unique in its presentation. I think the Uniqueness criterion has been satisfied.

Chairman Clawson: Are there any other comments about Uniqueness?

Mr. Munson: Mr. Chairman, I would disagree with that, respectfully.

Uniqueness of the Property criterion satisfied with a vote of 3-1. For: Dr. Peppes, Farrington, Bussing. Against: Munson.

Chairman Clawson: The next factor is Rights of Adjacent Property Owners. I presume letters were sent?

Mr. Thompson: Letters were mailed out and you should have one email supporting the request.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The next is Hardship. Comments about this?

Mr. Bussing: Mr. Chairman, I'll try again on this one. I think the suggestion that just because a fireplace could be built somewhere else on the lot is not indicative of a lack of hardship. In order for the fireplace to be effective and efficient in its use and consistent with the appearance of the landscaping and the rest of the structure, I think it has to be placed where the homeowners have positioned it. Moving it would, in fact, be a hardship.

Hardship criterion satisfied with a vote of 3-1. For: Dr. Peppes, Farrington, Bussing. Against: Munson.

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

Ms. Farrington: I'll speak to Public Safety and General Welfare. The current position of where the fireplace is at only needs a variance of 1 foot, 11 inches, which is relatively small when you look at what is adjacent to it. The narrow lot is up against a 15-foot green space and then another wide swath of a neighboring driveway. There is sufficient distance between the neighboring structure and where the fireplace is currently placed, so I'd say this doesn't affect Public Safety and General Welfare.

Mr. Bussing: Mr. Chairman, I'd like to note the email that was received from the Fire Marshall indicating that the current placement of the fire pit exceeds the 10-foot minimum requirement.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The fifth factor is Spirit and Intent.

Dr. Peppes: Mr. Chairman, I think that Intent has been met because of the safe distance that's between the structure and the adjacent neighbors. That's the idea behind it; making sure that it's not encroaching on the neighbor's property.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

A motion to approve Case 54-2021 Julie & David Corley/Owners-Request for a Variance to the build line for the placement of fireplace in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 12612 Fairway Street, was made by Farrington; seconded by Bussing. Motion carried with a unanimous vote of 4-0. For: Dunn, Dr. Peppes, Farrington, and Bussing.

Case 55-2021 Greg Highbarger; Cocherl Family LLC/Owner-Request for a Variance to the Design Standards for parking lots (60/40 rule) in accordance with the LDO, Section 16-4-5.3(A) 4 in a BP District for property commonly known as 14212 Overbrook Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to add additional parking spaces to an existing building. A variance to the 60/40 rule is requested to add the parking spaces as shown on the plan.

Ms. Tomasic: Just for the Board's information, we have Katherine Geist and Mark Klein from Planning here via Zoom if you have questions for their department.

Chairman Clawson: Essentially the 60/40 rule in front of a major street would require that you have 60 percent green space and 40 percent parking, correct?

Mr. Thompson: Correct.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: I have a question, Mr. Chairman. Do you know how many square feet are in this office building? The parking is tied to there being a certain number of spaces per certain amount of square footage of office space being allowed, versus how many employees are using the office space.

Mark Klein, City of Leawood Planning Director, appeared via Zoom and made the following comments:

Mr. Klein: We're showing this building to be 10,550 square feet. You're right, Bud. Typically, the parking is tied to the size of the building. The BP section, however, doesn't have any standards per se, as far as STCR and the office.

Mr. Munson: What would the normal requirements for a building like this be? How many parking spaces per square foot of office space?

Mr. Klein: For normal instances, there would be 3 parking spaces per thousand square feet. If you did that, it would require them to have 32 parking spaces.

Mr. Munson: Let me reduct, actually. I took the time to measure the spaces there currently and there are at least 78, if not one more. Why do they need more?

Mr. Klein: The applicant may be able to better answer this question, but there's a property line that separates this building from the one to its north. I believe there are 24 parking spaces that actually belong to this southernmost building currently. The other parking spots belong to the other properties.

Chairman Clawson: Are there any other questions for staff?

Dr. Peppes: Mark, aren't there three buildings involved in this?

Mr. Klein: There are three buildings located in north-south orientation. They each have parking on their lots. The northernmost building is the most recently built one. The building that we're referring to in this case was actually constructed in 1996. The property to the north of it did request the same variance and it was granted. The intent of the Ordinance was to keep as much green space as possible without a lot of parking fronting the buildings. It used to be required on all sides of the frontage regardless. However, in 2014 we amended the LDO because we understood that if your property had 3 sides, the original requirement was a bit punitive. We changed it to only require the green spaces on 2 sides. It's not uncommon for lots to be on a corner and only have 2 sides, whereas being 3 sided is a bit more unusual. They do need it for 143rd Street and Kenneth Road, but not for Overbrook, because the LDO requires that the 2 highest vehicular volume roads have it.

Chairman Clawson: Are there any more questions for staff?

Mr. Munson: I have one more question. When the building was approved in 1996, the requirement was that there was to be a yard in front of the office building as part of that development. What are the requirements now?

Mr. Klein: We don't really have a requirement that they have a yard in front of the building, but there is the 60/40 rule that was intended to ensure that the building was the main focus. That's what this ordinance deals with. People enter this particular building on the north side, facing Overbrook.

Mr. Munson: In the 60/40 ruling ratio, can the parking space be included in the open space requirement?

Mr. Klein: The parking space would not be included in the open space. It would just be pervious. Where rain can soak through, those would be considered the open spaces.

Mr. Munson: Okay, thank you.

Chairman Clawson: Wade, you have on the screen here where you've outlined the portion that we're concerned with for this variance, correct? *Refers to picture on screen*

Mr. Thompson: The variance would only apply to the building at this address, yes. The one to the far north already has a variance in effect. The middle one does not.

Ms. Farrington: Mr. Chairman, I have a question for the staff. In your report, it states that there's a large gas pipeline easement on the west side that runs north to south. Does that start at the lower property and run alongside all 3 buildings, or is it primarily on just this property?

Mr. Thompson: It runs along all 3 buildings.

Ms. Farrington: So they wouldn't have had a chance to expand on the west because there's no room there?

Mr. Thompson: Correct.

Mr. Bussing: Does the structure to the southwest of this location meet the 60/40 rule?

Mr. Thompson: I would assume that it does. It's a new building.

Mr. Klein: Wait. In the southwest corner? No. The one on the southeast corner does, though.

Chairman Clawson: How about that. Any other questions for staff?

Applicant Presentation:

Greg Highbarger, 14602 Briar, appeared and made the following comments:

Mr. Highbarger: I have now been a Leawood resident for one month. I brought with me Lance Scott. He is the Civil Engineer and I'm going to let him speak more about this particular request. I will say that one of the biggest reasons that we're requesting the parking is because the employees of this particular building are currently parking in the street and we're trying to give them a place on the property to park. If we get this parking lot approved, then we will have 44 spaces associated with this building. If you'll notice, the property line does run through the parking field that's between this building and the one immediately to the north. If you do a parking count specifically to this building including the additional spaces being requested, there will be 45 spaces.

Lance Scott, Civil Engineer with CFS Engineers, 1421 E 104th Street, appeared and made the following comments:

Mr. Scott: Greg covered some of this. *Refers to image on the screen* This aerial shows that the property to the far north had the same situation. There was a variance request that was approved for that facility. Neither of the properties to the east and southwest would meet the requirements, but I believe they were constructed prior to the Ordinance.

Chairman Clawson: You're saying that the property to the north had a variance approved for it? Do you know when that was, Wade?

Mr. Thompson: Off the top of my head, I don't. I'd say 3 to 5 years ago.

Katherine Geist, City of Leawood Planner, appeared and made the following statements:

Ms. Geist: Mr. Chairman, I believe it was in December of 2014 when that variance was approved.

Mr. Scott: *Refers to drawing on screen* This is the drawing that was actually in the final development plan packet in 1996. We weren't able to find the approved preliminary development plan. The parking was originally intended as part of the plan from the start. I'm not sure why they only built along the front and didn't include any parking along the side. *Refers to another photo* This is a view from 143rd street of the existing parcel as it is now. *Refers to another photo* This is the Lot 3 Parcel. What we would be doing is very similar to this with the landscaping and a small berm. You can't even really see the parking as it is. I have a picture of the other ones, too, but they probably don't matter much. They just show the proposed landscaping for the site. We believe that we meet the five factors for this. The only one I'm not sure of is Intent, but that's because the buildings are already in place and can't be moved to make the lot more aesthetically pleasing. And with that, I'd be happy to answer any questions you might have.

Mr. Clawson: You're proposing a line of trees along the south side of the property, is that right? Is there a berm there, too?

Mr. Scott: Correct. There's also a gas line there as well. There's one that runs north/south, but another one that runs east/west, so we're limited on what we can do. Our site is above the road, so it already provides a bit of a screening effect as it is.

Mr. Clawson: Are there questions by the Board for the applicant?

Mr. Munson: Before we go on to the next step, *inaudible* says that the Planning Department does not support this request. Since we have staff here from that department, I'd like to hear from them on why they don't support it.

Mr. Klein: In looking at strict enforcement of the rule, the 60/40 was intended to make the buildings the prominent feature on the lots. It has to do more with aesthetics. We weren't supporting it just because we felt that the LDO did provide some relief with the amendment that was made to it in 2014.

Chairman Clawson: Could you briefly address the five factors that we have to consider when a variance is requested?

Mr. Scott: Sure. I wrote a letter and included it in the packets. A condition that is unique to the property is that the building has already been constructed but parking doesn't exist as employees are parking on the street. All of the other properties in the area already have parking basically right up to the street as it is, so we'd be the only outlier. No adverse effects. There hasn't been any public opposition to this in any way. The proposed parking lot is already 45 feet from the back curb. Unnecessary hardship; there's an existing building and it requires additional parking so if we don't get it, they're still parking in the street. Regarding health, safety and welfare of the public, there's no adverse effect there. In fact, it will likely help if we get some of those cars off the street. If the intent is for the aesthetics of the area, it will look better with the trees and the berm than what it looks like today. I realize that's all a matter of opinion, but I think it will look a lot better.

Chairman Clawson: The first factor is Uniqueness of the Property. This structure has been in place for 25 years.

Mr. Bussing: Mr. Chairman, As you indicated, the building has been there for 25 years. They've got a very nice problem to have, in that they have more employees coming to work than they have parking for. Of course, the gas easements on either side of the property creates a unique challenge for them, so I believe this criteria has been met.

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. Letters were mailed out and there's no one present here or online, correct?

Mr. Thompson: Correct. We haven't received any correspondence.

Ms. Tomasic: Correct, there isn't anyone online.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The next factor is Hardship.

Dr. Peppes: Mr. Chairman, I think that the Hardship factor has been met because we need to get those cars off the street and into a parking lot. I think if we were to turn this down, it would really create hardship for those employees.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

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

Mr. Bussing: I think, as Dr. Peppes indicated, getting these cars and their drivers off the street will be an enhancement to public safety.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The last is Spirit and Intent.

Ms. Farrington: Mr. Chairman, I'll speak on this factor. I think that the proposal and variance they're requesting does still meet the Spirit and Intent of Leawood. You can see the adequate landscaping plan that they've provided, with berming to screen and still provide a green space.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

A motion to approve Case 55-2021 Greg Highbarger; Cocherl Family LLC/Owner-Request for a Variance to the Design Standards for parking lots (60/40 rule) in accordance with the LDO, Section 16-4-5.3(A) 4 in a BP District for property commonly known as 14212 Overbrook Road, was made by Dr. Peppes; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Dunn, Dr. Peppes, Farrington, and Bussing.

Case 56-2021 Greg Highbarger; Cocherl Family LLC/Owners-Request for a Variance to the Architecture/Construction Standards prohibiting the use of plastic columns in accordance with the LDO, Section 16-2-10.3(B) 2 in a BP District for property commonly known as 14212 Overbrook Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to renovate the facade of the existing structure. The project includes a new covered entryway with large columns supporting a portico and roof. A variance is requested for use of synthetic, plasticlike material rather than stone columns.

Applicant Presentation:

Greg Highbarger, 14602 Briar, appeared and made the following comments:

Mr. Highbarger: First, I have a point of clarification that I'm requesting from either staff or this governing body. When we submitted this, it was with the understanding that there was an issue with the product for exterior ornamentation, which included the columns. The report that we received earlier today indicates that it's about the columns. I will say unequivocally that if the columns are the issue, we will change the columns as long as this product can be used for the balance of the ornamentation that's shown on the rendering here. *Shows image of building* If this is just about the columns, then the owner is willing to look at a different material that is part of the approved materials. If it is about this product holistically for building ornamentation, then that's what the variance would be for. The ordinance says plastic, which is a pretty broad category, for columns or building ornamentation. However, the report was specific to just the columns so I'd like clarification on that, please.

Mr. Bussing: Mr. Highbarger, who determined that this material is plastic?

Mr. Highbarger: The Planning staff here.

Mr. Bussing: *Holding a piece of the synthetic material* We think this is plastic? It seems to me that this would be critical. This doesn't look like plastic to me. I'd be interested to see who on the staff considers this plastic. Am I out of line?

Mr. Thompson: I don't know what the materials are that it's made out of. It's not stone.

Mr. Highbarger: It's not stone but it doesn't have to be stone to be used, though. It could be wood. A local example of where we used this material is the Truman Clock Tower in Independence. We were replacing a lot of wood that had been warped, rotted, and had deteriorated over time and they wanted something that would last. We chose this product for that renovation because it's designed specifically for this type of application. It will be there a hundred years from now. There are some polymers in the material, so I'm not going to say that somewhere there could be some plastic considered, but it's not known as a plastic product by any stretch.

Chairman Clawson: Could you go back to the plan that we had up on the screen earlier?
Photo on screen changed to frontal view of building

Mr. Highbarger: The owner is a big fan of classic Jeffersonian architecture. The most recent one that was built is actually called the Jefferson building. It has a lot of this kind of ornamentation on the windows, along the cornices, and it has the columns at the entry. He's trying to create more of a campus with the additional staff and trying to upgrade the building and make it a bit more of a great place for the employees to work. He wanted to know what he could do to give his building more curb appeal, so we came up with the idea to use this product to check all of the boxes. If you look at the existing building, you'll see that it's a huge difference for them. I think it will really enhance that corner and create a campus for the 3 buildings he has there on the corner of 143rd and Overbrook.

Chairman Clawson: Was the plan to put structural, reinforced concrete columns there and use this material as a surround?

Mr. Highbarger: Correct.

Ms. Tomasic: Planning staff is available to answer any questions from the very beginning of this application, as to whether it's just about the columns or the material and how that was determined.

Ms. Farrington: I would like to ask the Planning staff to weigh in. I know that on page 67 it describes prohibited exterior building materials as plastic columns or other ornamentation, with an asterisk, if allowed in single family residential uses. Could they expand on what other ornamentations that refers to?

Katherine Geist, City of Leawood Planner, appeared and made the following statements:

Ms. Geist: Mr. Chairman, I just want to speak on this a little bit. As far as the material that you all have in front of you, staff was not provided with a sample of it. When this case first came before us in May or June, our Material Board was provided with cut

sheets for the material they were wanting to use for the columns, balustrades, shutters, and those types of ornamental exterior items. Based on the cut sheets we were given, the material is called fypon. Mr. Klein and I did research on it and determined that it is more like a polyurethane product with some fiberglass, which we felt fell under the plastic columns or other ornamentation portion of the LDO, and that was our reason for this decision.

Chairman Clawson: You didn't have access to a sample of the material, is that right?

Ms. Geist: We did not.

Mr. Highbarger: We tried desperately to get the samples to you, but they literally just arrived.

Dr. Peppes: Mr. Chairman, I've got a logistical question. Here we are this evening, potentially approving a variance for a material that's not even on the list of acceptable materials within the LDO. Are we supposed to do that? Can we approve a material that's not even listed?

Ms. Tomasic: I think that's why it's being requested as a variance. It has to meet that high burden of those 5 factors, versus being granted an exception. There's nothing specifically saying that you cannot request a variance for something like this. In some of the other sections there are exceptions that could be allowed depending on the type of product and its meeting certain requirements. The Planning Department being opposed to this is another reason that it's being requested as a variance. The applicants have a pending case with the Planning Commission in December regarding this building as well.

Dr. Peppes: If we allow this as a variance for the material then when this case comes before the Planning Commission, the material will already be allowed to be used.

Ms. Tomasic: For this project, potentially. I would think that the Planning Commission could still not approve this, but then it would go to the governing body. The applicants would have to pass all of those other hurdles as well.

Dr. Peppes: Here's my thought. The Planning Department staff who look at all of these products can discern whether or not certain items are acceptable. I don't have the expertise to make that decision for a material. When it comes to the application of a certain material, I can decide whether it's acceptable based on the LDO, but if the LDO says it's not allowed, I can't okay it.

Chairman Clawson: Would it be appropriate for us to continue this case until the Planning Commission makes a decision on it?

Ms. Tomasic: I'll defer to Mark Klein on that.

Mr. Klein: We get requests all the time about items that are prohibited for a variety of reasons. The applicant actually used a different product on the building to the north, which we thought was a good alternative. We assumed that they would use that product on this project as well, but they decided to go with this one. Unfortunately we didn't have a sample of the product available to us at the time, so we did some research on the product and found that it has polymers and things like that. Our hesitancy is that if we allow this, it could really turn into a slippery slope.

Ms. Farrington: Mr. Chairman, I have a question for staff as well. We are here to vote on whether or not this qualifies as a variance based on what is set in the LDO Zoning District Article 2, which we were given before this meeting. Under Item B, which lists prohibited building materials, it shows seven items. Number two shows plastic columns and ornamentalations, which the item in question in this case falls under. Prior to that, there is a list that has eighteen listed. For example, metal, wood, etc. In the selection of this material, were there not other materials that are on the list of acceptable materials that would meet your cost schedule and the look that you're going for?

Mr. Highbarger: We wanted to use stone because that's the most appropriate material to try to create these classical looks and it would be more in line with the Jefferson building to the north, but the existing building was not structured to handle that additional load. If we're talking about the new porticos that are being proposed on these two elevations *refers to picture*, we have no problem submitting to the Planning Commission that we're using approved materials. That's where I needed clarification. We would just need this material for the balustrades that go across the roofline, the cornices, and the trim around the windows because the building cannot structurally handle and reinforce stone for those ornamentalations. We didn't feel that this product fell under the category of plastics. It won't discolor over time or sustain the damage to it that most plastics will. We felt like this product went above what the unapproved category of plastics was intended for. We could use wood instead, but it would not look good in ten years. It would require a lot of maintenance and would warp, splinter, and split. It just isn't the right material for this application. I would not propose this material for use on a new structure but for a retrofitting, much like the Truman Clock Tower in Independence, this makes perfect sense. We asked Fypon to send us the literature that they had available to try to prove that this didn't fall under the category of plastics by the building material definition. We got the same thing that the Planning staff got-that since it contains polymers and fiberglass that it is a plastic material. I'm simply requesting a variance because I don't believe that to be the case.

Chairman Clawson: You'd like to use this material in the columns and other locations in the structure, just generally?

Mr. Highbarger: That's correct. We chose to use this product because then I'm consistent with my product use. I got a single source acquisition for it. If the issue is that we need to make the parts that are new additions to the building, like the porticos and pediment, then I'm all in. However, we would like to use the fypon material on the ornamentation that goes around the existing building. If you recall, the roof corners are

metal pyramids currently. We're taking those off and dressing that corner up. Many of the surrounding buildings are more of a light industrial look, and we're bringing in a nice, classical, Jeffersonian style campus which will really pop in this neighborhood. If we need to continue this case for any reason, I understand. It's not as black and white as other requests might be.

Chairman Clawson: Would the Planning Commission review a specific project like that and deem it acceptable to the City of Leawood?

Mr. Klein: No. Actually, the Planning Commission doesn't have the ability to approve this product. There's no exception listed in the LDO, so the BZA is the resource that they have to go to. Staff is okay with them using a different product like they did on their building further to the north. I don't think that was stone, either. Just to clarify, we're talking about more than just the columns so it would be the use of this particular material itself. When staff researched it, plastic was listed in some of the descriptions we saw, so we thought it was difficult to include it as being allowed. If we were to do that, it would allow it for everybody and not just this one project. We've seen a lot of materials that look great at the very beginning and then 5 years later, after UV rays and other deterioration comes into play, they have to be replaced. In Parkway Plaza, we had a ceramic or tile roof that looked wonderful. Within 10 years they were all gone with class action lawsuits. Staff is a little bit leary about the use of some of these artificial materials because we don't know how they're going to do over time.

Ms. Geist: Mr. Chairman, I just want to clarify that it was cast stone that was approved for use in the Heartland building to the north. That was case 45-15. The balustrades as well as the columns were constructed with cast stone.

Mr. Highbarger: That was a newly constructed building at the time. I can't stick stone balustrades on top of that existing parapet wall. It's not designed to support it.

Chairman Clawson: It's sure not. It appears that the staff would not be in the position to approve that material. Therefore, we can act on this variance. Ashley?

Ms. Tomasic: Even though they haven't seen the product in person or gotten to hold it, they've stated that they've researched the materials used and the makeup of it and are still of the opinion that it would fall under the plastic prohibited building material and, therefore, it wouldn't be allowed. I don't see that changing even if they got the opportunity to see it and, to Mr. Klein's point, they would need you to approve the material before they could consider it. I think it would be appropriate for you to move forward tonight with this variance request.

Chairman Clawson: This product would be used in nonstructural applications only? For example, the columns would be constructed with approved material but then this product would be used just as ornamental?

Mr. Highbarger: Correct. This material wasn't designed for structural use.

Ms. Farrington: Mr. Chairman, I have another question for Mr. Highbarger. A letter was provided in our packet from HD Architecture that describes the product, fypon, being constructed with urethane foam that is created by mixing isocyanate and resin and kept under pressure in a mold until it reaches the desired shape. Do you have any more data on the longevity of the material or the upkeep of it? Does it have to be painted or anything of that nature?

Mr. Highbarger: It can be painted. I believe it can hold paint for 15-20 years, much like a hardy board siding type of product. Once it is up it requires zero maintenance, which is something the building owner was excited about. There are pictures on their website showing this product on buildings for 20-30 years and it looks exactly the same as it did on day one. I can get more literature, but it was designed specifically for this type of application and used in situations where maintenance was an issue.

Chairman Clawson: Are there any other comments?

Dr. Peppes: Mr. Chairman, I have a question for Wade. Is this like EIFS, where we allowed that product for use as a trim only and for a long time we didn't allow it on commercial buildings?

Chairman Clawson: I propose that we proceed and evaluate this variance as shown in our packet.

Mr. Bussing: Mr. Chairman, I share Dr. Peppes' discomfort. Moving a fence or granting a location of a patio is one thing, but approving a building material about which I know nothing is another. Who's to say that this gentleman's opinion isn't as good as our Planning Department? I have all the confidence in the world in our Planning Department. They do a great job. However, I feel that I'm being asked to weigh in on something here, of which I have no knowledge or background. It makes me uncomfortable. I think Mark mentioned a couple of buildings that deteriorated here, even after they used approved materials.

Mr. Highbarger: I am more than happy to go before the Planning Commission and ask for their permission. City said we had to go this route because it's not approved material.

Chairman Clawson: We could continue this case while you schedule a meeting with the Planning Commission.

Mr. Highbarger: There is a lot of gray area here. I am fine with whatever the group decides.

Ms. Farrington: I think it comes down to your decision here. You can decide to continue and withdraw this, or have us vote on the 5 factors.

Chairman Clawson: The concern with some of the board members is not having enough background in materials.

Mr. Highbarger: I completely understand. If the Planning Commission is willing to move forward with me and not send me right back to the BZA, that seems like the next logical step. I have to go to the Planning Commission anyway because of the parking lot, so I'll be there anyway. If that's a route that the City and staff are willing to accept, I'm willing to withdraw and go that way.

Ms. Tomasic: I think Mark Klein wants to address this.

Mr. Klein: Mr. Chairman, what it comes down to is that the Planning Commission can't make the decision to approve it because this material is technically in the LDO on a list of unacceptable items that don't have exceptions to them. It really comes down to two things. Either the BZA would have to grant a variance on just this project or there would have to be an amendment to the LDO. I know that EIFS was mentioned as something similar. Currently, the problem is that the Planning Commission wouldn't be able to approve that product. The best they'd be able to do is have a stipulation that they'd have to come back with a different material.

Chairman Clawson: The Planning Commission wouldn't approve it and staff couldn't either, correct?

Mr. Klein: We saw a lot of plastic in the research we did. They were supposed to provide us with a sample, but were unable to. It was our understanding that there were other alternatives that they could use. Hardy board was mentioned. We asked the applicant to look at something else that we could approve.

Mr. Highbarger: I think the appropriate thing to do now would be to withdraw this application. Now that we have the sample, let staff look at it and let me work with staff on what might be an acceptable material. Giving them the chance to look at it the way you did, could perhaps bring us to some sort of common ground.

Chairman Clawson: We could continue this case in the meantime.

Mr. Thompson: Continue it? He requested a withdrawal.

Mr. Munson: Mr. Chairman, is cost a factor for them not using stone? I didn't hear that part.

Mr. Highbarger: No. It's just not feasible for the existing building. The new additions may have stone, but we would not be able to use it for the building ornamentation as it's shown in your packet.

Chairman Clawson: If the applicant concurs, we will continue this case.

Mr. Thompson: Continue or withdraw?

Mr. Highbarger: Let's go with a continuance. I will leave a sample with Wade. I will work with Mark to find a common ground. If we can do that, then I could withdraw at that time. If not, I'll come back and we'll have a different presentation.

A motion to continue Case 56-2021 Greg Highbarger; Cocherl Family LLC/Owners-Request for a Variance to the Architecture/Construction Standards prohibiting the use of plastic columns in accordance with the LDO, Section 16-2-10.3(B) 2 in a BP District for property commonly known as 14212 Overbrook Road, was made by Clawson. Motion carried with a unanimous vote of 4-0. For: Dunn, Dr. Peppes, Farrington, and Bussing.

Case 57-2021 Rick Stanley Homes LLC/Owner-Request for a Variance to the front build line in accordance with the LDO, Section 16-2-4.5(A) 2 in an R-1 District for property commonly known as 9801 Ensley Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new addition to the side of the existing home. Due to the placement of the home on a corner lot, a variance of 10 feet, 4 inches is needed in order to construct the addition as shown on the plan.

Chairman Clawson: Does the Board have any questions for staff?

Applicant Presentation:

Rick Stanley, 12104 Catalina, appeared and made the following comments:

Mr. Stanley: I live at but am the owner of the home at 9801 Ensley Lane. This is my architect, who knows the topic better than I do.

Matt Lero/RDM Architecture, 222 W Gregory Boulevard, appeared and made the following comments:

Mr. Lero: With this project, we're trying to make this home accessible. We're widening hallways and doorways. In a lot of these Leawood homes, the bedrooms aren't exceptionally large. In this particular house we are removing closets from bedrooms to allow room for circulation. This small addition here adds a closet for the front and back bedrooms. Due to the location of this house on the corner lot and the way the lot bulges out, the majority of the house is already over the setbacks, so we're requesting a variance just to allow an addition on that side. We're adding a series of small additions. The rest of them are all within the current setbacks, so we only need the variance for that small closet addition. It's a single story addition. The roof line is secondary to the main roof, but it will be the same colors, same finish, and same materials. We're keeping it as close to the existing home as we can. As you can see in the plan drawing, this house was

originally built with a 25-foot build line. Because of the angle of the house and its relationship to the street, we're still well within that build line. The site is a bit unique in that the rear property line is in the middle of a stream, so the grade falls about midway along that closet addition to where there is a walkout to the lower portion. Because of the location on the site, we can't push that closet out any further without having a full basement underneath. Also, since the closet is obviously associated with the bedrooms, we aren't able to move that addition anywhere else.

Chairman Clawson: Are there questions for the applicant? I'm very familiar with this site because I live about 4 houses to the east. This is a unique lot. The creek and back drops off pretty quickly in the backyard. Of course, the house being on a corner lot means it is oriented 45 degrees from the front buildline. It really is a unique situation.

Mr. Lero: Another thing is, because of the way it sits and because that lot has the creek there, we're really far from neighbors on either side. The addition is only about 1'10" closer to that neighbor than the current house is. We're trying to keep that as small as we can while being functional.

Chairman Clawson: Staff reported that this appears to meet the criteria for approval.

Mr. Thompson: That doesn't happen very often.

Chairman Clawson: In going through the evaluation, I think it was fair. Are there any other questions for the applicant from the Board? Is there anyone online that wishes to speak for or against this case? Letters were mailed out?

Ms. Tomasic: Nobody is online for this case.

Mr. Thompson: We didn't receive anything from anyone.

Chairman Clawson: I propose that we go through the five factors. The first is Uniqueness of Property. Discussion by the Board?

Ms. Farrington: Mr. Chairman, I will speak on that. Looking at the site plan, the creek running through the property and the slope behind it, and the distance from neighboring properties makes it unique.

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. Staff knows that letters were mailed and we've received no calls or complaints, correct?

Mr. Thompson: Correct.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The third factor is Hardship.

Dr. Peppes: Mr. Chairman, I think Hardship has been met because of the creek being there, the elevation change on the side, and the house being where it is because of the dropoff. There are many limitations.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

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

Ms. Farrington: Mr. Chairman, I'll speak on that. Staff notes that the proposed addition will be within the originally plotted buildline and further away, 67 feet, from the adjacent home.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

Chairman Clawson: The fifth is Spirit and Intent.

Mr. Munson: It's been met, Mr. Chairman.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dr. Peppes, Farrington, Bussing.

A motion to approve Case 57-2021 Rick Stanley Homes LLC/Owner-Request for a Variance to the front build line in accordance with the LDO, Section 16-2-4.5(A) 2 in an R-1 District for property commonly known as 9801 Ensley Lane, was made by Farrington; seconded by Peppes. Motion carried with a unanimous vote of 4-0. For: Dunn, Dr. Peppes, Farrington, and Bussing.

MEETING ADJOURNED.

