

**City of Leawood
Board of Zoning Appeals Minutes
February 23, 2022 – 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 February 23, 2022 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Munson

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the January 26, 2022 Board of Zoning Appeals meeting.

A motion to approve the minutes from the January 26, 2022 Board of Zoning Appeals meeting was made by Hawk; seconded by Farrington. Motion carried with a unanimous roll-call vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

OLD BUSINESS:

Case 56-2021 Greg Highbarger; Cocherl Family LLC/Owner-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.

Chairman Clawson: According to the Agenda we have one case, 56-2021, that has been withdrawn. We will move on to New Business.

NEW BUSINESS:

Case 07-2022 NSPJ Architects; Russell & Sherri Lindmark/Owners-Request for a Variance to the front build line for the placement of a fence and gate in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 9117 Lee Boulevard.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to construct a 6-foot tall gate at the driveway entrance. The plan shows a 4-foot tall fence attached to the structure that runs parallel to Lee Boulevard along the property line that then turns east for 115 feet.

Chairman Clawson: Are there questions for staff or the Board?

Dr. Peppes: Wade, what about emergency vehicle entrance to the gate?

Mr. Thompson: Whenever there is a gated entryway, the fire and police departments have a code for it so that they can get in.

Chairman Clawson: Can we have a plan view of the property showing where the placement of the fence is proposed?

Mr. Thompson: *Displays plan view on screen.* The red line shows the fence and then you can see where the gate is.

Chairman Clawson: Are there other questions for staff?

Dr. Peppes: As I look at it, this is a separate driveway. Is that the way it is now?

Mr. Thompson: No, sir. This house shared the first part of the driveway with the home to the south. This applicant wants to construct a new driveway off of Lee Boulevard that will go over the creek. Right now they use the same entryway and their driveway splits off to their residence, but they will be constructing a new driveway.

Dr. Peppes: The entry that's there now will stay and will be his?

Mr. Thompson: That will remain the neighbor's to the south. The new driveway will be built to the north.

Dr. Peppes: Okay, so it will be closer to the guardrails.

Chairman Clawson: And that is what's depicted here? The driveway on the north side is their new driveway?

Mr. Thompson: Correct. The driveway shown on this plan is the driveway they will construct.

Chairman Clawson: Is the applicant here? Just for your information, anyone who speaks at the lectern can take their mask off. You do need to state your name and address for us.

Applicant Presentation:

Tim Homburg/NSPJ Architects, 3515 West 75th Street, Prairie Village, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Homburg: I'm here on behalf of my clients, Russel and Sherri Lindmark, to discuss the request being made. We've been here previously. If you remember, they have a weird shaped lot and setbacks that we were dealing with. Obviously that is facing us again, regarding the location of the buildable footprint of the house and its proximity to the street. I've got a couple of photos here that I took a couple of days ago that will help tell the story. The core of what the concern is and what is driving this request is security and safety. *Photo displayed on screen.* This picture shows you what it looks like standing on Lee Boulevard looking to the east. You can see the highway guardrail that is currently there, and a small indication of the neighbor's house to the south. What you can't see here is any indication of my clients' house; even in the winter when there's no foliage. The onus of the request for the gate is to not allow someone to get into the property unseen and undetected. The reason behind the gate's location and its proximity to the street was in concern for delivery trucks and things of that nature. When we were thinking about locations, say if we had the gate set 50 feet back from the street, then we'd have to contend with the FedEx trucks, the UPS trucks, trash trucks, and anything of that nature being able to turn around somewhere in that zone to get back out. That is also what drove the concept of the design and having its proximity so close to the street. In the plan design of the gate, there is actually a box that is a secured package delivery box. Anyone delivering a parcel would be able to safely drop it off within 25-35 feet of their delivery vehicle. I know that the staff report mentions continuity of the area. If you're familiar with the neighborhood, you'll know that they are kind of in this low spot where a majority of the frontages are dictated by the big highway guardrail that's there. Actually of note, we are in discussions with the city to have that guardrail replaced and upgraded to a nicer formed concrete guardrail.

Chairman Clawson: Are there questions by the Board for the applicant?

Dr. Peppes: Does the neighbor to the south no longer want to share a driveway?

Mr. Homburg: It is actually a common access easement between them, but it actually starts on the neighbor's property. It made more sense to give my clients their own driveway instead of an easement because if there were any sort of contention, they could just close it off. The other thing is that where the existing bridge that goes over the streamway is, it isn't stout enough to handle any construction activity. We would have to tear out that old existing bridge and build a new one. When that created that cause-effect moment, we wanted to first get my clients their own dedicated entrance on their property. Then we will be constructing a new concrete bridge that goes over the streamway arm.

Dr. Peppes: Wade, are they able to end a driveway on Lee Boulevard where there hasn't been one before? Even though they won't technically be cutting a curb, isn't there something in the Leawood Development Ordinance (LDO) that mentions cutting a curb for a driveway?

Mr. Thompson: It's permitted. Even if it were new construction, they would just have to cut the curb and pay for a new curb and driveway entrance.

Chairman Clawson: You're aware of the 5 factors we have to consider, correct?

Mr. Homburg: Yes.

Chairman Clawson: Could you perhaps address those quickly and give us your opinion on how they relate to your care?

Mr. Homburg: Yes, sir. I believe we put them in the response. With regards to uniqueness, a historical lot has a proper frontage and setback to a house that's usually 50-75 feet at most. We're at over 400 feet here because the size of this lot has created a unique condition with the position of the house being set so far back from the street. Because of that, there's no visual connection that a standard house that's adjacent to it would have to somebody approaching the house.

Chairman Clawson: Thank you. Hardship is a factor that is usually problematic. Can you address that?

Mr. Homburg: Hardship is the safety factor. We feel that the hardship is that a standard house would have a frontage that allowed the occupant to see the Amazon delivery driver approach. Our hardship is that we don't have that visual access, which is a safety issue.

Chairman Clawson: Any other comments by the Board for the applicant? Is there anyone here who wishes to speak for or against the application?

Joe Cannova, 9121 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Cannova: I own the house directly to the south that shares the driveway. I am very much in favor of them having their own driveway. The driveway that we currently have has a very sharp right angle and the bridge has been hit many times by the property behind. That being said, when the new guardrail came in, they took a majority of the front yard. There is very little yard that they own that sits between my driveway and this new guardrail. There is not a safety issue. I've lived there since 2003 and have never encountered any issues. People do occasionally drive into my driveway, but then they turn around and drive back out. There are no gates of that sort on Lee Boulevard and it would be a large, obnoxious gate right next to my driveway that I'm personally not in favor of. That being said, I am very much in favor of them having their own driveway. They need their own access for the build as well. I think a driveway is important for safety reasons as well. One time the alarm went off when the previous owners lived there and they came to my house because they didn't know they needed to take that sharp left turn to get into theirs. They absolutely need a driveway. However, with as little property of theirs that's left between the driveway and guardrail, there's not a safety issue requiring that gate.

Kelly Cannova, 9121 Lee Boulevard, appeared before the BZA and made the following comments:

Mrs. Cannova: I'm Joe's wife, so I live next door to them as well. I think there is currently a gate back there that she used to have that would beep when someone would come driving through.

Mr. Cannova: It wasn't a gate, it was a small sensor that would go off when anyone went past the easement where it turns to the left at a sharp angle. That was, I guess, her safety.

Mrs. Cannova: I do understand that safety issue. Her fire alarm went off and the police told me that they didn't even know that there was a house back there. I just thought I'd bring it up that she had that sensor.

Chairman Clawson: Thank you for your comment. Is there anyone else who wishes to speak?

Kelly Brende, 9104 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Brende: I live directly across the street from the proposed property. My husband, Brett Brende, nor I are in support of this gated entrance or having a gate up by Lee Boulevard. We've lived in two houses on Lee Boulevard because of the beautiful aesthetics of Lee Boulevard and that's how it's historically known; the nice, long grasses that lead up to people's houses and that type of thing. I'm sure you've all driven down Lee Boulevard and seen that and admired how beautiful that is during the summer. By giving one homeowner the opportunity to basically create a gated community is not something that we want to see on Lee Boulevard. I understand the issues that they've raised today, but there are other ways to address those concerns. Obviously someone's lived in that house for how many years? They didn't need a gate 14 feet off of Lee Boulevard. That is what we would see every day looking out our front windows: a 6-foot gate with 8-foot pillars. Not something I want to see outside of my house every day. That's not why I moved to Leawood or purchased two different homes on this street. We enjoy the historic nature of Lee Boulevard and would like to see it preserved. You know how this goes. It's a slippery slope. If you let one homeowner do it, you set a precedent. Next thing you know, people are moving in and tearing down/rebuilding and deciding that they want a gated community. This would change the whole nature of Lee Boulevard, the looks of it, and why people live there. It would change why people like the Leawood area and want to live here and be part of our community. We have something special in Leawood and on Lee Boulevard, and allowing them to create a gate that would be 14 feet from the street that is, again, 6 feet tall with 8-foot pillars, is just not in line with what we've allowed in Leawood previously. They also mentioned a safety issue. We've lived in this house for ten years now and our house sits far back from Lee Boulevard as well, but not as far back as theirs. I can see their house today with the foliage so I know that other people can. There are other ways to address this issue. Why not have a gate that is closer to the house that could also allow UPS and others to pull up

there and turn around if they want to? Why should we have to look at this eyesore every day because they're concerned about the FedEx truck or delivery truck? Typically, they just park on Lee Boulevard and walk up to deliver our packages (and most of those in the neighborhood) because our driveways are so long. It's important that we look at the historic nature of Lee Boulevard and try to address some of their concerns. Another thing I wanted to mention today is their comment about hardship because they're not visible from the street. I'm not sure how that coincides with putting up a large fence all around their property. I just don't see it meeting that need and there are other, less invasive measures to take care of those situations than changing the whole nature of Lee Boulevard and Leawood. Thanks for your time.

Chairman Clawson: Is there anyone else? Please come forward and state your name and address.

Chris Evans, 9110 Lee Boulevard, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Evans: My home is adjacent to Kelly's house and directly across the street. I submitted an email earlier that you may or may not have. Just to echo, I respect their need for safety and we all agree that a separate driveway for them is a necessity. One of the main reasons I chose to buy a home on Lee Boulevard is for safety. I don't really think that's a factor here. There are a lot of less invasive solutions for the security measure. For instance, a \$200 camera, motion sensors; it just doesn't warrant the amount for that fence. I understand the need for security, but it just feels like a facade and not necessary to the community. I think it sets a nasty precedent for the rest of the street. That would be the only exception to that rule, other than the gated community further up, almost to 103rd. That's kind of where I stand. I definitely don't want to limit someone's creative license, I just feel that's a bit overkill. I am not in favor of the fence, but I am for the driveway.

Chairman Clawson: We have one board member not present tonight and I believe he provided Wade with some comments. Wade, could you please present his comments?

Mr. Thompson: Yes. Member Munson called me earlier today and wanted me to let the Board know that it is one of his favorite streets in the city. He loves the drive, the streetscape, and the historic look. He wanted you to know that he is very much in favor of denying both requests.

Mr. Homburg: Would I be able to provide a bit of context to some of the comments?

Chairman Clawson: If you're very quick. I'll give you two minutes.

Mr. Homburg: I definitely appreciate the neighbors' concerns. Just a clarification. If we are behind the front yard setback line, a gate and fence is allowed, correct?

Mr. Thompson: No. The front of the home dictates the front setback, so it could not extend past the front of the home.

Mr. Homburg: Would that be the front of the home or would that be the buildline that we established the last time we were here?_

Mr. Thompson: No. For a fence, it would be the front of the home.

Mr. Homburg: Right. So obviously the functionality of that doesn't work. Cameras capture the activity after it's happened to prove who did it. It's not going to deter someone from doing it. Nor are motion sensors or things of the like. The important thing is that we're looking at the security of my client and their peace of mind. Everyone has their own comfort level with how they feel that security. If there is concern about the continuity of the frontage, we've got a 300-foot long metal highway railing that is along this street. We're actually working to improve that and make it nicer for Lee Boulevard. Regarding the proximity and condition of this location, I want to remind you that it's not like we are mid-block on 103rd that has equidistant homes. One of our reasons for going through this process is the uniqueness that is the layout of this property. Obviously this wouldn't set precedence, because anyone else who would come here would have to get the same hardship approved by this Board. Thank you.

Mr. Thompson: I want to add that I did hear from another neighbor, Ms. Erickson, at 9030 High Street. She was also against this request but couldn't be here tonight. Also, on your screen is a picture I took today (*picture displayed on screen*). The trees are north of where the neighbor to the south's driveway is located. Of course the guardrail is not in, so that is about where the gate would have to go.

Chairman Clawson: This is a variance, so as a Board we have to evaluate the five factors based on the presentation that was given by the applicant and we will take into account the comments from neighbors and other folks. In order to support a Motion for Approval, we have to vote in the affirmative on all 5 factors. That will determine how we proceed with the case. The first is Uniqueness of the Property.

Ms. Farrington: Mr. Chairman, I'll talk about this one. Looking at the property, it does lend toward being a unique property. It's set back from the road, there is a creek in front of it, it's had a shared driveway for a number of years, utilities bisect the property. We look at this independently each time, however it has Johnson County sewer lines that run through their property. I would say that this property is unique.

Chairman Clawson: Any other comments about Uniqueness of the Property?

Dr. Peppes: Mr. Chairman, I'd like to agree to those things that my fellow board member said. We also have to understand that the lines aren't straight on this property, which means that the southern part of the property is not a straight line from Lee Boulevard all the way to the back. It encroaches more so on the property to the north of it and then comes back again. Anything that's put on the front of this on Lee Boulevard is going to also be in front of the house on the property next to it just because of how the lines are drawn, but that also makes it unique.

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

Chairman Clawson: We've voted in the affirmative on the first factor. The next is Rights of Adjacent Property Owners.

Mr. Bussing: Mr. Chairman, I'll take a stab at this one. I don't think this project adversely affects the rights of the adjacent property owners and I don't see that it would create any erosion or stormwater issues or anything like that on any of the adjoining properties. The neighbors are rightfully concerned with regards to the appearance, which I understand, but I don't think that the appearance of the structure is what we're considering when it comes to the rights of those property owners. I don't think that the rights of those property owners would be negatively affected by this application.

Chairman Clawson: Any other comments about the Rights of Adjacent Property owners?

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

Chairman Clawson: We've voted in the affirmative on the second factor. Next is Hardship.

Mr. Dunn: Mr. Chairman, if I may. You brought up that this is the factor that often hangs up these types of things. I did a quick review of the materials that we've been educated with on Hardship. I can't justify that the Hardship required by law exists in this case. Under the law, this would be considered a self-created hardship because it was purchased either with knowledge or willful ignorance of the zoning restrictions that were in place when the property was purchased. As far as I can see, that precludes a finding that hardship exists.

Chairman Clawson: Are there any other comments on the Hardship criterion?

Dr. Peppes: Mr. Chairman, I agree. Usually with Hardship cases, there are limiting factors that are there. For example, an easement or creek. While all of those things are there, they don't involve the fence that we're discussing. The gate could be placed at another location on the property without having to go through a lot of this, so I feel that the Hardship criterion hasn't been met, either.

Chairman Clawson: I'd like to make a couple of comments about Hardship. This case came before us for the placement of the house. Hardship was a primary consideration in that because the house wouldn't have been able to be placed on the lot without that criterion being satisfied, correct?

Mr. Thompson: Correct.

Chairman Clawson: In that case, Hardship made sense because it would've restricted them from building a house. However, in this case they have multiple options they can choose from. They could opt for sensors or cameras. It may not be their preferred option, but they could go that route. Any other comments about Hardship?

Hardship criterion not satisfied with a unanimous vote of 0-5. Opposed: Dunn, Peppes, Hawk, Farrington, Bussing.

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

Mr. Dunn: I can't see that it would impact Public Safety and General Welfare.

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

Chairman Clawson: We've voted in the affirmative on the fourth factor. The last factor is Spirit and Intent.

Mr. Bussing: Mr. Chairman, I saw the neighbors' voice heard on this one. This is, in fact, the criteria where we're looking at the entire neighborhood and what works best with what the City of Leawood is trying to accomplish. I don't believe that this particular structure is consistent with the Spirit and Intent of Leawood's unique character, especially in this Lee Boulevard neighborhood, as has been described by a number of neighbors here tonight. I don't think that criteria has been satisfied.

Chairman Clawson: Any other comments about Spirit and Intent?

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

A motion to deny Case 07-2022 NSPJ Architects; Russell & Sherri Lindmark/Owners-Request for a Variance to the front build line for the placement of a fence and gate in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 9117 Lee Boulevard, was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 08-2022 NSPJ Architects; Russell & Sherri Lindmark/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 9117 Lee Boulevard.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: Mr. Chairman, since this is tied to the previous case, we can let the applicant decide if they want to proceed. I don't think a fence height exception would be necessary since the first request was denied.

Applicant Presentation:

Tim Homburg/NSPJ Architects, 3515 West 75th Street, Prairie Village, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Homburg: We are rescinding our application in this case due to the outcome of the first.

Chairman Clawson: Case 08-2022 was withdrawn by the applicant. We will move on to our next case.

Case 09-2022 Thomas Jeffers/Owner-Request for an exception to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2004 W. 92nd Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant is remodeling the home and would like to construct a covered entryway on the front of the home. An exception for 4 feet, 6 inches is needed to allow the addition to extend into the required setback. On your screen you will see that the red line is the buildline and the small green portion is the entryway that would be constructed (*displays plan drawing on screen*).

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

Mr. Bussing: I drove down 92nd Street today and there are a whole series of homes with similar covered entryways. It's virtually impossible to tell which, if any, overlap the setback. Would you agree with that? It's very difficult to identify those small setbacks from the street view.

Mr. Thompson: Right. I drove by there today as well and took a picture. This is the front of the home and this is looking west (*picture displayed on screen*). The home to the west is probably built on the same line. The house to the east is on the corner of 92nd Street and State Line and is also likely built on the same line. Any house that wants to put a covered entryway would have to come before the Board.

Applicant Presentation:

Tom Jeffers, 2004 W. 92nd Street, appeared via Zoom before the Board of Zoning Appeals and made the following comments:

Mr. Jeffers: I apologize for having to appear remotely, but I'm caring for children today. Thank you for allowing me to appear this way. I worked with ESC Architects to design a

small, attached entryway to the front of my home that is less than 75 square feet and doesn't encroach more than 6 feet. It meets all of those requirements. With this renovation, we are turning the garage around so that it faces 92nd Street and we're going to have this covered porch next to it. Currently, the front entryway is more than 50 feet from the driveway, which of course means the front door is never used. However, with the change to the garage and to make the house more interesting, we were hoping to get the exception granted. I do have a couple of photos so that I can show you what the current house looks like and what the new architectural rendering of the front elevation will be if you'd like to see it. *Displays pictures on screen.* Here you can see the current dining room, which will become the new front entry. The old entry is over here, and the driveway is over here. When we do the renovation, the garage will be here and will extend slightly to the north. By moving the entry over here, we'll be able to have guests walk to our front entry very easily. We tried to design it so that it will look very similar to other houses on the street, many of which are in this cottage or ranch style. We're trying to make our house look more of a cottage style, like this one across the street (*displays another picture on screen*). There are some covered porches on this street. Ours might be slightly bigger, but it does meet the criteria. In terms of scale from our architect's perspective, they thought it was quite good. Thank you so much for hearing our request.

Chairman Clawson: Are there questions for the applicant? Is there anyone online that wishes to speak for or against this application?

Ms. Tomasik: No.

A motion to approve Case 09-2022 Thomas Jeffers/Owner-Request for an exception to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 2004 W. 92nd Street, was made by Bussing; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 10-2022 James & Lainie Decker/Owners-Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 2328 W. 123rd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants need to replace an existing 4-foot tall fence. The current Leawood Development Ordinance (LDO) requires a 35-foot buildline. The fence is 22 feet from the rear property line, therefore a Variance for 13 feet is needed to allow the fence to be replaced.

Chairman Clawson: How long has this fence been in place?

Mr. Thompson: I believe about 2 decades. A long time.

Chairman Clawson: This is a Variance because it is a through lot.

Mr. Thompson: Yessir.

Chairman Clawson: Therefore, a variance of 13 feet is needed?

Mr. Thompson: Correct. It's just a variance for the placement of the fence. No fence height exception is needed. They just want to replace the existing fence.

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

Applicant Presentation:

James Decker, 2328 W. 123rd Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Decker: Wade's done a great job. *Picture displayed on screen.* If you can see the blue tape on there, that is where the fence would have to go in order to meet the 35-foot criteria. I do have letters from both of my neighbors on the east, 2324 and 2332, saying that they fully support it. We purchased this home in 2005 and the fence has been there since the 90's, so it needs to be replaced. The only thing I'd say regarding hardship is that I would also have to pay to have sprinkler systems redone to pull the fence back into the yard. As you can see, we have no ability to get between the 2 side yards around the back if we had to move the fence back further. Thank you.

Chairman Clawson: This is a Variance. Mr. Decker, would you like to briefly touch on the five factors?

Mr. Decker: For Uniqueness, this is a triangular lot at the back of a cul-de-sac. It's narrow in the front and much wider in the back, so the house was built quite further back than normal. It's really compressed. I've looked at neighboring houses and we are as close to 123rd Street as any house along that stretch because of the unique shape of the property. For the Rights of Adjacent Property Owners; there would be no change to affect that.

Chairman Clawson: Everyone's been contacted?

Mr. Thompson: Yes, sir. All the letters have been mailed out. I haven't heard from anyone for or against, but he says he has letters that support the request.

Mr. Decker: Unnecessary hardship. We have no backyard because of the placement of the property. What we have back there is some gravel that allows us to get from one side yard to the other, so part of it would be that we'd lose the ability to get from one side to the other without going to the front of the house. Plus, I can't even get my head around what this would do to the deck and the gazebo if we had to move the fence. Public Health and General Welfare. The location of the fence has no negative impact on either of those

things. Spirit and Intent. This would not have any impact there. The fence has been in that location. Neighbors also support it and see no negatives in that.

Chairman Clawson: Very good. There's nobody here to speak for or against this, so we will go through the five factors. We will vote on them and that will determine how we address the disposition of the request for a Variance. The first is Uniqueness of the Property.

Ms. Farrington: Mr. Chairman, I'll speak about the Uniqueness of the Property. This lot is a triangular shape and there are quite a few of those in the city of Leawood. I would say that this one here, being right up against the street, there's actually a tall berm and big tree line between the fence and where it's placed now. The way it is in proximity to the street, the placement of the house; all of that factors into this being a unique situation.

Mr. Hawk: Since there's no material change and it's been there for 30 years, I think we've lost our option to make any change.

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

Chairman Clawson: Rights of Adjacent Property Owners. All the letters have been mailed and there haven't been any complaints?

Mr. Thompson: Correct.

Chairman Clawson: Any comments about the second factor?

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

Chairman Clawson: Hardship.

Dr. Peppes: Mr. Chairman, I think the Hardship criteria in this situation have been met. We talked about limiting factors as we saw that blue tape that was on the fence and all of the things that he would lose if the fence had to be cut back. Not only that, but he would no longer have a backyard.

Mr. Dunn: I would agree, Mr. Chairman. I see this as a case where it would actually create a significant financial loss of value to these property owners if we were to enforce it this way.

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

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

Mr. Dunn: I am compelled to say that it hasn't proven a danger in 30 years, so I don't think that replacing it will create any.

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

Chairman Clawson: The fifth factor is Spirit and Intent. Staff says that the intent of the Ordinance is to protect the unique look and character of the neighborhood. This fence has been there for probably 30 years and it's become part of the neighborhood.

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

A motion to approve Case 10-2022 James & Lainie Decker/Owners-Request for a Variance to the rear build line for the placement of a fence on a through lot in accordance with the LDO, Section 16-4-9.3(D) in an R-1 District for property commonly known as 2328 W. 123rd Terrace, was made by Hawk; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 11-2022 JCLC Homes; Matt & Linda Rau/Owners-Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8021 Cherokee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The owners would like to add a new addition to the rear of the home. The new addition would be 12 feet, 8 inches from the south property line. An exception for 2 feet, 4 inches is requested to construct the addition as shown on the plan.

Chairman Clawson: Are there any comments by the Board or questions for staff about this case?

Mr. Thompson: *Plan drawing displayed on screen.* The portions in red are the ones that would need an exception. As you can see, part of the home is already legal nonconforming. The new addition would actually be jogged in and will not stick out as far as the existing home does.

Chairman Clawson: The existing home was built at 10 feet, right?

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Mr. Thompson: Correct.

Chairman Clawson: Is the applicant here? You may present your case.

Applicant Presentation:

Carrie Rouchka/JCLC Homes, 6525 Valley Road/KCMO, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Rouchka: The reason for the addition is that they're a growing family with young children and it currently has one lower level bedroom and two upstairs. In order to have their family on the same floor, we're adding that bedroom bump out across the back.

Chairman Clawson: Are there questions for the applicant? Is there anyone online who wishes to speak for or against this application?

A motion to approve Case 11-2022 JCLC Homes; Matt & Linda Rau/Owners-Request for a side yard exception in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8021 Cherokee Lane, was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson had to recuse himself from Case 12-2022, so he asked Mr. Hawk to step in as Chairman for this last case of the evening.

Case 12-2022 Mack Colt Homes/Owner-Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8912 Pawnee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant will be raising the existing home and constructing a new one. A variance to allow an increase in grade of 3.1 feet and cut 2.5 feet is requested to construct the home as shown on the plan.

Mr. Dunn: I don't really understand that description. Could you use other words for me?

Mr. Thompson: He might be able to describe it better. He will be shaving a portion of the property off and building up another portion. Both of which will exceed the amount we would give them.

Mr. Dunn: I see. Thank you.

Mr. Bussing: Wade, is this new dirt that's being moved around being held up with retaining walls?

Mr. Thompson: As of right now, no.

Mr. Bussing: We're going to have to talk about that.

Mr. Thompson: Here's a picture (*photo displayed on screen*) so you can see where that portion will be raised to level off that area.

Mr. Dunn: In this bottom picture where there's green, what does that indicate? The red indicates where it will be raised?

Mr. Thompson: The red indicates where it will be shaved off and the green probably indicates where it will be raised.

Mr. Dunn: Okay. Thank you.

Chairman Hawk: I guess the bottom line is that staff thinks this is a better situation than exists currently?

Mr. Thompson: Currently, yes. It's in the staff report that he doesn't have a drainage study right now, but once a permit is issued he will have to have one approved by Public Works.

Dr. Peppes: I have a question. Why are we seeing this without a drainage study? What if the drainage study is done and they find that it doesn't support the adding of gradation? If that creates a drainage issue with the neighbors, something has to get done. Yet here we've gone and given them the authority to do this and it doesn't work.

Mr. Thompson: I understand what you're saying but without a drainage study that passes, they will not issue a permit.

Dr. Peppes: Yes, but it may have to recontour the grade to a point that it may add up to more than 3.1 feet and maybe I'm not comfortable with that.

Mr. Thompson: I understand.

Dr. Peppes: I mean, it's not finished because I'm not a drainage expert. I've got to rely on an expert's stamp of approval.

Chairman Hawk: Perhaps the applicant can provide more information.

Applicant Presentation:

Mack Colt, 21225 W. 96th Terrace, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Colt: I own the property at 8912 Pawnee. We do have the drainage study as of now, but I did not bring it with me. It will actually be quite the opposite. The changes we want to make at the property actually help with the drainage situation. We primarily want to shave off the part of the lot that is so steep and drains off from the neighbor's yard because it's a mowing hazard and is heavily eroded. From a drainage standpoint, shaving that off makes it gentler. It will create more infiltration, less runoff, and less erosion.

What we're wanting to do is take a steep slope and make it gentler. From a drainage standpoint, we're actually making it better.

Chairman Hawk: Would you like to address the 5 factors that we have to consider?

Mr. Colt: Sure, I'd love to. Actually, before I do that I want to explain why I came to the Board at this stage instead of after the plan is fully developed. There are so many restrictions on tear-down/rebuilds that have to do with the topography. How you set the house and the height you set the house at all factor into not just how the house sits, but the actual design of the house itself. The height envelope restriction hinges on how you're placing the house. We're looking at \$25,000 in engineering and architectural costs to design it and I don't want to go down that road if I can't get a variance. I am aware of the grade change ordinance. I'm no rookie at this. I've done tear-down/rebuilds in Leawood since 2001. Back to the five factors. Uniqueness. It's not terribly unique to find houses in Leawood where the garage is on the downhill side of the lot, although when we build houses now we try not to do that because it's not a good thing from a drainage standpoint. *Displays photo on screen.* This is a picture of the garage taken by standing on the property line and facing west. You can see how steep it is from the driveway down to the property line. We plan on putting the new driveway on the uphill side of the lot. One of the reasons is that it's better and you don't have the situation of it being so steep. *Displays another picture on screen.* You asked if the retaining wall was holding up parts of the grade. The grade is not held up everywhere with a retaining wall, but the patio of the existing house is built up with a brick retaining wall. What's very unique about this is that the patio is behind the garage and you would normally see it behind the living portion of the house. That adds to the steepness on that side of the lot. I am confident that we've got a unique situation here. The second factor is Rights of Adjacent Property Owners. It will actually be favorable to nearby property owners because it will get better drainage and decrease runoff and erosion. I've talked to the neighbors and they're all in support of this. I've shown the plans to the Homeowners Association and they've approved them. There is a change to one window that they want to do, but that is their only comment. The third factor is Hardship. I believe that not granting the variance would create one. *Displays picture of the front of the yard and house.* The front yard is about as flat as you could have it and still allow for drainage. My new house is actually going to be 3 inches lower than the existing house, which is almost unheard of. I'm trying to do everything I can to alleviate the situation, because if I set the house up higher then everything gets worse. Back to the rear yard. *Picture of rear yard displayed on screen.* The area shown in green there is where I'll raise some ground to keep from having 8 steps up to the patio. *Displays topography map of property on screen.* The area in green is where I want to build the ground up by more than a foot and the area in red shows where I want to cut by more than one foot. When I submitted this to Wade, I told him that the fill at the most extreme spot was 3.1 feet and that the cut at the most extreme spot was 2.5 feet. The most extreme spot in cutting the grade is really only 1.7 feet. Most of this area is just barely more than one foot cut. The fill up by my new house is only 1.7 feet. There's just one area right here where our fill would be extreme, and that's because you can't slope a patio as much as you could a yard. *Picture of a similar property displayed on screen.* This is a pretty much identical situation as far as the height difference between

the two levels. It's a bit hard to tell on the monitor. That is actually an outdoor kitchen and there's the patio. This retaining wall is only 2.8 feet tall, so about the height of this desk here. Back to the five factors and whether not granting me the variance would create a hardship. I think on the part of the lot that I'm wanting to shave, it's creating a mowing hazard, it's harder to grow grass, and it would be beneficial to the neighbor if we were granted the variance. On the side that we're wanting to fill, we're trying to avoid having a bunch of stairs. My only other option would be a deck, which is much less desirable than a patio because of maintenance, lack of resilience, and safety. Regarding the fourth factor, Public Safety and General Welfare, it would not adversely affect that. I believe it would do the opposite. There'd be safer mowing, a safer patio, less erosion, less runoff. The fifth factor, Spirit and Intent. I am very familiar with where this ordinance arose from and I think we're doing quite the opposite. Since I've been doing tear-downs and rebuilds in Leawood for some time, I am well versed in where this came from. A guy built a house on High Drive north of 83rd and the lot was relatively flat. It wasn't a lot that supported a walkout basement and this builder came in and put a house abnormally high. The yard is extremely sloped. The house looks out of place. It's sitting higher than it should be. He put it higher than what he needed to for drainage. He did it that way because he wanted a daylight basement. The ordinance arose because of complaints on that house and I really feel that the intent of the ordinance is to prevent homes from being set at a higher elevation than needed for proper drainage. In my case, I'm setting the house as low as possible. Without getting into a lot of detail, we're pulling some tricks on doing a zero-entry garage to make it where I can set the house a foot lower than I'd be able to otherwise. I'm not trying to force a daylight basement or any of that. I think this is a case where the ordinance was written in an attempt to have a blanket rule that would address concerns of people setting houses too high, but it doesn't always work that way. On this lot, and unfortunately for you guys, I have another property coming up that's looking like it's an even better example of why this ordinance doesn't work the way it's intended.

Mr. Bussing: Wade, put the other picture up. The one with the red and green on it. *Picture displayed on screen.* In this picture, to the far right on the north side where it says, "something setback" by where it says, "959", you're going to cut a couple of feet down there, correct? What am I going to see there? Am I going to be looking at a 2 feet of exposed foundation?

Mr. Colt: No. Let me grab another folder back here. I mentioned on High Drive where they forced a daylight basement. When you've got a lot that doesn't have much side-to-side sloping that doesn't call for a daylight basement, you shouldn't force one. However, when you have a lot that has 4 to 7 feet of slope from side to side, you don't want to have 4 feet of foundation showing. In that case you should do a daylight basement. It's going to look better and drain more adequately with less velocity. *Plan drawing of the right side elevation shown on screen.* Up towards the front of the house, I'm not needing to shave much off of that portion. One thing I've got going for me is that my new house is further away from the north property line. Another quirky thing about the ordinance is that it doesn't apply to anywhere that the new house sits, nor where the old house sat. It's really just what's left of what's being looked at. This is the north side of the new house. There

will be a little bit of daylight basement here with a partially below-grade window. This is about 3 feet of framed wall. Our siding will step down and follow the topography there so that we're only showing about a foot of foundation at the most.

Mr. Bussing: Okay. Thank you. One other question. Are those big trees in the back going?

Mr. Colt: They are. I wish we could save them, but the proximity is too close. This is about the most shallow floor plan from front to back that we can work with. This isn't a very deep house. There aren't a lot of jogs in front and back. We did that mainly to preserve as much back yard as we could because the lot isn't incredibly deep. Unfortunately, the two trees in the back need to go. There are three mature trees in the front that are all staying.

Chairman Hawk: Are there any other questions for the applicant? I think we're spending a lot of time on the house rather than the grade change and that's really what we're here to do.

Mr. Colt: I will say, just to give you an example, that I have another project coming up where the current house is terraced in nine different levels around the back yard. There are retaining walls everywhere and there's a swimming pool. The terracing is all to match the house that we're going to be tearing down. When you go to put a new house there, you can't really terrace the yard the exact same as it was before and have it match a different house. I understand the intent of the ordinance and I agree that there is a need to address that issue, but the way this was written didn't really give the building official any discretion to say, 'Okay, this person is trying to set the house up abnormally high and in that case we're going to deny it because he's changing the grade so much.' Instead the ordinance just basically says you can't change the grade by more than a foot up or down anywhere on the lot. That's the first part of it. The second part of the Ordinance says the only exception to that is, "unless the alteration is to provide compliance with storm and waste water regulations or guidelines." It'd be nice if we could get that Ordinance worked on.

Chairman Hawk: Wade, do we have any comments or letters from neighbors?

Mr. Thompson: No. I haven't received any comments whatsoever, for or against.

Chairman Hawk: Is there anyone online or anyone here that wishes to speak for or against this application? I think at this point we should go ahead and look at the five factors that constitute the variance then. The first one is Uniqueness of the Property.

Mr. Bussing: Mr. Chairman, let me take a stab at this one. I think that staff has noted that the structure of the garage and patio created a steep grade. Clearly, the existing grade of the lot creates problems specific to this structure. The narrow definition of that is that the lot is unique. I understand the applicant's desire to try and resolve those issues and I think

that if, in fact, he does have an approved stormwater plan, it will be beneficial to the property. I think the Uniqueness criteria has been met.

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

Chairman Hawk: The next factor is Rights of Adjacent Property Owners.

Mr. Thompson: Again, I haven't heard from anyone for or against the request.

Ms. Farrington: Mr. Chairman, I'd like to add to that. Being in place, the stormwater report has to be submitted if this was approved. If it has been done, I think that would be the concern of the adjacent property owners. In this case, it would be caught in that process.

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

Chairman Hawk: The next is Hardship.

Dr. Peppes: I think that Hardship has been met. We are looking at limitations, so in order to gain a grade that doesn't harm the neighbors and is better than what's currently there, it would be a hardship to not allow this variance.

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

Chairman Hawk: The next is Public Safety and General Welfare.

Mr. Bussing: Mr. Chairman, I think the Public Safety and General Welfare criteria has been satisfied. Given the steep slopes on this lot, I'm sure that there are erosion and water runoff issues. Approving this plan will hopefully address those and improve public safety.

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

Chairman Hawk: The final criteria is Spirit and Intent.

Dr. Peppes: Mr. Chairman, I believe that Spirit and Intent criteria have been satisfied. As we look at what the house is now and the changes that are going to be made, the new house is going to be more functional and will fit into the neighborhood a lot better.

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

A motion to approve Case 12-2022 Mack Colt Homes/Owner-Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8912 Pawnee Lane, was made by Farrington; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Hawk, Bussing, Farrington.

Chairman Hawk: Wade, should we also indicate that this is subject to approval with the drainage study?

Mr. Thompson: I don't think we have to. He'll have to submit it to move forward.

Ms. Tomasic: I would agree. I don't think you need to condition it on that. If you want to condition it on the change allowed, you could do that. If you're satisfied with what the drainage study is going to say since it's part of the permitting process, I don't think it needs to be included in a motion.

MEETING ADJOURNED