

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

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

MEMBERS ABSENT: Farrington

STAFF PRESENT: Thompson, Tomasic

APPROVAL OF MINUTES: Approval of the minutes from the February 23, 2022 Board of Zoning Appeals meeting.

A motion to approve the minutes from the February 23, 2022 Board of Zoning Appeals meeting was made by Hawk; seconded by Bussing. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Chairman Clawson: We have a number of cases tonight. If we could have the applicants provide discussion of their case for no longer than 5 minutes, that would be appreciated. All of our cases are in New Business this month.

NEW BUSINESS:

Case 13-2022 Harold Hooper/Owner-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 13715 Alhambra Street.

Staff Presentation:

Wade Thompson appeared before the Board of Zoning Appeals and made the following presentation:

Mr. Thompson: The applicant needs to replace an existing 4 foot fence. The Leawood Development Ordinance (LDO) requires a 35 foot rear build line. The fence is 24.8 feet at its closest point from the rear property line, therefore a variance for 10 feet, 2 inches is needed to allow the fence to be replaced in its current location.

Applicant Presentation:

Sonya and Harold Hooper, 13715 Alhambra Street, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Hooper: I've prepared some remarks before realizing that our request for a Variance and request for an Exception would be separate cases. May I present my remarks to include both at this time?

Chairman Clawson: That's fine.

Mrs. Hooper: Thank you for the opportunity to present. Our Leawood property backs up to highly trafficked Mission Road. When we moved to our house 12 years ago, the only major drawback to the property itself was that it backed up to a major street. The fact that there was only a 4 foot fence separating us from the constant traffic and excess sound generated from it was mitigated mostly by the large amount of foliage along the fence line. We do not know how long the current fence has been there, but for as long as we've owned the property we have wanted to increase the height for our added protection and privacy from Mission. The only thing that stopped us from seeking a change sooner has been the constant impending understanding that Mission Road was going to be widened. Throughout that time, the foliage density has increased. It's not an exaggeration to say that because of it, Mission Road and its traffic can barely be seen from our back deck. We've presented some pictures that show our current view. *Picture displayed on screen.* Even in the winter time, the foliage has provided a great deal of privacy. Our twins were only 2 years old when we moved there. Our backyard is one of our favorite places to be with kids. We've always loved the level of privacy and separation that we've had. As you know, plans for construction on Mission Road have been off and on the table for decades, going back much longer than our residency here. Throughout the time we've lived here, in addition to building a taller fence, we've also wanted to add a swimming pool. Doing so would mean an increased desire to add more privacy from the Mission traffic. Until now, it wouldn't have made sense to prematurely change a fence or add a swimming pool or spa without knowing whether the fence would need to be moved or replaced as a result of the road someday being widened. Pool placement itself was hindered by not knowing if we would need to relinquish any of our property as a result of the 'Widen Mission' project. At last, it seems the changes will truly be happening and we can finally stop wondering and move forward. We're grateful that the City has communicated closely with us, allowing us to know about the addition of a prospective sidewalk, bike path, and turning lanes that will presumably create more foot and bicycle traffic that is more impactful to our property. Sadly to us, those changes will greatly affect the land on our easement, substantially reducing the amount of privacy foliage that you see in the pictures. This will likely result in more noise. These changes in the visibility lines are our biggest concern. We plan to add trees per the City's recommendation once construction is complete. Ideally, we would like to replace our fence before the beginning of the construction phase for what we believe are obvious reasons related to privacy, security, noise, and etcetera. With these factors in mind, we are asking for a height variance from our existing fence to help mitigate the noise and visibility changes and also to provide increased privacy should we add a pool at a future date. Preparing for this discussion has certainly made us more observant of all the different types and heights of fences in Leawood. Comparing properties along Mission and other major roads, it doesn't seem that our variance request for fence height would be out of the ordinary. In fact, directly

across the street on the Mission side, our neighbors that face us have taller fences in the front, back, and side yards, even without swimming pools or other considerations. Within our Variance request, we are asking for the new fence to be placed exactly where the existing fence is now. We don't know if a previous variance was granted or if easement changes have occurred since the original fence was constructed. Simply stated, it will allow us to put the fence to the existing north and south fence lines of our neighbors and will make it look more cohesive. Thank you for your consideration.

Chairman Clawson: According to our notes, the fence was constructed in 1996 after the City issued a permit for it.

Mr. Thompson: That's correct.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: I have one. In the photograph that I have, it is showing Mission as an undivided street. However, the drawing shows Mission as a divided street. Is that the planned expansion? And your fence is shown then, in relation to the planned widening of Mission Road?

Mr. Hooper: *Refers to drawing* That document right there was actually created by Affinis. They were kind enough to provide us with exact measurements from our property line to our fence line.

Mr. Munson: Staff, is this particular improvement done or is it in the 5-year capital improvements plan?

Mr. Thompson: This will probably happen within the next year.

Mr. Munson: It's in the improvement program?

Mr. Thompson: I don't know if it's in the improvement program or not. I have spoken with Public Works and it will be happening soon.

Mr. Munson: Okay. Thank you.

Chairman Clawson: Are there other questions for the applicant? We will discuss the Variance request for fence placement first. We have to go through the five factors. Uniqueness and Hardship are some that we sometimes have trouble with. Could you discuss those quickly, beginning with Uniqueness?

Mr. Hooper: Uniqueness. Once they remove all of the trees, we will no longer have privacy. We had almost total privacy from our view of Mission. We just want to have something high enough that people can't easily look into our backyard if we're sitting on our deck or barbecuing.

Mrs. Hooper: I would also say that with the fence, as you said, being constructed around 1996 that it's probably fulfilled its use. We've repaired parts of it over the last 12 years and we think a new fence would aesthetically improve the property, especially once the foliage is gone and no longer hiding it.

Mr. Hooper: We've talked to a couple of contractors already and we're planning on replacing it with a cedar fence.

Chairman Clawson: Hardship is another one.

Mrs. Hooper: Would it create hardship if it isn't granted?

Chairman Clawson: If you didn't get it granted, you'd have to conform to the requirements of the LDO and move it.

Mrs. Hooper: Obviously, we would have to lose part of our backyard. In addition to that, aesthetically it would not give a cohesive look to what is being viewed along Mission Road between 135th and 143rd Streets. All of the properties show a linear fence line in our neighborhood. Changing it would make it look like a zig-zag. If that's what you want, of course we will adhere to that. However, I don't think that is the look that the community desires.

Chairman Clawson: So there are many fences in this same location along Mission Road?

Mr. Thompson: No, because there are only 3 houses.

Mrs. Hooper: We're in the middle of the house on the corner, which doesn't quite butt up to that corner and then we're corner-to-corner with our neighbor to the south.

Mr. Thompson: The neighbor to the south has a metal fence in the same location that runs parallel to Mission and the neighbor on the corner has a smaller fence that encloses the rear yard but is considerably further back toward the house from Mission, even more so than what's necessary. If I can get IT to put the picture up on the screen. *Picture displayed on screen.* Those are the fences that are currently in place. If their request for a Variance isn't granted, that's approximately where the new fence would have to go and you can see that there's quite a jog. It'd be another 10 feet from where the fence to the south is.

Mr. Hooper: The only other hardship that we would have is that I have a red margin bamboo planting within about 3 feet of our fence, so we'd have to pull that out. It was quite expensive to even dig the trenches for it.

Chairman Clawson: As a Board, we have to evaluate the five factors. The first is Uniqueness of the Property.

Mr. Munson: I'm struggling with that one. What makes this property one of a kind?

Chairman Clawson: One issue is that the City did grant a permit for this fence 25 years ago. It's been there, things have grown up around it.

Mr. Dunn: Mr. Chairman, I would venture to comment that the loss of decades of foliage along there as a result of construction is convincing me that we've got a fairly rare situation.

Mr. Munson: I will add to my comments, if I may. I am actually for them getting what they're requesting, but I'm still trying to figure out why it's unique. It hasn't hit me yet that it's different from anything else around here with regards to size and things like that. That's just me.

Dr. Peppes: I think we need to bring up that this is a through-lot, so not only does it have a busy street to the rear of the property, it's also got a street on the front. We frequently deal with cases involving through lots, generally because of the angulation of the house in relation to the amount of property that's there. It's already been there and we've permitted it. I think this application meets the requirements.

Mr. Munson: I concur with what Dr. Peppes said about the number of cases we get with through-lots. One day, I looked up how many lots could be in this type of situation. Triangular lots, small lots based on current zoning, and things of that nature. I found over 400 in the northern portion of Leawood alone. We're going to be faced with through-lots all the time. Maybe we should reexamine the meaning of unique, or put something else in there that really fits the situation. Because to me, they're not unique unless there is something very different about them, and I don't see that in this case.

Chairman Clawson: I think there's something to be said about the foliage that's grown up in this area over many many years and they've adapted their yard to support it. I think that's kind of a unique situation.

Mr. Munson: I can't say that. Leawood advertises itself as a tree city, so to say foliage is unique...well, is it? I think the definition of Uniqueness of the Property needs to be changed.

Mr. Dunn: Mr. Chairman, just so the record is clear. I didn't intend to say that the foliage makes it unique. What I intended to say is that the removal of decades of foliage as a result of widening the road makes it a unique situation.

Mr. Thompson: I'd like to add that the shape of the lot is odd. Not that that alone would make it unique, but it does help their case.

Mr. Munson: Please mark me as abstaining from this vote.

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

Chairman Clawson: Our second factor is Rights of Adjacent Property Owners. I presume all of the letters have been sent out.

Mr. Thompson: Yes, sir. I heard from the Otos across the street on Mission and they didn't have any issues with the request.

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

Chairman Clawson: Hardship. Discussion by the Board?

Mr. Munson: I think Wade pointed out with the pictures that he showed that it makes sense for them to proceed and do what they want to do.

Dr. Peppes: As we look for Hardship, we look for something that's in the way or makes it difficult for them to move the fence. I think with the street being widened, landscaping being removed, and the fence already having existed in that spot for such a long time, hardship has been met.

Mr. Dunn: Mr. Chairman, I want to add that one of the main criteria with Hardship is whether this is a condition that was created by the homeowners themselves. In this case it certainly is not.

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

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

Mr. Dunn: With the increase in both foot and motor traffic on Mission Road, I would have concern for folks if they were not able to put up a fence.

Mr. Munson: When the road gets divided into 4 lanes, it will probably have even more traffic.

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

Chairman Clawson: The last factor is Spirit and Intent. Discussion by the Board?

Mr. Dunn: I don't think that it would be within the Spirit and Intent of Leawood's Ordinances for someone to not be able to replace a fence that they approved of and that was built properly many years ago.

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

A motion to approve Case 13-2022 Harold Hooper/Owner-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 13715 Alhambra Street – was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Bussing.

Case 14-2022 Harold Hooper/Owner-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 13715 Alhambra Street.

Staff Presentation:

Wade Thompson appeared before the Board of Zoning Appeals and made the following presentation:

Mr. Thompson: The applicant needs to replace an existing 4 foot tall fence. He would like to replace it with a 6 foot tall privacy fence.

Applicant Presentation:

Sonya Hooper, 13715 Alhambra Street, appeared before the Board of Zoning Appeals and made the following comments:

Mrs. Hooper: I would just like to reiterate the fact that, having the privacy from the very established greenery at our back property line and knowing that it will be substantially altered, we would like to maintain at least a portion of the privacy that we've enjoyed since becoming residents 12 years ago. Also, please take into consideration our future plan to put an inground pool in our backyard.

Chairman Clawson: Any comments from staff?

Mr. Thompson: None. No calls or complaints have been received about the request, other than the Oto family supporting it.

A motion to approve Case 14-2022 Harold Hooper/Owner-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 13715 Alhambra Street– was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 15-2022 James Mahoney; Smith Sisters Renovation LLC/Owners-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 9304 Pawnee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant will be constructing a new home on this site and is wanting to increase the total square footage by 515 square feet, or 12.9%, for a total of 4,494 square feet.

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

Applicant Presentation:

Jamie Mahoney, 7900 Granada Road, Prairie Village, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Mahoney: In general, my wife and I are looking to increase the square footage in the attic in order to add another bedroom and bathroom. The home has already been presented to the Homeowner's Association (HOA) in Leawood and it was approved. We've included that letter in the file. That's really the long and short of it.

Chairman Clawson: Are there any questions for the applicant? Are there people here who wish to speak for or against the application?

Vicky Smith, 9300 Pawnee, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Smith: I live right next door to the new building and I certainly want to be a good neighbor and welcome the person who is building the house. My biggest concerns are the drainage and the elevation of the house and how that might affect my backyard, and also the distance between the garage and the driveway to my fence. I was told that it's only 5 feet. I'm not very familiar with these processes, so I'm just trying to understand how that's going to be laid out and what issues or dangers I may need to consider in the process.

Chairman Clawson: Do we have a plan view of the house that shows it on the lot?

Plan drawing displayed on screen

Ms. Smith: Mr. Mahoney was kind enough to send me the plans for the house, but I'm not an architect. With that fact and the numbers being so small, I don't quite understand them.

Mr. Dunn: May I ask a quick question? Wade is it safe to assume that, whether this is approved or not, it's not going to change the footprint?

Mr. Thompson: That's correct.

Chairman Clawson: As far as questions about the drainage, could you address those, Wade?

Mr. Thompson: The home has had a drainage study. Public Works reviews that and they have an appropriate plan for the water that will be displaced by the house.

Chairman Clawson: A permit for the construction has not been issued yet, correct?

Mr. Thompson: No, sir. It has not.

Chairman Clawson: In order for a permit to be issued, those drainage studies have to be performed to make sure that it won't encroach on adjacent properties, correct?

Mr. Thompson: That's correct. A permit will not be issued if it doesn't pass the Public Works drainage study.

Ms. Smith: What is the current elevation of the house versus the elevation of the house when it's built?

Mr. Mahoney: The current top of footing is 974.8 and the proposed is 975, so it's within 4 inches.

Chairman Clawson: The elevation is virtually the same as it was before, correct?

Mr. Mahoney: Correct.

Ms. Smith: The space between my fence and the garage and driveway once they're built is 5 feet, right?

Mr. Mahoney: Yes. *Refers to plan drawing* You can see on the plan here that there's a little swing out space for the garage. There's about 28 feet between the garage and the driveway. From there, it is about 5.5 feet, I believe.

Mr. Munson: Would you please point out her property in relation to this?

Ms. Smith: I'm going to be close enough that I'll be able to hand something through the fence.

Mr. Thompson: Not that it matters, but the driveway can be poured all the way up to the property line.

Chairman Clawson: You're primarily concerned about drainage and what else?

Ms. Smith: Drainage and just how close that is to my property. There's a lot more space with the current driveway and house, but I guess it's within code to be 5 feet?

Chairman Clawson: Yes.

Ms. Smith: Interesting. Okay.

Chairman Clawson: Again, the drainage study will address any issues to make sure drainage doesn't affect your property.

Bruce Berry, 9311 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Berry: I just have one point that I'd like to make. The previous owner of the property had a drainage problem in the back yard that affected their neighbor, Ms. Smith. Leawood went in and revamped the drainage system in that yard. I don't know how well it has done, but that might be a consideration. We got the letter and our concern is how big this house is going to be. Our house has just under 2,000 square feet on the first floor. We're talking about how many square feet in this house?

Mr. Thompson: The total will be 4,494 and 3,979 is what's permitted. They're adding another 515 square feet.

Mr. Berry: So they're going to double the size of my house as well as every other house on that street?

Chairman Clawson: Is that a 2 story house that's being proposed?

Mr. Thompson: Yes, sir.

Chairman Clawson: How big is the footprint?

Mr. Maloney: The first floor's square footage is 2,200.

Mr. Berry: I appreciate new houses and the house that they are tearing down needs to be, but that's an awful big house on this street. That's my only comment. Thank you.

Mr. Thompson: Mr. Chairman, on the site plan, I did mention that this is a well-established north Leawood neighborhood of mostly single-level ranch style homes.

Chairman Clawson: Okay. Thank you.

Terence O'Rourke, 9319 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. O'Rourke: I will appreciate having the new house built on that lot, but we do not need to go over 4,000 square feet when all the rest are 1,700 square feet. I hope you have many children and need all that space. Evidently there must be basement bedrooms with egress windows, but I'm not sure. You guys set the rules and regulations, so while

allowing the extra 400 square feet doesn't affect me personally, it's just a start of larger houses in the neighborhood. I wish we'd stick to what the standard is.

Dr. Peppes: Mr. Chairman, I'd like to make a comment. This is an area that is close to where I live. I've been up and down that street many times. Most of the houses there appear to be ranch-style with one story from the front, but they indeed have a second floor on the back. The house directly behind us is a teardown-rebuild that is absolutely gorgeous and I think it fits very well in the neighborhood. It's a cul-de-sac just like Pawnee Lane is. The amount that the applicant wants to add on isn't even in the footprint. It will be added to where the attic is already going to be. We see cases here all the time where people just want to add another bedroom in the attic and it pushes them over the edge of the LDO's allowance, where the actual footprint itself remains the same as it was many years prior. The setbacks on the front, sides, and back are all within the LDO guidelines. In the house that I see going up there, I'm led to believe that they're following everything that they should and that it will fit into the neighborhood just fine.

Mr. Munson: Doctor, what period of time were most of these houses built? Sixties, seventies?

Chairman Clawson: Fifties and sixties, probably.

Mr. Munson: These properties are interesting from the standpoint of trying to do something with today's features, etcetera, as opposed to what was built then is a dilemma.

Mr. Dunn: Mr. Chairman, I'd like to comment as well. I live in old Leawood also and I don't think we've had a period of time within the last ten years in my neighborhood where there weren't construction vehicles blocking our street. I understand that there are some monstrosities, in my opinion, that have gone up in our neighborhood, but the fact is that the rules are the rules. This is not a request for a Variance to allow violation of the setbacks. It's an exception to finish the attic area. In other words, a house this size could go in here without this attic being finished and that's just the truth of it these days in Leawood. It's a hard thing to get used to. In my opinion, if someone comes in here and they have followed the rules and are not trying to get an exception to the rules, then I have a hard time denying that request.

A motion to approve Case 15-2022 James Mahoney; Smith Sisters Renovation LLC/Owners-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 9304 Pawnee Lane– was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 16-2022 NSPJ Architects; Chris & Andrea Atkins/Owners-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 8100 Overbrook Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to take advantage of the exception allowance of 20 percent to convert the attic into two additional bedrooms and a small office. This would add 779 square feet to the living space for a total of 4,682 square feet without changing the outside appearance.

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

Applicant Presentation:

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

Mr. Homburg: This is pretty straightforward. Their family is growing and they need more bedrooms.

Mr. Munson: You're essentially finishing existing space, is that correct?

Mr. Homburg: That's correct. The space above the garage and partially over the master bedroom.

Chairman Clawson: So the footprint hasn't really changed?

Mr. Homburg: It's not changing at all. Neither are the roof forms. The space is basically tucked between the roof and the dormers.

Mr. Dunn: I think it's exactly like the situation that Dr. Peppes referenced in the last case.

Chairman Clawson: I think you're right.

Mr. Hawk: We wouldn't know a change has been made at all from the outside.

Mr. Homburg: No, because the roof forms stay the same and nothing else changes. We're just filling in dead attic space.

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

A motion to approve Case 16-2022 NSPJ Architects; Chris & Andrea Atkins/Owners-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 8100 Overbrook Road– was made by Hawk;

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

Case 17-2022 Koenig Building + Restoration/Owner-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 8817 Aberdeen Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant's clients would like to convert 75 square feet of unfinished attic space into a living space. The additional area would not be visible from the outside, nor will it change the appearance of the home. *Plan drawing displayed on screen* That portion in red is the area in question.

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

Applicant Presentation:

Scott Koenig, 4722 68th Street, Prairie Village, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Koenig: I don't have any comments, but I can answer any questions if there are any.

Chairman Clawson: What is the square footage now? Are they at the maximum?

Mr. Thompson: The maximum allowable is 4,623 and he's asking for another 75 square feet.

Mr. Koenig: We framed the house and the clients walked through and thought maybe they could capture a little bit more square footage with the space in the attic.

Chairman Clawson: You built what you could on the lot but you need a little more space, correct?

Mr. Koenig: That was the case, yes.

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

Mr. Bussing: Mr. Chairman? Wade, what subdivision is this?

Mr. Thompson: Leawood Hills.

Mr. Bussing: Okay. Thank you.

A motion to approve Case 17-2022 Koenig Building + Restoration/Owner-Request for an exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5.3 (F) 2 in an R-1 District for property commonly known as 8817 Aberdeen Street– was made by Munson; seconded by Dunn. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 18-2022 Jon Elliott/Owner-Request for a Variance to the rear yard setback for the placement of an outdoor fireplace in accordance with the LDO, Section 16-4-1.2 (B) 6 in an R-1 District for property commonly known as 12838 Alhambra Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new outdoor entertainment space. This would include a wood burning fireplace that would be 10 feet from the west property line. A variance for 15 feet is requested to place the structure as shown on the plan. *Plan drawing displayed on screen.*

Mr. Munson: How far is it from the property line? From the fence?

Mr. Thompson: It'd be 10 feet from the west property line. A variance for 15 feet is needed.

Mr. Munson: Mr. Chairman, before we start our discussion, I'd like to call attention to two of those squares plus the middle square. That's approximately ten feet. That's how close he'd be to the fence.

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

Applicant Presentation:

Jon Elliot, 12838 Alhambra Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Elliot: There's two Variances as part of my application. One of them being the outdoor kitchen and the other being the outdoor fireplace. As part of the application process, I've been told that the two criteria with the biggest hurdles to overcome are Uniqueness of the Property and Hardship. Regarding uniqueness, this is a corner lot and the house sits at an angle. The backyard as it stands now is completely unusable. A hardship is that we've now gone through three configurations of drawings to try and orient this in different ways. This one is the most successful and economical one. The other ones were not feasible in the scope of finances, so this is the one we decided to present. We have spoken with all of the immediate neighbors and they are in favor of this project. Right now there is no privacy. The backyard neighbor's home sits much closer to the property line than mine does. This project actually creates privacy with the landscaping and the hardscaping.

Chairman Clawson: Are there questions for the applicant? How close would the fireplace be to the property line?

Mr. Elliot: As shown on the drawing, it's about 12 feet from the fence. We have not yet completed a stake survey. We backed it up approximately 10 to 12 feet to accommodate the utility easement that sits along that line. The outdoor kitchen would be 13 feet from the fence line.

Chairman Clawson: Could you show the plan view, Wade? *Plan view displayed on screen.* Is that vegetation that's shown currently there?

Mr. Thompson: No, it's not. It's part of the plan. He will plant that eventually.

Mr. Elliot: It's part of the landscape plan that has yet to be installed.

Chairman Clawson: Does your neighbor have landscaping close to that?

Mr. Elliot: They do, sir. *Aerial view of properties shown on screen.* There are existing trees, which we've had proactively trimmed. In accordance with the Fire Marshal's recommendations, I had the canopy trimmed prior to this application.

Chairman Clawson: Those trees are not located on your property?

Mr. Elliot: No. They sit just on the other side of my neighbor's property. The fireplace will be about 13 or 14 feet from those closest trees. The guidance that we received from the Fire Marshal said that we had to have the fireplace 10 feet from any combustibles.

Mr. Munson: What would prevent you from sliding the fireplace around that curve so that it would be farther away from the fence and from your adjacent neighbor?

Mr. Elliot: We did not want it closer than 15 feet from the house. We'd have to push that much further, toward the street, if we moved it around that curve. Then we would not be able to achieve privacy between the homes and the backyards.

Mr. Munson: You spoke with the Fire Marshal? What was his reaction?

Mr. Elliot: He did not seem concerned, as long as we are 10 feet away from combustibles.

Mr. Munson: How does one control the fire so that there's no ashes or sparks escaping and falling on someone's roof or wherever?

Mr. Elliot: Understood. There will be a cap on the fireplace, with a spark arrestor if needed.

Mr. Munson: I'm very sensitive to this, Mr. Chairman, and I'll tell you why. I have a neighbor who likes to have open fires in his backyard. I've alerted the City of Leawood to it, but they won't do anything about it unless you file a complaint. The other day, I had my windows open and he was out there burning kindling and leaves and the smoke from it was coming into my window. I was thinking that if the smoke could come into my window, perhaps the sparks wouldn't be too far behind. I'm wondering what kind of protections the applicant's neighbor has from a fireplace like this.

Chairman Clawson: The neighbor's house is close to the property line, too. With you proposing to put a fireplace close to your property line, it would also be fairly close to your neighbor and they've got trees hanging pretty close to this area. That's a bit concerning, frankly.

Mr. Elliot: The canopy is pretty high up with the way we have it trimmed. We spoke to the neighbors and they are in favor of this. They were actually the first people that we consulted, before we had drawings.

Chairman Clawson: With this being a Variance, we have to go through the five factors. Uniqueness is an issue that you need to talk about, because this is a corner lot. We have a lot of houses in Leawood that are on corner lots and sit at 45 degree angles, which impacts the yard space, so this is not necessarily unique in that way.

Mr. Elliot: The uniqueness really is the orientation of the streets. If we move it closer to the south end of the lot, we become very close to the streets and sidewalks. That would limit the use of the outdoor kitchen and fireplace, and create a privacy concern. If we move it closer to the north end of the lot, there is a hill that is fairly unstable. Leawood had done some major drainage additions prior to me owning the home. That hill, which is unstable and continues to erode, would require an extensive amount of construction. There is also going to be a capital improvement between the neighbor to the north and my lot, with the Mission Improvement Plan that is going to start in May. They will be coming to connect to that main drainage that you see on the northwest side of that drawing, so we did not want to move it closer. Plus, there are electrical and utility easements that we did not want to deal with.

Chairman Clawson: Did your contractor look at options for creating this in a way that meets the LDO?

Mr. Elliot: Yes. We were unable to achieve that.

Chairman Clawson: Due to what reason?

Mr. Elliot: Mainly due to that 15-foot setback requirement.

Chairman Clawson: You couldn't meet that?

Mr. Elliot: No. Not in between the home and the fence line, with the way they're oriented.

Chairman Clawson: If you moved it closer to Alhambra in the middle of your yard, why wouldn't that be feasible?

Mr. Elliot: The variance I've requested for the outdoor kitchen comes into play with that. Since it's a cohesive project, having the kitchen be that far offset from the home would make it inconvenient and very difficult to use.

Mr. Munson: But, sir, the tradeoff is safety for your neighbors as opposed to convenience for you.

Mr. Elliot: Understood. The only safety we've questioned is fire safety for the Public Safety requirement. With the Fire Marshal only pointing to the combustibility setbacks, we've achieved that.

Mr. Munson: As I pointed out before, the Fire Marshal only comes if you file a complaint. They don't come if there's a possibility of a fire.

Mr. Elliot: Understood. My understanding is that, if we are allowed to move forward and pull permits, we will have an onsite inspection done.

Mr. Munson: I'm willing to admit that I have serious problems with fires that close to property.

Chairman Clawson: Are there any other questions for the applicant? If not, is there anyone here that wishes to speak for or against the application? We will go over the five factors, the first of which is Uniqueness of the Property.

Mr. Bussing: Mr. Chairman, I have a question for Wade. As I'm looking at this drawing, it's virtually impossible to push that patio structure back to meet the setback rule and achieve any surface area at all. He would need another 15 feet. Am I reading that correctly?

Mr. Thompson: Looking at the picture, if he moved it toward the street and to the south, he could meet the side yard setback requirement. It wouldn't be pretty, though.

Mr. Dunn: Mr. Chairman, regarding the Uniqueness factor, I'm looking at this to see if the property is unique in some way, not whether this is a good plan or not. It's a great plan and I'd love for people to do things like this, but our job here is to determine if it meets the law or not. We have a lot of corner lots in Leawood and I don't see anything unique about this property. There may be things about this property that make the placement of an outdoor kitchen difficult, but that's not for us to determine.

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

Chairman Clawson: Rights of Adjacent Property Owners. Letters were sent out, correct?

Mr. Thompson: Yes, all the letters were mailed out. He says he's talked to the neighbors, but I don't have anything documented.

Mr. Munson: Mr. Chairman, I feel that allowing him to build this would jeopardize the adjacent property owner.

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

Chairman Clawson: The third factor is Hardship.

Mr. Dunn: Mr. Chairman, as I understand it, you can't have a hardship that is self-created. If you can't build an amenity that you want, I don't see how that creates any hardship under the law.

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

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

Mr. Munson: Staff feels that placing a fireplace that close to an existing tree line poses a possible fire risk, etcetera. General Welfare is pretty broad, but fire is a Public Safety factor. The potential for there being one is there.

Mr. Thompson: Mr. Chairman, if I could get I.T. to put the picture on the screen. *Plan drawing displayed on screen.* The Fire Marshal requested that combustibles be 10 feet away and I don't believe that his plantings are going to be 10 feet away. Two trees directly behind the fireplace look like they are going to be pretty big.

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

Chairman Clawson: The fifth factor is Spirit and Intent.

Mr. Munson: It says that the ordinance is to maintain safe distances in between structures and protect the privacy of neighbors. I'm not too concerned about privacy, but I am concerned about the safe distances between structures since there's a potential fire hazard.

Spirit and Intent criterion unsatisfied with a vote of 2-3. For: Dunn, Bussing. Against: Munson, Dr. Peppes, Hawk.

Chairman Clawson:

A motion to deny Case 18-2022 Jon Elliott/Owner-Request for a Variance to the rear yard setback for the placement of an outdoor fireplace in accordance with the LDO, Section 16-4-1.2 (B) 6 in an R-1 District for property commonly known as 12838 Alhambra Street – was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

Case 19-2022 Jon Elliott/Owner-Request for a Variance to the rear yard setback for the placement of an outdoor kitchen in accordance with the LDO, Section 16-4-1.2 (B) 6 in an R-1 District for property commonly known as 12838 Alhambra Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a new outdoor entertainment space that includes an outdoor kitchen. The new structure would be 13 feet, 3 inches, from the west property line. A variance for 11 feet, 9 inches, as shown on the plan is requested.

Dr. Peppes: Is this a situation in which we should ask the applicant if he wishes to proceed? Our stance on Uniqueness isn't going to change from his other case.

Chairman Clawson: Does staff have any issues?

Mr. Thompson: It would be up to the applicant. You guys would still have the five factors to vote on.

Chairman Clawson: There could be some differences, though.

Mr. Thompson: It will be different, but Hardship and Uniqueness are probably going to be the same, so it's totally up to the applicant.

Applicant Presentation:

Jon Elliot, 12838 Alhambra Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Elliot: If you're going to vote no, let's just do the vote, okay? There's no more information that I can add about the Uniqueness factor. The property is the same. I would just add that I'm trying to improve property here that increases value. I'm doing it safely and I'm going through the process that I've been given, so I would just ask for that consideration.

Chairman Clawson: We appreciate that. Should we just go ahead and vote on it?

Ms. Tomasic: I would go through the 5 factors again and I think you can reference your comments from before. You don't have to completely rehash it. I think, especially if you have hang-ups on those 2 factors that you mentioned, that you should go through those briefly before voting.

Chairman Clawson: Can we reference our previous case?

Ms. Tomasic: Yes. It will be on record that it is the same property, but at least some reference on the record to that previous case would be helpful.

Chairman Clawson: We will go through the five factors and vote on them. The first is Uniqueness of the Property.

Mr. Dunn: Mr. Chairman, I would just reiterate my comments from the prior case for the record.

Chairman Clawson: Any other comments about Uniqueness?

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

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

Mr. Thompson: I've received no calls or complaints.

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

Chairman Clawson: Hardship. Are there comments from the Board?

Mr. Dunn: Mr. Chairman, I would like to say that I restate my comments here from the prior case for the record.

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

Chairman Clawson: Public Safety and General Welfare. I think there was concern last time because of an outdoor fireplace. This application doesn't involve one, so it may not be as onerous.

Mr. Dunn: Not to turn a ball of yarn into a sweater, but I see this one differently. I don't see the Public Safety and General Welfare concerns here like I did with the fireplace.

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

Chairman Clawson: Last is Spirit and Intent. Any comments?

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

A motion to deny Case 19-2022 Jon Elliott/Owner-Request for a Variance to the rear yard setback for the placement of an outdoor kitchen in accordance with the LDO, Section 16-4-1.2 (B) 6 in an R-1 District for property commonly known as 12838 Alhambra Street – was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing.

MEETING ADJOURNED.