

**City of Leawood
Board of Zoning Appeals Minutes
April 27, 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 April 27, 2022, Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: None

STAFF PRESENT: Thompson, Knight

APPROVAL OF MINUTES:

Approval of the minutes from the March 23, 2022, Board of Zoning Appeals meeting.

A motion to approve the minutes from the March 23, 2022, Board of Zoning Appeals meeting was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: We have a number of cases tonight, so I would like to have the applicants limit discussion to five minutes.

NEW BUSINESS:

Case 20-2022 Matt & Ann Kenny/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 4900 W. 114th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants need to replace an existing 4-foot wooden fence. They would like to replace it with a 6-foot wooden privacy fence. The current fence was constructed legally in 2000 with a permit issued by the City.

Chairman Clawson: Are there any questions for staff? Is the applicant here? You may come to the lectern and present your case.

Applicant Presentation:

Matt Kenny, 4900 W. 114th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kenny: I have a neighbor here with me, Adam Moore, who might speak at some point. We need to replace our fence. We have a unique property where our backyard is exposed to the side roadway. We are in a cul-de-sac and the front of the house doesn't face the corner of the cul-de-sac; it faces it directly. I've got some photos to illustrate that, but effectively we've got two front yards. Additionally, that side yard has some elevations in it and the 4-foot fence is almost something you can reach over. We have pets that are well-behaved, but they are large enough to scale that fence. There are some liability risk concerns that we have. Certainly, neighbors and barking dogs would pleasantly see an improvement in that if we raised the fence height and reduced visibility. I have letters from the nearest adjacent neighbors in support of this. The Goosetrees are affected in particular. As part of our proposal, we would be replacing a fence along their line. It's their fence that's currently 4-foot, but we would be raising it to 6-feet, and they are in agreement with this.

Chairman Clawson: Wade has put a photo up.

Mr. Kenny: *Refers to photo* You can see that elevation. There's sort of a drainage point that runs underneath our driveway and out. You can see quite a bit of the side yard there.

Mr. Dunn: Is this the view from 114th Street?

Mr. Kenny: Yes.

Mr. Hawk: You would replace the entire fence as we're seeing it, correct?

Mr. Kenny: Yes. We'd be replacing the entire fence, with the exception of a neighbor to the north who has a pool and already has a 6-foot fence. The neighbor to our northeast would then have a 6-foot contiguous fence because we share a line there. The Goosetrees, immediately to our east, would have the majority of their backyard covered by our 6-foot fence.

Mr. Munson: Sir, would this fence help your noise problem with Roe Avenue? It says you've got *inaudible* a 320-foot distance, which is a little over a football field's length, between you and Roe Avenue. The comment mentions noise. Is that a factor there?

Mr. Kenny: It can be. I would say there would be an improvement there for us. Additionally, 114th Street has been getting more and more busy and will continue to do so with the new developments off of 112th and Roe. Privacy, noise, and liability concerns are of importance here. One of the things that Mr. Goosetree shared in his email was that he's got a young son, Jack, so they are proponents of the fence being raised because it reduces the chances of anything happening. He's very supportive of this.

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

Adam Moore, 11401 Cedar, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Moore: I live catty-corner from the Kennys and I'm also the Vice President of the Leawood Country Manor Homeowners Association (HOA). In the process of Mr. Kenny telling me what they were planning to do, I did a walk-through of the other properties within our HOA and there are probably 17 to 20 other 6-foot fences in this area. Some of them have pools, but many do not. I have small dogs as well. I know the Kenny's dogs and they are great. They are jumpers, so it is certainly a concern. I can tell you with the topography that I don't think the proposed fence will block any views or ruin any aesthetics of the neighborhood. In fact, I think it's going to improve the neighborhood to have this fence in place. I am fully in support of it. I would've written a letter, but I said I wanted to come speak on their behalf. If you have any questions, I'd be happy to answer them.

Chairman Clawson: Thank you. Is there a motion?

A motion to approve Case 20-2022 Matt & Ann Kenny/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 4900 W. 114th Street– was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 21-2022 Tom Shaw & Kimberly Haynes/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 RP-4 (Previous LDO) District for property commonly known as 12220 Sagamore Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants would like to replace an existing 4-foot wooden fence with a 4-foot-tall black steel fence. To replace the fence, a variance for 2 feet is requested. *Aerial photo shown on screen.*

Mr. Dunn: To be clear, Wade, they would be putting the new fence back where the old fence was?

Mr. Thompson: That's correct.

Chairman Clawson: Was the current fence approved by the City at some point?

Mr. Thompson: I could not find a permit that was issued for the fence, so I would say that the fence was built when the home was built, in 1996.

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

Applicant Presentation:

Tom Shaw, 12220 Sagamore Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Shaw: To correct the statement about when the fence was put in, we put it in in 2013. When we hired the fence company, they told us that they would get the permit. The permit person was driving by and stopped one day when I was out front and asked for my permit. When I told him that the fence guys said they got one, he told me that was not the case and that I needed one. I went to the City and obtained one for \$80. That was in 2013. I posted it in our window for 2 weeks, as I was told to do by the permit guy. We are wanting to replace the 4-foot existing wooden fence with a black steel fence. We have pets. It will help it look a lot nicer as well. Our property backs up to the berm, on the other side of which is 123rd Street, so we got to learn about what a through property is.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: Are you on the north side of 123rd?

Mr. Shaw: Yes.

Mr. Munson: Thank you.

Chairman Clawson: This is a variance, so we have to evaluate the five factors. You probably looked at that because you had to send out letters. Uniqueness of the Property is one that usually becomes problematic. Could you address that?

Mr. Shaw: Yes. Our property is unique in the sense that our house doesn't set square to 123rd Street or the cul-de-sac. We are kind of on the side of the cul-de-sac. We're the second house in from the corner, so the front of our house faces northwest and the back faces southeast. The southernmost corner of the house is only a short distance to the berm, which is where we have the current fence. We need that space so that our dogs can go around to the side yard to use the bathroom and that sort of thing. The back of the property only has an area that is smaller than about half of this space here, which would be the southeastern portion of the property.

Chairman Clawson: Do we have a plan view that shows the location of the fence?

Mr. Thompson: *Plan view displayed on screen.* The dark black line is where the fence is.

Mr. Shaw: The HOA is replacing new trees on the berm, so our property is exposed at the moment. They are going to put in new trees, so we are fine with that. We mainly need the fence for our pets.

Chairman Clawson: This property was zoned RP-4? It also says, "Previous LDO".

Mr. Thompson: Yes. The RP-4 went away, so they used the RP-2 zoning rules.

Chairman Clawson: Is that more strict?

Mr. Thompson: No, they are the same. There's still a 20-foot rear build line.

Chairman Clawson: If you had to meet the requirements of the Leawood Development Ordinance (LDO) and move that fence 2 feet, where could you put that fence? Wade, could you put that picture back up and show me?

Mr. Thompson: *Displays aerial photo of property.* That's just a guesstimate.

Ms. Farrington: Mr. Chairman, could you put this picture up? *Photo of current wooden fence shown.* If they had to move it 2-feet, it would be to the right, correct?

Mr. Thompson: Towards the house, yes. It would be right up close to those juniper trees you see there.

Mr. Shaw: We would probably have to move the junipers. There wouldn't be enough room for them at that point.

Dr. Peppes: Wade, I've got a question. This fence runs all along there with all the other houses, so chances are that some of the neighbors would be in the same situation. Correct?

Mr. Thompson: That's correct. They'd be considered legal, nonconforming. In the future when they want to replace their fences, they will be here in front of you.

Chairman Clawson: A unique situation here, in my mind, is that they received a permit in 2013 for this fence location. Their vegetation has grown up around this fence, so I think that's a situation that should be considered, frankly.

Mr. Thompson: In the staff report, I did mention that it's a small neighborhood and they are kind-of sandwiched between a school and shopping center. That sidewalk carries a lot of foot traffic.

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

Linda Joslin, 12224 Sagamore Road, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Joslin: When we look out our windows, we see their fence and their home. They just want to replace it and put it where it's always been and that's fine with us. It will be an even prettier fence than what is there now. I was a member of the HOA when they turned in their Architectural Review Committee (ARC) paperwork and it was fine with the HOA. Of course, our ARC said to take it to Leawood and get a permit. We were all as surprised as Tom was, that he would have to come before you all and make sure that the variance was allowed. Everyone is fine with it being in the place it was before.

Chairman Clawson: Since this is a variance, we must go through as a Board and evaluate the five factors. The first one is Uniqueness of the Property.

Ms. Farrington: Mr. Chairman, I will start with Uniqueness. I'd like to argue that this is a unique property in that it is situated between a school and a commercial district. I know that sidewalk is used a lot. It is one that I frequent quite a bit. There are always children and people walking their pets along there. I am familiar with the berm as well. You can hardly see the fences back behind it, which I think is a great feature for their home and the sidewalk traffic there. It has been in place for a number of years and was permitted by the City, so I'd say it meets the Uniqueness factor.

Mr. Munson: This is the subdivision between what used to be Hy-Vee and the school, correct?

Mr. Thompson: Correct.

Uniqueness of the Property criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. It is indicated that all letters were mailed, and neighbors came tonight and were in support of this.

Mr. Thompson: Correct. I haven't received any calls or letters.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: The third factor is Hardship.

Mr. Dunn: Mr. Chairman, although a fence could be constructed that is in compliance, it would involve losing trees and placing the fence right under the window. I think that is enough in this situation to be considered a hardship.

Hardship criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

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

Mr. Dunn: If anything, it enhances it.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: The fifth factor is Spirit and Intent.

Mr. Dunn: Since it's replacing one that's exactly the same height in the same exact location, I can't imagine that it's violating the Spirit and Intent.

Spirit and Intent criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

A motion to approve Case 21-2022 Tom Shaw & Kimberly Haynes/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 RP-4 (Previous LDO) District for property commonly known as 12220 Sagamore Road—was made by Farrington; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 22-2022 Jon Dunlop/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 3220 W. 82nd Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace an existing 4-foot-tall picket fence along the rear property line to match the neighbor's 6-foot-tall privacy fence.

Chairman Clawson: Are there any questions from the Board? Is the applicant here?

Applicant Presentation:

Jon Dunlop, 3220 W. 82nd Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Dunlop: We have kind of a unique property, like the first guy that was up here. To the west of our property is a creek that runs behind Prairie Village Utility Works and to the north, our property is split evenly between two other neighbors. One neighbor has a pool, and the other doesn't. We have a brand new, beautiful 6-foot privacy fence on one side and a crappy, 4-foot picket fence on the other. We want to replace it with a privacy fence either way because there are dogs and whatnot. From our viewpoint, uphill and into the neighbor's yard behind us on 81st Terrace is wonky. The other thing that I'd point out is that there are dogs on both sides. Another thing I'd like to note is that the neighbors behind us are in support of this fence. They couldn't be here tonight as they have a one-week-old at home, but we are the only two property owners that see that fence. There's nobody else to the west, or to the south of us/north to them, nor can anyone way off to the east see it. It literally only affects us and they are in favor of it.

Chairman Clawson: Questions for the applicant?

Mr. Dunlop: *Picture displayed on screen.* Thank you for putting that up. That is what it looks like looking towards the west at the property line of my neighbors.

Chairman Clawson: And you're just replacing the fence to the north?

Mr. Dunlop: Yes. That half you see of the northern fence. It is about 112 feet.

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

Mr. Bussing: Mr. Chairman, question. I notice in this picture, Wade, that the posts on the existing fence are in the neighbor's yard. Are the posts going to be in his yard on the new fence, or in the neighbor's yard?

Mr. Thompson: We did speak about this. I think he's going to go with the double-sided posts. He can confirm that.

Mr. Dunlop: Yes. We are pretty flexible on that, either way.

Mr. Thompson: The good side has to go out, so he would be able to build a 6-foot-tall fence, but he'd have to have the ribs on the inside.

Mr. Bussing: If he wants it to look like this, he's going to have to double-side it?

Mr. Thompson: Yes, sir.

A motion to approve Case 22-2022 Jon Dunlop/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 3220 W. 82nd Street--was made by Bussing; seconded by Dr. Peppes. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Chairman Clawson: I'm going to have to recuse myself from this next case because I'm related to the applicant. I will leave the chambers and go outside, and Mel Hawk will take over as the Chair for this case.

Case 23-2022 Mack Colt/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 a property commonly known as 8912 Pawnee Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to convert some unfinished attic space into a fourth bedroom. The added space, 427 square feet, would increase the total to 4574 square feet, or 10.3% over the permitted 4147 square feet.

Chairman Hawk: Does the Board have any questions?

Mr. Bussing: The outside doesn't change?

Mr. Thompson: The exterior doesn't change whatsoever.

Chairman Hawk: Could the applicant please come to the lectern and present their case?

Applicant Presentation:

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

Mr. Colt: Basically, we'd just like to add a fourth bedroom above grade. I think that will put us more in line with what the market expects for the house at this price point. Previously, maybe five or 6 years ago, our price point wasn't as high so we could get away with a smaller house. However, with cost increasing on lots and so forth, we're into a price point where the market just expects more out of a house. That's the main reason for our request.

Chairman Hawk: We've seen this case before and this is just a minor change revision, is that correct?

Mr. Thompson: We haven't seen this case on this particular house. He was here for this house about 2 months ago, but that was for a maximum grade change. Let me put this up on the screen. *Plan drawing displayed on screen.* This shows the unfinished attic space. You can see the yellow door into the attic space, and this is what it will look like if he gets the approval. Again, that's interior only. It will not change the exterior look of the home.

Mr. Munson: This is the proposal of what it will look like when it's finished, if he gets the approval?

Mr. Thompson: Yes, sir.

Chairman Hawk: From the outside, we would not see a difference whatsoever?

Mr. Thompson: Correct.

Mr. Colt: There's currently a window on the back of the house that's into the attic. The window is already there and has already been approved. The house meets the height requirements and there is zero change to the exterior of the structure, other than the window will look into a bedroom instead of into an attic.

Chairman Hawk: The added area does fall below the threshold, right Wayne?

Mr. Thompson: Without the attic being finished, yes it does.

Chairman Hawk: Are there any questions from the Board?

A motion to approve Case 23-2022 Mack Colt/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 8912 Pawnee Lane—was made by Dr. Peppes; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Bussing, and Farrington.

Case 24-2022 Adam Anthony Pfeifer NCARB, LLC; Wes Hampp & Trudy Rodgers-Request for a Variance to the maximum height for an accessory structure in accordance with the LDO, Section 16-4-1.2 (C) 1 in an R-1 District for property commonly known as 3553 W. 153rd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to add an architecturally attached accessory structure to the home that included a fourth garage and a storage area. A variance for 5 feet, 11 inches is requested in order to match the roof pitch on the existing home.

Chairman Clawson: Are there questions for staff by the Board? An accessory structure is limited by 15 feet.

Mr. Thompson: Yes, that is correct.

Chairman Clawson: Is the applicant here?

Mr. Thompson: They will be presenting by Zoom call.

Applicant Presentation:

Adam Pfeifer, 12214 W 79th Terrace, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Pfeifer: I am the architect for this project. As Wade described, the case for a variance is for the height of the architecturally detached structure. The owners, Wes and Trudy, are looking to add a fourth car garage to their property and to create a more homogeneous and uniform aesthetic to the entire home. They are wanting to match the pitch of the existing roofs. With that comes the need for a 5'11" height variance.

Chairman Clawson: Are there questions for the applicant about this case?

Dr. Peppes: Mr. Chairman, I understand that the accessory structure only has a 15-foot height limit, but as you look at that photo, it appears to be much higher than that. Even with this nearly 6-foot variance, it still won't be the same height as the main structure. For some reason, it doesn't make a lot of sense to me.

Mr. Thompson: It's because it is an accessory structure. If it were attached to a complete wall of the main structure, they wouldn't need the variance. Since it's attached by a breezeway, it is considered a detached structure and has to meet the 15-foot LDO requirement.

Dr. Peppes: Now I understand. Thank you.

Mr. Bussing: Mr. Pfeifer, could you tell me what the current pitch of the roof is that you're requesting and what the pitch would have to be in order to meet the lower requirement of the City?

Mr. Pfeifer: Yes. The existing pitch of the roof is a 12/12 pitch. In order to meet the 15-foot requirement, we would have to drop down to either a 3/12 or 4/12 pitch to be able to make up that much difference.

Chairman Clawson: The pitch that you're proposing for the accessory structure mimics the pitch of the rest of the house, is that correct?

Mr. Pfeifer: That's correct.

Chairman Clawson: Could you speak about the breezeway? What does that entail? Is it strictly just a breezeway?

Mr. Pfeifer: It is. The next case up is another case for our project that has to do with the maximum allowed area. That exception request will be for the piece that you see between the new garage and the existing residence. That addition then connects to the main house but this garage will be detached from all of that with a breezeway through. The reason for that breezeway is we're proposing to put a pool in the backyard, and we want to be able to have guests not go through the house and all the way around to get to the pool. This offers them a protected, gated entrance straight to the rear pool terrace.

Ms. Farrington: Mr. Chairman, I have a question for Mr. Pfeifer. With the extra pitch, is that an exposed ceiling or is it an attic space?

Mr. Pfeifer: There's no living quarters or finished space. It will just purely be attic space.

Mr. Munson: Question for the architect. Based on the elevations that you've presented; it looks like the breezeway is enclosed. Is it enclosed or is it open?

Mr. Pfeifer: It's open. It has a roof over it. It has a gate on the front side. The light gray section with a fence that you're seeing immediately to the right of the new garage is purely a shadow as you're looking through it. That section, which is about 5 1/2 or 6-feet wide, is the breezeway that connects back to the addition that we'll get to with the next case for the exception. In that rendering that you're seeing there, you'll see the light between the garage and that car sitting in the driveway. That's the breezeway that disconnects this fourth car garage from the addition.

Mr. Munson: The breezeway is essentially open.

Mr. Pfeifer: Correct.

Mr. Munson: Question for staff. What does the LDO say about open breezeways connecting structures?

Mr. Thompson: That's not considered an interior wall, so if the breezeway were totally enclosed it would still be considered part of the house. If the garage was moved over and they did away

with the breezeway, it would still be connected by an interior wall so they would be able to pull a permit without seeking BZA approval.

Mr. Munson: So are they asking for an open breezeway?

Mr. Thompson: Yes, sir. That's on the plan and that's what they have designed.

Mr. Munson: But the LDO doesn't permit an open breezeway connecting houses?

Mr. Thompson: It does, but when it's an open breezeway that's what makes the garage an accessory structure.

Mr. Munson: Okay. It's a little confusing.

Chairman Clawson: That's really the definition of architecturally attached. Basically, some type of breezeway goes from the main structure to the garage or to the accessory structure.

Mr. Dunn: The simple fact is that if this wasn't a breezeway, they could build the roof exactly as they are proposing it.

Mr. Bussing: Wade, what's the side yard setback on an R-1?

Mr. Thompson: Fifteen feet.

Chairman Clawson: The issue we have with this is that it's a variance. We have to justify each of the five factors. Architecturally, I can certainly understand why they want to do it. It is consistent with the rest of the structure. It's just that the LDO doesn't permit it. I guess I'll turn it back to the architect and ask him to address the five factors.

Mr. Pfeifer: In terms of a condition which is unique to the property in question, trying to maintain that 15-foot height requirement would require a significant change to the roof pitch, which would reduce the aesthetic across the entire property. In turn, that would potentially impact some of the properties around it in terms of values. With that, it comes back to the point that you guys made. If it were attached, it would be approved. In terms of adversely affecting the rights of adjacent property owners, we have an email from the residents of the neighboring house to the south. We received it late and I'm not sure if Wade got it. He is in support of this. I can read the email if you'd like. He would be the most directly impacted by this because we're up against his property. On that adjacent side of his property, he has a driveway, pool house, and pool. We will not be impeding on his property at all. Strict application of the LDO from which the variance is requested constituting a hardship. In order for us to fully follow the LDO with this being a detached or architecturally attached structure, we would obviously need to have a significant change in roof pitch. That would create a very odd aesthetic to the main house. Would this adversely affect public safety and general welfare? No. It wouldn't be proposed if it were connected to the main house. Would it oppose the general intent and spirit of the LDO? We would argue that it wouldn't. Again, same thing. If it were attached to the house it would be allowed. We're purely wanting to open that

up for access for guests to get to the pool without having to go through a double set of doors to get to that pool house.

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

Mr. Munson: Yes. One more question, if I may. Is this development visible from the front of the house?

Mr. Pfeifer: It will be visible from the front of the house. It's set back from the front of the house, but it is visible.

Chairman Clawson: Is there anyone here that wishes to speak for or against the application? If not, the Board will go through the five factors. The first factor is Uniqueness of Property.

Mr. Munson: I feel that staff has given a good reason for why it doesn't meet Uniqueness and that it could be done without this going on.

Mr. Dunn: I haven't heard anything that makes this property unique, as the statute requires.

Uniqueness of the Property criterion unsatisfied with a unanimous vote of 0-6. Against: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: The next factor is Rights of Adjacent Property Owners. All letters were mailed.

Mr. Thompson: All the letters were mailed. I did include one email in your packet from someone who didn't approve of either request and stated that the LDO has rules that are in place and that they should be followed. I did just receive, at 5:28, an email from Dr. McCune at 3549 153rd Terrace. He and his wife are both in support of the request.

Chairman Clawson: Any other comments about the second factor?

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: The third factor is Hardship.

Mr. Munson: Again, I think the staff's observation is correct. If it's denied, it can still be built to meet the requirements for a permit to be issued.

Dr. Peppes: I think the hardship is being brought on by the applicant. Also, the way that the law rules for Hardship, nothing that we see here tonight qualifies it as such.

Hardship criterion unsatisfied with a unanimous vote of 6-0. Against: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

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

Mr. Dunn: I've got to say, Mr. Chairman, if they changed the breezeway to be a part of the structure, they could build exactly what they've proposed. I can't imagine how building it this way would cause any greater impact on Public Safety and General Welfare.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 6- 0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

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

Dr. Peppes: Mr. Chairman, I feel that the Spirit and Intent criterion have not been satisfied because by making it an accessory structure, the LDO has it going in a specific fashion. If it's not followed those rules, then it doesn't fit into the spirit of what's going on.

Spirit and Intent criterion unsatisfied with a unanimous vote of 6-0. Against: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

A motion to deny Case 24-2022 Adam Anthony Pfeifer NCARB, LLC; Wes Hampp & Trudy Rodgers-Request for a Variance to the maximum height for an accessory structure in accordance with the LDO, Section 16-4-1.2 (C) 1 in an R-1 District for property commonly known as 3553 W. 153rd Terrace—was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Case 25-2022 Adam Anthony Pfeifer NCARB, LLC; Wes Hampp & Trudy Rodgers-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 3553 W. 153rd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners are planning a major renovation and expansion to the home. This includes a pool, a pool cabana, and an additional garage. To construct the project as shown on the plan, an exception is needed to allow an increase of 809 square feet or sixteen percent (16%) over the 4,991 square feet that is permitted.

Mr. Munson: What's the maximum allowable?

Mr. Thompson: Twenty percent (20%), for an exception.

Chairman Clawson: In a case like this where you have a breezeway, is that included in the square footage?

Mr. Thompson: Yes, sir.

Chairman Clawson: So anything under the shadow of the roof would be considered part of the structure?

Mr. Thompson: Livable space. The attic space, such as in the previous case, isn't considered even though it is under the roof. Anything that's livable space is included.

Chairman Clawson: Is the breezeway considered livable space?

Mr. Thompson: Yes, sir.

Chairman Clawson: Alright.

Ms. Farrington: Mr. Chairman, could the floorplan be put up again? *Drawing displayed on screen.* The green areas are the new, additional square footage areas, correct?

Mr. Thompson: Correct.

Applicant Presentation:

Adam Pfeifer, 3553 W. 153rd Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Pfeifer: No, that's not quite correct. The green areas represent what is having work done. Only the green area of the garage to the left and the piece in the middle are additions. Anything to the right of those red blocks is existing home that we're just going to be doing interior work on.

Mr. Thompson: So, everything left of the pen is new.

Mr. Pfeifer: Correct.

Chairman Clawson: We don't have a plan view that shows just the existing house and what's new, do we?

Mr. Pfeifer: If you go back to that floorplan, anything to the left of those red blocks/red brick patios is new. Everything to the right is just currently existing home. It's a pretty clear cut definition of what's existing and what's new.

Chairman Clawson: Okay.

Mr. Pfeifer: Additionally, since we did not get approved for the height variance, we will simply enclose that breezeway so that it's attached.

Dr. Peppes: They'll still want the exception.

Mr. Pfeifer: Correct.

Chairman Clawson: Alright. It's an exception because it's less than 20% of the allowable. Are there any questions by the Board for the applicant? Is there anyone here who wishes to speak for or against the applicant?

A motion to approve Case 25-2022 Adam Anthony Pfeifer NCARB, LLC; Wes Hampp & Trudy Rodgers-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 3553 W. 153rd Terrace—was made by Bussing; seconded by Hawk. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

Dr. Peppes: Mr. Chairman, I wish to recuse myself from the next case.

Case 26-2022 Matt Peppes & Lauren Nugent/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 9210 Belinder Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicants are wanting to replace the majority of the 4-foot chain link fence in the rear yard with a 5-foot wooden picket fence. The fence would match the existing fence that belongs to the neighbor on the east. The chain link on the north side of the property line will not be removed.

Chairman Clawson: Is the applicant here?

Applicant Presentation:

Matt Peppes, 9210 Belinder Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Peppes: I want to thank everyone for their time tonight and for allowing me to come before you all. We're requesting a fence height exception. One of our neighbors currently has a 5-foot picket fence that runs along a good majority of our back yard, which they received a permit for. *Photo of fences displayed on screen.* You can see the image of what that fence looks like. This would replace the current chain link fence that currently surrounds our backyard. We have a large dog who we'd like to keep from jumping up on the fence and reduce her visibility to keep her from barking at people and other dogs. Belinder is a very heavily walked-along street. Lastly, our neighbors to the south have a small dog that continues to jump over that small fence into our backyard every time it sees our dog out there, so we would like for that to cease.

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

A motion to approve Case 26-2022 Matt Peppes & Lauren Nugent/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 9210 Belinder Road—was made by Dunn; seconded by Bussing. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Hawk, Bussing, and Farrington.

Case 27-2022 James Lake; Quigley Custom Homes, LLC/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 8904 Mohawk Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to construct a 6-foot-tall wooden privacy fence along the entire rear, or west, property line and approximately 60 feet along the southern property line. The remainder of the property will be enclosed with a 4-foot-tall aluminum see-through fence.

Mr. Dunn: Is that the part that is marked in yellow on the sheet we got, Wade?

Mr. Thompson: That portion will be 6-foot tall, correct.

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

Applicant Presentation:

James Lake, 2511 W 91st Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lake: The house at 8904 Mohawk Lane is currently being constructed. It will hopefully be done within the next five weeks or so. As mentioned, our neighbors to the north currently have a 6-foot privacy fence. On the back, we'd like to tie into that fence and run the 6-foot fence along that entire west side. Then we would like to replace the chain link on the south side, up to where it currently is. We have two small children and a third on the way, plus two dogs. For us it's kind of a privacy issue. The way that the house is currently constructed, the patio is elevated based on the slope or topography of the lot. Basically, with that in mind, a fence that's 4 feet high turns into more of 1 or 2 feet, so we would like that 6-foot elevation to give us all more of a private atmosphere.

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

William Copeland, 8901 Mohawk Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Copeland: I live behind but adjacent to this property, as well as behind the house that already has the 6-foot fence. I was here when they made their application. I see this as a fence extension and it will really improve the value and look of the property, especially behind me. I am in support of this.

Chairman Clawson: Is there anyone else here that wishes to speak on this application?

Bruce Parker, 8905 Mohawk Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Parker: I live directly behind the property that is under construction. I am in favor of the fence replacement. They could make it ten feet tall, and I would appreciate that because they're going to be towering over my little ranch. I'm going to have to get some landscaping done to hide the house. No, I am in favor of it.

A motion to approve Case 27-2022 James Lake; Quigley Custom Homes, LLC/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 8904 Mohawk Lane—was made by Farrington; seconded by Dunn. Motion carried with a unanimous vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Bussing, and Farrington.

MEETING ADJOURNED.