

**City of Leawood
Board of Zoning Appeals Minutes
June 22, 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 June 22, 2022 Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: Bussing

STAFF PRESENT: Thompson, Knight

APPROVAL OF MINUTES:

Approval of the minutes from the May 25, 2022 Board of Zoning Appeals meeting.

A motion to approve the minutes from the May 25, 2022 Board of Zoning Appeals meeting was made by Clawson; seconded by Dunn. Motion carried with a unanimous roll-call vote of 5-0. For: Munson, Dr. Peppes, Dunn, Hawk, Farrington.

NEW BUSINESS:

Case 31-2022 James Monahan/Owner-Request for a Fence Height Exception in accordance with the LDO, Section 16-4-9.4 in an RP-1 District for property commonly known as 2804 W. 112th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 6-foot-tall, metal fence. The fence is requested due to a break-in at the home and to protect the landscaping from animals.

Chairman Clawson: Are there any questions for staff?

Mr. Munson: *Refers to drawing.* I'm looking at the drawing, Mr. Chairman, and would like staff to let me know what the blue line means and what the black line means. I'm assuming the blue line is the property line and the black line is the fence. Is that correct?

Mr. Thompson: The blue line is the property line, correct. The black line is where the fence would go.

Mr. Munson: Alright, and what is that configuration in the middle of the fence?

Mr. Thompson: I believe it's a landscaping island.

Mr. Munson: The fence goes right through the middle of it now?

Mr. Thompson: It will go close to it, yes.

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

Applicant Presentation:

James Monahan, 2804 W. 112th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Monahan: The fence that we would like to put up is not only because of the break-in, but also for protection. When I first moved into the home 5 years ago, I wondered why people had fences. Now I know why. We've got bobcats, coyotes, and all kinds of other 4-legged creatures there. We also get plenty of 2-legged creatures that come up through the golf course, which is unprotected, and they are breaking into the back of homes. I wanted a fence that was a little higher in order to keep the coyotes from being able to jump over it, and also as a deterrent to intruders. The berm that you mentioned has been moved back by two feet since that picture was taken. I had moved some shrubbery and it actually didn't die but I decided to move it back so it wouldn't look so ridiculous.

Mr. Munson: Is the shrubbery closer to the property line or further away from it?

Mr. Monahan: They are further away.

Mr. Munson: Thank you.

Mr. Monahan: I have the police report and a letter of approval from the Homeowners Association (HOA). I also have an approval letter from Hallbrook Country Club. They've reviewed the stakings that I put up for the posts. The police report shows that my home was broken into and was one of about 7 that have happened within the last couple of years. What really scares me is that I have two daughters that are younger and sometimes we whip out to Hen House and leave them home for a short time. This intruder broke in, the alarm went off, and he still entered the home. He was inside for about 3 and a half minutes, I was back in 5, and the police got there in about 7 minutes. He still went through a bedroom. It's kind of scary, especially when you have younger folks around. Do you all have any questions?

Mr. Thompson: Mr. Chairman, I did have those two files put into your packets. The one from the HOA and the one from Hallbrook. They are requesting that the fence be approved.

Mr. Monahan: I also have a picture of me with my neighbors' fences showing that they have fences just as high.

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

Dr. Peppes: Mr. Chairman, I have a question for Wade. Does the country club not have a fence?

Mr. Thompson: Hallbrook does not. Iron Horse does, because it's a municipal course. Hallbrook does not have a fence requirement out there.

A motion to approve Case 31-2022 James Monahan/Owner-Request for a Fence Height Exception in accordance with the LDO, Section 16-4-9.4 in an RP-1 District for property commonly known as 2804 W. 112th Street – was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.

Case 32-2022 Douglas Landscape & Design; Doug Bergman/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 13009 Granada Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to replace the existing 4-foot-tall fence with the same on all sides except the rear. They would like a 5-foot-tall fence at the rear to help conceal a large storm basin.

Mr. Dunn: Just to be clear, this is an exception request just for the extra foot on the rear part of the fence, correct?

Mr. Thompson: That is correct.

Chairman Clawson: Are there any additional questions for staff?

Mr. Munson: Is that drainage ditch open?

Mr. Thompson: Yes, it is. The applicant has some pictures that I can put up on the screen.

Mr. Munson: Was that ditch constructed by the City of Leawood?

Mr. Thompson: Yes.

Mr. Dunn: Just for clarity, Wade, is that black line where the fence would be 5-feet-tall? *Refers to picture on screen.*

Mr. Thompson: The dark black line is where that portion of the fence would be and the lighter black line is the ditch itself. The green line is a sewer line.

Applicant Presentation:

Doug McMullen, 1713 NE Whitestone-Lees Summit, appeared before the Board of Zoning Appeals and made the following comments:

Mr. McMullen: In short, it is a stormwater basin on the back side. The homeowners do have a 4-foot fence back there, but the ground slopes off quickly right behind the shrubs you see there. *Picture displayed on screen.* They would like to have another foot to try and hide a little bit more of that, to help prevent some of the erosion that is taking place, and to hide some of that drainage ditch. *Different picture displayed on screen.* You can see a bit of concrete at the beginning of it. That's at the bottom end of where the water comes through. That is the end of their property line. It does go underground after that, but the rest of that is exposed. These people love landscaping. It's everywhere. They just want to try and protect their ground and protect some visibility from their backyard.

Mr. Munson: Looking back at the photograph of those poles, are those on your property?

Mr. McMullen: Yes.

Mr. Munson: Are the poles there to support the fence, which hasn't been placed yet?

Mr. McMullen: Yes. The old fence has already been taken down.

Mr. Munson: Are you going to use them for the new fence?

Mr. McMullen: No. If we are allowed an exception for that extra foot, they would be too short.

Chairman Clawson: What type of fence are you proposing?

Mr. McMullen: Wood. Shadow box style. *Picture displayed on screen.*

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

Mr. Munson: Is this the only fence on the property?

Mr. McMullen: No. They have fences on the other sides and they are metal. They don't want to do that kind of expansion on the back. It doesn't hide as much.

Mr. Munson: Does that channel flood?

Mr. McMullen: Yes. It will get close to the posts. The one time I was there when it was raining hard I didn't have my phone with me to take a picture, but it does get close. This was about a month ago when all of those heavy storms came through.

Mr. Hawk: Did you say that the fences on the other sides are wrought iron?

Mr. McMullen: Yes.

Mr. Munson: If I may, could I go a little further here?

Chairman Clawson: Yes, go ahead.

Mr. Munson: I was looking at this particular case earlier and I will just say what went through my mind. Does the fence call attention to what is going on back there? Would landscaping be a better option?

Mr. McMullen: I don't think so. The other concern that the homeowners mentioned to me is that, on occasion, kids will walk that back area and actually crawl down and go through that storm drain. It's a 4-foot pipe. They don't want the kids coming up into their yard.

Mr. Munson: Well then, that pipe is designed for some pretty heavy flow.

Chairman Clawson: Do you know where the floodplain line is?

Mr. McMullen: Standing right here, no. I printed out the plot map and took a quick peek at it, but it just shows me the storm water line going through there.

Chairman Clawson: The reason I ask is because putting structures through the floodplain are generally not approvable.

Mr. McMullen: The one time I saw it flooding, it did get close; within three feet of the poles. That is a pretty deep open swell that you've got there. It would have to back up with a lot of water to fill something like that.

Travis Torrez, City of Leawood Building and Codes Director, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Torrez: It's not in the floodplain.

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

David Coleman, 4425 W 130th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Coleman: We live adjacent to the property. We are on the other side of that creek and will be looking at their fence. We have no issue with the fence. We personally wish it wasn't there, just because their backyard is absolutely beautiful. They spend a lot of time out there on the landscaping. I first thought they wanted to put the taller fence there to block the view of my backyard, which is full of weeds. We have no problem with this application.

A motion to approve Case 32-2022 Douglas Landscape & Design; Doug Bergman/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 13009 Granada Road – was made by Farrington; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.

Case 33-2022 Field Stone Homes; Dan Long & Shannon Ryan/Owners-Request for a Variance to the maximum allowable grade change on a lot in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8708 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners will be razing the existing home and constructing a new one. The plan calls for the north side of the property to be cut 5 feet to flatten the side yard and improve drainage. *Plan drawing displayed on screen.*

Chairman Clawson: Are there any questions for staff? Are there any plot plan photos? How far are they from the property line?

Mr. Thompson: I don't see any dimensions called out here on this particular plot plan. I don't see a number on the northeast corner, but it may just be covered up by the red. That is the side where most of the shaving would occur.

Dr. Peppes: Wade, has there been a drainage study done?

Mr. Thompson: There probably hasn't been yet, but there will be once the plan is submitted.

Travis Torrez, City of Leawood Building and Codes Director, appeared before the Board of Zoning Appeals via Zoom and made the following comments:

Mr. Torrez: We did review this application and plan with the Public Works, Stormwater Division. They didn't feel that it quite met the exception that they could administratively approve the grade change as it's stated in the Ordinance. However, they did feel like the grade change could actually help the drainage situation, which you may be able to tell from the photos. It's pretty steep as it exists today. They're not razing it, they are cutting it out.

Chairman Clawson: The LDO says, "shall not be altered more than one foot". Usually we see an increase, where an applicant wants to fill a lot. This is a case where just the opposite is being requested. Is the applicant here?

Applicant Presentation:

Curtis Befort, 18025 W 94th Street-Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Befort: I am with Field Stone Homes and am here representing the property owners, Dan Long and Shannon Ryan. The original home was built with the garage on the right side of the property and it was necessary for them to build that grade up extremely high. The grade elevation is so severely sloped that it's unmowable. We proposed removing the existing house and making the garage on the left side of the new one. We will then be able to cut that grade down and make our drainage swale between our property and our neighbors to the north, which should alleviate a lot of water issues for the neighbor as well as the property owners.

Mr. Dunn: Is there effectively a dead area down there now where you can't really grow anything because of the constant water that runs through there?

Mr. Befort: Correct. It's difficult to tell from the photographs, but it's completely overgrown and there's a property fence between the north neighbor and our property.

Mr. Dunn: All that grows there is the most tenacious plant.

Mr. Befort: Right. It's just enough to keep it from eroding.

Chairman Clawson: So, the wall that you're proposing involves lowering the grade, correct? What kind of wall are you proposing?

Mr. Befort: Correct. Off of the front corner of the house, coming toward the street, it would be a stacked limestone retaining wall. From the back right corner of the property there would be another retaining wall that would veer off and go toward the back of the property line. That would allow us to cut down that side and blend into our neighbor.

Chairman Clawson: The foundation wall would basically be deep enough that it would allow you to drop that grade.

Mr. Befort: Exactly. Our foundation and that new elevation on the north side will make it so that we are actually able to get daylight windows out of the basement. It should hopefully be much more attractive for the neighbors as well.

Ms. Farrington: Mr. Chairman, I have a question for the applicant. In this photograph you would be cutting it down five feet. Does that make it where you will be on the same grade as the neighbor or is it slightly different?

Mr. Befort: It will be slightly elevated from the neighbor because they are considerably lower, but we will be able to meet at the property line and create a slight berm that will help control the water toward the street.

Chairman Clawson: Do you think that when this house was built, they brought in filler, or do you think this is the original ground line?

Mr. Befort: I think that was the original grade. Because that was a garage, they had to build that all up for the driveway. In this day and age, we simply wouldn't put a garage on the low side of the lot. Our future driveway will be on the left side of the property.

Mr. Dunn: I want to be clear on that point, because I'm a bit confused. They did build the grade up when they put this garage and driveway on that side of the home?

Mr. Befort: Yes. I'm assuming so. It's considerably steeper than the property line so they had to elevate that to have the driveway put there.

Mr. Munson: What is the width of that lot?

Mr. Befort: I believe it is 110 feet.

Mr. Torrez: Looking at Johnson County AMES, it is 110 at the front and 115 at the rear.

Mr. Munson: That leads to my last question on this one. What is the effective side yard when they rebuild? Does it meet the requirements of zoning or something different? What is the length of the side yard for this grade change request?

Mr. Thompson: It will have to be 15 feet.

Mr. Torrez: Yes, it would have to meet that 15-foot requirement. The applicant may know that for sure. If I remember correctly, I think it was close.

Mr. Befort: Yes. We are right on that number.

Mr. Dunn: If this weren't approved, how would it impact what you could build there?

Mr. Befort: We would simply put in window wells to be able to get egress windows out of our basement and the grade would stay where it is. Without a BZA application, we could effectively still lower it a foot, but the slope would be so severe that they couldn't mow it and it would just be an overgrowth of erosion-control plants or some type of landscaping.

Mr. Dunn: Are you saying that the hardship from the homeowners' standpoint is that by not allowing this grade change, it pretty much makes that part of the property unusable?

Mr. Befort: Right. It is not even safe to walk because of the slope.

Chairman Clawson: It is steep. You can see that in the photographs.

Mr. Hawk: It looks like this will have two advantages. One for these property owners and one for the neighboring property owners.

Mr. Befort: Correct. We have had conversations with the next-door neighbors to the north and they are in favor of cutting it down because they feel that it will also be helpful to their drainage.

Chairman Clawson: This is a Variance which means that, as a Board, we have to evaluate the five factors and vote on each one of them. We must vote in the affirmative on all 5 factors before we can support a Motion for Approval. Uniqueness is usually a tough one to prove, as is Hardship.

Mr. Befort: Right, so in the application I think we've addressed the five points that I believe you're speaking of. We feel strongly that they've been met.

Chairman Clawson: The first factor is Uniqueness of the Property.

Mr. Munson: Mr. Chairman, the definition of Uniqueness according to the LDO is that it is not ordinarily found in the same zone or district. I would certainly hope that this condition isn't found in any other part of our district here. This is dreadful.

Mr. Dunn: Mr. Chairman, I find myself agreeing with my fellow member.

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

Chairman Clawson: The next factor is Rights of Adjacent Property Owners. They've all been notified, Wade?

Mr. Thompson: Yes. I haven't received any calls or complaints.

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

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

Mr. Munson: The hardship here was not created by them, it was created by the previous owners.

Mr. Hawk: We are also providing relief to the next-door neighbors.

Mr. Dunn: I would just note that on the sheet that they submitted, the current slope-which was a created condition in the prior construction-makes it too steep to mow the lawn, maintain the yard, or really even safely walk across it. I do think that creates a hardship that's recognized by the law.

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

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

Ms. Farrington: Mr. Chairman, I will speak on Public Safety and General Welfare. The applicant had stated that it causes a safety concern obviously with the steep slope. I'd also like to point out that if this isn't approved and it was only dropped by the minimum of one foot and they would put in window wells, there is still an unevenness here that could create safety hazard for the window well and someone walking in that type of environment. Doing the grade change actually creates a safer environment because you wouldn't have to put the window wells in.

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

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

Mr. Dunn: Mr. Chairman, my thoughts on Spirit and Intent are I'm wondering how the original grade change complied with preserving the spirit and intent and I can't see how this change is going to negatively impact that.

Dr. Peppes: Mr. Chairman, I think that this change will help the property fall into Spirit and Intent more than it is now.

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

A motion to approve Case 33-2022 Field Stone Homes; Dan Long & Shannon Ryan/Owners-Request for a Variance to the maximum allowable grade change on a lot in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 8708 Meadow Lane – was made by Farrington; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.

Case 34-2022 Field Stone Homes; Dan Long & Shannon Ryan/Owners Request for an Exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5(F) 2 in an R-1 District for property commonly known as 8708 Meadow Lane.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners will be razing the existing ranch-style home and want to construct a new two-story home. The lot allows for a 4,332 square-foot home. The home they want to construct is 5,085 square feet, or 753 square feet over what is permitted. *Plan drawing displayed on screen.*

Mr. Dunn: Just for clarity of the record, Wade, I wanted to verify that the increased square footage is creating more usable space inside. It's not going to change the footprint size of the house or the overall size of the structure.

Mr. Thompson: I can't say that about this one because this is the plan they've submitted and those rooms were designed and that is the size they came up with. This case isn't like adding a bedroom where an attic currently exists.

Chairman Clawson: So you did the calculations and the addition is 14.8 percent greater than what would be allowed. Since that's less than 20 percent, it can be considered an exception. Is that correct?

Mr. Thompson: Yes, sir.

Mr. Hawk: Would they lose much if they didn't have this increase of 14.8 percent?

Mr. Thompson: It would be a complete redesign, because 753 square feet is a pretty good-sized room.

Chairman Clawson: Are there any other questions for staff? Does the applicant wish to come forward and present their case?

Applicant Presentation:

Curtis Befort, 18025 W 94th Street-Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Befort: We've done about 15 projects in the city of Leawood, including tear-downs and rebuilds. We designed this home according to the criteria. The most stringent of those are the size, setbacks, height, etc. We have fulfilled all of those requirements. For the needs of the family, however, we have added additional square footage on the second floor for a loft space and bedroom. If we were to have to change this, we could effectively turn those into attic space, and it wouldn't change the footprint of the home at all. We feel that this exception should be granted because doing so wouldn't change the appearance of the home.

Mr. Munson: Sir, will this additional space be on the first floor or second floor? How would that affect your elevations?

Mr. Befort: The bedroom is on the front right corner on the second floor.

Mr. Munson: And that doesn't affect the footprint?

Mr. Befort: Correct. And the second space that was added was a loft space that is essentially in the middle back portion of the house.

Chairman Clawson: Are there other questions? I take it there is no one here that wishes to speak for or against the application.

Shannon Ryan, 9007 W 70th Street-Merriam, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Ryan: If you haven't seen this letter, I will read it so that you understand how important the bedroom and loft spaces are for us. It's a lot more than just space in a home. Here's my letter: "Thanks for giving us a chance to speak on behalf of our home build. We're so excited to move to this neighborhood that we've already begun building relationships with our new neighbors, planning get-togethers and playdates for the kids, and I know the neighbors are ready to see this project completed as well. It's hard to put into words what this home means to our family. It represents overcoming massive challenges over the last several years after my mother passed away, meeting goals that have been decades in the making, and most importantly it will provide a living space for us in a way that our current home cannot, due to our family growing unexpectedly. The depth of emotional security that this will bring to our children can't come soon enough. When I say, 'our children', I am not just referring to our 3-year-old who asks me nightly when she will have a bedroom that she won't have to share, but also my sister's children who we now care for as our own. They have endured years of struggle only to have it end in tragedy. Their mother, my sister, recently passed away after a long struggle with mental illness. While the children are coping the best way they can, that kind of loss brings on haunting insecurity. Because our family grew so quickly and unexpectedly, we initiated the home build process with Field Stone in Leawood this year. We were convinced that this project would be the best way to go forward after we looked at the Meadow lot and the other beautiful homes that Field Stone has built in the neighborhood. We started this project so that we'd be able to give our family the living spaces and learning spaces that they can truly thrive in. A place where they fell completely at home. We're blessed to have children in our care that are constantly seeking knowledge, so it's imperative for us to foster that intellectual drive into something productive and educational. This home and its conscientious

design will provide an optimal environment to channel our children's endless curiosity through family team projects, engineering and science experiments, arts, music, and much more. That's what that loft will provide for the kids. It's not just a recreational area for them. It's a place where we can really encourage them to learn. It's a space that they can have experiments and creations that they can come back to and build on. They blow me away every day with what they're doing. But they also need to have their own spaces. I think that they deserve that. After we lost my sister, we lost 3 more family members within that month, and it's been an incredibly challenging chapter in our lives. It feels like we're walking through the fire, but this home is the light at the end of a dark tunnel. We are ready to start this new chapter of calm and peace when this home is complete. I ask you today to please consider how much relief this exception could offer our family. For you, this might be one of one hundred decisions that you'll make today. But, for us, it means everything, and it will determine the functionality of our home for years to come." Thank you for your consideration today. I appreciate your time.

A motion to approve Case 34-2022 Field Stone Homes; Dan Long & Shannon Ryan/Owners Request for an Exception to the maximum allowable square footage on a lot in accordance with the LDO, Section 16-2-5(F) 2 in an R-1 District for property commonly known as 8708 Meadow Lane – was made by Dr. Peppes; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.

MEETING ADJOURNED.