

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

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

**MEMBERS ABSENT:** Dunn

**STAFF PRESENT:** Thompson, Knight, Weber, Geschwind, Torrez

**APPROVAL OF MINUTES:** Approval of the minutes from the June 22, 2022 Board of Zoning Appeals meeting.

**A motion to approve the minutes from the June 22, 2022 Board of Zoning Appeals meeting was made by Bussing; seconded by Dunn. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Chairman Clawson: Our first case tonight, Case 35-2022, has been continued until the next meeting.

Mr. Munson: I have a question. Is that case a rerun of another one we had before?

Mr. Thompson: No, sir.

Chairman Clawson: In that case, we will move on to Case 36-2022.

**NEW BUSINESS:**

Case 36-2022 Sarah Prater/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 9526 Belinder Road.

**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 rear property line to screen the parking lot of the church located behind the property.

Chairman Clawson: Are there any questions for staff?

Mr. Hawk: Is this the applicant moving in or out? I see a 'For Sale' sign in the yard.

Mr. Thompson: Moving in.

**Applicant Presentation:**

Sara Prater, 9526 Belinder Road, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Prater: We would like to put up a 6-foot privacy fence just along the back of our property. All of our neighbors except one have 6-foot privacy fences. They block the parking lot. It would have a gate, just like the chain link fence does now. We would match the whole fence, which is cedar, but keep it 4-feet-tall on the rest of the sides.

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

Dr. Peppes: Mr. Chairman, I do. Will the chainlink be taken down along the backside?

Ms. Prater: Yes.

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

**A motion to approve Case 36-2022 Sarah Prater/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 9526 Belinder Road, was made by Munson; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 37-2022 Paul Evans; John O'Conner/Owner-Request for an exception to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8909 Pawnee Lane.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The property owners would like to add a covered entryway on the front of the home. An exception for 2 feet, 6 inches is needed to construct the addition as shown on the plan. *Plan drawing displayed on screen.*

Chairman Clawson: It's an exception because it meets the requirements that are listed in the analysis section, correct?

Mr. Thompson: Yes.

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

**Applicant Presentation:**

Paul Evans, 700 W 31st Street, KC, MO, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Evans: I'm the contractor for the property located at 8909 Pawnee Lane. I think the issue is that it was slightly ahead of the average between the two on either side of us.

Chairman Clawson: With your proposed addition, the entryway would be slightly closer to the street, correct?

Mr. Evans: Yes, it would be slightly closer to the street.

Chairman Clawson: It's an exception because it doesn't protrude more than 6 feet and its area is small.

Mr. Evans: Correct.

Ms. Farrington: Mr. Chairman, I have a question. Part of the requirement in the Zoning Article 2 is that it is to be architecturally attached and constructed of the same materials as the primary residence. There are no elevations or descriptions, so could you please elaborate as to what materials the house is made of and what materials you will use?

Mr. Evans: It's going to be cut into the roof. It is going to be a hip on the front of it.

Ms. Farrington: Same roof materials and same siding?

Mr. Evans: Yes.

Mr. Hawk: This is a covered porch like we've seen so many times. Not only are we talking about the square footage, but relief for people using the facilities and getting in and out of the house.

Chairman Clawson: Are there any materials provided that show the elevations?

Mr. Thompson: Not a lot. I'll put what I have up on screen. *Image displayed on screen.* That just kind of shows the side view. I really don't have anything from the straight-ahead.

Chairman Clawson: Does that answer your question, Dana?

Ms. Farrington: Yes. I just want assurance that it's the same roof material and that it architecturally matches. That's all.

Mr. Evans: I believe it is.

Debbie O'Conner, 8909 Pawnee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Ms. O’Conner: I am one of the homeowners. We have some already-existing cement steps that were put in probably 8 years ago. We’re going to be covering those with this portico. There will be 2 wooden columns at the front, and it will be tied into our existing roof. But the roofing material that we’re using will be that sort-of approved metal that you see all over Leawood.

Mr. Munson: What’s the material of the existing roof?

Ms. O’Conner: Composite. It’s a split-level home and it will be tied in nicely to both sides.

Chairman Clawson: Is that an acceptable material?

Mr. Thompson: Yes, sir. That is an approved roofing material.


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

Mr. Torrez: As long as it’s less than 5 percent of the surface area of the roof, it’s acceptable.

Mr. Thompson: It’s 6’10” by 7’10”, so it shouldn’t exceed 5 percent.

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

**A motion to approve Case 37-2022 Paul Evans; John O’Conner/Owner-Request for an exception to the front build line in accordance with the LDO, Section 16-2-5.3(D) in an R-1 District for property commonly known as 8909 Pawnee Lane, was made by Farrington; seconded by Munson. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 38-2022 Mike Wilson/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 9441 Manor Road. 

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to replace a 4-foot-tall chain link fence on the south side of the property with a 6-foot-tall wooden privacy fence. *Picture of property with chain link fence displayed on screen.*

Chairman Clawson: Would it be going in exactly the same place as the chain link fence shown in the picture?

Mr. Thompson: Yes. That part of the property runs along 95th Street and they feel that the privacy fence would reduce some of the noise and bright lights from the traffic.

Dr. Peppes: Mr. Chairman, I have a question. Wade, is their existing chain link fence going around the rest of the house? If so, will that stay?

Mr. Thompson: Yes, sir. They just want to replace the one side of the fence.

Chairman Clawson: Are there any other questions for staff? If not, is the applicant here?

**Applicant Presentation:**

Mike Wilson, 9441 Manor Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Wilson: We would just like to put a privacy fence up along the 95th Street side of our property. We're trying to do it as a sound barrier and also for a little more privacy, as 95th Street is a busy place with vehicle traffic as well as foot traffic.

Chairman Clawson: Are there any questions for the applicant? Do you have a plan view?

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

Mr. Hawk: Do we have a picture of the proposed fence?

Mr. Thompson: I do not.

Chairman Clawson: What type of fence do you propose? Just a wood fence?

Mr. Wilson: Yes. A wood fence.

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

**A motion to approve Case 38-2022 Mike Wilson/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 9441 Manor Road, was made by Hawk; seconded by Dr. Peppes. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Chairman Clawson: The next case for this evening, Case 39-2022, has been continued for the next meeting. We will move on to the next case.

Case 40-2022 Colm Roughan/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 12912 Howe Drive.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has replaced a fence that had been in the same location for 3 decades without a permit. The fence encroaches the rear buildline and therefore a variance of 14 feet is needed to allow the fence to remain in the current location. *AIMS image displayed on screen.* That figure should say fourteen, not four. I left out the one in the picture.

Chairman Clawson: When was the fence installed?

Mr. Thompson: That I'm not sure of. Probably in the last two months.

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

Mr. Munson: Yes, I have a question. This fence was erected without a permit, correct? Is there a penalty for someone who does this? What's the Leawood Development Ordinance (LDO) or law on this?

Mr. Thompson: They double the fee for the permit. For example, if the permit was \$500, it would be \$1,000 now.

Mr. Munson: And that is subject to what? If the Board turns this down, what happens?

Mr. Thompson: He would have to remove the fence.

Mr. Munson: Okay, thank you.

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

**Applicant Presentation:**

Colm Roughan, 12912 Howe Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Roughan: Last year, we replaced the fence. It had been the original fence since the property was built in 1988. That fence was erected because the constructors of the property applied for and received a permit for a spa. To our knowledge, a spa was never installed. The fence, being original to the property for several decades, was in very bad disrepair. My neighbor and I frequently made repairs to the fence. We have a large dog and a child, so safety is a concern. We were told by the realtor when we bought the property eleven years ago that the fence was grandfathered in, and we didn't need to be concerned about the existence of a 6-foot fence. That said, when we went to replace the fence last year, we asked the contractor if we needed a permit. We were told that we didn't because we were just replacing the original fence. Fast forward to April of this year when we received the enforcement notice, we worked very quickly with our contractor who has, to our knowledge, done nothing about this. We've obtained legal advice. Furthermore, we are here to make this right, so we are in full compliance. Additionally, we do see the fact that we have a Verizon cell tower that was installed without our consultation. If the fence were to be removed, it would be a bit of a hardship for us. At the same time, one of the things we did as part of this process was work very closely with our neighbors and ensure that they were happy with the fact that we were replacing the fence. We also made sure that the posts were placed on the inside so that it

wouldn't be an issue, aesthetically. The other fact here is that we are very mindful that this isn't currently in compliance, and we want to make this right. The upcoming road work on Mission will cause a massive increase to the noise that we currently don't have to worry about with the fence being in place. Our neighbor to the south is constructing a 3-seasons kitchen, which would interfere with our privacy if the fence were removed. I'd like to make it clear that we are totally in favor of his construction project, though. Those are the main points that I have for my case. I'll answer any questions that you may have.

Mr. Munson: Have you applied for a permit yet? If so, what was the fee?

Mr. Roughan: Yes. To my knowledge, the estimated fee was about \$430.

Mr. Munson: What did you have to pay?

Mr. Roughan: We haven't paid anything yet because we were advised by Travis that we would have to go through this process before we could get the permit.

Mr. Munson: The fee for the permit is a lot cheaper than tearing the fence down, though.

Mr. Roughan: That would be a correct statement.

Mr. Munson: Wade, you said the fine's double?

Mr. Thompson: Yes, sir.

Mr. Munson: I would suggest that you approach your real estate agent and ask them to pay half of it. This concerns me, this business of people doing things without permits and I think the City should have a mechanism in place to collect enough money to make it worth the City's effort.

Dr. Peppes: Wade, we're dealing with a through lot here, aren't we? A six-foot fence is an option for a through lot.

Mr. Thompson: Yes. He has the next case tonight, asking for an exception.

Chairman Clawson: We're talking about the location of the fence, period, right now.

Ms. Farrington: Mr. Chairman, I have a question for staff. Do you have the AIMS map so we can see it?

Mr. Thompson: Mark, if you could please put that on the screen. *AIMS map displayed on screen.*

Ms. Farrington: Does Mission Road sit just to the south?

Mr. Thompson: The fire station sits just north of this home.

Mr. Roughan: It's actually to the west.

Mr. Munson: You're on the west side of Mission?

Mr. Thompson: He's on the east side of Mission.

Mr. Hawk: This fence is pretty well obscured by vegetation. I think you'd have to look pretty hard to even find a fence.

Mr. Thompson: Yes. *Picture displayed on screen.* On your screen is a picture I took and there is a lot of vegetation that hides the fence.

Mr. Munson: Well, my issue isn't so much with the fence. It doesn't make much sense to tear it down. My concern is with the people that build things without permits. I think there should be something in place to enforce this. I can imagine that the real estate agent was just wanting to sell the house and didn't know any better, but you would suffer from her bad advice.

Chairman Clawson: Did your fence contractor indicate that you needed a permit or not?

Mr. Roughan: We asked him, and he said we did not need a permit.

Chairman Clawson: Are there other fences along this stretch?

Mr. Thompson: Yes, sir. Both neighbors have fences. The 2 to the north both have 6-foot fences, then there's a 4-foot, then his is a 6-foot, then there's another 4-foot.

Chairman Clawson: Are they roughly in the same location?

Mr. Thompson: Yes, sir.

Chairman Clawson: In all likelihood, this has been in place since the house was constructed.

Mr. Thompson: Yes. I went back and looked. There was never a fence permit issued, so it was constructed when the home was, back in 1988.

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

Mr. Thomas: I did put a couple of letters in your packets that we received.

Craig Klos, 12908 Howe Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Klos: My house has a 4-foot fence.

Mr. Munson: Could you point out your house on the map, please? *Map shown on screen.*

Mr. Thompson: He's right next door to the north. *Points to house on map.*



Mr. Klos: Myself, my wife Georgia, and family have lived at this address since 1992. We and the City are fortunate that Colm and his wife finally bought this property in 2011. The last good owners departed somewhere between 1992 and 1994. Prior to that, this property was neglected. It was an eyesore. My neighbor and I had to weed whip the front and back yards just to be able to mow. We had to tear down Christmas tree lights on the house because they had fallen and were whipping in the wind. The real estate agent who might be at fault here is the person in this city who represented the gentleman who rented the property, a man named Langly who lives in Florida. Just so the City knows, in the mid-90s, four of the first eight properties on Howe Drive were rented. That includes a house that was rented by the Sprint Corporation. Instead of putting people up in a hotel, the company would put them up in this home. The driveway was full of Enterprise, Avis, and Hertz rental cars. Since Colm and his wife Nieve came in, we have together repaired this dilapidated fence on numerous occasions. He finally tore it down and with full consent of myself and other neighbors, put this 6-foot fence up with the pickets on the inside. He even asked if I wanted it painted since the previous one was painted. Since the Roughans have moved into this property, it has significantly improved inside and out. They should be on HGTV. The transformation has been amazing. The landscaping and fence have been an invaluable contribution to our neighborhood. We, the neighbors, have always been informed on their projects. With the fence, the landscaping, the house being repainted, doors and windows being replaced, it has added considerable value and curbside appeal to the property. If the fence were to be removed, we would lose significant privacy that we have become used to. In conclusion, I would ask that the Board approve this. Thank you.

Chairman Clawson: Is there anyone else that wishes to speak for or against this application? This is a variance, which means we must evaluate and then vote on each of the five factors. First up is Uniqueness of the Property. Discussion by the Board?

Dr. Peppes: Mr. Chairman, I'd like to lead it off. As we've seen many times before, cases involving through lots are ones we have to deal with all the time. There are properties seen throughout the city where two streets intersect it. As we've seen on the AIMS map, we've got all those properties along Mission Road, and they just have to deal with it. These folks are limited in their amount of distance between both streets and sometimes the build lines encroach the property lines. I still think it's a unique thing that is happening all over the city and they have to deal with it by coming before us to ask for a variance. I feel that the uniqueness factor has been met.

Mr. Munson: Mr. Chairman, I would concur. I would say that this lot is unique from the standpoint of its shape. The other lots are not shaped at all like this one is.

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

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

Mr. Thompson: Correct. No complaints received.

Mr. Munson: Mr. Chairman, I think we heard a property owner bless this with all he had, so I'd say it meets that requirement quite well.

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

Chairman Clawson: The third factor is Hardship.

Ms. Farrington: Mr. Chairman, I'll speak on Hardship. Looking at this plan, the fence is replacing an existing fence from a prior inception. To me, the hardship is removing this to meet the ordinance. There are photos in the packet that show the old fence and they already had planting beds. There's also a utility box in place, so it was very well thought out. Keeping it in the exact same place that it's been in all these years, to me, is the right thing to do. The hardship would be moving it and refiguring the landscaping and all of the costs involved.

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

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

Ms. Farrington: Mr. Chairman, I'll speak on Public Safety and General Welfare. The home backs up to a very busy road, Mission Road. I frequent it quite often. The fences that are all there are in alignment with one another, and I believe it meets Public Safety and General Welfare to the betterment of the public that's using the sidewalk next to it as well as the homeowners.

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

Chairman Clawson: The last is Spirit and Intent.

Dr. Peppes: Mr. Chairman, I'll speak on this. I think the Spirit and Intent is all about what you see from the street and how it blends in with everything else. If we were to make them take that fence 14 feet in toward the house while everyone else's is out at the street, it would not blend in well.

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

**A motion to approve Case 40-2022 Colm Roughan/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 12912 Howe Drive, was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

Case 41-2022 Colm Roughan/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 12912 Howe Drive.

**Staff Presentation:**

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has replaced the original, 3-decade-old fence without a permit. The exception is needed to allow the 6-foot fence to remain.

Chairman Clawson: Are there any questions for staff?

Ms. Farrington: Mr. Chairman, I have a question. Was the original fence that got replaced also 6-foot tall?

Mr. Thompson: Yes, ma'am.

**Applicant Presentation:**

Colm Roughan, 12912 Howe Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Roughan: As previously stated, the original fence was in disrepair, and had been in place since 1988. The first owners of the house obtained a spa permit but a spa was never installed. Additionally, last year when we went to replace the fence (which is the same height and in the exact same location as the original), we consulted with our contractor who said a permit was not needed. This was based off of the seller's realtor telling us that the fence had been grandfathered in and that a permit was not needed. When we received the enforcement notice a few months ago, we obtained legal advice and then notified the contractor who is nonresponsive. We also applied for a permit but were told to go this route first. The reason we are here tonight is to make sure we're fully in compliance. The other element is that we replaced the fence for safety reasons as well.

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

Craig Klos, 12908 Howe Drive, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Klos: I would ask the Board to please approve the 6-foot fence for reasons previously stated. On a lighter note, we've got two terriers and I don't need those dogs looking at anything other than what they can see when they look out at Mission Road because they like to bark. We do our best to control that out of respect for the neighbors. Please approve it. This house is just magnificent compared to what it was in the early to mid-90's.

**A motion to approve Case 41-2022 Colm Roughan/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 12912 Howe Drive, was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 5-0. For: Munson, Dr. Peppes, Hawk, Farrington, Bussing.**

*MEETING ADJOURNED*

