

**City of Leawood
Board of Zoning Appeals Minutes
September 28, 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 September 28, 2022, Board of Zoning Appeals Meeting. Could I have roll call, please?

MEMBERS PRESENT: Munson, Dunn, Clawson, Hawk, Farrington

MEMBERS ABSENT: Dr. Peppes, Bussing

STAFF PRESENT: Thompson, Knight, Torrez

APPROVAL OF MINUTES: Approval of the minutes from the August 24, 2022, Board of Zoning Appeals meeting

A motion to approve the minutes from the August 24, 2022 Board of Zoning Appeals meeting was made by Hawk; seconded by Munson. Motion carried with a unanimous roll-call vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: We have several cases before us tonight. I would like to request that each applicant keep their comments to five minutes or thereabouts so that we can get through this meeting at a reasonable hour. Our first case tonight is in Old Business.

OLD BUSINESS:

Case 35-2022 Milton Winter/Owner-Request for a Variance to the rear setback for the placement of a sport court in accordance with the LDO, Section 16-4-1-3(B) 6 c in an R-1 District for property commonly known as 13207 Windsor Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant has a non-permitted sport court in the backyard. The sport court started out as a patio and the basketball goals were added at a later date. Per the applicant, the sport court is 8 feet, 5 inches from the property line. A variance for 1 foot, 7 inches is needed to allow the sport court to remain.

Chairman Clawson: Are there any questions for staff regarding this case?

Mr. Dunn: I do have one, Mr. Chairman. Under one of our factors, it states that this home had a preexisting basketball hoop on a patio that was built by the previous owner. Do you know anything about that?

Mr. Thompson: I just know what was reported to us. We did issue a permit for the patio. It is possible that the person who pulled the permit added a basketball goal, but I don't know that for certain.

Chairman Clawson: Could you please reiterate what the requirement is for a sport court?

Mr. Thompson: All sport courts must be at least 10 feet from other property lines.

Mr. Munson: I have a question. If the sport court has to be 10 feet away, how far do the basketball goals have to be? Are they usually located on the edge of the court?

Mr. Thompson: In this case, they are both on the edges of the court. One is in the middle, and the other one is at the southeast corner.

Mr. Munson: That's closest to the back lot line?

Mr. Thompson: The second one is, yes.

Chairman Clawson: Could you briefly put up a picture of the property that shows where the basketball goals are? *Pic displayed on screen.*

Mr. Thompson: You can't really see it, but I've got x's placed on each, which I'll point to.

Mr. Hawk: Can you tell us how long these goals have been there?

Mr. Thompson: I don't know. They were actually found when a Code Enforcement Officer went out there on a different complaint.

Mr. Hawk: Was the complaint about the noise?

Mr. Thompson: Actually, the first complaint was about pool pump noise. Pool equipment has to be screened and at the time, theirs was not. It has since been remedied, but they found the sport court violation when they went out there on that complaint.

Chairman Clawson: The 8 feet, 5 inches is measured from the property line to the edge of the concrete, correct?

Mr. Thompson: Yes, sir.

Applicant Presentation:

Milton Winter, 13207 Windsor Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Winter: I bought the house in 2018 and the patio in question was already there with a basketball hoop. It already existed when I moved in, and I did not know that it didn't have (or even needed) a permit. The pool and patio were already added before I moved in. I did have a basketball hoop from my previous house that was pretty expensive, so I brought it with me when I bought this house. I put it where the preexisting basketball hoop was already at. I am asking for this variance because in order to meet the 10-foot requirement, I would have to cut off a foot and a half of concrete. Instead of spending the time and money to cut off the concrete, I'm asking for the variance so it can remain as is.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: There's a letter in our packet that mentions the lights at night. Are there light fixtures on the back of your house that shine on the court, or is it lit up by different light fixtures?

Mr. Winter: There are some preexisting lights that shine a little bit on the pool and a little bit on the patio there. I did put a small light that shines down on the patio as well, so there are a couple of lights out there.

Mr. Munson: Also, there was mention of noise because of the basketball goals being used at night. What's the situation there?

Mr. Winter: I have three kids. A thirteen year old and 2 eleven year olds. They all play basketball. Sometimes it is dark. During the school year, we try to have them inside by 9 o'clock. In the summertime they may be out later than that, but definitely not past 10 o'clock.

Mr. Hawk: For our orientation, could you describe where the basketball goals are on the patio?

Mr. Winter: The preexisting one is over here, and the other one is sort of on the edge right here.

Chairman Clawson: Is the basketball goal in question the one in the picture that has the light shining on it?

Mr. Thompson: Actually they would both be in question. Even if they removed one, it would still be considered a sport court. He would either have to remove the basketball goals altogether, or cut the concrete down to 8 feet, 5 inches in order to meet the requirement of the Leawood Development Ordinance (LDO).

Mr. Munson: So this is an either/or request?

Mr. Thompson: Unless you approve the variance request, yes.

Ms Farrington: Mr. Chairman, may I ask a question of staff?

Chairman Clawson: Sure.

Ms. Farrington: My understanding is that the original intent was a patio and that was constructed/put in place with a permit in 2016 (and passed inspection in 2017). Then, sometime before this gentleman purchased this home in 2018, a basketball goal was added by the previous owner and that's when this became a sport court. The permit was based on a different intended use. It became something different. This homeowner purchased the home and added another basketball hoop, without knowing that the permit wasn't issued for a sport court in the first place. So we're looking at something that was not intended as a sport court to begin with, but has since become one. Now it has to follow the rules and regulations listed in the back of our packets. Regulation C in this LDO states, "Courts shall not be constructed within a required front yard and shall be located a minimum of 10 feet from any rear or side lot line." So we are looking at the homeowner asking for the variance of the 1 foot, 7 inches. There is another part to this regulation. It says, "Screen plantings of a height necessary to muffle noise and block lights may be required as a condition to the special use approval." Well, this was never approved because it was only intended to be a patio. We're kind of dealing with an odd situation.

Mr. Thompson: According to the applicant, if the variance passes, he will comply with the plantings to screen from the neighbors. He didn't want to plan them if you deny the request.

Mr. Winter: Yes. Because if you deny the request, I will have to go out there and do other work to cut concrete, so it wouldn't make sense to put a bunch of plantings there if I'm going to end up having to rearrange the whole thing.

Ms. Farrington: What does the City look at to meet the adding of screened plantings to muffle noise and lights? That's not really defined in the LDO.

Mr. Thompson: That is something that would go before the Planning Department. We would go out and inspect to make sure that it meets the criteria set forth by the Planning Department.

Mr. Dunn: Wade, if we were inclined to grant the variance, could we make it conditional upon it meeting all of the criteria regarding screening as well?

Mr. Thompson: Yes, you could. He would have to meet all of that anyway. Otherwise, he would have to come back before you with another variance to the screening ordinance.

Travis Torrez, Director of Building and Code Enforcement, appeared before the Board of Zoning Appeals via Zoom call and made the following comments:

Mr. Torrez: He would still have to submit a landscaping plan to Mark Klein. It's not super specific in the LDO, but it would just be comparable to other sport court projects that have been approved. For example, evergreens that are of a certain height that would help block out some of the noise. Additionally, any lighting used for the sport court would have to go through the Planning Commission and Governing Body and would be a separate issue. There is no permit for lighting and we've informed the applicant that he would have to go through that process for any lighting he is using for the sport court.

Chairman Clawson: The lighting that is in place now is illegal?

Mr. Torrez: Potentially. It could be used to light up that sport court. He'd have to go through the Planning Commission and Governing Body to get that approval.

Chairman Clawson: If this variance is approved, that is part of the stipulations that would have to be met by the Planning Department, correct?

Mr. Torrez: Correct. This is a variance for the setback only. For anything else, he would have to meet all City requirements. We had those conversations leading up to this to see if he wanted to go for more than one application to the Board, but he indicated that this is the only thing he needed a variance for.

Mr. Munson: Travis, what kind of schedule would he be faced with in order to get that screening in place?

Mr. Torrez: It would just be contingent on approval of the sport court permit, which could take 120 days. We would try to push to have it done sooner than later since the use already exists.

Mr. Munson: One of my main concerns is the effect it has on adjacent property. Is it a nuisance to have that noise and that light on the property next door? Can the city pursue that if it is shown to be a nuisance?

Chairman Clawson: To address that, have letters gone out to adjacent property owners?

Mr. Thompson: Yes, sir. We have received at least one email that is in your packet. I actually received that email before the letters were sent out. He emailed me to inquire about the noise. He didn't even know this was going before the Board at that time.

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

Mr. Dunn: May I? I always struggle with this. You have obviously thought of this and seem to have come up with an idea that seems to make perfect sense. Obviously, making you move the court by removing a foot and a half isn't going to make a bit of difference as far as light and noise are concerned. I understand that. But this isn't like a lot of other bodies with the complete, unfettered authority to do what they like. You have to meet the criteria of the law and the two factors that cause us a lot of trouble are Uniqueness and Hardship. I'm sure you've looked at those. At this point, sitting here, I've looked at the cases on that and I can't see how this could ever possibly meet the criteria for Hardship. That means, of course, if we went ahead and approved it and one of your neighbors got a wild hair, they could go to court and get it overturned. That's what I struggle with, Mr. Chairman. I don't know what your response to that is, sir, but that's our dilemma. If you could help us with it, we would appreciate it.

Mr. Winter: I haven't looked up the exact definition of Hardship or any other factor. I just consider it a hardship because if I have to reconfigure the court by a foot and a half, it's not really going to make much of a difference. But if I have to spend who knows how much money to have someone come out and draw a plan, cut the concrete, and potentially move things around, that's where I think the hardship is.

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

Mike Dahir, 13203 Windsor Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Dahir: I am the next-door neighbor. If you could please put that aerial picture back up there, that would be helpful. *Picture displayed on screen.* Just for context, we are the house that is as close to the basketball hoop as you can be. Unfortunately, that's where our master bedroom is located as well. It is on the easternmost side of the home and his basketball hoop is on the westernmost part of his property. I like the Winters. They are good neighbors. I want them to be able to fully enjoy their property and for their kids to enjoy doing all these things. We also want to be able to enjoy our property and our home. We want to protect the value of our home and unfortunately, a sport court right next to our master bedroom is not conducive to that. As requested, we are not in support of it. Plus or minus a foot and a few inches, I agree with the comments that were made earlier. What we do hope for is that the Winters just get a permit to the extent it is required by the City Code. There are also two hoops there and we hope for just one hoop there in the future. I think the City permits two, but the Homeowners' Association (HOA) only allows one.

Jill Dahir, 13203 Windsor Street, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Dahir: I am the second party that lives next door. This is a matter of noise. Noise in the morning, in the evening, all day. Kids need to be kids and they need to play but we can't be in that part of our house, sleeping or anything. Even in the bottom part of our basement, we hear constant thumping of multiple balls. It's just a matter of noise, it's nothing personal. We would like to just live in our home peacefully and sleep. Perhaps even sleep in sometimes. Thank you.

Chairman Clawson: Are there any other comments from the audience? If not, we will evaluate the five factors as a Board. We have to vote in the affirmative on each factor in order to support a Motion for Approval. The first factor is Uniqueness of the Property. Comments by the Board?

Mr. Dunn: Mr. Chairman, I see nothing unique about the property other than the sport court there. That's kind of unusual and it was placed there a foot and a half too close to the other property to be a sport court. I don't think Uniqueness has been met, but I could be corrected by my peers.

Mr. Munson: I will echo that. I feel the same way.

Uniqueness of the Property criterion unsatisfied with a unanimous vote of 0-4. Against: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. Comments?

Ms. Farrington: I'll go ahead and speak to this one, Mr. Chairman. We've had an email and homeowners next door speak in regard to their rights of being adjacent property owners and both have expressed their concerns with noise and light. Had this been submitted as an actual permit for a sport court, maybe it would've been taken into consideration. At this time, it does not meet the rights of the adjacent property owners.

**Rights of Adjacent Property Owners criterion unsatisfied with a unanimous vote of 0-4.
Against: Munson, Dunn, Hawk, Farrington.**

Chairman Clawson: The third factor is Hardship.

Mr. Dunn: If I may, Mr. Chairman, I will speak on this one. Based on our prior council's urging, I spent time studying both uniqueness and hardship, so I know it pretty well. While there are legal principles that can be argued, one that cannot be argued is that it can't be self-created. This is the definition of being self-created, so it doesn't meet the criteria.

Hardship criterion unsatisfied with a unanimous vote of 0-4. Against: Munson, Dunn, Hawk, Farrington.

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

Mr. Dunn: I feel like I'm talking too much, but we've had two neighbors show up that said it affects them adversely.

Mr. Munson: I'll echo that.

**Public Safety and General Welfare criterion unsatisfied with a unanimous vote of 0-4.
Against: Munson, Dunn, Hawk, Farrington.**

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

Ms. Farrington: I'll speak to Spirit and Intent. The LDOs that are set in place are done so for a reason, and that is to meet the spirit and intent of the City of Leawood. The sport court that was not permitted for that function does not meet what was put in place by the City.

Spirit and Intent criterion unsatisfied with a unanimous vote of 0-4. Against: Munson, Dunn, Hawk, Farrington.

A motion to deny Case 35-2022 Milton Winter/Owner-Request for a Variance to the rear setback for the placement of a sport court in accordance with the LDO, Section 16-4-1-3(B) 6 c in an R-1 District for property commonly known as 13207 Windsor Street– was made by Munson; seconded by Hawk . Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, and Farrington.

Case 39-2022 Cortez Francis/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 2001 W. 83rd Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant constructed a 6-foot-tall wooden privacy fence after a permit for a 4-foot fence was issued. What you see on your screen in red is where the fence is at. He meets the side yard requirements since it is a corner lot, so it is legally placed. They just built it too tall.

Mr. Munson: Why did that happen, by the way? He had a permit to build it 4 feet tall, but he made it taller.

Mr. Thompson: I do not know. You will have to ask the applicant.

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

Mr. Thompson: If you'll recall, this case came before you last month. He didn't show up then, either. Mr. Francis does have a warrant out for his arrest. He was issued a ticket for building the fence too tall, and has failed to appear in court twice now. That may be why he isn't here tonight.

Chairman Clawson: In light of that, I propose that we continue this case to the next meeting.

Mr. Hawk: Why would we continue the case if the applicant has failed to appear two times in a row?

Mr. Thompson: I did call the applicant last Friday to remind him of tonight's meeting, so he was informed by me personally that he needed to be here. I did not tell him that he has a warrant out for his arrest, so he probably doesn't know.

Chairman Clawson: We could go ahead and act on the case.

Mr. Thompson: I don't know if you can deny the case or withdraw it. You can continue it, though.

Mr. Dunn: Let's just go ahead and continue the case so that we can move on.

Mr. Torrez: Marcy, what are our options?

Ms. Knight: This is Marcy Knight with Legal. Considering he hasn't appeared twice now, I think you can continue it for up to a year. You could also take it up, but obviously you don't have any input from the applicant that could help your decision. The City can't withdraw it. I don't know

if there are any rules in the LDO about failing to appear. You can rule on it or you could continue it.

Mr. Munson: Marcy, what would his status be in this case if he were in jail?

Ms. Knight: The status of this case with the BZA would remain the same.

Chairman Clawson: I suggest that we continue it. Do we have a motion?

Mr. Dunn: Mr. Chairman, before we act on that, I am prepared to make a motion to approve, if you just want to get rid of it.

Ms. Knight: Or another suggestion might be to instruct staff to send Mr. Cortez a notice that this will be the final continuance and if he doesn't appear, the Board will take certain action. At least put him on notice of what the consequences would be if he doesn't appear a third time.

Mr. Dunn: So make it part of the record that if he doesn't appear a third time, it gets thrown in the trash.

Ms. Knight: Right. It would be deemed abandoned if he doesn't appear and he would have to reapply.

A motion to continue Case 39-2022 Cortez Francis/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 2001 W. 83rd Terrace, with the stipulation that the City contacts the applicant and informs him that this will be the last possibility of his case being seen by the Board - was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, and Farrington.

NEW BUSINESS:

Case 48-2022 John Lentell/Owner-Request for a Variance to the 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 2844 W. 138th Terrace.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 4-foot-tall metal fence. The fence would be 2 feet from the property line. Therefore, a variance for 33 feet is needed. The fence is on your screen. It is marked in red. The blue line is the property line. The pink line is the neighbor's fence. They were granted a variance years ago. This fence will probably jog in about 4 or 5 feet.

Mr. Dunn: So the other fence is even closer to the street?

Mr. Thompson: Yes, sir. It's actually just about 10 inches off the sidewalk.

Chairman Clawson: But there is no fence to the left, is that correct?

Mr. Thompson: Yes, sir. That is correct.

Chairman Clawson: For the fence to be legal, they would probably have to put it through the middle of their house.

Mr. Thompson: It would go through the deck. The house is legal, but the deck would be cut off.

Chairman Clawson: Are there additional questions for staff?

Mr. Munson: What's the street behind it?

Mr. Thompson: I believe it's 138th Street.

Mr. Munson: I see. This property is on a Terrace. It's in a cul-de-sac.

Applicant Presentation:

John Lentell, 2844 W. 138th Terrace, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Lentell: If I may, I have a small packet of pictures to pass out. *Picture displayed on screen.* This first picture is showing the neighbor's fence, which was granted a variance. You can see there is a small stake in our yard marking where our fence would have to go right now. It's set in roughly 16-feet from the other fence. That's one of the issues; it's just not in conformity with the variance that's been granted for the neighbor's fence. From an aesthetic standpoint, the setback difference between the two fences would just look a bit ridiculous.

Chairman Clawson: The neighbor's fence was approved with a variance, correct? Do you know when that was?

Mr. Thompson: Yes. 2010.

Mr. Lentell: *New photos displayed on screen.* The next two photos are of a tree in the backyard. The way the fence is currently staked, it would come within just a couple feet of that tree, making it virtually impossible to get a mower in between the tree and fence. The stakes were placed there by a fence company that came out to show where the fence would have to be placed without the variance. The maximum depth between the fence and the tree at that point is 4 feet. As you can see, that's not a lot of space. *Displays another photo on screen.* This shows the distance of the fence from the neighbor's fence without the variance being granted for us. *Last picture displayed on screen.* The final photo is just a quick picture of a little slab that you can see there. That is a slab that just kind of comes off of the deck. There's only 27 feet between that slab and where the fence would go, so there's a really tight fit in there. Especially for any kind of deck redesign or that type of thing. For marketability and resale value of the property, both ours and neighboring properties, having the variance between the fences and the tight fit on that fence

between the tree and the deck would be detrimental to our property value, as well as the neighbors. The fact that the neighbors have been granted a variance for the same issue on the through lot as we are requesting. Thank you.

Chairman Clawson: Are there any questions for the applicant? Is anyone here who wishes to speak for or against the application? In that case, we will go through and evaluate the five factors. The first one is Uniqueness.

Mr. Munson: Mr. Chairman, it's not unique in terms of the way that other lots are around it, but I think we've kind of established a principle that with through lots, in order to accomplish their livability, we have to consider them as somewhat unique.

Mr. Dunn: Mr. Chairman, I would also add that if a legally constructed fence is, frankly, absurd in many ways because of the lot, I'm prepared to find that it makes it unique.

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. All of the letters were mailed out, I presume?

Mr. Thompson: Correct. No complaints or calls have been received.

Mr. Munson: Mr. Chairman, the proposed fence matches that of an adjacent property owner, so that is a plus.

Mr. Hawk: This fence would be the wrought iron material like the neighboring fence, correct?

Mr. Thompson: Correct. It would be a 4-foot-tall wrought iron fence.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The third factor is Hardship.

Ms. Farrington: Mr. Chairman, I'll speak on Hardship. If the request is denied, staff had put in our packet that it could only be constructed on the eastern and western portions of the yard, and I'd like to point out that with the rear yard setback it would deem it where they couldn't place a fence. If they did, it would have to go through their current deck. It would create a hardship because they wouldn't really be able to put a fence up to enclose the back yard, really.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington, nson, Dunn, Dr. Peppes, Hawk, Bussing.

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

Mr. Munson: Mr. Chairman, I will point out that it backs up to 138th Street, which has a lot of traffic. I don't know that that fence will keep out a lot of noise, but it will provide safety.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4- 0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The fifth factor is Spirit and Intent.

Mr. Dunn: I think the spirit and intent with respect to these corner lots is different than it is in other parts. I think the spirit and intent of what we've been doing with other variances on through lots is definitely being met in this case.

Mr. Hawk: Again, with a 4-foot metal fence, it provides a nice look.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

A motion to approve Case 48-2022 John Lentell/Owner-Request for a Variance to the 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 2844 W. 138th Terrace– was made by Hawk; seconded by Farrington. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, and Farrington.

Case 49-2022 Karen Geldhof/Owner-Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3696 W. 128th Place.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant needs to replace the existing 4-foot-tall wooden fence in the same location. The fence has been in place since 1995 and was constructed with a permit issued by the City. A variance for 26 feet is needed to replace the fence at its current location. *Plan drawing shown on screen*. What you see on your screen in blue is where the current fence is. The new fence will be in the exact same spot.

Chairman Clawson: Can you point out the portion of the fence in question?

Mr. Thompson: Everything outside of that red line, basically.

Applicant Presentation:

Karen Geldhof, 3696 W. 129th Place, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Geldhof: The address is listed incorrectly on the agenda. It is 129th Place, not 128th Place. I just went through the questions. I just want to replace the existing fence with the same exact

fence, a 4-foot-tall cedar, shadowbox fence. *Picture displayed on screen.* That's the fence; it butts right up against my patio. It's not 8 feet away from steps. I'm considering that to be unique. The adjacent property owners...*inaudible.*

Chairman Clawson: We need to get your speech on the recording so that we can have our Minutes. Could you please speak into the microphone?

Ms. Geldhof: *Picture displayed on screen.* This is the intersection. My fence is nowhere near it. It is in the back corner that you saw in the initial presentation. When it comes to the rights that adjacent property owners have, it does not adversely affect them. The current fence is in need of repair. My preference is to replace it. I do have two dogs that are both licensed with Leawood. One dog is five pounds and can get under it, so they are going to make it closer to the ground. My father lives with me, and he has Parkinson's Disease and dementia and tends to wander. I need a safe fence so that he can be able to go outside without us worrying about him wandering off. With regards to public safety, it is on the side of my house and doesn't obstruct the view at the intersection of Mohawk and 129th for the spirit of the ordinance. I went through 297 pages, let me tell you. I searched for "fence" and "corner". There were a couple of things that mentioned the spirit of the ordinance creating security and safety. I really am concerned that the current fence is not sturdy enough and I want to keep my father in the yard, as well as my dogs. To maintain the aesthetics of the development, which is mentioned as one of the ordinance's intentions, is being accomplished by painting our house and trying to replace a worn out fence. The final bullet point that I found in that document mentions conforming to height requirements. It is a 4-foot fence, so I'm not asking for it to be taller.

Chairman Clawson: Are there any questions for the applicant? Is anyone here who wishes to speak for or against the application? In that case, we will go through and evaluate the five factors. The first one is Uniqueness.

Mr. Munson: Mr. Chairman, I think you said it initially. This is another one of those lots that has issues that make them different and unique than others. It meets the criteria that I put forth in the last casem which is that forcing her to put a fence where it is legally allowed is kind of absurd. It would end up in an absurd result. I think that makes it unique.

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. All the letters were mailed out, I presume.

Mr. Thompson: Correct. I did receive one call in support of the request.

Mr. Munson: Nothing changes for the adjacent properties, except that they get a new fence.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4- 0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The third factor is Hardship.

Ms. Farrington: Mr. Chairman, I'll speak on Hardship. If this fence were to be moved, it would intersect in the middle of the current patio and existing landscape. That would create a hardship for the property owner.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

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

Mr. Hawk: The fence has been there for over 2 decades, so I don't think anyone would notice any change, other than it's a better fence.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4- 0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The fifth factor is Spirit and Intent.

Mr. Dunn: It's hard to say that replacing a fence of the exact same kind and in the exact same place would negatively impact the spirit and intent.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

A motion to approve Case 49-2022 Karen Geldhof/Owner-Request for a Variance to the build line for the placement of a fence on a corner lot in accordance with the LDO, Section 16-4-9.3(A) in an R-1 District for property commonly known as 3696 W. 129th Place– was made by Farrington; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Dr. Peppes, Hawk, and Farrington.

Mr. Hawk: I would like to say, again, that any case like this that is so cut-and-dry, that the City be empowered to make more approvals.

Mr. Thompson: We have something in the works, so hopefully we'll have good news for you fairly soon.

Ms. Knight: I wouldn't get your hopes up that it's soon. We have discussed it with Planning, which it will need to go through. They just recently lost some staff, so I think they probably need to take it before the Governing Body first to see what they think, and then proceed through to the Planning Commission. We are discussing it, but the wheels turn slowly around here.

Mr. Torrez: This would be a corner lot setback. I'm not sure we discussed doing anything different with corner lot setbacks, but we have talked about the through lot situation.

Case 51-2022 Stanley Ho/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 11210 Rosewood Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant needs to repair/replace a 6-foot-tall existing fence and complete the enclosure of the rear yard to match. The home was issued a pool permit in 1982, but the pool has never been constructed. The fence along the back property line has the good side facing out, so it appears that portion belongs to this home. *Picture displayed on screen.* The part that you see in black on your screen is currently in place and it is a 6-foot-tall fence. The portions marked in red would be the new additions and he wants those to be 6-feet-tall to match.

Mr. Munson: Does the new addition meet the setback requirements and such?

Mr. Thompson: Yes.

Applicant Presentation:

Stanley Ho, 11210 Rosewood Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Ho: When I bought my house in 1996, the backyard fence existed. In 2010 or 2015, I don't remember which year a winter storm knocked down part of the fence. Currently, the fence exists on the left side, the back side, and a section of the right side. I just request to finish the portion that was knocked down and close the back.

Chairman Clawson: There's never been a pool constructed back there, correct?

Mr. Ho: Correct, but there is a hot tub back there.

Mr. Thompson: I have a copy of the actual permit that was issued. It was supposed to be for a pool.

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

Rick Corvick, 11205 Rosewood Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Corvick: I live across the street from the Hos and in Leawood Country Manor, we've done a really good job of keeping the fences down to 4 feet. A lot of them are wrought iron fences. I think that the fence he has in the backyard that separates his property from the commercial property behind his lot works well. I think that by extending that around to the front of the house, it's going to be an enclosure that isn't familiar in our subdivision.

A motion to approve Case 51-2022 Stanley Ho/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 11210 Rosewood Street– was made by Dunn; seconded by Munson. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, and Farrington.

Case 53-2022 Wes Welch; Nancy Walrafen/Owner-Request for an exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 10413 Cherokee Lane.

Staff Presentation:

Mr. Dunn: Before we get to them, Wade, could I ask why this is coming before us as an exception rather than a variance? Is it because of the amount of distance they are requesting?

Mr. Thompson: Yes, sir.

Mr. Dunn: What's the limit that makes it turn from an exception to a variance?

Mr. Thompson: Closer than 10 feet.

Mr. Dunn: Okay, thank you very much.

Wade Thompson made the following presentation:

Mr. Thompson: The property owner would like to add a screened-in porch to the rear of the home. The existing structure is 10 feet, 3 inches from the property line and the new addition would be offset by an additional 1 foot, 6 inches. A request for an exception of 3 foot, 3 inches is sought to construct the addition as shown on the plan. *Survey drawing shown on screen.*

Chairman Clawson: Looking at the survey, it appears that a portion of the house is only 7 feet away. Is that right?

Mr. Thompson: Correct.

Chairman Clawson: In other words, to conform with the LDO, it will be set back to the 15-foot?

Mr. Thompson: Eventually it will. He could actually come straight off the side of the home because it's 10 feet, 3 inches. The property line actually moves away from the side of the home. That's why the front of it is 7 plus feet and the back of the home is 10 plus feet. They are moving it over and at the end of the addition, it will be 15 feet from the property line.

Chairman Clawson: Very good. Any other questions for staff? Is the applicant here?

Applicant Presentation:

Wes Welch, 10413 Cherokee Lane, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Welch: I am the architect on the project. The property owner, Nancy Walrafen, is sitting back there where I was. Basically, we want to add a screened-in porch. Due to the grade, which falls quite rapidly to the west, this is really the only place we can put the porch. We had some space in there with an existing patio, but if we put it there, we would block off all the light from the south that comes into the kitchen breakfast area. We pushed it as far as we could over behind the garage. Now that corner of the garage is a little over 10 feet away from the property line. *Points to image on screen.* It's that corner right there. Do we have any of those other exhibits from the drawing, Wade? *Different picture displayed on screen.* You can see that the hashed area behind the garage is the location of the screened-in porch that we're proposing. That open area to the left/west is where the existing patio is. We put it behind the garage. As you can tell with the pie-shaped lot, the furthest point of the garage corner is 10.3 feet or whatever that exact dimension was. We pushed it over an additional foot and a half behind the garage. Well, that means that with the portion of the screened-in porch that adjoins the existing garage, we're only a little over 12 feet from the property line. Of course, the Ordinance requires 15 feet. As long as we're not getting closer than the existing garage and we're staying a minimum of 10 feet away, this falls under the exception rule. As it projects further to the south, we're more than 15 feet away from the property line. Basically, what we're looking for is for just a sliver; 3 feet tapering down to nothing on the east side of the screened-in porch. That's what we're asking for. It's a huge lot as you can see. We are a good distance away from the house to the east of us at this point.

Chairman Clawson: Are there any questions for the applicant?

Mr. Hawk: Did you want to move it any closer to the property line than that, or are you satisfied with where this proposed location is? I see an offset there. *Refers to plan drawing on screen.*

Mr. Welch: Do you mean push it further away from the property line than we already have? If we do, then we start making the patio so small. We did look at the possibility of moving it over, but then we ran into the issue of the patio becoming worthless.

Mr. Hawk: What if you push it out the other way? Away from the patio?

Mr. Welch: If we push it away from the patio, we are pushing it closer to the property line. I like to keep the offset between the existing corner of that garage and the proposed screened-in porch area because we're going to have pretty good eaves on this porch. We have 2-foot overhangs and I think, aesthetically, I don't want to have that sticking out beyond the house. I think you have those drawings. *Points to more detailed plan drawing.* You can see it here. I don't want that fascia to be beyond the existing fascia of the house. Otherwise, it starts looking really weird.

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

Jim Kelly, 2600 W 105th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Kelly: I live directly south of the property in question. I've seen the plan drawings and the sight lines, and I have no objections or concerns at all with the project.

Chairman Clawson: Thank you, sir.

A motion to approve Case 53-2022 Wes Welch; Nancy Walrafen/Owner- Request for an exception to the side yard setback in accordance with the LDO, Section 16-2- 5.3(D) in an R-1 District for property commonly known as 10413 Cherokee Lane – was made by Munson; seconded by Dunn. Motion carried with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, and Farrington.

Case 54-2022 Mack Colt; Gibson Family Trust/Owner-Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 3105 86th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The property owners will be razing the existing home and constructing a new one. Due to the existing topography, unique terracing, and elevation changes, the grade needs to be raised and lowered all around the home in order for water to drain away from the structure. They are asking for a change to the maximum grade change, which will exceed 2 feet.

Mr. Dunn: Just for clarity's sake, if we were to approve this request, whatever they build would still have to meet our water runoff requirements, correct?

Mr. Thompson: Yes, sir. I've placed at your stations the email that we received from Public Works where the engineer states that he does agree with the drainage study.

Mr. Dunn: Thank you.

Chairman Clawson: So he takes no exceptions to what is being requested, correct?

Mr. Thompson: Correct.

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

Applicant Presentation:

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

Mr. Colt: I'm the general contractor for this project. My clients are the Gibsons back here. I've been in front of you guys before with the same type of variance. I think this one is even more convincing. I hope, anyway. It looks like Wade already has my site plan up there. *Points to site plan on screen.* This property has some very unique topography going on. I've broken this down into different zones of A, B, C, D, E, F, G. On some portions of the lot, I need to raise the grade by more than a foot. By the way, the highlighted yellow portion is the existing house. The proposed structure is outlined in black here. The areas in green are all areas that I need to raise

the grade by more than 12 inches and the areas in red are places that I need to lower the grade by more than 12 inches compared to the existing grading. Each of these zones has a different reason for why we need to do that. The green areas have to do with getting the proper drainage away from the structure. This lot slopes downhill from 86th street. The drainage pattern sends all of the water down to this southeast corner of the property and this flows off the property and directly into a big stormwater system that the City has recently updated. It's not really flowing onto another property. We've done some stormwater analysis and engineering and we've got a retention system. It's not shown on this site plan, but I've got the plot plan that I submitted to Public Works that shows the retention system that we will have here to retain excess runoff.

Mr. Munson: Sir? I think of this as a French drain. How does the water get to the French drain? Is it piped from the eaves?

Mr. Colt: Let me find the larger print. I'm not sure it will fit on this projector. The gist of it is that the stormwater engineer has calculated the excess amount of impervious area that we'll have and we are directing that same square footage of tributary area of roof into the system.

Mr. Munson: Well that doesn't really answer my question, but that's okay. You're grading and when it's done, you'll have what's considered to be a swale going down from that far southeast corner of the lot. How far is that from the stormwater system that you mentioned Leawood had updated?

Mr. Colt: A couple hundred feet, maximum.

Mr. Munson: How far? In other words, how much property does it go across before it gets to the stormwater system?

Mr. Colt: I don't have that in front of me. I could probably pull it up on the Automated Information Mapping System (AIMS). The gist of it is that we're retaining any excess runoff on our property anyway.

Ms. Farrington: Mr. Chairman or staff, if you put up the impervious plan that is proposed, that might show it. It's in the packet and it looks like this *holds up plan drawing*.

Mr. Colt: I have the full stormwater report here.

Ms. Farrington: That's the infiltration pit and trench detail, but if you put up the plan it kind of shows you where those locations are at.

Mr. Munson: I understand that, thank you. I ask these questions because you calculate runoff but then *inaudible*.

Ms. Farrington: Yes, that's the one I'm talking about there. *Refers to plan site drawing on screen*. That's it.

Mr. Colt: This site drawing shows what's pervious and impervious. These shaded areas are impervious, so the house structure, street, driveway, patio, and pool deck. Per Public Works guidelines, they actually make us go all the way out into the center of the street, which isn't really our property. But when we do our calculations, we have to include half of the right-of-way, so that's all been done here. *Letter regarding drainage study displayed on screen.* This shows that with the existing versus the proposed impervious area, we have an increase of 1,787 square feet. Ironically, another hitch to the way that Public Works makes us calculate this: the existing impervious area shows as 12,075. The actual existing is like 12,800 or something but because it's over the 35% threshold, so technically existing versus proposed isn't actually 1,787. It's only like 900 or something. Since that threshold exists, we have to consider the existing as 35%. Hopefully I'm answering your question here. With the increased impervious area of 1,787 square feet, we are taking our roof and piping it into the infiltration pit. Another fortunate thing that helped us is that the house next door to the east is only a couple of years old and they had already graded a swale right along the property line here and that's the direction everything wants to head. There are no issues with running across their lot, so we're covered on that.

Mr. Munson: Well, I wasn't thinking about the adjacent lot. I was thinking about it going southeast toward the stormwater pipe that the City put in. It looks like, even though your numbers probably make your case, I just think about what happens when God pours a bucket of water on this area like he does every once in a while? What's going to happen to the drainage?

Mr. Colt: The reason that I point out that there's a stormwater system in place right there is to reinforce the fact that, on a typical lot, we just retain anything that's over 35% and/or any increase in impervious surfaces and that's all we're really required to do. That's the same with this lot, but to back up your concern, if there's a thousand year flood event the water is not going onto someone's property. It's going to the stormwater system. There's a name for that creek system that I can't recall, but it was a 10 million dollar project that you guys did.

Mr. Munson: I don't want to beat this to death, but one thing that's been brought to our attention continually is runoff as it affects adjacent properties. That's why I was questioning you.

Chairman Clawson: Do we have a plan that shows adjacent properties, like AIMS?

Mr. Colt: I am actually pulling up AIMS on my phone right now to help answer this.

Chairman Clawson: This is an interesting lot. You've got a 20-foot grade change from the north end of the lot to the corner.

Mr. Dunn: Could I ask a question? Am I reading this correctly in that they're not dealing with the natural contours of the lot, but rather the terracing that was put in by the previous owners?

Mr. Colt: Yes. Most of the areas that I'm needing to fill by more than 12 inches have to do with inadequate drainage of the current structure. It's sloped towards the house. It sits in a hole. The driveway also sits in a hole and has drains built into it that are all clogged up. That's in the front. All of the stuff in back has to do with *inaudible*.

Mr. Dunn: You don't need to get into all of that. I understand. Those areas are ones where it wasn't the natural contour, but ones that were built up.

Mr. Colt: I think you've got a whole bunch of pictures that I submitted. *Picture of current structure displayed on screen.* Here's one that shows the pool deck, then another couple feet up there's a pool equipment area. Then this steps up another 3 feet to another level, then it steps up another 2 feet to a patio over here and 2 more feet to another patio over here. Basically, the only way to comply with the grade change ordinance for a new house on this property would be to build the exact same house in the exact same place. Doors and windows and floor plans would have to match exactly what's there to be able to terrace exactly the same way. Even building the same house in the same place isn't possible because the setbacks have changed. We have to set our new house back 7 or 8 feet further than where this current house is. I'm pretty confident in saying that we have a pretty unique lot and topography to comply with.

Mr. Hawk: I think our major concern is the runoff water. With the elevation of the house and the studies having been done in great detail and approved by the City, I think we're well on the road to deciding if everything is fine.

Mr. Colt: We've done the engineered study. The Public Works Department did come back with a couple of questions and wanted me to add some verbiage and notes on the plot plan. I think they're just wanting to make sure it takes any liability off of you and them. For instance, the swale that the neighboring lot to the east put in place. When we do our surveying, we have to survey 25 feet into neighboring properties. Because of that, our survey shows this existing swale that runs down the property line. Public Works came back and said that their plot plan on file from when they built the house 3 years ago doesn't show they built that swale. Well, the plot plan was submitted before the house was built, so it's not an "as-built" survey. Public Works wanted some clarification showing or stating that this is what exists now, so we added some wording there. On the plot plan we added some wording in spots that says, "existing swale". Public Works has been satisfied. There's really no other restrictions. The house and the house plans meet all of the other ordinances.

Chairman Clawson: It appears that the grading changes that you're proposing are shown by area and the maximum amount of grade change. It looks like most of them are less than 2 feet, but there's one that is 6.7 feet.

Mr. Colt: Yes, there is that one that is very extreme. *Picture of front of house displayed on screen.* There's another picture that shows all of the different levels going on. I'm going to show you my house plan. *Plan drawing shown on screen.*

Chairman Clawson: Is this area right here going to be filled in? This area right here *inaudible*

Mr. Colt: Well it gets kind of complicated. There are areas right next to each other that I'm requesting a variance for needing more than 12 inches to fill, but right next to them, I'm needing a variance for more than 12 inches of cut. Right here in this picture, our new house has remarkably very similar topography. We really tried to comply with the 12-inch grade change rule but there's just no way. Overall, it'll be terraced very similarly to the existing house.

Displays plan drawing of proposed house on screen. We have a walkout basement, a mid-level terrace similar to what you see in the picture, and an upper-level terrace. This is the rear elevation of our proposed residence. Here we have the walkout part of the basement, and then we've got a 5-foot stone retaining wall. I've included a picture in your packet of an example of a similar type of construction so you could see how we intend to build that retaining wall. There's the 5-foot wall. There are some steps that are inset into the lime retaining wall. There will be a patio on this mid-level and then a half flight of stairs up to a screened deck. It's this area right here that gets pretty complicated. I do my own drafting and house plans and I've got a little bit of education on topography. I've got a Civil Engineering Degree, so I've learned some of this stuff. Figuring out exactly what is changing by more than 12 inches is hard enough, but this area "E" that has the most extreme spot (68 inches) seems like a lot. However, when you're talking about 5-foot retaining walls not being in the same place on the proposed house as they are on the existing house, some bigger grade changes are needed. *Image of grade-changes in plot drawing shown on screen.* Right here are where the existing retaining walls are that jump from walkout level up to an intermediate level. On our new plan, we are doing the same thing but we're moving it over here just slightly. This is only like 10 feet away. This is partially due to the existing house being closer than 15 feet to the property line, which is what the current side yard setback is regulated at. Our new house had to shift this way. The existing house has a pool; our new house will have a pool. They are both in similar locations. Overall, I think it's a positive thing. We're getting everything further away from the property line. In my summary of what I've submitted, I mentioned that unless we match exactly where these terraces take place, then we're going to have areas that are drastically different than what currently exists. Overall, it's very similar topography to what's already there. Everything else on the lot is changing by less than 12 inches, which is very minimal on a project like this. I hope that answers your questions.

Chairman Clawson: The key thing that we focus on with any variance asking for a grade change is drainage. You've already performed a drainage study by an engineer. It's a sealed report that was submitted to the City and approved with no exceptions, right?

Mr. Colt: We are reducing the slope over here, which is a positive thing for the safety of the Gibsons with regards to mowing and kids and all that. It also has a positive effect on the runoff.

Mr. Dunn: But the point is, you're not here asking us to relieve you of any relieved of any requirement that City staff has given you for runoff.

Mr. Colt: Right. Like I said at the last meeting, I know you guys aren't the ones writing the LDO, but I truly think that eventually this Ordinance needs to be reworded slightly. I've done a lot of teardowns and rebuilds in Leawood since 2001. This was before there were any restrictions whatsoever. I'm familiar with each restriction and why it became an ordinance. This particular restriction came about because of a house that was built on the west side of High Drive. I don't recall the builder's name, but he took a lot that was relatively flat and put the house up extremely high on that lot. He set it up higher than it should have been just to get a daylight basement in the back.

Chairman Clawson: Did he fill it in at all?

Mr. Colt: Probably not because it was bigger than the former house was, so when he dug the basement, I'm sure he had lots of dirt. He probably had to haul dirt off, in fact. The topography in the front yard was built up and raised quite a bit for that daylight basement. In new developments, you see that all the time. You see guys taking a lot that doesn't really have the slope for a daylight basement and they'll set the house up higher in order to achieve that. That flies in new home subdivisions. But the problem, especially at 82nd and High Drive (which is the epicenter of cottage-type architecture), is that you put up a giant new house 4 feet higher than it should be. That's where this Ordinance stems from. The neighbors and some of the Leewood Homes Association members threw a fit, for good reason, because it doesn't really fit in. I don't know the innards of how the Ordinance made its way through the Planning Commission or how they came up with the exact wording, but it literally has 2 sentences. The gist of the first sentence is that you can't change the topography by more than 12 inches up or down from existing to proposed, period. The second sentence says that if Public Works deems it necessary for proper drainage, then you can. Well Public Works isn't looking at this house on a microscale. They are looking at runoff and not at how I need to make the house work. That forces me to have to apply for a variance and not just an exception. I understand the intent of the Ordinance and am familiar with how it arose. In my case, it has nothing to do with forcing a daylight basement or building a house up significantly higher than it should be. There's no other reason than that we can't build a new house without getting a variance.

Mr. Dunn: Well, Mr. Chairman, I think I've heard enough.

Chairman Clawson: We've been pretty sensitive to cases where they want to raise the grade on a lot. I know a case in my neighborhood, where we approved it, and they added about 2 or 3 feet worth of fill over the lot. The next-door neighbor ended up with her yard full of muddy water and things flowing down the hill, so we are sensitive to it. But it sounds and looks to me like you've done the appropriate analyses that were required and everything and that's what we need, frankly.

Mr. Munson: Question. There's quite a bit of pavement that's part of your impervious measurements of material. Will those existing pavements be retained in this new house? The circle drive, for example?

Mr. Colt: The existing circle drive is in a bad state, so we will be putting in a new one. It's almost in the exact same spot but has to be shifted back slightly further and will be slightly wider. The existing is really narrow. We're almost in the exact same spot on this side.

Ms. Farrington: Mr. Chairman, it states in the report that there's a 5.2% increase from impervious materials.

Mr. Colt: But most of that is from the house, not pavement.

Ms. Farrington: Right. We can see that on the plan.

Chairman Clawson: Well, I think we have a good understanding, as a Board, of the critical issues in this case. Are there any other questions for the applicant?

Mr. Munson: I would like to make one editorial comment, if I may. I would give kudos to Mack Colt for this work that he's done with this particular application. It took me moments to look through all of this stuff, but it was interesting. Congratulations.

Chairman Clawson: Is there anyone here that wishes to speak for or against this application? As you know, we have to go through the five factors. We have to vote in the affirmative on all five factors to support a motion to approve the variance. The first factor is Uniqueness.

Mr. Dunn: Mr. Chairman I'd point out that, in the report written by our staff, they even used the word "unique" to describe the terracing of the property. There are several factors that make this property unique. I think it meets those criteria.

Uniqueness of the Property criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. I presume that all the mailings went out.

Mr. Thompson: No calls or complaints were received.

Rights of Adjacent Property Owners criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The third factor is Hardship.

Mr. Munson: Well, he won't be able to build the new house and get what he needs unless he gets this action taken. It would be a hardship for him if we didn't approve this.

Mr. Dunn: It meets the classic definition of hardship. Following our codes would force him to build a house that would flood. That's a hardship.

Hardship criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

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

Mr. Munson: Staff points out that it won't really affect this factor.

Mr. Hawk: Except that it's a safety factor that will have less water drainage.

Public Safety and General Welfare criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

Chairman Clawson: The fifth factor is Spirit and Intent.

Ms. Farrington: Mr. Chairman, I'll speak to this. It has met the criteria for Spirit and Intent for Leawood and the engineer report shows that they have made a large effort to deal with stormwater runoff and the grades to keep this property looking the way it should be in Leawood.

Spirit and Intent criterion satisfied with a unanimous vote of 4-0. For: Munson, Dunn, Hawk, Farrington.

A motion to approve Case 54-2022 Mack Colt; Gibson Family Trust/Owner-Request for a Variance to the maximum allowable grade change in accordance with the LDO, Section 16-2-5.3(G) in an R-1 District for property commonly known as 3105 86th 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.

MEETING ADJOURNED.

