

**City of Leawood
Board of Zoning Appeals Minutes
November 16, 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 November 16, 2022, Board of Zoning Appeals Meeting. Could I have roll call, please?

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

MEMBERS ABSENT: None

STAFF PRESENT: Thompson, Weber, Torrez

APPROVAL OF MINUTES: Approval of the minutes from the October 26, 2022, Board of Zoning Appeals meeting.

Chairman Clawson: We have no Minutes from the last meeting yet, so we will begin with Old Business.

OLD BUSINESS:

Case 57-2022 Total Home Fence & Deck; Darlene Campbell/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 12624 Howe Drive.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The homeowner would like to replace the existing 4-foot-tall wooden fence in the same location. The current fence has been in place for at least two decades and is in need of replacement. The fence is placed on the property line, and a variance for 35 feet is needed to replace the fence in its current location.

Chairman Clawson: Are there questions for staff?

Dr. Peppes: Wade, they're just replacing it with another 4-foot fence, correct?

Mr. Thompson: Yes.

Applicant Presentation:

Brian Andrade, 11100 W 82nd Street, Suite 105B, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Andrade: I'm new to this, so the biggest thing I can say is-having reviewed the street line at the property-there are 13 houses in a row from 127th down Mission Road that all have that same line of fence. I'm assuming that was done before this LDO was enacted. However, if we were to switch that and put the fence back where the code says it should be, it would basically be on their patio. That does provide some difficulty for the homeowner.

Chairman Clawson: Are there questions for the applicant?

Mr. Munson: I see, when you answered question number three, that if you had to obey the requirement, it would go across your patio. Is that correct?

Mr. Andrade: That's what I was referring to, sir. Thanks for asking. They have a patio slab right there that has been there for quite some time, but it basically puts the fence line right on it.

Mr. Thompson: *Refers to aerial photo of the house.* That red line is where the fence would have to be placed if they had to stick to the 35-foot build line.

Mr. Munson: And this is a through lot?

Mr. Thompson: Yes, sir.

Mr. Munson: Thank you.

Chairman Clawson: It looks like it would almost be up against the house.

Mr. Andrade: If you could see the fireplace, it would basically be a foot away from it.

Mr. Hawk: Wade, haven't we just had one very similar in the same block?

Mr. Thompson: Not yet. But I'm sure we will, because there's a whole row of fences that are getting old and will need to be replaced. I think this will be the start of many.

Chairman Clawson: You said how many houses along that street have the same fence?

Mr. Andrade: By my count, there were thirteen in a row that had the same line. One of them was approximately five feet in from all the rest.

Mr. Munson: When was this house built?

Mr. Thompson: 1988.

Mr. Bussing: Wade, is there a record of a variance being requested when the home was built?

Mr. Thompson: No, sir. I looked.

Chairman Clawson: Is there anyone here that wishes to speak for or against this application? Well this is a variance, so we have to go through the five factors and evaluate each one. The first is Uniqueness of the Property. Comments by the Board.

Dr. Peppes: Mr. Chairman, as we looked at the property, you could see that all the houses look the same. Once again, this is a through lot and has a busy street behind it and in front of it. It appears as though it's a different breed when we're dealing with through lots. I believe, just because it's a through lot and with the adjacent houses there creates its uniqueness.

Chairman Clawson: Any other comments on Uniqueness?

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

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. Letters were mailed out?

Mr. Thompson: Yes, sir. No calls or complaints have been received.

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

Chairman Clawson: The third factor is Hardship.

Ms. Farrington: Mr. Chairman, I'll speak on Hardship. If the request is denied, staff has noted that the fence will be right up against the rear of the home and go over their existing patio. That would create hardship for usage and construction costs. Keeping it in the exact place where it's been for a number of years seems like the most logical in preventing any hardship.

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

Chairman Clawson: The fourth factor is Public Safety and General Welfare. Any discussion or comments by the Board?

Mr. Munson: Well, in the staff's writing it says approval of this request should not affect this factor, so it must be okay.

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

Chairman Clawson: The last factor is Spirit and Intent.

Ms. Farrington: Mr. Chairman, I'll speak on Spirit and Intent. This meets the spirit and intent of Leawood as it just basically replaces the fence in the exact same position that it's been in for the last two decades, and it lines up with all the other fences in that area as well.

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

A motion to approve Case 57-2022 Total Home Fence & Deck; Darlene Campbell/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 12624 Howe Drive– was made by Munson; seconded by Hawk. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

NEW BUSINESS:

Case 61-2022 Chris Frans; Gina Danner/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 12609 Delmar Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The homeowner needs to replace an aging fence that has been at its current location for over three decades. The fence was constructed with the pool in 1987. *Refers to aerial photo of property.* The dark black lines are where the variance would be. That would be the 35-foot.

Chairman Clawson: Would this be a 6-foot fence?

Mr. Thompson: Yes, sir. It's currently a 6-foot fence. They do have a swimming pool, so it's allowed.

Chairman Clawson: So, the dark line is where it would go?

Mr. Thompson: Yes. That's where it's at now, and that is the portion that would require a variance for the placement.

Ms. Farrington: Could you put up page 2, which has the red line showing where the 35-foot line is? That might be a better view. It's the fourth page back in our packets. So we're just voting on that back property line, correct?

Mr. Thompson: *Displays requested photo on screen.* Correct. That would let the fence be reconstructed where it is at.

Chairman Clawson: Are there any other questions for staff?

Ms. Farrington: I have another question. If we're looking at this, the existing fence is placed 14 feet away from the property line and they're wanting to put the new one along that same 14-foot line, correct?

Mr. Thompson: Yes, ma'am.

Chairman Clawson: Again, to follow the ordinance, the fence would have to be placed up close to the house. Correct?

Mr. Thompson: Closer to the pool, yes. Very close to the pool.

Applicant Presentation:

Chris Frans, 6037 Speaker Road, Kansas City, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Frans: We just want to put the fence right back in the same spot.

Chairman Clawson: So you're just planning a conventional 6-foot fence?

Mr. Frans: Yes. It's a PVC fence. It will last longer than the type of wooden fence that is there now.

Chairman Clawson: What color?

Mr. Frans: White. The fence that is there now is white also.

Chairman Clawson: Any questions for the applicant?

Mr. Hawk: Why white? Because that's what color the fence is now?

Mr. Frans: Yes, and that's what the owner chose.

Ms. Farrington: It might help out. I go by this on a route. It's a modern home. Is it efface or stucco? It's all white. The home has a very modern design and the fence has always been white.

Chairman Clawson: Are there fences on adjacent properties?

Mr. Thompson: Yes, sir. The property located at 4301 126th Terrace has a 4-foot fence in the same location, so it would be in line with that.

Mr. Munson: What street are we looking at in this picture?

Mr. Thompson: It's 127th Street, looking north.

Chairman Clawson: Is there anyone here who wishes to speak for or against this application? This is a variance, so we must go through the five factors. The first factor is Uniqueness of the Property.

Mr. Bussing: Mr. Chairman, once again this is a through lot, which we have noted before are somewhat unique in and of the issues they present to homeowners with regard to traffic on the front and back side of the house.

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

Chairman Clawson: The second factor is Rights of Adjacent Property Owners. No comments? Letters were mailed?

Mr. Thompson: Letters were mailed, and we've received no comments.

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

Chairman Clawson: The third factor is Hardship.

Dr. Peppes: Mr. Chairman, I feel that Hardship has been met. Once again, we're looking at a through lot, but also, it's something that's been there for three decades and matches with the other properties that have been there. And if it was taken back, it would be too close to the pool.

Chairman Clawson: Yes. They've got a pool, so they've got to have a fence.

Mr. Thompson: Yes, sir.

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

Chairman Clawson: The fourth factor is Public Safety and General Welfare. Staff notes that approval of this request should not affect this factor. Any other comments?

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

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

Ms. Farrington: I'll go ahead and speak on Spirit and Intent. This home is pretty unique in itself and looks a bit different than the ones around it. However, it's been in place for thirty years, so I would say that they've met the spirit and intent. That's kind of what gives it its character, so I would recommend keeping it.

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

A motion to approve Case 61-2022 Chris Frans; Gina Danner/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 12609 Delmar Street was made by Hawk; seconded by Farrington. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Case 62-2022 Patrick Blassie/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 8314 Sagamore Road.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant would like to enclose the rear yard with a 6-foot-tall privacy fence. The fence is needed for more privacy and less disturbances to the neighbors from the Great Dane that resides at the home.

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

Mr. Munson: Staff, what are the fence heights on adjacent properties?

Mr. Thompson: The home to the south, 8320 Sagamore Road, currently has a 6-foot-tall privacy fence. The home to the north, 8308 has a 4-foot chain link fence.

Applicant Presentation:

Patrick Blassie, 8314 Sagamore Road, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Blassie: I just want to build a 6-foot privacy fence to replace the 4-foot chain link fence that's currently on my property for a couple of reasons that have already been stated. The neighbor to my south has a 6-foot-tall wooden privacy fence. We like the way it looks. Secondly, the chain link fence that we have is falling apart and I'm holding it up by a lot of different wiring and whatnot. Lastly, as was mentioned, I have a Great Dane. A big dog. He likes to get up on the fence with the neighboring pets and they get into a little barking match, which gets loud and frustrating so building this fence would help keep the peace with the neighbors. That's all I have. Thank you.

Chairman Clawson: Are there any questions for the applicant?

Dr. Peppes: Is the existing 4-foot-tall chain link fence going to be removed?

Mr. Blassie: Yes, sir.

Mr. Hawk: Has this dog jumped the fence?

Mr. Blassie: He has not, but I fear that he could if he really tried.

Chairman Clawson: Is your existing fence 4-foot?

Mr. Blassie: Yes.

Chairman Clawson: He probably could.

Mr. Thompson: In your packet, you will notice that the neighbor directly behind him has a large play area which is very close to the property line. Are there any issues with that?

Mr. Blassie: Not really. They have 2 dogs and they let them out to play with their kids. No real issues, they just get into a barking match since they can see right through the chain link fence. It gets a little loud.

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

A motion to approve Case 62-2022 Patrick Blassie/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 8314 Sagamore Road was made by Dr. Peppes; seconded by Hawk. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Hawk, Farrington, Bussing.

Case 63-2022 Caleb George; Chris George Homes/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 9615 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 lot has considerable grade change, back-to-front, of approximately fourteen feet. A grade change of three feet is requested to create a manageable slope for the driveway and a semi-flat section in the rear yard.

Chairman Clawson: Are there questions for staff? It appears that a drainage study was done in this case. Has the City provided their evaluation?

Mr. Thompson: Yes. The City Engineer has looked at this case and didn't have any issues with the report that was submitted.

Mr. Dunn: Wade, I just wanted to confirm for the record that this is one of those cases in which, if this is approved, then whatever is built is going to have to meet our runoff criteria and is not going to adversely impact surrounding property.

Mr. Thompson: That's correct, and that's why we're so strict about having the drainage report and our Public Works Department approved the drawings as well.

Mr. Dunn: So, we don't have to worry that, if we approve it, it's going to end up as a problem for the neighbor.

Mr. Thompson: Correct.

Mr. Dunn: Thank you.

Applicant Presentation:

Chris George, 15954 South Mur Len, Olathe, appeared before the Board of Zoning Appeals and made the following comments:

Mr. George: We have this property, and we basically just want to add a little bit. *Plot plan drawing shown on screen.* You can see the small retaining wall on the plot plan there. The hope is to lessen the steepness of the driveway and have a small portion of the backyard that is more usable. It's a steep, bowl-shaped backyard right now. The good thing is that the neighbors on the side are pretty even. It's a real back-to-front drainage, so everything will still drain that way if you look at the plot plan. It shouldn't have any adverse effect on the neighbors.

Mr. Munson: The note here says that the proposed retaining wall will be "112 sf". What does that mean?

Chairman Clawson: Square feet.

Mr. George: Yes, the whole thing will be 112 square feet. I think it will be about 3.5 feet tall and then whatever the width shows on that plan. Sorry, I don't have a copy in front of me.

Chairman Clawson: Do you have a diagram of the wall? Is it flat?

Mr. George: I do not. It is flat, I think 3 and a half feet tall, CPU block, engineered. We use decorative CPU blocking. It's like an artificial stone that my landscape guy says is the only stuff to use.

Chairman Clawson: The elevation of the wall is flat all the way across?

Mr. George: That's correct.

Mr. Munson: Again, what is that "112 sf"? I didn't catch that.

Mr. George: Total square footage of that wall.

Mr. Munson: Oh. You mean on top?

Mr. George: It's the total face frontage square footage because it's x amount of feet long, times 3.5 feet tall.

Chairman Clawson: So basically, the water is going to have to flow down and around that wall.

Mr. George: Or over the top. We generally put a French drain in front of the wall to capture any. If you see the grade lines there, it comes down and then around. No matter what, that's how it is going to drain; down, back-to-front, and then around. This just adds the wall there.

Chairman Clawson: I guess I would like to see a cross section of the wall.

Mr. George: We could certainly submit a visual of what the wall would look like.

Chairman Clawson: I'm just trying to figure out if the soil behind the wall even with the top of the wall. Or does the wall stick up above the soil?

Mr. George: It's even. It's made to flow over. Once the sod is in, that water will flow over the top and dissipate around. That way it still flows back-to-front for drainage.

Mr. Munson: You have a swale on the right-hand side, and it appears you also have somewhat of a swale on the left hand side. Is that correct?

Mr. George: That's correct. There's one on each side.

Mr. Munson: Okay, thank you.

Chairman Clawson: It looked to me like, on the left side, that the water is going to flow down onto the adjacent property line.

Mr. George: The overall is going back-to-front. I think you're right on that left side, but I don't think that's going to be substantially changed by that retaining wall. The overall grade is just a little bit lower in that lot on that side, but it's not too much. You are reading that plot plan correctly, where it's got a little bit left-to-right there.

Ms. Farrington: Wade, do you have a picture of the AIMS map that has the adjacent properties next to it? All of the maps we have here just show this property itself. I guess the one you have up there now shows the structures on the other side. I think it says 25-feet to the right of it. Are those the actual houses on either side of it? Typically, in cases like this where the drainage is redirected, there's a swale provided between the two properties so that there's a way for it to flow out, versus onto the neighboring property. *Refers to plot plan drawing on screen.* If we're looking at this, the back side of the house to the left, you can see where all of the contours go downhill and just to the left of that you can see the edge of the other house. You can see the drainage is down that slope. Typically, between the houses themselves there should be a grade change in swales to create a culvert to direct the water out. I don't see one there, so I guess the question is if you have drainage going down this slope here. You mentioned providing a French drain that goes along the back side of the retaining wall, but what about out into the yard? Is it going to divert into the neighbor's yard? Our concern is typically how it is going to affect the neighboring properties, especially with a 3-foot grade change.

Mr. George: I think on that I generally defer to the engineer and Public Works. There have been times when they require us to do something different, but it sounds like Matt did the drainage study and then it went through Public Works. It didn't sound like they had any issues with it. That said, I'm certainly open for input.

Ms. Farrington: *Refers to plot plan drawing on screen.* If you look here, you can see that the swale on the left side shows it just going straight and I don't think that's accurate. But if you look at Exhibit B that accompanies the letter written by the surveying company Allenbrand-Drews, it shows how the grade changes in the proposal. It doesn't match the plot plan drawing.

Mr. George: So you're saying there are some missing details there. I see.

Ms. Farrington: Yes. That's why I was questioning it. The contours are not the same as what's shown in the proposed plan.

Mr. George: Sorry, we're looking for Exhibit B.

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

Mr. Torrez: Public Works Stormwater Division did review this plan and they were ready to permit the project. They've approved this plan. I think they are showing it being cut on the sides there to carry that swale, but we're not the stormwater engineers with the City.

Ms. Farrington: *Exhibit B-Proposed Conditions shown on screen.* This one shows it better. You can see Exhibit B to the left. That actually shows a path of water.

Mr. Torrez: Yes, so Public Works reviewed and approved this plan. It shows some cutting along those sides that is greater than a foot grade change to the back to carry that water better along the sides. That's the way I read the plan when I looked at it.

Mr. George: *Refers to Exhibit B.* Yes. I think you have about a foot-and-a-half of fall there, and then the water flow marked there. I'm trying to compare that to the plot plan to see if there might be some missing detail added to that. It looks like it's got the same. Is there something specifically missing from here that you'd like to see on the plot plan?

Ms. Farrington: The plot plan doesn't show the contours correctly on the adjacent property. The dotted lines are your existing contours, and the dark lines are what you're modifying.

Mr. George: I understand. I'm just looking for what is missing.

Ms. Farrington: On the plot plan, if you look at that adjacent property to the left, those lines are shown differently than they are in that V shape there. That's why it's confusing. But maybe it truly is accurate, which it should be since the engineering firm evaluated it and then the City reviewed and approved it. Travis, can you confirm that the City would have suggested a drainage system if they felt it needed to happen?

Mr. Torrez: Yes. If they felt there were revisions that needed to be made, they would've flagged it. When we checked with them, they'd already routed this for approval and permitting. I think it's just awaiting approval of this tonight in order for us to permit it, but I can ask them about this. You're making a good point. If that doesn't match up with the existing grades on the

adjacent lot, they may have overlooked that. It might look good on this one plan, but then you look at the existing and something doesn't match up. I can ask them to take another look at that. We would definitely, no matter what, make sure that they did anything they needed to in order to meet stormwater requirements.

Chairman Clawson: For example, let's look at the elevation of line 935 on the adjacent property to the left. You're showing that the 935 contour meets at the property line, correct?

Mr. George: You're asking about right here? *Points to contour line 935 on Exhibit B.*

Chairman Clawson: I'm looking on the north side of the property, which is the left side. It meets the property line. Do you agree with that?

Mr. George: Yes.

Chairman Clawson: Alright. It looks like 936 meets the contour of the adjacent property at the property line.

Mr. George: Yes.

Chairman Clawson: What's your concern, Dana?

Ms. Farrington: I'm not concerned when I look at that, because the V shape shows the existing. When it meets at that property line with the way that water flows, it will flow down from 936, 935, to 934 towards the front so it will flow between the properties. Now if you look on the other side, the driveway side, 935 hits over here *points to Exhibit B on screen.* At this point, you're coming down so it's going to flow down to the neighbor's yard and into their driveway from that point down.

Chairman Clawson: I mean, there is a swale in there.

Ms. Farrington: Yes, there is. It is slight.

Chairman Clawson: I'd be more concerned about the water flowing onto the adjacent property, coming from up above that wall.

Mr. George: *Refers to Exhibit B on screen.* From above the wall, I think that downward tilt will feed right into this swale here. If you look at line 941, you've got quite a bit of fall there. I don't think there's any concern with any water going off this way. Is that what you were trying to address?

Chairman Clawson: I looked at these three houses today and the yards do slope down on all of them. It's not like this one is higher or lower than the adjacent houses. They're all about the same.

Mr. George: I would agree.

Chairman Clawson: This case is about adding fill, right?

Mr. George: We want to raise it up, yes.

Chairman Clawson: Where are you raising it up at?

Mr. George: We're trying to add the retaining wall so that we cannot have the foundation sit up as high and therefore drop the driveway.

Chairman Clawson: So, you're dropping the elevation of the ground behind the retaining wall.

Mr. George: Exactly. That's correct. That's the variance request; dropping that section right there.

Chairman Clawson: You're not adding elevation, you're dropping it.

Mr. George: Correct.

Chairman Clawson: You're saying that water can flow over the wall?

Mr. George: That's correct.

Chairman Clawson: I wish we had a cross section through that wall. This is a variance, so we have to go through the five factors. In the past, we've had trouble with these kinds of cases. Primarily with water flowing where the applicant didn't think it would and impacting the neighbor. We've had cases come back to us where the applicant had to regrade their property and put swales in to make sure it didn't affect adjacent properties.

Mr. George: Definitely. I've built over a thousand houses, and I've had to do that a time or two, so I understand. It does happen. Things don't get graded correctly or things just don't sit where you want them to, or you have to bring in extra materials to make it grade correctly. I think part of that is the as-built process; making sure it meets what is actually shown on the plot plan and getting the as-built plot plan after it's actually graded is a very important process. I know Leawood has that in place.

Chairman Clawson: We'd prefer that it be built correctly and not have to come back and be modified.

Mr. George: You and I both.

Chairman Clawson: Any other questions?

Mr. Munson: What are the side yards on both the left and right sides? I'm assuming they meet the code, but will there be enough room there to do what the proposal says they want to do?

Mr. George: Yes. In terms of the space between the edge of the house and the end of the plot plan and then the amount of falloff that the plot plan shows in terms of grade, there should be pretty standard.

Mr. Munson: What is it, fifteen feet?

Mr. George: There's not an enormous amount of fall. Really, the problem comes if there's not enough fall between the foundation and the edge of the lot. On this one, between the house and the edge of the lot on the left side or south side, you've got about two feet of fall. On the other side, you've got more. There should be a good amount of space. You've got twenty feet between the house and lot line on the right side. You've got sixteen feet on the other side. In that regard, there's nothing abnormal.

Chairman Clawson: Wade, when the inspectors are out from the City, what are they going to be looking at here?

Mr. Thompson: Our building inspectors are just going to be looking at the home.

Chairman Clawson: If the applicant shows how the retaining wall is going to be constructed, would they review that?

Mr. Thompson: That would be looked at by the plan reviewer once the whole project gets reviewed. Travis, do you have anything to add to that?

Mr. Torrez: We make sure that it's built in accordance to the plans, and if the plans show something that looks off, we would require an as-built plan to be submitted by a surveyor on the grading. Now the one thing that we require on every house to at least make sure we are on the right foot to getting all the grades correctly is an elevation certificate on the foundation so that we can make sure it's within an inch of where it's supposed to be. From there, you should be able to have the grades fall into place in accordance with the plan.

Mr. George: Just to add to that, that is a very important thing that Leawood does with the elevation certificates. Oftentimes you run into grade issues at the end. If it doesn't match the plot plans because the foundation is off a bit, it makes it difficult one way or the other. Some cities don't do that.

Mr. Torrez: This is all cutting, too. Obviously, it's a bigger house, so they'll have less room to carry that from back to front. But all the grade change that is in excess of a foot is cutting. They're not really adding.

Mr. Bussing: Mr. George, what is the total square footage of the proposed house?

Mr. George: The actual finished square footage of the house is, I believe, about 3500 feet.

Ms. Farrington: It says right there in the middle of Exhibit B; 3601 feet.

Mr. George: It's a reverse story-and-a-half.

Ms. Farrington: Mr. Chairman, were you wanting to see a section through the grade to see how that would look?

Chairman Clawson: Yes. Is it on here?

Ms. Farrington: No. I drew it on my plan.

Chairman Clawson: My concern, Dana, is that the top of the wall is flush with the ground behind it and that water can flow over it. Because if they built it up a foot or so, the water would come down the hill and go around the sides and surely go onto adjacent properties. I want to make sure that wall is constructed properly. How do we do that?

Ms. Farrington: I think the concern would be, if you're putting in a French drain, is that drain at the base of that wall? Where at?

Mr. George: I'd have to ask my landscaping guy where they usually put that. My understanding is that they usually put it at the base of the wall all the way across the front of the footing.

Ms. Farrington: Which is not on the side you're cutting out. It's on the back side that has the dirt on top of it.

Mr. George: Yes.

Ms. Farrington: So, when groundwater goes into the soil, it goes into the French drain and then goes out around it. That doesn't really address the grade on top and how it might overflow, which was your concern.

Mr. Munson: I'm sorry. Which side would the French drain be on?

Mr. George: It's on the footing side; the low side. One of the reasons is that any time you have a retaining wall, you're going to have a flat section. You don't want that one section retaining all that water because it doesn't have as much grade as that top section does.

Mr. Munson: In order to meet the point that Chairman Clawson raised about water coming down on the east side from above and then threatening to go onto the adjacent property running along the wall, should there be something to intercept the water?

Mr. George: At that point, I'm looking at my engineer to prescribe anything like that in the drainage study.

Mr. Munson: You don't have an answer for this today?

Mr. George: I'm not sure what's being asked here.

Mr. Munson: Okay. You've got water coming down from the extreme east side of the slope. It slopes east to west, correct?

Mr. George: Correct.

Mr. Munson: Before that water gets to that wall, is there some reason to try to intercept it or use a French drain to soak it up rather than letting it follow that wall all the way around and then go onto the adjacent properties?

Mr. George: That's not how I've ever seen them built.

Chairman Clawson: If water can flow over the wall, then I think your drainage pattern would probably work. Don't you, Dana?

Ms. Farrington: If they've reviewed it and they do have a French drain in there, which he said will be on the footing side, it should.

Mr. George: When they grade, like you're saying, they grade that dirt to the top of the wall. It's right to the top and then sod is laid on top of that. I'm no retaining wall expert, but I do know how they go together.

Mr. Munson: I would assume there would be issues with the reliability of the wall if there were French drains put in on both sides of it. Is that correct?

Mr. George: I think that is why they put them on the footing side. Because if you're collecting right at the top of the wall, you could affect the structural integrity of the wall. I've never seen them do that. I've only seen them on one side.

Chairman Clawson: Wade, please answer this. If what he's saying is how it's going to be constructed, how will the inspectors verify that after it's built?

Mr. George: I believe Public Works does that when they come to do the final.

Mr. Thompson: Travis, is that something that the inspectors look at?

Mr. Torrez: We're generally looking at grade and sod and anything that was way off. I definitely understand the concerns. The one place they're raising the grades is up there by that wall, maybe to direct water left and right. No matter the outcome tonight, I will definitely ask Public Works if they feel that it won't have an impact on neighbors from a stormwater perspective. If that grade is within a foot of what it's supposed to be, we probably wouldn't flag it. Now Public Works is coming out to make sure all those swales and drainage won't be impactful to the neighbors, so they are doing additional grading inspection and a pre-sod grading inspection to make sure the water will get carried the way those swales are designed to. Chris, is this something that could be continued? I would've had someone here tonight from Public Works, but I figured we didn't need them since they already approved it. Making sure Public Works approves of the stormwater drainage is usually the box we like to check before we bring it in front of the Board of Zoning

Appeals. Is this something that you're starting right away, or could we continue it to possibly get answers to those questions?

Mr. George: Everything has already been submitted, so this is the last piece of the puzzle to get things started on the project.

Mr. Munson: Mr. Chairman, I feel that the concerns that have been expressed in reviewing this need to be looked at. I'm not comfortable yet with it.

Chairman Clawson: I think we have two options here. We could evaluate and vote on this tonight. Since there are concerns by the Board, that could mean a denial. Or we could continue it to the December meeting. You could provide more information to us, and we could address it at that time.

Mr. George: Is there any way you could put in writing the exact information you're wanting? I don't want to guess and get it extended again or have it denied because we don't have the correct information. Certainly I've heard the concerns, but I've also heard various other things like the cross section of the wall, how drainage is going to be on the north side versus what it shows in Exhibit B, etc. Like Travis said, Public Works has reviewed it. Maybe if they were here, they could weigh in some more. If we're extending it, I just want to make sure I have the information that you all need.

Chairman Clawson: What I would want to see, number one, is an elevation of the wall.

Mr. George: Meaning?

Chairman Clawson: Length of wall, top of wall elevation. Bottom of wall elevation. Maybe one or two sections through the wall showing elevations behind the wall and at the bottom of the wall with the drainage systems noted on it.

Mr. George: I guess it would probably make sense for me to bring in my landscaping architect as well? That way he could speak more eloquently on retaining walls.

Chairman Clawson: Is he putting together plans?

Mr. George: Usually they wouldn't on this, but I can certainly have him do it.

Chairman Clawson: I'm not thinking that we need anything elaborate. I just think we need to see what the wall looks like with elevation, and we need to see two or three sections.

Mr. George: Okay.

Ms. Farrington: I think, even on this Exhibit B or proposed plan, a good thing would also be to know where that drainage comes out. Does it come out right at the end of the retaining walls or does it carry out to the front of the property and then pop up? The question is the runoff and how it affects the adjacent properties?

Mr. Hawk: Well, the City has already provided preliminary approval. Couldn't we go back through them and let them look at these terms and these questions and satisfy those requirements?

Mr. Thompson: I sure don't want to speak for Public Works, but I have an email here from John Westbrook, the engineer, that says, "I already reviewed this one and was okay with the drainage on this project. Let me know if you need anything."

Mr. Bussing: Mr. Chairman, I think we're placing an undue burden on the applicant. We've got a document in our packet from a professional engineer that says there will be level grading behind the house for the wall and a swale will be graded on the north side to keep the flow off the neighboring lot, and the drainage patterns will remain nearly the same. Further he says there will be no adverse effects on neighboring properties and no stormwater detention is proposed. I'm not an engineer. I have no way of addressing these issues. That's why we asked the applicant to bring these engineering reports in. If we're just going to ignore them, then why are we asking him to bring these reports in?

Ms. Farrington: I think it's more than just having the reports, because those are provided by the applicant themselves and someone they hired. It's more along the lines of what Wade just read from his statement. What we have to go by is the Public Works department, which is the City of Leawood, and what they approved. Not knowing that until you just spoke that statement, that gives us more information than we had before we started to discuss this. What we see is what's given in front of us, this report, these plans. But it doesn't show that extra information. That department had to review the drainage, so they had more information than what we were given.

Mr. Bussing: I apologize for being naive, but I figured if we were given a packet like this, I'm going to assume that the appropriate City bodies have already taken a look at it and approved it. They wouldn't send us something that either has not been reviewed or has not been approved. I think we are burdening this applicant unnecessarily.

Mr. Thompson: If I had a formal report from our Public Works then I would have included it. But all I had was that email from John stating that he reviewed it and is okay with the drainage issues.

Mr. Bussing: I trust our Public Works people. That's more than sufficient for me.

Mr. Torrez: There is a plan that I have that shows the top of the wall to the base of the wall. I don't know if that helps at all. Wade, I don't know if you can put it up or not, but it's in the packet. They would be held to those top-of-wall/base-of-wall for the retaining wall that was reviewed and approved by Public Works if this ends up being approved here.

Mr. George: While he's looking for that, I want to apologize. My brother got all of this stuff together. We split up projects and he had a sick kid, so I'm filling in and I'm not as familiar with this packet as he would've been.

Mr. Thompson: What is it that you're looking for, Travis?

Mr. Torrez: The plot plan. It's in the packet, near the last page. *Plot Plan displayed on screen.* Yes, that's the one. It shows the top of the wall and the base of the wall in several locations. I don't know if that helps or not. They would have to execute the plan, just like they have to execute the elevation of the house, etc.

Mr. George: The TW and BW, yes.

Mr. Torrez: There were more important details than just the black lines through there for the engineer with the City to review.

Mr. George: So, each one that says "TW" and "BW" gives you the top-of-wall and base-of-wall all the way across. I should've pointed that out.

Ms. Farrington: Mr. Chairman, I think for future reference having that email report in our packet would help, because then we can see it in writing that City Works had approved it. We're limited on what we're given to review.

Chairman Clawson: That would be helpful, yes.

Mr. Torrez: Going forward, Wade and I will try to make sure that we put whatever we can into the packet and probably just routinely have someone here from Public Works to answer any questions that may arise.

Chairman Clawson: We've had these cases before, and we've approved cases where they've changed the grade on lots and it's affected adjacent properties. We need to be very careful on these types of cases, that's the bottom line. I'm okay to vote on this if that's what you'd like us to do.

Mr. George: Yes. I think we can go ahead with the vote. I'm comfortable with that.

Chairman Clawson: Are there any other questions for the applicant? I trust that there is no one here that wishes to speak for or against this application? You may sit down then, and we will go through the five factors and vote on each one. The first factor is Uniqueness of the Property.

Mr. Munson: Mr. Chairman, I think you mentioned that you viewed the properties and they're all like this one, with sloping from the back to the front. Is that correct?

Chairman Clawson: Yes.

Mr. Munson: So this property is not unique among the others.

Chairman Clawson: At least several of them in the same area.

Mr. Hawk: There are elevation changes on the property.

Chairman Clawson: Elevation changes, yes.

Dr. Peppes: Mr. Chairman, I feel that the Uniqueness criterion has been met because of the elevation changes, even though there are a few houses in that area that are the same. If we look at the city as a whole, most of the time they aren't flowing from the back to the front as steeply as this one is.

Mr. Bussing: I would agree with Dr. Peppes. I think that unique means different, not the only one. There can be a number of unique lots in the city, and there are. I believe that the grade change, the location, and the size of the lot all conspire to make it unique.

Mr. Dunn: Mr. Chairman, I have a question regarding uniqueness. What is the difference in square footage between the house that is being proposed and the one that is being torn down?

Chairman Clawson: The existing house is 2364 square feet and the proposed is 3601.

Mr. Dunn: That's what I suspected. The reason I asked that question with respect to uniqueness is that, while I agree with member Munson, that there are a lot of areas in old Leawood where properties were underbuilt. Therefore, a big slope like this was able to be absorbed because of the small size of the existing structure. Putting up a larger structure makes that slope more critical and, I believe, turns it into a unique factor.

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

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

Ms. Farrington: I'll speak to Rights of Adjacent Property Owners. Obviously, nobody has come in here to complain and we don't have any letters in our packets, so that has all been addressed. Our concerns tonight have been mainly looking at changes in grade. Moving forward, a recommendation to staff would be for them to provide us with an actual report or written approval from City Works if they aren't going to be present. Some of us are not engineers and needed more than just a report from an engineer to be able to make the determination. We obviously would support the City's review and approval and that information would have helped us come to a quicker point tonight with much less discussion. In line with that, I believe the Rights of Adjacent Property Owners has been addressed since Public Works approved it for the drainage system.

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

Chairman Clawson: The third factor is Hardship.

Dr. Peppes: Mr. Chairman, I think this has been met. If the applicant had to follow the one-foot rule and not have buildup on the back side of this, the drainage studies would've turned out differently. With that, I think the criterion for Hardship has been met.

Hardship criterion satisfied with a vote of 5-1. For: Dunn, Dr. Peppes, Hawk, Farrington, Bussing. Against: Munson.

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

Dr. Peppes: Mr. Chairman, it says that with a lesser slope, it will be safer to use. In actuality, it will be safer than what it was before.

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

Chairman Clawson: The fifth factor is Spirit and Intent.

Ms. Farrington: I'll speak on Spirit and Intent. With this case having a grade change of 3 feet, it always raises red flags for us. I think the applicant made a conscious effort to make improvements with their new design and they provided us with an engineering report.

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

A motion to approve Case 63-2022 Caleb George; Chris George Homes/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 9615 Meadow Lane was made by Dunn; seconded by Dr. Peppes. Motion carried with a unanimous roll-call vote of 6-0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

Chairman Clawson: Wade, in the future on these cases in which we have grade changes, and they require a drainage study, I think a representative from Public Works needs to be here. I could hardly read the information on this one. They need to provide readable documents. I think the City, while it's under construction, needs to look at the grading to make sure it's being constructed in accordance with what they've shown in their drainage reports. Is that fair?

Mr. Thompson: That's something that we can surely talk about. I am definitely not the person that can implement those decisions. Travis is listening, so your concerns will be regarded.

Case 64-2022 Kevin Campbell; Chad Biniker/Owner-Request for a Variance to the minimum required open space in accordance with the LDO, Section 16-2-6.3(D) in an SD-CR District for property commonly known as 4311W. 119th Street.

Staff Presentation:

Wade Thompson made the following presentation:

Mr. Thompson: The applicant wants to add an addition to the rear of the building that will contain an outdoor walk-in cooler. This will reduce the amount of open space required by the Leawood Development Ordinance. Due to a previous variance, granted September 28 of 2011 by the Board,

the current open space is 28.31 percent. A further reduction will result in open space being placed at 28.10 percent.

Chairman Clawson: Are there questions for staff?

Applicant Presentation:

Bret Springs, Rockhill Grille, 4311 W. 119th Street, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Springs: Essentially, this is dubbed as cooler space. We are trying to add 500 square feet of non-occupancy space. Not only for coolers, but also for a grease trap receptacle so that it's not on the exterior of the building by the trash chute. There are a lot of things from an internal restaurant that increase our liability and things like that. The addition of the space will allow us to run a cleaner, more efficient restaurant.

Mr. Munson: Is there no cooler inside what was a restaurant before?

Mr. Springs: There is not. La Bodega had a small cooler in there. They also had a cooler in another location in that facility that was about 1000 square feet, I believe, that is attached to what is now the Evereve space.

Chairman Clawson: So, the requirement for a property like this, Wade, is to have 30 percent open space. And there was a variance granted in 2011, correct?

Mr. Thompson: Yes, sir.

Chairman Clawson: Okay.

Mr. Springs: Essentially, part of the process we've done here is try to reduce the sidewalk footprint since we're on the end cap space. I'm not sure it's outlined, but I've worked with members of the City Council. It's not a true 500 square feet, because the concrete pad that currently exists there is 150 square feet and we're pushing that farther to the west to reduce the runoff impact.

Chairman Clawson: Are there questions for the applicant? As you know, this is a variance, so we have to go through the 5 factors. The ones we tend to have trouble with are Uniqueness and Hardship. Could you address those?

Mr. Springs: From the hardship perspective, we are currently operating out of a restaurant space that we had planned and permitted with this cooler attachment. After we did some exterior improvements-removing mosaic tile and replacing it with bricks-this cooler expansion was flagged. In total, I think they agreed at that point in time for an 8 by 10 cooler, 80 square feet. It would be nice if we could, but unfortunately you can't get restaurant deliveries 7 days a week and we would run out of food on the weekends. There's no question about that. The other thing from that perspective is that we reduced the interior occupancy significantly. When it was La Bodega there was an occupancy limit of 248 people, and we've reduced that to 210. Granted,

you guys go by square footage. We've limited that. From a uniqueness perspective, I would say that restaurants are not clean. When we have to empty out a 25-pound grease container from a fryer, and there are two of them in most restaurants, we have to wheel that product from point A to point B. Those are 350 feet away in this case. The liability on us to push hot grease and drain it into an elevated receptacle causes messes and rodents and many other things that can be unattractive as a restaurant operation, so we are trying to eliminate that process. There's a self-contained grease trap system through DAR PRO that holds up to 1300 gallons of grease. All I have to do is bring a port to it and it sucks all the grease out. They come and draw a hose to our enclosure and suck it out. We're talking drops of grease that will get exposed outside, rather than gallons. The other thing that pertains to uniqueness would be that we have a dedicated space on the interior of these 500 square feet for our dirty linens. Those are usually placed out back of a restaurant. They're big, plastic bins. We like to keep those inside because it eliminates cross-contamination, fruit flies, and those types of things. We will put proper ventilation to keep that at a certain temperature so that we don't have those issues.

Ms. Farrington: Mr. Chairman, the ordinance that I see in the back of our packet is Article 2. We're looking at open space, so they're trying to keep a minimum 30 percent open space outside on the site plan. What we're dealt with, due to the previous variance that was granted in 2011 to reduce that to 28.31 percent, is now reducing it to 28.10 percent. That's roughly 0.20 percent, which is a very minimal amount. *Refers to site plan image displayed on screen.* When you're looking at the site plan that's up there, they're reducing the outdoor space to add a functional need that they have. Being on an end cap, you can see that the property is landscaped all around. The front piece is all sidewalk, and you can't add any more open space because it's on the front side. There's a fenced patio on the northside and you can't add anything there because it's all landscaped. Really, they're just taking away what was 0.20 percent. That's really what we're voting on—an open space that's back-of-house, not really affected. You could look at it and ask if they could possibly come up with open space somewhere else on the property, but it's such a minimal amount. To me, it's not a matter of having a functional cooler on the back. What we have to look at is the City requirement to have open space.

Mr. Springs: Yes, that is a requirement. In that case, we have a massive patio on either end that we are going to add landscaping to. On the front, there are a ton of impermeable bricks and pavers that we will eventually revisit for patio space. It will be heavily landscaped when we make those presentations. The concrete pad lies about 4 feet off the current area. I know we're talking about open space. If any of you all have driven behind Town Center Crossing, there is no landscaping there. It's all mud and there are currently 5 dead trees. When it rained the other night, it was like a slip-and-slide. There is zero live grass. There are 3 areas that have worn ruts. I would have no problem putting gravel or something of the sort that will keep the water from just draining on the lower sidewalk area. It's a slip-and-fall hazard, especially this time of year.

Chairman Clawson: Wade, I presume how they calculate it is that they look at the entire part of the property, subtract the building and part of the parking lot, and whatever's left has to be 30 percent. Is that right?

Mr. Thompson: Yes.

Dev Anand, Dev Inc., 8807 Monrovia Street, Lenexa, appeared before the Board of Zoning Appeals and made the following comments:

Mr. Anand: If I may, I am going to add to this. The reason we're here is that when we submitted the plans to the City for the permit for this restaurant, I had no clue of the variance granted in 2011. I've worked with the City for almost 20 years and have a very good relationship with the staff at the Planning Department and Codes. One of the things I would do before I started a project is go to the staff and say, "Hey. I'm going to do this project here. What are the variances? What are the conditions that we have?" before I assume we're going to do something. As Bret mentioned, right next to the space there is an exterior cooler. I talked to Mark and my understanding at the time was that if we followed the guidelines that were already adopted for this shopping development, everything would be fine. So, when we submitted the plans for the tenant-finished project, we showed the exterior cooler. We showed that we were going to do some exterior improvements but would submit those at a later date. It's there for engineering, planning, occupancy, and code purposes. Based on that, plans get submitted to other departments in the City. We get comments and we respond to them. We received no comments regarding the exterior cooler. We got a full permit. In those plans, the kitchen showed no cooler, except for what we were going to expand. We also received documents from the construction plans showing a 3000-foot expansion that never got built. At that particular time, we assumed that we had this flexibility to do this work, and nobody said that we couldn't expand the building based on the cooler that we showed. Here we come about 30 days before we're supposed to open this restaurant and the Planning Department looks at the cooler plans and rejects our submission. Panic ensued. What do you mean we can't do this cooler? The green space discussion came about, but none of it had been brought up throughout the prior 7 months of construction for this project. That includes submitting plans to the City back in April. Had we known that we couldn't add a cooler or expand, we probably wouldn't have done the restaurant. The restaurant can't survive without a cooler. We feel that a comment should have been made a lot sooner. Everything seemed to be going smoothly with the City of Leawood, in my opinion, up until that point in time that the cooler came into discussion. It was a complete shock to us. Through that process, we negotiated for weeks back and forth with the City to try and reduce the cooler space. It got to the point where we were down to 150 square feet of cooler space. I told Bret that this is where we're at. If we don't agree, we are not going to have a cooler. I don't know how you're going to operate a restaurant because the City is saying that we can't do this. We came to terms and went through the process with the Planning Commission. It went smoothly until we came before the City Council. Half of them were not happy about where I was. The most important questions that a City Council member asked me was if the restaurant could survive with a 150 square foot cooler. I told him it could not. We're adapting, which means Bret has to go to the downtown restaurant to get additional food to bring to the Leawood location. To be honest, that corner capstone is designed for a 2-story setup. There is 20 feet worth of attic space. If I had known, maybe we'd have thrown a cooler up in that ceiling attic space or something. I truly thought we were going to get unanimous approval that day. It threw me off that six City Council members were puzzled as to why I was there and that we couldn't get the space that we needed. That did change things and make everything more optimistic for us. We didn't realize that we could even be here before you. I am honored to have this opportunity to discuss this issue for the restaurant. I'm proud of Bret for opening this restaurant. As you know, it is not a chain. It is locally owned. I'm especially proud to bring it to an area that had been dead for years. There will

be more work done to make the space even more special. We are here today to ask for this variance so that this restaurant can continue to be successful. Not just for the next 3 or 5 years, but for the next 10 and more.

Chairman Clawson: I think we understand the situation. There doesn't seem to be anyone here that wishes to speak for or against this application. Are there any questions? We will go through the five factors. If we vote in the affirmative on all five factors, we can support a motion for approval. The first factor is Uniqueness of the Property.

Mr. Bussing: Mr. Chairman, as staff pointed out, this is a triangular-shaped commercial lot, bordered on 3 streets, and has a considerable grade change. I think the property is quite unique.

Mr. Munson: I concur.

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

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

Mr. Munson: All the adjacent properties are commercial properties, correct?

Chairman Clawson: I would think so, yes. No calls or complaints were received, correct?

Mr. Thompson: No, sir. No calls or complaints.

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

Chairman Clawson: The third factor is Hardship.

Mr. Dunn: Mr. Chairman, I think the applicant said it. Whether this was based on a misunderstanding or not, if this is not allowed, they won't really be able to effectively complete this project. That's a pretty big hardship.

Mr. Hawk: I think we are here to promote the expansion of restaurants in Leawood for the ambiance and the economic impact of a restaurant of this nature.

Dr. Peppes: Mr. Chairman, I would also like to say that we're speaking about a really small amount of the space that is there. The space that they want is on the backside of the building. I go by there all the time and never notice the back. It's part of the building that nobody sees anyway.

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

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

Mr. Munson: The staff noted that this factor is not affected.

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

Chairman Clawson: The fifth factor is Spirit and Intent.

Ms. Farrington: Mr. Chairman, I'll speak on the spirit and intent. As staff noted, the intent of the ordinance is to ensure that the open space is ample enough to support green space and protect the unique character that our city is known for. With this being a property that has already been in place as a restaurant for several years and now having a new tenant that wants to move in, they are working with a fore plate of what they were given. There is a side patio. They intend to add a patio on the front. They want to enhance the spirit of what is there. Again, the space they want a variance for is on the back of the property. That is not a space that the public is going to utilize. They also have a site plan where it looks like they are going to add in some landscaping and a bunch of trees around the cooler itself, so that improves the look of the back as well. I feel they've met the criterion for Spirit and Intent and that they will make the open spaces that are there even better.

Mr. Hawk: This is a successful operation. This is not their first rodeo. I think we should do everything we can to encourage local businesses.

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

A motion to approve Case 64-2022 Kevin Campbell; Chad Biniker/Owner-Request for a Variance to the minimum required open space in accordance with the LDO, Section 16-2-6.3(D) in an SD-CR District for property commonly known as 4311W. 119th Street was made by Munson; seconded by Bussing. Motion carried with a unanimous roll-call vote of 6- 0. For: Munson, Dunn, Dr. Peppes, Hawk, Farrington, Bussing.

MEETING ADJOURNED.