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THE FAIRWAY BOARD OF ZONING APPEALS

**MINUTES OF THE PUBLIC HEARING
OF THE BOARD OF ZONING APPEALS
OF THE CITY OF FAIRWAY, KANSAS**

The Board of Zoning Appeals of the City of Fairway, Kansas (the "Board") conducted a meeting on Monday, May 22, 2023. The meeting was called to order at 5:30 P.M.

Present: Board Members Doug Huffman (via Zoom), Amy Berlau, Marcia Downs, William Stafford, Peter Ho.

Absent: Board Member Patrick Wiederaenders.

Presiding: Chair Chris Shank.

Staff Present: City Clerk Kim Young; Zoning Counsel Anna Krstulic; Community Development Director Basil Alani; Recording Secretary Barb Fox.

Visitors: Tim Hakes, 3904 Shawnee Mission Parkway; Paula Schwach, 3942 Shawnee Mission Parkway; Judi Albors, 3934 Shawnee Mission Parkway; Lula Vanderkolk, 3940 Shawnee Mission Parkway, Olivia Stiffler, 3944 Shawnee Mission Parkway, Cristina Carper, 3954 Shawnee Mission Parkway, Michale Ann Kincaid, 3946 Shawnee Mission Parkway, Anne Devaney, 3915 W. 53rd Street.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD APRIL 24, 2023

Chair Shank asked for a motion to approve the minutes from the April 24, 2023 meeting.

MOTION: Motion was made by Mr. Stafford to approve the April 24, 2023 minutes. Ms. Berlau seconded the motion.

The motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

a. VARIANCE REQUESTS FOR DETACHED GARAGE BY TIM HAKES, PROPERTY OWNER, FOR PROPERTY LOCATED AT 3904 SHAWNEE MISSION PARKWAY, FAIRWAY, KANSAS, FOR THE FOLLOWING:

1. ENCROACH INTO THE 25-FOOT REAR SETBACK AND THE 17.8 FOOT SIDE SETBACK.
2. HAVE A SECOND ACCESSORY BUILDING.
3. EXCEED THE MAXIMUM ALLOWED GROUND FLOOR AREA FOR ACCESSORY BUILDING (REQUEST WAS NOT PART OF THE APPLICATION AND THEREFORE NOT INCLUDED IN THE PUBLISHED HEARING NOTICE IN THE LEGAL RECORD OR IN THE CERTIFIED LETTERS TO PROPERTY OWNERS IN THE 200-FOOT BUFFER ZONE.

Chair Shank opened the public hearing and requested the staff report.

Director Alani reported that the applicant was granted approval for a greenspace exception from the Planning Commission on June 27, 2022 for a car parking area and the building permit was issued on September 30, 2022. A kitchen expansion/remodel building permit was issued on January 11, 2022. The applicant is proposing the construction of an 818 square foot three car garage.

The proposed garage will not meet the setback requirements. Because the proposed garage is greater than 575 square feet, it must meet the same setback as the existing house, which would require a side setback of 17.8 feet and a rear set back of 25 feet. The applicant's request is to have a 5.1-foot side setback and 5.3-foot rear setback, resulting in a variance of 12.7 feet for the side setback and 19.7 feet for the rear setback. During the review process it was determined that a third variance will be required for the maximum ground floor area of the proposed garage.

The second variance is for two accessory buildings. The house currently has an existing pool house. With the addition of the garage, the lot will have two accessory buildings.

The third variance relates to the size of the proposed garage, which exceeds the allowed square footage for accessory structures. Because the lot is over 10,000 square feet, the accessory structure is allowed to be 720 square feet. The proposed garage is 818 square feet.

Staff is not supportive of the requested variances. The existing home has an existing 695 square foot attached garage per county records. When the applicant sought an exception to the greenspace requirements from the Planning Commission, he noted that the proposed parking pad would not be visible to any neighbors. The proposed garage with a height of 18 feet will be visible to neighbors. Should the Board grant approval, the following conditions should apply:

1. One electronic set of plans must be submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City Code.
3. Project must comply with all City ordinances, and the 2012 International Residential Code, the 2012 Building Code, and other incorporated technical codes.
4. Application and approval are void if a building permit is not obtained within one year of the date of Board of Zoning Appeals approval.

Responding to Chair Shank's question, City Clerk Young explained that certified letters were sent to adjacent property owners within the 200-foot buffer zone. She did not receive any comments from neighbors, but did receive a PowerPoint presentation today from a resident who is present at the meeting.

Mr. Ho asked whether the third variance request should be included in the Board's consideration because it was not included in the published notice or in the certified letters sent to neighboring property owners.

Zoning Counsel Krstulic explained that it would be up to the Board whether to consider or continue the third variance request related to the square footage of the accessory structure. Notices were obviously received as there are residents in attendance at the meeting. She thinks the Board can consider that adequate notice was given even though the square footage variance was omitted from the notice.

Chair Shank asked for additional questions. Hearing none, he asked the applicant to address the Board.

Tim Hakes, 3904 Shawnee Mission Parkway, stated that he is the property owner. He addressed the five criteria for granting a variance, as follows:

1. The property is unique because it is 57,000 square feet when the average lot in Fairway is 10,000 square feet. The property is somewhat shielded from most neighbors. The garage will be in the back northwest corner and not many neighbors will be able to see it. This is the only location the garage can go on the property. The closest neighbors would be residents of Charleston Court and the closest building is 65 feet away. The garage will be 70 yards from the neighbor to the east and is 130 yards from Shawnee Mission Parkway. The building will be aesthetically pleasing and will match the siding and stone of the current home.
2. Granting the variance will not adversely affect the rights of adjacent property owners because the garage will be so far away. While he thinks the neighbors may be having some drainage problems, those issues have nothing to do with his property. He built a drainage ditch and all of the drainage from the proposed garage will be directed away from the neighbors.
3. Strict application of the provisions of the zoning regulations constitutes an unnecessary hardship because the homeowner has four children and there are six cars. If there are three cars parked inside the new garage, it will look better than having three cars parked alongside the driveway. In addition, they are constantly having to move cars around when people come to or leave the home.
4. The variance will not adversely affect the public welfare because the garage addition is in an isolated location.
5. The proposed variance is not opposed to the general spirit of the zoning regulations. The garage will be built with high quality materials and will be architecturally pleasing. The garage will improve the property by parking cars inside rather than have them sitting in the driveway.

Chair Shank asked for questions from the Board.

Responding to Ms. Berlau's question, Mr. Hakes stated that he has looked at all other locations for the garage, but there is no other place for it. Mr. Hakes also discussed how a new fence would be built that would shield the garage from Charleston Court.

Responding to Mr. Stafford's question, Mr. Hakes stated that in addition to the proposed three car garage, there is a three-car garage that is a part of the existing home. He explained that his four children are all one year apart and while the parking situation may be temporary, they do still have friends over that make the parking situation even worse.

There is a discussion concerning whether Mr. Hakes could reduce the size of the garage to a two-car garage. Mr. Hakes stated that moving the garage in 14 feet would make the garage more the size of a one car garage and it wouldn't be worth the trouble. Also, if the garage was pulled forward, it would affect the ability to drive cars into the existing garage of the home which has a side entry.

Mr. Stafford asked for clarification concerning the definition of an accessory building. He noted that the property owner already has a pool building that is required for the pool apparatus.

Zoning Counsel Krstulic explained the Code definitions for accessory building and accessory structure. She confirmed that the Code states that there shall not be more than one accessory structure on the property.

Chair Shank asked if there were other questions for the applicant. Hearing none, he asked for comments from the public.

Paula Schwach, 3942 Shawnee Mission Parkway, stated that she has been authorized by the Board of Directors of Charleston Court Homeowner's Association to represent the HOA. She is also a resident of Charleston Court.

Ms. Schwach explained that the site conditions are such that the ground slopes gently from east to west in addition to the pronounced slope from north to south. Where the applicant wishes to site the new garage is the highest point of his lot. The Charleston Court lot has a steep drop from the location in question and already experiences drainage problems. Ms. Schwach presented photographs of the applicant's rear property showing the steep drop to Charleston Court. Adding an 18-foot-tall structure will be the equivalent of a four-story building if you are standing on the Charleston Court grounds at the bottom of the drop. Charleston Court residents object to that visual intrusion.

Because the proposed garage will only be four feet from the property line, Ms. Schwach is concerned that unless the guttering forces all the water to the east side of the proposed garage, groundwater off of the steep slope can only go to the Charleston Court property. To accommodate the additional driveway and parking area recently added to the applicant's property, they have put in a trench; however, because of the grading of the site to accommodate the expanded driveway, the water is forced back into the Charleston Court lot.

Ms. Schwach presented a photograph of the applicant's retaining wall near the parking pad showing a six-inch drain pipe onto the Charleston Court lot. She indicated that this drain pipe is dumping water directly onto Charleston Court property and erosion is evident.

Ms. Schwach next presented a photograph depicting the existing three car garage on the Hake property.

As for Mr. Hakes' responses to the five criteria for granting a variance, Ms. Schwach stated:

1. She does not believe the Hakes' property is unique in that the Charleston Court property is also longer than wide and slopes both north to south and east to west. Charleston Court also has a long driveway from Shawnee Mission Parkway to the north part of the lot.
2. She believes that Charleston Court would be adversely affected by the additional water coming from the steep slope of the garage roof and the ten-foot encroachment into what should be a setback to absorb part of the roof run off. She thinks amelioration of the issue could occur if Mr. Hakes built only a two-car garage or if he were not allowed to build anything. He already has a very long driveway with bump outs for additional parking so there are sufficient parking spaces. If approval is granted despite Charleston Court's objections, she believes amelioration of the water runoff could be obtained by adding an infiltration trench between Mr. Hakes' driveway and the Charleston Court property line

above the 930-foot elevation, in addition to directing water from all guttering to the east side of the new structure.

3. Denial does not unnecessarily harm the Hakes because the Hakes already have a three-car garage, a turn out, and parking pad for two or three additional cars. This parking pad was approved without notice to Charleston Court owners. Most homes in the market have only two car garages.
4. She believes there will be a negative impact to public welfare because Kansas law does not favor externalizing the burden of development to adjacent property owners.
5. The proposal is not in keeping with the spirit of the zoning law. Runoff has already increased because of the addition of the parking pad, barrier wall and the slope of the driveway, creating a nuisance for Charleston Court property owners. Charleston Court now has a request for preliminary bids to cure drainage problems at an estimated cost of \$35,000 to \$40,000. If the variance requests are approved, it will add costs for Charleston Court.

Chair Shank asked for additional comments from the public.

Judi Albors, 3934 Shawnee Mission Parkway, stated that Mr. Hakes' comment that no one will see the proposed garage is not true. From her back porch she looks straight into the rear of Mr. Hakes' property so the only thing she and her husband would see is the huge garage structure. She added that when the fence was being removed Mr. Hakes also had a white pipe installed going along the fence so now at the corner of their property, she sinks deep into the mud so there is already a problem with runoff.

Michale Ann Kincaid, 3946 Shawnee Mission Parkway, stated that her condo is the farthest in the back and she will be able to see the proposed garage. She has no doubt the proposed garage will look nice because the rest of the Hakes' property looks nice. She asked whether the footing system has already been installed even though the variance has not been granted. She is concerned that the cart was put before the horse. She also agrees with what has been said about drainage. When she stands on the level ground outside her condo, she is already ten feet below Mr. Hakes' driveway where the building will be. The proposed garage will be another 18 feet higher than what currently exists.

Chair Shank asked for additional comments from the public. Hearing none, he asked Mr. Hakes' if he would like to address comments from the public.

Mr. Hakes stated that the neighbors have all made good points and he is more than happy to work out any issues. He explained that the parking area there now is gravel and absorbs water. He had permeable/impermeable studies done to get the driveway approved last year so he does not think there is excess water now because it is being absorbed.

He stated that the pipe that Ms. Schwach showed in the picture is for the hydrostatic pressure against the retaining wall and it does not drain.

He also explained that the muddy areas occurred because before the fence was removed, he brought in a bunch of dirt for new sod and he has been running sprinklers three times a day. The sod has taken pretty well so he doesn't expect that to be an ongoing issue.

As for the pictures presented, Mr. Hakes stated that the photograph of his existing three car garage shows the slope. That slope starts on the Charleston Court property, not on his property. He added that regardless of what he does, the Charleston Court neighbors are going to have to do some work. The plans are for the water that comes off the driveway and off the proposed garage roof will be directed east and away from Charleston Court. The infrastructure has already been installed to divert the water and he thinks that if all the water from the proposed garage roof and driveway is diverted, it will likely help with the issues that Charleston Court is having because now there is nothing diverting the water.

As for his need for the additional garage, Mr. Hakes explained that even with the extra parking pad, they are moving cars constantly.

Mr. Hakes stated that he would be more than happy to work with the Charleston Court neighbors to find a resolution because he does not want the situation to turn adversarial and upset his neighbors.

Chair Shank explained that the Kansas Legislature has set forth a Statute that gives the Board strict instructions of what it should consider or not consider in granting a variance and the Board is bound by those criteria. Therefore, the Board won't be considering what agreements can be reached between the neighbors.

Chair Shank asked for additional public comment. Hearing none, he closed the public hearing on this item.

Chair Shank asked for discussion from the Board.

Mr. Huffman has concerns as to whether criteria no. 2 has been met related to adverse effect on the adjacent property owners.

Ms. Berlau agrees that criteria no. 2 has not been met.

Mr. Stafford agreed that criteria no. 2 has not been met for two reasons; the first relates to drainage and the second relates to the height of the structure.

Ms. Downs agreed that criteria no. 2 has not been met and even if the drainage issues are solved, she does believe there is an adverse impact on the neighbors. She also questions whether criteria no. 3 related to unnecessary hardship upon the property owner has been met.

Chair Shank explained that all five criteria have to be satisfied in order for the variance to be granted. And, along with Ms. Downs, it is hard for him to believe that a strict application of the zoning rules works as an unnecessary hardship on the property owner given that they already have a large parking area and a three-car garage.

Chair Shank asked for further discussion from the Board. Hearing none, he asked for a motion.

MOTION: Motion was made by Ms. Berlau to deny the variance requests for detached garage as submitted by Tim Hakes, property owner, for property located at 3904 Shawnee Mission Parkway, Fairway, Kansas, for the following:

1. Encroach into the 25-foot rear setback and the 17.8-foot side setback;
2. Have a second accessory building; and
3. Exceed the maximum allowed ground floor area for accessory building.

Ms. Downs seconded the motion.

Motion carried unanimously.

4. ADDITIONAL BUSINESS.

a. SET NEXT MEETING DATE.

City Clerk Young explained that the next meeting is scheduled for June 26, 2023.

5. ADJOURNMENT.

MOTION: Ms. Berlau made a motion to adjourn. Ms. Downs seconded the motion.

Motion carried unanimously.

Meeting adjourned at 6:20 P.M.

Kim H. Young, City Clerk

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