

**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 via telephone and video conference on Monday, January 31, 2022. The meeting was called to order at 5:30 P.M.

Present: Board Members Doug Huffman, Patrick Wiederaenders, Peter Ho, William Stafford, Amy Berlau (all via video conference).

Absent: Board Member Marcia Downs.

Presiding: Chair Chris Shank (via video conference).

Staff Present: City Administrator Nathan Nogelmeier (via video conference); Zoning Counsel Anna Krstulic (via video conference); Community Development Director Basil Alani; City Clerk Kim Young.

Visitors: None.

Chair Shank outlined the virtual meeting rules. During the meeting, all attendees will have their video and audio disabled; however, attendees will be able to hear and see the members of the Board and staff. Applicants for each agenda item will be unmuted at the appropriate time and should use the hand raise option to alert the Zoom facilitator that the applicant is associated with the item being discussed. The facilitator will share the applicant's audio and video with the Board. At the conclusion of the discussion for each agenda item, the applicant will be placed back into attendee mode with their ability to share video and audio disabled. Applicants should provide their first and last names and addresses for the public record.

Proper decorum is expected of all attendees and anyone who fails to behave appropriately may be removed from the meeting. The City reserves the right to discontinue the meeting if any improper behavior occurs that would interrupt the conduct of business. During the public hearing for any agenda item, the public will have the opportunity to comment by using the hand raise option to alert the Zoom facilitator. The facilitator will unmute the visitor at the appropriate time. Visitors should provide first and last names and addresses for the public record.

Chair Shank also requested that speakers identify themselves each time they speak and Board members should identify themselves, including if they are making a motion, in order to comply with the Kansas Attorney General's guidance on virtual open meetings. All votes will be roll call votes.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD OCTOBER 25, 2021

Chair Shank asked for a motion to approve the minutes from the October 25, 2021 meeting.

MOTION: Motion was made by Mr. Ho to approve the October 25, 2021 minutes. Mr. Huffman seconded the motion.

City Clerk Young called for the roll call vote. The motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

- a. PUBLIC HEARING TO CONSIDER VARIANCE REQUEST TO THE REQUIRED MATERIALS FOR A DRIVEWAY AS SUBMITTED BY MARK KELLERMAN, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5616 CHEROKEE, FAIRWAY, KANSAS.

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

Director Alani stated that the applicant is requesting a variance to replace a legal non-conforming asphalt driveway with concrete pavers with grass/turf seams.

Staff does not think the request meets the spirit and intent of the Code in that it increases the degree of nonconformity. Should the Board of Zoning Appeals grant the requested variance, the following conditions should apply:

1. Three (3) complete sets 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, 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.

City Clerk Young recalled that several years ago a project at 6016 Windsor was reviewed by the Planning Commission. To meet the greenspace requirements, the property owner installed landscape strips in the driveway. The grass strips get driven on, shoveled and salted during the winter weather and have failed to grow. The Planning Commission determined that the Midwest climate and hardness of grass types are not practical for use as landscape strips within driveways amended the Code to prohibit such use.

She clarified that the driveway that is the subject of the variance request is a secondary driveway. This secondary driveway is considered non-conforming because it does not connect to another driveway or garage and is less than two feet from the property line. The applicant has already removed the driveway and curbing has been installed. Because it is non-conforming, the applicant is allowed to replace the driveway in the same location; however, they propose using landscape strips instead of a solid hard surface. Staff believe the landscape strips increase the degree of non-conformity and violate the spirit and intent of the Ordinance.

Chair Shank asked if there were questions for staff.

Responding to Mr. Ho's question, Mr. Huffman stated that he viewed the property today, the lot is very large so he does not think there would be any problems with the greenspace requirement.

City Clerk Young added that even if an existing home and driveway did not meet the current greenspace requirements, the Code would allow them to replace the driveway as it exists.

Mr. Stafford stated that as a civil engineer, he is concerned that the application of the pavers the applicant is planning to use will not be structurally sound if used as a driveway over a period of

time. Typically, when pavers are used as a driveway, there is a subgrade to support the pavers so they do not break apart. Although he understands that is not a Code issue, he would have a difficult time approving an application that has not been properly designed for a driveway but is basically used for foot traffic.

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

City Administrator Nogelmeier stated that the applicant was not present at the meeting via Zoom.

Discussion followed concerning the fact that there may have been technical issues with the applicant being able to sign on to participate in the meeting. Mr. Huffman indicated that he went to the property prior to the meeting and spoke with the applicant who indicated they would attend the meeting.

City Clerk Young stated that the meeting was properly noticed by the applicants as an in-person meeting. She then informed applicant that the meeting would be changed to the Zoom format. She noted that she is unable to connect to the Zoom link posted on the website and gets a notification that another meeting is in progress.

Chair Shank opened the public hearing on this item. He asked if there were members of the public who would like to speak on this application. Hearing none, he closed the public hearing on this item.

Chair Shank stated that he is concerned there was some technical snafu or misunderstanding, especially since Mr. Huffman spoke earlier with the applicant who indicated they planned to attend. He suggested that this item be continued to the February 28, 2022 meeting.

Chair Shank asked for a motion.

MOTION: Motion was made by Mr. Wiederaenders to continue the variance request to the required materials for a driveway as submitted by Mark Kellerman, property owner, for property located at 5616 Cherokee, Fairway, Kansas to February 28, 2022. Ms. Berlau seconded the motion.

City Clerk Young called for the roll call vote. Motion carried 5 to 1 with Boardmember Stafford voting naye.

Mr. Huffman asked a follow-up question concerning the curb that has been installed in the driveway that goes across the back yard. He asked if that was original to the driveway.

City Clerk Young responded that the curb did not exist and was added.

Mr. Huffman suggested that the curb issue be discussed further at the February meeting.

4. ADDITIONAL BUSINESS.

a. SET NEXT MEETING DATE.

City Clerk Young explained that the next meeting is scheduled for February 28, 2022.

5. ADJOURNMENT.

BOARD OF ZONING APPEALS
JANUARY 31, 2022 MEETING MINUTES

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

City Clerk Young called for the roll call vote. Motion carried unanimously.

Meeting adjourned at 5:24 P.M.

Kim H. Young, City Clerk