

CITY OF FAIRWAY
5240 Belinder Road
BOARD OF ZONING APPEALS
AGENDA
Monday, January 31, 2022
5:30 P.M.
Via Zoom

1. MINUTES.

- a. Approval of Minutes from meeting held October 25, 2021

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, KS.

4. ADDITIONAL BUSINESS.

- a. Next meeting date – February 28, 2022

5. ADJOURNMENT

THESE MINUTES ARE NOT FOR PUBLIC DISSEMINATION UNTIL THEY HAVE BEEN APPROVED BY
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, October 25, 2021. The meeting was called to order at 5:30 P.M.

Present: Board Members Patrick Wiederaenders, Amy Berlau, William Stafford, Marcia Downs.

Absent: Board Members Peter Ho, Doug Huffman.

Presiding: Chair Chris Shank.

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

Visitors: Caleb George, 6830 Beverly, Overland Park, Kansas.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD JULY 26, 2021

Chair Shank asked for a motion to approve the minutes from the July 26, 2021 meeting.

MOTION: Motion was made by Mr. Stafford to approve the July 26, 2021 minutes. Mr. Wiederaenders seconded the motion and the motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

a. PUBLIC HEARING TO CONSIDER VARIANCE REQUEST TO ENCROACH INTO THE REQUIRED MINIMUM STREET SIDE SETBACK ON A CORNER LOT FOR FENCE AS SUBMITTED BY CALEB GEORGE OF CHRIS GEORGE HOMES ON BEHALF OF MICHAEL HELMUTH AND JENNIFER INMAN, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 5900 EL MONTE, FAIRWAY, KANSAS.

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

Director Alani reported that the applicant is requesting a variance to encroach into the minimum street-side setback on the north side of the property to enclose the back yard. The lot is a standard corner lot with a minimum street-side setback of 18 feet. The new proposed fence will be located 12 feet 6 inches from the back of the curb.

Staff is supportive of the variance request. The Police Chief and Director of Public Works have reviewed the fence location and do not have concerns with approving the rod iron fence in that location. If the Board grants the requested variance, staff recommends the following conditions:

1. Building permit must be obtained and fees paid, as required by City Code.

2. Application and approval are void if a building permit is not obtained within one year of the date of Board of Zoning Appeals approval.

Chair Shank asked if there were questions for staff.

Responding to Mr. Stafford's question, Director Alani stated that the applicant would like to enclose the back yard. The Code allows the fence to be within 12 feet of the back of the curb and the proposed fence location will be 12 feet 6 feet from the back of the curb.

Responding to Chair Shank's question, City Clerk Young stated that proper notifications were sent and staff did not receive any comments from neighbors

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

Caleb George, 6830 Beverly, Overland Park, Kansas, stated that towards the completion of construction of the home, the buyers decided to add a fence. A permit has been obtained for three sides of the fence; however, they wanted to capture a larger portion of the back yard on the street side for additional back yard space to the property for their dog, which required a variance. The proposed fence location is consistent with other corner lots down the street in terms of setback from the street. If they do not receive the variance, the fence to deck connection would be awkward.

Mr. George addressed the five criteria for granting a variance, as follows:

1. The property is unique because it is a corner lot. Because of the house placement on the lot and the price point for the neighborhood, they would like to capture additional back yard space.
2. Granting the variance will not adversely affect the rights of adjacent property owners.
3. Strict application of the provisions of the zoning regulations constitutes an unnecessary hardship because the back yard square footage would be smaller than most of the neighbors and would impact the use and enjoyment of the property, specifically for the owners wanting to have more space for their dog.
4. The variance will not adversely affect the public welfare.
5. The proposed variance is not opposed to the general spirit of the zoning regulations.

Chairman Shank asked for questions from the Board for the applicant.

Responding to Mr. Stafford's question, Mr. George stated that the property owners would like to have a fenced in yard not only for their dog but also for themselves to increase the size of their back yard.

Mr. Stafford asked about the size of the dog and whether the property owner would be allowed to put up some type of blockade because sometimes rod iron fences do not contain a dog.

City Clerk Young responded that if the Board stipulated that the fence must be rod iron and later the property owner decided to install a privacy fence, they would not be allowed to do so without approval from the Board. However, if the Board were to grant the variance for the fence with no specific stipulation that it be rod iron, the property owner could later change the fence to a privacy fence, because it would meet the Code and a variance has already been approved for the location.

Thus, if the Board wants the variance to hinge on anything specifically, it must be set out as a condition of the approval.

Responding to Ms. Down's question, City Clerk Young confirmed that the Board is not required to include a specific stipulation as to what type of fence can be installed.

Chair Shank asked for additional public comment.

Mike Helmuth, 5900 El Monte, stated that he is the property owner. He stated that the rod iron fence will be 4 feet tall. Their dog is about 65 pounds so there will be no issue with the dog escaping. It is important for them to be able to look out to the street from their back yard.

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

Chair Shank asked for discussion from the Board.

Ms. Berlau stated that she believes the five criteria for granting a variance have been met. She does think that the Board should stipulate that the fence be rod iron so there are not visibility issues for traffic on the corner lot.

Mr. Wiederaenders agrees that the criteria have been met and also agrees that the fence should be required to be rod iron.

Ms. Downs also believes the criteria have been met; however, she thinks the Board should allow any type of fence and should not require that it be rod iron.

Mr. Stafford agrees that the requirements have been met but would like a stipulation included that the fence be rod iron only.

Chair Shank also agrees that the five criteria have been met and thinks it would be reasonable to stipulate that the fence be rod iron. If circumstances change in the future, the property owner or a subsequent land owner could come back to the Board to seek some relief.

Chair Shank asked for a motion.

MOTION: Motion was made by Mr. Stafford to approve the variance request to encroach into the required minimum street side setback on corner lot for fence as submitted by Caleb George or Chris George Homes on behalf of Michael Helmuth and Jennifer Inman, property owners, for property located at 5900 El Monte, Fairway, Kansas, subject to staff recommendations, as well as a requirement that the fence be rod iron. Ms. Berlau seconded the motion and the motion carried unanimously.

4. ADDITIONAL BUSINESS.

a. SET NEXT MEETING DATE.

City Clerk Young explained that the next meeting is scheduled for November 29, 2021.

5. ADJOURNMENT.

MOTION: Ms. Downs made a motion to adjourn. Mr. Wiederaenders seconded the motion and the motion carried unanimously.

Meeting adjourned at 5:48 P.M.

Kim H. Young, City Clerk

DRAFT



**STAFF REPORT
Board of Zoning Appeals
January 31, 2022**

TO: Chair Chris Shank
Board of Zoning Appeals Members
Anna Krstulic, Zoning Counsel

FROM: Basil Alani, Community Development Director
Kim Young, City Clerk

APPLICANT: Mark and Amy Kellerman, Property Owners

PROPERTY: 5616 Cherokee Circle - REINHARDT ESTATES UNIT NO 4 LT 10 & 11 FAC 2 10 ("Lot 1"); 10-12-25 BG SE CR NW1/4 NW1/4 W 60' N 160' E 60' S 160' TO POB .22 ACS M/L ("Lot 2")

ZONING: R-1

REQUEST: Replace existing legal non-conforming driveway with landscaped strips and/or non-hard surface material

BACKGROUND:

Applicant is requesting a variance to replace existing legal non-conforming asphalt driveway with poured concrete pavers and grass/turf seams that are less than 8 ft in dimension. This is a secondary driveway on the south side of the property. The secondary driveway does not meet Code because it is less than 2-foot from property line and does not correspond to the garage. The primary driveway is on the north side of the property and corresponds to the garage.

APPLICABLE CODE PROVISION:

Code Section 15-297. - Site design standards.

- (3) *Curb cuts and driveways. The following driveway standards preserve the streetscape, maintain greenspace along the frontages and integrate driveways into the natural terrain and landscape, by keeping them as narrow as practical closer to the streetscape.*
- d. *Materials. Any construction or replacement of driveways shall be with a hard surface material. Gravel, crushed rock or other similar material is not considered hard surfaced material. Curb and driveway materials in the public right-of-way shall also be subject to any applicable right-of-way material requirement. Landscape strips or any landscape islands within driveways that are less than eight feet (8') in any dimension are prohibited.*
- e. *Nonconforming. Any legal nonconforming driveway or curb cut not complying with the above standards may be maintained, repaired or replaced without any modification other than adherence to any applicable right-of-way material requirement, provided that all driveways and curb cuts shall be brought into compliance in the event of a new dwelling unit, or when determined necessary, in the Building Inspector/Code Enforcement Officer's sole discretion, in the event of a substantial addition or remodel.*

Code Section 15-778(a) – Variances

(a) *Variances. The Board of Zoning Appeals may grant, in specific cases, a variance from the specific terms of the zoning regulations, which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the zoning regulations, in an individual case, results in unnecessary hardship; and provided that, the spirit of the zoning regulations shall be observed, public safety and welfare secured, and substantial justice done. Variance shall permit any use not permitted by the zoning regulations for the applicable district. A request for a variance may be granted in this case upon a finding that all the following conditions have been met:*

- (1) *That the variance requested arises from a condition that is unique to the property in question and that is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owners or the applicant;*
- (2) *That the granting of the variance will not adversely affect the rights of adjacent property owners or residents;*
- (3) *That the strict application of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;*
- (4) *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and*
- (5) *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

Applicant submitted responses that address each of these criteria for both variances requested.

STAFF RECOMMENDATION:

Staff does not think the request meets the spirit and intent of the code and increases the degree of nonconformity of the driveway. If the Board of Zoning Appeals grants the requested variances, staff recommends the following conditions:

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. That the project complies 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 from the date of Board of Zoning Appeals approval.

Variance Request #1

Sec. 15-297 a. 3. d. Materials. Any construction or replacement of driveways shall be with a hard surface material. Gravel, crushed rock or other similar material is not considered hard surfaced material. Curb and driveway materials in the public right-of-way shall also be subject to any applicable right-of-way material requirement. **Landscape strips or any landscape islands within driveways that are less than eight feet (8') in any dimension are prohibited.**

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by the actions of the property owner or applicant;

We intend to replace the current legal non-conforming, dilapidated 2nd driveway with a more modern and aesthetic driveway that is wheel chair accessible and matches the green space of the property. The intention is to use this generally as a walkway to our pool, but may be used for additional off street parking, if needed. In order to do so, we seek your approval to update and modernize the driveway with poured concrete pavers with grass seams, instead the solid concrete surface described in the code- Sec. 15-297 a. 3. d.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Current and proposed driveway is in a relatively non-visible portion of the property. We would simply like to replace the current legal non-conforming driveway to a more aesthetic and green driveway that allows multiple uses as a walkway and over-spill parking if/when needed, as it has been historically used.

All neighbors, as required, have been notified. After receiving initial feedback from our adjacent neighbors we feel that the new driveway will be much improved from the current one and enhance our property values.

3. That the strict application of the provisions of the zoning regulations of which the variance is requested will be an unnecessary hardship on the property owner represented in the application;

Updating the driveway to a green space driveway/walkway allows for our wheel chair bound family and guests to access the pool as well as match the updated pool house and patio that was recently constructed.

4. That the variance desired will not adversely affect the public welfare; and

The variance would not impact the public at all. We ask for approval to replace a current legal non-conforming 2nd driveway to a poured concrete pavers instead of a solid surface as required under the city code. This will allow overflow parking for private use and off the public street.

5. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

The request for variance is to enhance and update our property in a modern and environmentally positive manner. The general spirit is to improve the look and value of our unique property in Fairway. The design is simple and aesthetically pleasing. Similar designs are found on properties in Mission Hills and Leawood Kansas.

Date

Name

Address

City, ST, Zip

Re: Application for Variances
5616 Cherokee Circle
Fairway, KS 66205

Dear Property Owner,

This letter is to notify you that a public hearing will be held by the City of Fairway Board of Zoning Appeals to consider a request for a variance regarding a legal non-conforming driveway on our side lot at 5616 Cherokee Circle in Reinhardt Estates (Lots 0010 & 1004), a subdivision in the City of Fairway, Johnson County, Kansas.

The Fairway City Code requires that all owners of property within 200 feet of the property requesting a variance be notified of the hearing.

- *Per city code (sec. 15-297 a.3.d.), the replacement of a driveway shall be with a hard surface material. Landscape strips within the driveway that are less than eight feet in any dimension is prohibited.* This variance seeks to replace the driveway with a modernized design using poured pavers with 3 inch grass seams. The driveway design matches the recently added pool patio design to which this driveway accesses.

The public hearing will be held at 5.30pm on January 31st, 2022, in the Fairway City Hall, 5240 Belinder, Fairway KS. Any interested property owners are invited to attend. Copies of the proposed legal description and site plan are available before the meeting upon written request to the undersigned.

Sincerely,

Mark and Amy Kellerman
5616 Cherokee Circle
Fairway KS 66205

Done



Photo (4 of 4)



1:03

Messages



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