

**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, April 24, 2023. The meeting was called to order at 5:30 P.M.

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

Absent: Board Members Doug Huffman.

Presiding: Chair Chris Shank.

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

Visitors: Laura Bauers, Lo Design, 7327 Summit Street, Kansas City, Missouri; Steve Eck, 6109 Howe Drive.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD AUGUST 29, 2022

Chair Shank asked for a motion to approve the minutes from the August 29, 2022 meeting.

MOTION: Motion was made by Mr. Ho to approve the August 29, 2022 minutes. Mr. Wiederaenders seconded the motion.

The motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

a. PUBLIC HEARING TO ENCROACH INTO MINIMUM 40-FOOT FRONT SETBACK FOR A PORCH AS SUBMITTED BY LAURA BAUERS OF LO DESIGN ON BEHALF OF STEVE AND LEIGH ECK, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 6109 HOWE DRIVE, FAIRWAY, KANSAS.

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

Director Alani stated that the existing home encroaches into the required 40-foot front setback and has a 35-foot front building line. Staff showed AIMS aerials and photos and noted the home was constructed at this setback before 1940 and is considered a lawful non-conformance. The project requires a variance. The applicant is proposing to add an additional 5-feet of encroachment into the front building line. The Planning Commission does not have the authority to grant an exception for the encroachment because the adjacent properties do not encroach beyond the 35-foot setback.

The applicant submitted responses to the five criteria for granting a variance. The request was properly noticed.

Staff is not supportive of the requested variance. Should the Board grant approval, the following conditions should apply:

1. Building permit must be obtained and fees paid, as required by City Code.
2. Project must comply with all City ordinances, and the 2012 International Residential Code, the 2012 Building Code, and other incorporated technical codes.
3. 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, Director Alani explained that staff is not supportive of the request because of the code requirement and the adjacent properties do not encroach beyond the platted 35-feet. The Code allows encroachment for an open patio entrance with Planning Commission approval of the exception; however, the Code requires that the property owner must still maintain the building lines for the adjacent properties. The Planning Commission cannot grant an exception in this situation because the front porch would exceed the building line of the adjacent properties, which are at 35-feet.

Responding to Mr. Wiederaenders' question, Director Alani confirmed that the home already has a little step front porch. He does not think the proposed front porch will be further toward the street. He understands that they will be covering the porch, and will then loop it around towards the garage around the back.

Mr. Ho explained that he is a member of the Home Owner's Association for Reinhardt Estates, and understands that many front building lines in Reinhardt are at 35-feet; however, the Fairway Ordinances state that front building lines are at 40-feet. He asked which would supersede.

Zoning Counsel Krstulic responded that the platted setback of 35-feet would supersede the Ordinance. She added that the Ordinance allows the Planning Commission to approve an exception that would allow building 10-feet into the front setback; however, she would interpret the Ordinance to apply at the 40-foot front building line and not off the 35-foot platted building line.

City Clerk Young added that while the Planning Commission can grant the exception, they can only do so if the encroachment is in line with immediately adjacent properties. In this situation, neither of the adjacent properties encroach that far so the Planning Commission cannot grant the exception. While those homes are built at the 35-foot building line, they do not have entry features that further encroach into the building line and therefore, a variance is required.

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

Laura Bauers, Lo Design, 7327 Summit Street, Kansas City, Missouri, stated that she is representing the property owners in this matter. She addressed the five criteria for granting a variance, as follows:

1. The property is unique because the presence of a front building line on a plat is not addressed in the Fairway zoning language. If treated similar to a front setback, the proposed entry structure would be allowed.
2. Granting the variance will not adversely affect the rights of adjacent property owners. The addition of the front porch will have little to no impact on the adjacent properties. It is of the size and location that it will not affect the sun or drainage patterns on the adjacent properties.

3. Strict application of the provisions of the zoning regulations constitutes an unnecessary hardship because the homeowner would not be allowed to improve the exterior aesthetic of their existing home without having to make major renovations to the structure or scraping the existing home in order to re-site and build a new home.
4. The variance will not adversely affect the public welfare in that the addition of an attractive front porch feature will be an asset to the community and there will be no negative impact on the public welfare.
5. The proposed variance is not opposed to the general spirit of the zoning regulations. The goal of the home owner to add a primary structure limited to 30 feet from the front property line is in keeping with the aesthetic and zoning goals of the City of Fairway, which recommends such features. The applicant requests clarity as to the nature of the front building line.

Chair Shank asked for questions from the Board.

Mr. Stafford asked if the applicant's statement that the presence of a front building line on a plat is not addressed in the Fairway zoning language is a true statement.

Zoning Counsel Krstulic responded that the front building line on a plat is addressed in the Dimension Standards for lots. In those standards, the minimum front setback is identified as 40 feet. There is also a footnote that states that lots with existing front setbacks of less than 40-feet are considered to be non-conforming lots and are eligible for exceptions with regard to future additions to the principal building. The Planning Commission can grant an exception to build 10-feet into the front setback, but the project must meet other requirements that the current project does not meet. Therefore, a variance is required.

Zoning Counsel Krstulic pointed out that the first of the five criteria for granting a variance state that the variance request must arise from a condition that is unique to the property, not ordinarily found in the same zone or district, and not created by an action or actions of the property owners. In the current situation, while there are other properties in the area that do not have the same platted setback, the applicant did not plat the property and did not create the situation. This language gives the Board some flexibility in making its decision.

Chair Shank explained that Board has considered uniqueness from a historical perspective, for example, how property usages have evolved over time. He noted that the property owner didn't do anything to create the situation.

Mr. Stafford asked the applicant to explain the statement in response to the first criteria that if the project were treated similar to a front setback, then the proposed entry structure would be allowed.

Ms. Bauers explained that if the home was built at the 40-foot setback and they wanted to add a 5-foot front porch that would encroach into that setback, it would be allowed. The home is built at the 35-foot building line and her question is whether that would mean that the 35-foot building line would then become the front setback. If the setback changes to 35 feet, then the 5-foot encroachment would be allowed. She thinks the Code language is a little muddy.

Mr. Stafford agreed there is ambiguity in the Code and the Board can interpret it.

Chair Shank asked the applicant to describe the project.

Ms. Bauers stated that the new front porch will extend out 5 feet from the home and will be in the same location as the current porch. A roof will be added and the porch will extend toward the driveway and turn back connecting a covered walkway to the side door of the house and the garage.

Responding to Mr. Stafford's question concerning the shade tree that is located near the front porch, Ms. Bauers explained that they plan to use piers instead of a full footing across the front of the porch to maintain the health of the tree.

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

Steve Eck, 6109 Howe Drive, stated that he is the property owner. He and his wife have lived in the home for 15 years. There has been a lot of complete tear downs and rebuilds on their street and they want to maintain the historic nature of the home. They would like to add a more open area in the front of the home to hang out in and to have conversations with the neighbors.

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

Chair Shank asked for discussion from the Board.

Mr. Ho stated that he draws a parallel between the 40-foot typical front setback and people being allowed to build into that setback with a front porch. He thinks that the applicant has met the five conditions for granting a variance and would be in favor of granting the variance.

Mr. Stafford stated that the addition is aesthetically pleasing, there has been no comments from the neighbors, and the proposed addition is encroaching the same as what is already there. He believes that all five criteria for granting the variance have been met.

Ms. Berlau agreed that the five criteria have been met.

Mr. Wiederaenders agreed that the front porch will be an improvement and that the five criteria have been met.

Chair Shank stated that he believes the five criteria have been met and would support the variance request.

Chair Shank asked for a motion.

MOTION: Motion was made by Mr. Stafford to approve the variance request to encroach into the minimum 40-foot front setback for a porch as submitted by Laura Bauers of Lo Design on behalf of Steve and Leigh Eck, property owners, for property located at 6109 Howe Drive, Fairway, Kansas, subject to staff recommendations, with an additional requirement that the property owners take all reasonable precautions to protect the tree near the project site. Ms. Berlau 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 May 22, 2023.

5. ADJOURNMENT.

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

Motion carried unanimously.

Meeting adjourned at 6:02 P.M.

Kim H. Young, City Clerk