

**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, August 29, 2022. The meeting was called to order at 5:30 P.M.

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

Absent: None.

Presiding: Chair Chris Shank (via Zoom).

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

Visitors: Caleb George, 6830 Beverly, Overland Park; Bill Poole, Poolehaus Residential Design, 1600 Genesee, Suite 455, Kansas City, Missouri; Philip Meltzer and Lauren Aaronson, 5318 Mission Road.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD JULY 25, 2022

Chair Shank asked for a motion to approve the minutes from the July 25, 2022 meeting.

MOTION: Motion was made by Mr. Wiederaenders to approve the July 25, 2022 minutes. Mr. Stafford seconded the motion.

The motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

- a. TO ENCROACH INTO 18-FOOT MINIMUM SIDE SETBACK ON CORNER LOT FOR A FENCE AS SUBMITTED BY DEREK LINDBERG, PROPERTY OWNER, FOR PROPERTY LOCATED AT 6142 EL MONTE STREET, FAIRWAY, KANSAS.

City Clerk Young explained that the applicant has requested this matter be continued to the September 26, 2022 meeting.

Chair Shank asked for a motion.

MOTION: Motion was made by Ms. Downs to continue the variance request to encroach into the 18-foot minimum side setback on corner lot for a fence as submitted by Derek Lindberg, property owner, for property located at 6142 El Monte Street, Fairway, Kansas. Mr. Stafford seconded the motion.

Motion carried unanimously.

- b. TO ENCROACH INTO 18-FOOT MINIMUM SIDE SETBACK ON CORNER LOT FOR A FENCE AS SUBMITTED BY CHRIS GEORGE CUSTOM HOMES, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5869 FONTANA DRIVE, FAIRWAY, KANSAS.

Chair Shank asked for the staff report.

Director Alani explained that the applicant is requesting a variance for a fence. The lot is a standard corner lot and the minimum side street setback is 24 feet. The applicant is requesting the fence location be 15 feet from the back of the curb. The Public Hearing was noticed on August 9, 2022 in the Legal Record and the property owner mailed the required notices on August 5, 2022.

Staff supports the requested variance. 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. Hearing none, he asked the applicant to address the Board.

Caleb George, 6830 Beverly, Overland Park, stated that he is appearing on behalf of Chris George Homes, the owner and builder of the property. The house has been sold and the variance request is at the direction of the buyer. The fence will be wrought iron and will not inhibit visibility. They would like to maximize the usage of the side yard of the corner lot.

He addressed the five criteria for granting a variance, as follows:

1. The property is unique because it is a corner lot and the current Code requirements will greatly reduce the fenced area of the back yard.
2. Granting the variance will not adversely affect the rights of adjacent property owners. The wrought iron fence will allow visibility for vehicles and pedestrians. In addition, the lot is at the corner farther away from the turn so it is not as significant as other corner lot properties.
3. Strict application of the provisions of the zoning regulations constitutes an unnecessary hardship because strict application would result in a smaller back yard for the size of the lot.
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. The applicant feels that the Code requirements are more for standard lots to ensure they do not have fences encroaching on the front street side portion of the lot.

Chair Shank asked for questions from the Board. Hearing none, he asked if anyone in the audience would like to comment on this item. Hearing none, he closed the public hearing on this item.

Chair Shank asked for discussion from the Board.

All Boardmembers stated that they believe the five criteria for granting a variance have been met and are supportive of the variance request.

Chair Shank asked for a motion.

MOTION: Motion was made by Mr. Ho to approve the variance request to encroach into the 18-foot minimum side setback on corner lot for a fence as submitted by Chris George Custom Homes, property owner, for property located at 5869 Fontana Drive, Fairway, Kansas, subject to staff recommendations. Ms. Downs seconded the motion.

Motion carried unanimously.

- c. TO ENCROACH INTO THE REQUIRED 6-FOOT MINIMUM SIDE SETBACK FOR A GARAGE REPLACEMENT AND SECOND STORY ADDITION AS SUBMITTED BY LAUREN AARONSEN AND PHILIP MELTZER, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 5318 MISSION ROAD, FAIRWAY, KANSAS.

Director Alani stated that the house already encroaches into the 6-foot setback. The variance is required because the applicant plans to add a second story to the garage which increases the degree of non-conformity. The applicant will be demolishing the existing garage and will build back the garage with a second story. The Public Hearing was properly noticed on August 9, 2022 and the required notices were mailed by the applicant on August 5, 2022.

Staff is not opposed to the requested variance. If the Board grants the requested variance, staff recommends the following conditions:

1. Application and nine sets of plans submitted to Planning Commission for project 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 Mr. Wiederaenders' question, Director Alani confirmed that the applicant will be reducing the height of the driveway and then will be replacing the garage and adding a second story addition. The variance is required because they will be increasing the non-conformity with the height of the second story addition.

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

Bill Poole, Poolehaus Residential Design, 1600 Genesee, Suite 455, Kansas City, Missouri, explained that the genesis of the project is aging in place. The existing driveway is quite steep, making it difficult for the homeowners and their guests to open car doors to get in and out of the car. This is not an area where you can park on the street because of the narrowness of Mission Road and the traffic. The goal is to lower the driveway down to what is required for proper drainage and install an elevator at the back of the garage that will service the remainder of the home. When the project began, they discovered that the existing garage encroached into the side yard setback. The existing garage is only 16 feet wide so the option of reducing it would make a two-car garage impossible.

He addressed the five criteria for granting a variance, as follows:

1. The property is unique because the request does not extend the building any further north than the existing garage wall.
2. Granting the variance will not adversely affect the rights of adjacent property owners as the new garage and second story will not be any closer to the neighbor to the north than the current structure.
3. Strict application of the provisions of the zoning regulations constitutes an unnecessary hardship because increasing the side setback to the code compliant dimension would eliminate the ability of the house to have a two-car garage and a one-car garage would decrease the property value and be a hardship for the owners.
4. The variance will not adversely affect the public welfare because the current setback will be maintained.
5. The proposed variance is not opposed to the general spirit of the zoning regulations. The existing side setback, while less than what is allowed by the current Code, has been in place for over 40 years and has not caused any hardship to neighboring properties or the general public.

Chair Shank asked for questions from the Board.

Responding to Ms. Stafford's question, Mr. Poole explained that they have not designed the lighting but they will use only pathway lighting and any lighting on the garage will be a downlit with a narrow beam. They will not use any type of flood lights on the house that would affect the neighboring property.

Mr. Wiederaenders asked the applicant to address how the second story will affect the view from their property because it will be taller than the existing house.

Philip Meltzer, 5318 Mission Road, stated that he is one of the owners of the property. He stated that they reviewed the plans with their neighbors to the north and the neighbors had no objections. The second story may block the neighbor's view of their backyard, but that is all it will do.

Lauren Aaronson, 5318 Mission Road, added that the second story will not be any higher than the existing home. It will just be a little closer to the neighbor's home because it will be over the garage instead of on the other side.

Mr. Poole added that the homeowners would like to continue to use their upstairs bedroom. The house will be organized so the homeowners can come up from the basement to the second floor using the elevator. The second story addition is needed to create space so they can go across into their existing bedroom and other spaces.

Chair Shank asked for additional questions. Hearing none, he asked if anyone in the audience would like to comment on this item. Hearing none, he closed the public hearing on this item.

Chair Shank asked for discussion from the Board.

All Boardmembers agreed that the five criteria for granting a variance have been met and were supportive of approving the variance request. Mr. Stafford requested there be an additional requirement that no lighting be installed that would affect the neighbors next door.

Discussion followed concerning the request for an additional requirement to the approval concerning lighting. Chair Shank agreed that it was probably good to bring the lighting to the attention of the applicant; however, the applicant specifically stated that they would not add any offensive lighting. He thinks the applicant's assurance that offensive lighting would not be installed should be sufficient, but asked Mr. Stafford to share his thoughts on that issue.

Mr. Stafford responded that with the assurances from the builder and the homeowners that they will not add lighting that would affect the neighbors next door, he agrees that no additional requirements are necessary.

Chair Shank asked for a motion.

MOTION: Motion was made by Ms. Berlau to approve the variance request to encroach into the required 6-foot minimum side setback for a garage replacement and second story addition as submitted by Lauren Aaronsen and Philip Meltzer, property owners, for property located at 5318 Mission Road, Fairway, Kansas, subject to staff recommendations. Mr. Wiederaenders 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 September 26, 2022.

5. ADJOURNMENT.

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

Motion carried unanimously.

Meeting adjourned at 5:58 P.M.

Kim H. Young, City Clerk