

**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