

**MINUTES OF PLANNING COMMISSION MEETING  
OF THE CITY OF FAIRWAY, KANSAS**

The Planning Commission of the City of Fairway, Kansas (the "Commission") conducted a meeting at 5240 Belinder on Monday, October 25, 2021. The meeting was called to order at 6:00 P.M.

Present: Commissioners Jonalan Smith, Ben Zwick, Jeremy Deeken, Shae Pelkowski.

Absent: Chair Wendy Bailey, Commissioner Ron Denton and Michael Hoelscher.

Presiding: Vice Chair Ben Zwick.

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

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

1. APPROVAL OF MINUTES

Vice Chair Zwick asked for a motion to approve the minutes from the September 27, 2021 meeting.

MOTION: Motion was made by Commissioner Smith to approve the September 27, 2021 minutes. Commissioner Deeken seconded the motion and the motion carried unanimously.

2. OLD BUSINESS

a. CONSIDER FAÇADE MATERIAL FOR APPROVED SITE PLAN FOR NEW SINGLE-FAMILY HOME – 5869 FONTANA DRIVE, AS SUBMITTED BY CALEB GEORGE OF CHRIS GEORGE HOMES, PROPERTY OWNER.

Vice Chair Zwick requested the staff report.

Director Alani stated that last month the Planning Commission approved the site plan except for the siding material. The applicant revised the plans and proposes using engineered wood siding board and batten as the primary material with Hardie lap siding on the gables.

Staff is not opposed to the revised materials and allocation.

Vice Chair Zwick asked for questions from staff. Hearing none, he asked the applicant to address the Commission.

Caleb George, 6830 Beverly Road, Overland Park, stated that they applied the Commission's comments from the last meeting and also tried to keep the homeowner's desired finishes. They have removed the cedar shake on two gables and replaced those with lap siding. They have also added a shed roof above the pedestrian door on the garage side and have added

several vents. Overall, they have reduced the amount of board and batten to a fair level as requested by the Commission.

Vice Chairman Zwick thanked the applicant for revising the plans to address the Commission's concerns. He asked for questions for the applicant and for discussion from the Commission. Hearing none, he asked for a motion.

MOTION: Motion was made by Commissioner Pelkowski to approve the façade material for approved site plan for new single-family residence – 5869 Fontana Drive, submitted by Caleb George on behalf of Chris George Homes. Commissioner Smith seconded the motion and the motion carried unanimously.

3. NEW BUSINESS

a. SITE PLAN FOR EXCEPTION TO THE GREENSPACE REQUIREMENT – 5818 EL MONTE STREET, FAIRWAY, KANSAS, AS SUBMITTED BY CHANCE SCARLETT OF THE GREENSMAN ON BEHALF OF BAHR FAMILY TRUST, PROPERTY OWNER.

Vice Chair Zwick requested the staff report.

Director Alani referred the Commission to the report. He stated that there is a discrepancy between staff's greenspace calculations and those of the contractor. The required greenspace for the lot is 9847.5 square feet or 65 percent. The existing greenspace is 9863.5 square feet or 65.2 percent. The proposed site plan would increase the impermeable area to 9404.5 square feet, which is 62.2 percent greenspace. This results in 442 square feet over the allowable hardscape or 2.9 percent.

Director Alani spoke with the applicant last week who indicated that the owner would attend the meeting. At that time, the applicant advised there was a good chance that they would not proceed with the project, even though it is about 50 percent complete. The applicant is not present at the meeting.

Responding to Vice Chair Zwick's question, Director Alani explained that staff received a complaint about the project. Staff reached out to the contractor, calculated the greenspace and advised the applicant that the project exceeded the allowable hardscape. A stop work order was issued and the applicant informed to proceed the project would need an exception from the Commission. The project involved removal of some concrete that was replaced with flagstone. Staff also contacted the engineer who completed the watershed analysis and the engineer indicated that nothing had changed with respect to the watershed; however, the engineer did not have the updated greenspace calculations.

Commissioner Smith commented that the applicant has done a great job with their landscaping and they have a beautiful home.

Responding to Commissioner Pelkowski's question, City Clerk Young explained that in order to be considered permeable, the area must be uncovered and be capable of supporting vegetation. The applicant's email included in the packet states that they have used stones over gravel with chip joints, which they do not consider hardscape. Staff does not agree because that area will not support vegetation, is therefore nonpermeable and would count against greenspace. In addition, although the brick walkways are laid over a compact dirt base, they are considered nonpermeable. As for the pavers, the Code states that the area between the pavers does not count as permeable because the area involved is negligible.

Commissioner Pelkowski agrees that the landscaping is quite good and he feels like the homeowner would make good use of the greenspace they have. He is somewhat concerned about the watershed report, which states that the project will not impact stormwater runoff when the applicant is installing a considerable amount of nonpermeable surface.

Vice Chair Zwick asked for further discussion. Hearing none, he asked for a motion.

MOTION: Motion was made by Commissioner Deeken to deny the site plan for exception to the greenspace requirement – 5818 El Monte Street, Fairway, Kansas, as submitted by Chance Scarlett of The Greensman, on behalf of Bahr Family Trust, property owner. Commissioner Pelkowski seconded the motion and the motion carried unanimously.

b. DISCUSSION REGARDING SOLAR PANELS.

Vice Chair Zwick requested the staff report.

City Clerk Young explained that currently, the City does not have regulations on solar panels. Over the last couple years, staff has issued three or four permits for solar panels, some on the roof and one was free-standing on the ground. Staff frequently receives calls about solar panels and is requesting input and direction from the Commission on Ordinance language. Staff has reviewed regulations from other neighboring cities, including Mission Hills, Prairie Village and Roeland Park. The regulations were also pulled from the City of Merriam because they have commercial properties.

City Clerk Young outlined several questions that staff has concerning this issue. She noted that Fairway is the City of Trees and wondered if solar systems are viable in residential neighborhoods that have mature tree canopies. The City only regulates trees in the right of way (12 feet in from the curb) so someone could possibly remove all the trees on their property and install solar panels. She isn't sure that would be considered compatible with the character of the neighborhood.

She explained there are roof mounted and free-standing solar panels. The City has no regulations for solar panels and staff recently issued a permit for a free-standing solar panel. The system was treated as an accessory structure and was required to meet setback and other

requirements. The property owner later came back requesting additional panels, which were approved. After the installation, a next door neighbor complained about the solar system.

Most solar panels are roof mounted and are generally flush to the roof. The Code regulations from the other cities allow them to be tilted as much as 12 inches above the roof line. One set of regulations also discussed glare that could be directed to a neighbor depending on the elevations of the homes.

City Clerk Young next discussed solar shingles. Her internet research found that several larger companies make them in tile or shake shingles and are black in color. Most cities require that solar panels not be visible from the street. She suggested that solar shingles be treated as accessory roofing materials where they would not be allowed to exceed 20 percent of the roof area, unless they can blend in substantially with the remainder of the roof. If the City were to consider solar shingles, they would have to be listed as an approved material or the applicant would need to seek an exception from the Commission.

As for free-standing solar panels, most cities do not allow them. If they do, there are regulations as to the square footage allowed and the height is limited to 8 feet. She pointed out that at 8 feet in height, they would exceed the height of a 6-foot fence and depending on the terrain, could be visible to a neighbor. She thinks that the Commission should consider setbacks from the front and rear as well as glare coming from the panels.

Commissioner Deeken noted that Prairie Village allows solar panels as does Kansas City, Missouri. He asked if staff was aware of any issues with property owners clear cutting trees from their property in order to increase the efficiency of their solar panels.

City Clerk Young responded that she was not aware of that happening.

Commissioner Deeken thinks that solar panels are most effective if there is a slope facing the south. He wondered if language could be included in the Code that would require approval of neighbors within a certain area.

City Clerk Young responded that the City at one time required approval from neighbors for fences, However, staff believes that creates a problematic situation. Staff prefers language in the Code.

Commissioner Deeken stated that his concern is that if someone clears all the trees in their yard it could affect the shade to a neighboring property. He asked if neighbors would be notified if a neighboring property is installing solar panels.

Zoning Counsel Krstulic responded that the neighbors would get notice if there was a site plan and a public hearing was required.

City Clerk Young clarified that alternatively, if the Commission is considering an exception, no notifications would be sent to neighbors.

Vice Chair Zwick is in favor of renewable resources and thinks it is important for the Commission to identify and consider them. He asked if Kansas has solar easements, indicating that someone could go to the expense of installing solar panels on the south side of their home and then three to five years later a neighbor could plant trees that would impede those solar panels. He also understands that there is some legislation in Missouri that actually prohibits certain HOAs and governing bodies from disallowing solar panels.

Zoning Counsel Krstulic responded that she is not familiar with the concept of solar easements and would need to look into that. She will also look into Missouri legislation concerning a governing body's inability to disallow solar panels.

Vice Chair Zwick stated that he is also concerned about the tree canopy because Fairway is considered the City of Trees.

City Clerk Young confirmed that the City owns and maintains trees 12 feet back from the curb and those trees cannot be removed without the City's permission. She added that one of the regulations she reviewed required a shade analysis and if the analysis did not meet a certain threshold, the request for solar panels was denied.

Commissioner Deeken pointed out that there would need to be a balance of the energy cost of cooling your house in the summer because if the trees are removed and replaced with solar panels, there would not be any shade.

Vice Chair Zwick stated that he is hearing that the Commission would like to entertain renewable energy sources like solar. He asked if there are other energy sources that should also be included in the regulations.

Director Alani suggested that geothermal sources of energy be included.

Vice Chair Zwick noted that wind energy was also discussed in some of the regulations and he recalled that battery storage was brought up at the September meeting.

Commissioner Pelkowski stated that he researched the Codes in California related to batteries and found that most discussed capacity requirements, whether they were inside or outside. The batteries can be very compact and are installed flush against the building.

As for solar easements, Commissioner Pelkowski explained that Prairie Village's Code includes language concerning solar easements and those are negotiated between the neighbors only.

Vice Chair Zwick wondered how those easements could be established and whether there would be deed restrictions involved. He assumes that Zoning Counsel Krstulic could research that issue. He would be concerned if someone had a good sun score and then a neighbor planted trees adjacent to the solar panels, that the sun score could be impacted. Thus, he thinks it would be good to establish some boundaries.

Commissioner Deeken stated that perhaps a property owner could buy an easement from their neighbor to not plant trees; however, when the neighbor sells their property, the property is burdened by that easement and maybe the new property owner doesn't want solar but would rather have shade.

Commissioner Hoelscher pointed out that it would be hard to control a neighbor's property if someone wants to install solar panels.

Commissioner Smith agrees. He thinks that the Code language from Mission Hills meets all of his concerns, like eliminating free-standing structures. Mission Hills' regulations also provide some guidelines at a higher level while some of the others are more detailed. And, adopting some Code language would require a permit so that staff could review the proposal and get more information.

City Clerk Young clarified that a permit is required for solar panels because there are electrical components involved. Staff does not review the permit more than just for the electrical components, except for the free-standing solar panels that are being treated as an accessory structure.

Director Alani pointed out that transfer switches are also required for the solar panels that involve piping and metal from the attic down the side of the house. One of the municipalities required that the piping be concealed.

City Clerk Young also asked about roof replacement and whether the Commission should make some consideration as to the age of the roof if someone is contemplating installing solar panels.

Director Alani pointed out that the roof would not deteriorate as fast if solar panels were installed but it could be an issue if the roof is 10 or 15 years old.

Vice Chair Zwick understands that solar panels have a life span of 15 to 25 years. In addition, they have removable sections that can be replaced, so a contractor could remove the solar panels and then replace the roof. He understands that the Commission is not in favor of allowing free-standing solar panels, and would require that the infrastructure related to the solar panels be concealed.

City Clerk Young asked how the Commission feels about solar shingles.

Commissioner Pelkowski stated that he would have a hard time not allowing the solar shingles because even if there is a shine to them, of all the products, solar shingles seem the least obtrusive.

City Clerk Young stated that if staff receives an application for a solar shingle, she would be inclined to say that it does not meet the allowed roofing material and would require approval by the Commission.

City Clerk Young asked if and where the language should be placed in the Code for commercial properties.

Commissioner Pelkowski considers a residential installation to be totally different than a commercial installation. Having solar panels on the flat roof of a commercial building seems like a benefit and commercial properties should be allowed to have as many solar panels as they want.

Vice Chair Zwick agreed, stating that for commercial properties, as long as the solar panels are not visible, staff could issue the permit without Commission review. However, if the solar panels are visible, they would need Commission approval.

Commissioner Deeken asked if there should be the same sort of fast track for residential properties when the solar panels are not visible, although that would likely not be a common occurrence.

City Clerk Young responded there are a few modern houses where the roof cannot be seen because of the design so language could be included that would allow staff to approve the panels as long as they were not visible from eye level or the street.

Vice Chair Zwick suggested that the parameters for visibility be defined because the solar panels could be seen from one side or the other of the home or could be visible to backyard neighbors.

Commissioner Smith stated that he does not want the Commission to create a barrier but also thinks there may be some gray area making it difficult for staff to determine whether they can approve the solar panels based on visibility.

City Clerk Young stated that because the processes are new, one option might be for the Commission to review all applications. The Commission could review the requests on a case-by-case basis and then as the process becomes more routine, those requirements could be changed.

Commissioner Pelkowski asked if there should be criteria to control the glare from the panels. He stated that a glare analysis is routinely conducted for solar panels, especially when there are large solar fields near an airport, for example. He agreed that it would be a good idea for the Commission to review all solar panel applications, especially because it is difficult to define the visibility aspect.

As for process moving forward, Zoning Counsel Krstulic stated that she would draft the Ordinance for review by the Commission at the November meeting.

With respect to Director Alani's question concerning whether language should be drafted related to geothermal, Vice Chair Zwick stated that most geothermal is underground so he is less concerned about that.

Commissioner Pelkowski suggested that even though the Commission does not have any issues with geothermal, he thinks it should be addressed in the Code.

City Clerk Young explained that she is aware of one geothermal installation on a new home construction and the builder hit a lot of rock. She is not sure how deep they have to dig for geothermal, but believes it is about 100 feet. She recalled that they drilled at that home for four days. And in addition to rock, the City has a lot of underground springs.

Vice Chair Zwick stated that the geothermal systems are a complete closed loop system so the underground springs are not an issue. The biggest issue is a drill rig is used during the construction and while it is for a short duration, they are very noisy.

Vice Chair Zwick discussed the scenario of someone wanting to remove all the trees in their backyard to put in a solar system. He wondered if there should be some sort of mechanism in place that certain sized trees could not be removed.

Commissioner Deeken stated that if the Commission decides to allow solar panels, that at some point it will have to accept the potential consequences that people might cut down their trees. He doesn't know if that will actually happen though because if they do cut down their trees, they are going to also decrease their property value. They would also need to consider how much solar energy they can produce by getting rid of all their trees versus the heating/cooling changes they are going to incur because they no longer have trees. He thinks this is one of those situations where it is best to let property owners decide.

Commissioner Smith suggested that there be some language added related to wind energy. While it is unlikely, if someone wanted to put something up, it would be best for them to come before the Commission for approval.

Vice Chair Zwick agreed, especially for commercial properties.

City Clerk Young pointed out that for commercial properties, the Code already requires that aside from paint, any alterations to commercial buildings comes before the Commission for approval.

Commissioner Pelkowski asked whether the Commission wanted to include language related to battery storage units. The Commission could consider allowing them on the exterior of the building. The NEC has updated the capacity requirements recently so those requirements could be included as well as what the storage container would look like. The battery storage units can be charged from several sources, including the electrical grid, solar panels or a generator. The complaints early on were that the systems were limited to 30 kilowatt hours, which is not enough to power a home for a full day. While the units can be indoors or outdoors, the California Fire Codes were recently updated to limit 40 kilowatt hours inside and 80 kilowatt hours outside. These limits are based on problems with lithium batteries, which can cause fires. There are other battery technologies available and they are getting better as their popularity increases.



Commissioner Smith thinks that the language being proposed should be vague so any type of energy saving measures would need to come before the Commission for approval. In the future, the Commission could then revise the Ordinance based on issues that are identified.

Commissioner Pelkowski suggested that the language concerning battery storage units be clearly stated so that applications would not have to come before the Commission for approval. He thinks that battery storage units will become more popular than even solar because they provide an easy alternative to generators and are nonobtrusive. The units mount to the wall and his only concern would be if someone tries to do some type of non-standard installation.

Vice Chair Zwick thanked the Commission for their comments. He requested that Zoning Counsel Krstulic draft language based on comments from the Commission for review at the November meeting.

4. ADDITIONAL BUSINESS

a. NEXT MEETING

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

5. ADJOURNMENT

Vice Chair Zwick asked for a motion to adjourn.

MOTION: Motion was made by Commissioner Smith to adjourn. Commissioner Pelkowski seconded the motion and the motion carried unanimously.

Hearing no further business, the meeting adjourned at 7:25 P.M.

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Kim H. Young, City Clerk