

**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 on Monday, October 30, 2023. The meeting was called to order at 6:00 P.M.

Present: Commissioners Shae Pelkowski, Ben Zwick, Rorric Pfalzgraf, Michael Hoelscher, Ron Denton.

Absent: Commissioner Jeremy Deeken.

Presiding: Chair Wendy Bailey.

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

Visitors: Joel Perry, Indwell Architecture, 4617 West 90th Street, Prairie Village; Jonalan and Alison Smith, 5809 Alhambra.

1. APPROVAL OF MINUTES

Chair Bailey asked for a motion to approve the minutes from the September 25, 2023 meeting.

MOTION: Motion was made by Commissioner Pfalzgraf to approve the September 25, 2023. Commissioner Zwick seconded the motion.

The motion carried unanimously.

2. OLD BUSINESS

None.

3. NEW BUSINESS

a. SITE PLAN – 5809 ALHAMBRA DRIVE, FAIRWAY, KANSAS, AS SUBMITTED BY JOEL PERRY OF INDWELL ARCHITECTURE & DESIGN, ON BEHALF OF PROPERTY OWNERS JONALAN AND ALISON SMITH, FOR SOLAR ENERGY SYSTEM AND ADDITION WITH EXCEPTION REQUESTS FOR THE FOLLOWING:

1. ROOFING MATERIAL – SOLAR TILES
2. MINIMUM SIDE SETBACK
3. REQUIRED GREENSPACE

Chair Bailey requested the staff report.

Director Alani reported that the applicant is requesting three exceptions:

1. Non-conforming side setback. The existing structure was legally constructed with a side setback of less than the currently required side setback of 10 feet 5 inches. The new addition will maintain the same non-conformity of 9 inches.
2. The greenspace requirement for new addition. The lot size is 16,257 square feet and the required greenspace is 10,693 square feet (65.8 percent). The existing greenspace is 10,369 square feet, or 63.7 percent. The proposed greenspace will be 9,784 square feet or 60.18 percent.
3. Primary roofing material (Tesla solar roof shingles). The applicant is requesting approval for the primary roofing material. No site-specific plans were submitted with the application. Staff contacted the International Code Council (ICC) regarding evaluation reports and the ICC responded by email indicating that the evaluation report for the Tesla roofing material was cancelled and ICC no longer provides support for the product. The packet has Underwriters' Laboratories (UL) and American Society of Testing and Materials (ASTM) information for aspects of the material. Staff did contact the applicant seeking more information and the applicant submitted plans for a different house using the roofing materials.

Staff is supportive of the exception request for the side setback. Staff is not supportive of the exception requests for greenspace or the roofing materials. Should the Planning Commission approve the site plan and requested exceptions, staff recommends the following conditions:

1. One electronic set 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. Project must comply with all City Ordinances, the 2012 International Building Code and other incorporated technical codes.
4. Application and approval are void if the building permit is not obtained within one year of the date of Planning Commission approval.

Chair Bailey asked if there were questions for staff.

Responding to Commissioner Denton's question, Director Alani stated that the applicant did not provide samples of the roofing material. The only information received was for a layout of a house that does not match the applicant's home and no electrical or installation information was provided. The information did show some testing that was done on the roofing panel; however, the roofing material is not an approved material in the ICC Code. Typically, the applicant will reach out to get an evaluation report. He discovered that the ICC had two evaluations, but both of them were cancelled. He heard there were several fires in California resulting in lawsuits involving Tesla and the installer, with allegations of improper installation.

City Clerk Young explained that the Tesla solar panels are actually a roof shingle and are not mounted on top of the roof like a traditional solar panel would be mounted. Because this roofing material is not listed in the Code as an acceptable roofing material, the applicant needs an exception from the Planning Commission to use the material.

Commissioner Pfalzgraf asked if the Commission would be approving the aesthetics of the material itself or whether the Commission was to approve the material's fitness for safety and other Code compliance as an electrical solar panel.

Director Alani confirmed that the Commission's charge was to approve the aesthetics of the material.

Commissioner Pelkowski believes the safety and other Code compliance should be a separate discussion from the aesthetics, because the information provided by the applicant is deficient in terms of electrical components.

Responding to Chair Bailey's question concerning whether the Commission was required to evaluate the electrical components of the roofing material, Zoning Counsel Krstulic explained that the criteria for reviewing the site plan and granting the exception are set out in the packet. The specific Code compliance issues will be reviewed during the building code inspection process. The Commission recently passed amendments to the Code allowing solar energy systems, and therefore, the roofing material would be allowed because there is a provision that solar energy systems need to be incorporated into the building, and the applicant meets that requirement.

Chair Bailey stated that based on that, Director Alani would need to determine whether the roofing material meets the electrical code.

Director Alani stated that he has not received any site-specific design information for the system and therefore, he has not considered or reviewed the electrical code components of the system.

There is a discussion concerning the process moving forward. Chair Bailey asked if the Commission approved the aesthetics, whether the applicant would then need to submit the solar information for review by the Commission because the Commission is required to approve solar panels.

Zoning Counsel Krstulic explained that one of the conditions for approval requires that the applicant comply with all building codes and incorporated technical codes, so the solar panel approval could be covered as part of those conditions. The building inspection would determine whether the solar panels are installed correctly and whether the material is acceptable for safety purposes.

Chair Bailey asked the applicant to address the Commission.

Joel Perry, Indwell Architecture, 4617 West 90th Street, Prairie Village, stated that he is the architect on the project and noted that he submitted several photographs of the roofing material to staff.

Jonalan Smith, 5809 Alhambra, stated that he and his wife are the applicants. They chose the Tesla roofing shingles because of the battery system. Their research concluded that the Tesla system is number one in terms of quality. Part of the reason they do not have all the information is that there are only two certified roofers in the area that can install Tesla roofs. They have been in contact with one of those roofers and are on the list, but he is not certain they will be able to meet the same timeline they will need for completion of the addition to their home. Therefore, they may end up having to use a different product. They submitted the application for approval of the solar roof and then Director Alani discovered there were some concerns with the Tesla shingles of which they were not aware. They are also looking at other solar roof options but the battery system of the Tesla product is their top choice.

City Clerk Young presented a photo of the roofing tiles from the Tesla website on the overhead.

Mr. Smith explained that there is a home in Prairie Village around 67th Street that has the Tesla roof installed and looks exactly like the one on the screen. He explained that you cannot tell which of the roof tiles are solar and which are regular roofing tiles. The roofing tiles look like a standard slate roof and are matte finish.

Director Alani explained that he reached out to neighboring cities concerning the Tesla roofing tiles and found that Leawood has added the roofing tiles to their list of approved roofing materials. Other neighboring cities have not approved the roofing material.

Responding to Commissioner Pelkowski's question, Director Alani explained that the tiles look like a shingle and they click together. All the tiles will match but some of them will generate power and those will be placed dependent on the sun/shade analysis.

Commissioner Pelkowski stated that he was not able to locate any UL certifications for the material, which he would expect to see. He noted that the Tesla website does say they are meeting a couple of the standards.

Director Alani pointed out that standard UL testing tests for impact and wind resistance and the product is meeting those requirements. An ICC evaluation report would include installation requirements; however, the ICC cancelled the reporting so staff is not supportive of the installation.

Commissioner Denton is concerned about the Commission approving something having no samples and just a photograph of a different home on the website. He can't tell if the product will be objectionable to neighbors, if it will reflect, or if it is even going to look acceptable. He added that the product does not meet the requirements of the different licensing organizations so he does not see how the Commission could approve the material.

Zoning Counsel Krstulic stated that the Commission could continue the application to have an opportunity to look at some of the properties that have it installed or look at samples if they can be obtained by the applicant.

Mr. Smith explained that they will contact the roofing company for a sample.

Commissioner Pfalzgraf suggested that the Commission consider approval of the Tesla slate roofing material and if the applicant changes the material to something substantially different than what is approved, or decides to install a composite shingle roof adding solar panels, then the applicant would need to come back to the Commission for approval.

Zoning Counsel Krstulic suggested that the approval be for the Tesla slate roofing material or an alternative material that complies with the Code, then the applicant would not have to seek additional approval from the Commission.

Commissioner Denton asked if Tesla's roofing material would need to meet the fire regulations and access requirements for solar panels.

Director Alani responded that the Tesla roofing materials are actual roofing materials and cannot be considered solar panels.

Responding to Commissioner Pfalzgraf's question, Director Alani confirmed that the Code would typically require ICC approval of the material.

Commissioner Pfalzgraf thinks that the Commission's approval is implied that whatever is used to build the house has to meet the building codes and therefore, the Commission does not have to determine whether or not the material meets the Code. The Commission does need to determine if the roofing material meets the Code requirements for aesthetics. After the material is installed, the building official would then determine whether or not it meets the Code.

Commissioner Denton pointed out that it should be up to the builder or the owner to come up with a product that would meet the Code requirements and if not, then some other solar product that would meet those requirements or a composition roof could be installed.

Chair Bailey asked if the Commission would be comfortable approving the roofing material without seeing a sample of the material.

Commissioners agreed that they would be comfortable approving the roofing material without seeing a sample.

Chair Bailey asked for discussion concerning the exception request for greenspace.

Director Alani reported that the watershed analysis indicates that a detention basin is required, but the plot plan submitted does not show the detention basin. He would require the design of the detention basin be submitted with the permit application.

Mr. Smith responded that they were comfortable with adding the detention basis and they planned to put it in regardless.

Chair Bailey noted that the current home does not meet the greenspace requirement.

Commissioner Pfalzgraf explained that the greenspace is above 60 percent, which is the percentage that the Commission has allowed on other recent applications and therefore, he would be in favor of granting the exception.

Commissioners Denton, Zwick and Pelkowski agreed.

Chair Bailey asked for discussion concerning the exception request for the non-conforming side setback.

Commissioner Zwick asked if the applicants have discussed the plans with their neighbors.

Alison Smith, 5809 Alhambra, stated that they have not talked with their neighbors about the project because they wanted to make sure they were going to move forward. They do plan to share the information about the watershed with neighbors to make sure they are comfortable with the plan.

Responding to Commissioner Zwick's question, Director Alani explained that the existing setback encroaches nine inches and then the encroachment goes back because the applicant wants to meet the requirement for relief on the façade. The project will have the same amount of non-conformance as the current home.

Commissioner Pfalzgraf stated that because the applicant is not making the non-conformance any worse, that he is not opposed to granting the exception. Other Commissioners agreed.

Chair Bailey explained that there is consensus on the greenspace and setback exception requests. She asked if there was further discussion concerning the roofing material.

Commissioner Pelkowski is concerned about the Commission ignoring the solar and approving only the aesthetics as he thinks it is a combination and it is concerning if the ICC has cancelled the evaluation report.

Chair Bailey added that she does not want the Commission to take on the liability of being responsible for the safety of any material it approves.

Commissioner Denton suggested that once the owner and architect have settled on a material that they want to use, that they resubmit the application for Code review and an aesthetic review by the Commission. Because the applicant is still trying to make up their mind, this would not slow the process.

Mr. Perry stated that if they move forward with the Tesla roofing material, there would be a technical document submitted with electrical drawings for the specific home. A lot of the discussions had with staff thus far relate to wiring, so the wiring diagram provided in the packet did not come from Tesla but came from a local roofing installer. There are cutoffs and safety

features built into the system. And, he believes if the roofing material is installed properly, there would be very few electrical problems. The roof is designed with a membrane system that is below the shingle and the tiles are a solid roofing material. The system allows you to collect energy over the day and then use it at night. Conventional solar panels do not allow for that collection of energy. The power panel is two by three feet, about six or eight inches deep, and is normally mounted in the garage.

Chair Bailey asked if the Commission preferred to approve the concept of the solar panel roof material and then ask that the applicant resubmit the complete solar package once they select the final material.

City Clerk Young suggested that the Commission pass final approval for the exception requests for greenspace and the side setback. The Commission could then provide a preliminary approval for the roofing material. This would require the applicant to come back to the Commission for final approval of the roofing material.

Chair Bailey asked for other discussion. Hearing none, she asked for a motion.

MOTION: Motion was made by Commissioner Pfalzgraf to approve the site plan for 5809 Alhambra Drive, Fairway, Kansas, providing final approval for the side setback exception and the greenspace exception, subject to staff recommendations. The Commission also provides preliminary approval for the concept of the roofing material solar tiles, and requires that the applicant return to the Commission for final approval with the final selection of the roofing materials and construction plans. Commissioner Denton seconded the motion.

The motion carried unanimously.

4. ADDITIONAL BUSINESS

a. NEXT MEETING

City Clerk Young stated that the next meeting is scheduled for November 27, 2023.

5. ADJOURNMENT

Chair Bailey asked for a motion to adjourn.

MOTION: Motion was made by Commissioner Deeken to adjourn. Commissioner Pelkowski seconded the motion.

The motion carried unanimously.

Hearing no further business, the meeting adjourned at 6:44 P.M.

Abbie Aldridge, City Clerk