

CITY OF FAIRWAY
5240 Belinder Road
BOARD OF ZONING APPEALS
AGENDA
Monday, September 28, 2020 - 5:30 P.M.

1. MINUTES.

- a. Approval of Minutes from meeting held June 29, 2020.

2. OLD BUSINESS.

None

3. NEW BUSINESS.

- a. Public Hearing to consider variance request to the Fairway Municipal Code 15-298 (5) a. - Special Conditions for Uses- Play Structures - to encroach into the minimum 3-foot side setback for basketball goal as submitted by Jonalan and Alison Smith, for property located at 5809 Alhambra, Fairway, KS.

4. ADDITIONAL BUSINESS.

- a. Next meeting date – no applications received.

5. ADJOURNMENT

**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 met for a public hearing remotely via telephone and video conference on Monday, June 29, 2020. The meeting was called to order at 5:30 P.M.

Present: Boardmembers Amy Berlau, Doug Huffman, Patrick Wiederaenders and Peter Ho (all via phone).

Absent: Boardmember Maria Downs.

Presiding: Chairman Chris Shank (via phone).

Staff Present: City Administrator Nathan Nogelmeier; City Clerk Kim Young, Zoning Counsel Anna Krstulic (via phone); Recording Secretary Barb Fox (via phone).

Visitors: Zim Loy, 1807 Jefferson Street, Kansas City, Missouri; Craig Shaw, ShawHofstra and Associates, 1800 Central Street, Kansas City, Missouri; Diane Robinson, 5600 Canterbury Road; Kevin Reichert, 5555 State Park Road; Mike Tamburini, 5545 Falmouth Road; Katherine Stenos, 5544 Canterbury; Michael Brabner, 5607 Norwood; Michele Kiehl, 5600 Suwanee Road (all via phone).

Chairman Shank outlined the rules of the virtual meeting. All attendees will have their video and audio disabled but will be able to see and hear the Boardmembers and staff. Applicants for each agenda item will be unmuted at the appropriate time and should use the hand raise option to notify the Zoom facilitator that they are associated with a specific item being discussed. When attendees are called upon, they should be prepared to give their full name and address for the public record. At the conclusion of discussion of each agenda item, the applicant will be placed back into attendee mode and their ability to share video and audio will be disabled. During the public hearing of the meeting, anyone from the public wishing to comment may use the hand raise option and the Zoom facilitator will unmute them one at a time so the Boardmembers can hear any comments. Once everyone has had an opportunity to speak, the Chair will close public hearing.

Proper meeting decorum is expected of all attendees at the meeting. Anyone who fails to act properly will be dismissed from the meeting. The City reserves the right to discontinue a meeting if any improper behavior occurs which prevents or interrupts the conduct of business.

Chairman Shank also requested that before speaking, Boardmembers identify themselves, including if they are making a motion or simply contributing to the discussion. All votes will be roll call votes administered by City Clerk Young. If during the meeting, a Boardmember wishes to comment, they should raise their hand to alert the Chair and they will be called upon.

1. MINUTES.

a. APPROVAL OF MINUTES FROM MEETING HELD MAY 18, 2020

Chairman Shank asked for a motion to approve the minutes from the May 18, 2020 meeting.

MOTION: Motion was made by Boardmember Ho and seconded by Boardmember Huffman to approve the May 18, 2020 minutes.

Motion carried unanimously.

2. OLD BUSINESS.

None.

3. NEW BUSINESS.

- a. CONSIDER VARIANCE REQUEST TO ENCROACH INTO THE REAR YARD SETBACK FOR AN ADDITION AS SUBMITTED BY ZIM LOY, ON BEHALF OF KEVIN REICHART, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5555 STATE PARK ROAD, FAIRWAY, KANSAS.

Chairman Shank opened the public hearing and asked City Clerk Young to present the staff report.

City Clerk Young explained that this project came before the Board of Zoning Appeals last month. The applicant has submitted a new request and proposes an addition on the rear of the home. The lot is triangular and does not have a rear property line parallel to the front property line. To determine the 25-foot rear setback, she referred to the report where the requirements of Fairway Municipal Code 15-799 are outlined.

At the May 18, 2020 meeting, the applicant came before the Board requesting to encroach approximately 7 ½ feet into the rear setback. The request was denied. The new request has reduced the encroachment from approximately 84 square feet to 48 square feet and some of the square footage has been shifted to the northwest.

The front portion of the existing home sits within the flood plain. The rear portion and lot are not in the flood zone. The City Engineer reviewed the proposed addition and stated that it would have no impact on floodwaters. Staff had not received the City Engineer's report at the time of the May meeting.

Staff does not support the request as proposed and believes there are options to build the addition to meet the rear setback. However, should the application be approved, the following conditions should apply:

1. Three (3) complete sets of plans, and one electronic set (pdf) are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City code.
3. That the project must comply with all City Ordinances and the 2012 International Residential Code.
4. Application and approval are void if a building permit is not obtained within one year from the date of Board of Zoning Appeals approval.

5. Approval from the City Engineer regarding the development activity on a property within the flood plan.

City Clerk Young stated that she received an email dated June 6, 2020 from Jane Pierce, property owner at 5540 Canterbury. Ms. Pierce indicated that she lives adjacent to the property. She does not use the Zoom app, but wanted to participate in the public hearing. She stated she has no objection to the request for a variance to the rear yard setback.

She said she had several conversations with Diane Robinson, the property owner to the south, who is not supportive of the request.

Chairman Shank asked if there were questions for staff. Hearing none, he asked the applicant to address the Board.

Zim Loy, 1807 Jefferson Street, Kansas City, Missouri, stated that she has made an offer on the property at 5555 State Park Road, contingent on approval of the variance.

Ms. Loy responded to the five criteria for granting a variance, as follows:

1. The lot is unique because it has an unusual pie shaped configuration.
2. The granting of the variance will not affect adjacent property owners. After the May meeting, the addition was redesigned in response to concerns from the Board. The new plan only goes three feet into the setback. The addition will be a modest single-story addition with landscaping and a new fence. The project will not affect the neighbors because it does not encroach into the 8-foot side yard setback. The current brick patio will be removed to help mitigate any water runoff from the property.
3. The strict application of the zoning regulations does cause a hardship for the current property owner because the offer to sell the home is contingent on granting of the variance.
4. The proposed variance will not affect the public welfare because it is within the character of the neighborhood and is not visible from the street.
5. The proposed variance is not opposed to the general spirit of the zoning regulations because it is within the R1 zoning for the neighborhood.

Chairman Shank asked if there were questions for the applicant.

Ms. Loy asked why staff did not support the variance request.

City Clerk Young responded that one of the criteria for granting the variance is that the request is not created by the action or actions of the property owner. She thinks there are alternatives to the location of the addition that would not encroach into the rear yard setback.

Ms. Loy explained that because of the layout of the interior of the home, other alternatives, like building a long narrow addition, were not feasible.

Boardmember Berlau asked if a sight line study had been conducted as discussed at the May meeting to determine how the addition will be viewed from neighboring homes.

Ms. Loy responded that the addition will be a single story and the ridge line of the addition is below the ridge line of the existing home.

Chairman Shank opened the public hearing on this item.

Mike Tamburini, 5545 Falmouth Road, stated that he lives south of the subject property. He can view the area of the requested variance from ground level as well as from the second story of his home. He is supportive of the variance request. The property is unique and the applicant is ready to make a commitment to the property, which is important. He believes that the addition will enhance the fair market value of adjacent and surrounding properties.

City Clerk Young noted that in reviewing her packet of materials, she located an email from Chris Hayes, who lives at 5548 Canterbury Road, which backs up to the home at 5555 State Park Road. Mr. Hayes states that he has no issue with the variance request. He encourages the home improvement as long as the addition does not affect his overall line of sight (which he does not believe it does) and that the addition would not lower the value of his home and other surrounding homes. He thinks that the addition will be an improvement and could increase the overall home values in the area.

Katherine Stanos, 5544 Canterbury, asked if there would be room in the rear yard for the equipment needed to build the addition.

Craig Shaw, ShawHofstra and Associates, 1800 Central Street, Kansas City, Missouri, stated that he is the architect on the project. He responded to Ms. Stanos' question, stating that concrete for the footings will be pumped over the house so it will not intrude on side yards. The lumber will be transported around the side of the home so there will be minimal intrusion.

Ms. Stanos further stated that while she does not have strong feelings one way or the other, she would like to see the project stay within the lines that have already been suggested by the Ordinances.

Kevin Reichert, 5555 State Park Road, stated that there are many homes that are close to each other. With the very minimal encroachment being requested within the backyard, they would still be roughly 60 feet from Ms. Stanos' property line. He said there are many homes that are built closer to the 25-foot rear setback and in relation to those homes, the three-foot encroachment is very minimal.

Diane Robinson, 5600 Canterbury Road, stated that her home is directly adjacent to the home at 5555 State Park Road. She said homes are close to each other and thinks that when people buy a home, they should feel confident that there are setback lines in place for a reason. She has lived at her home since 1997 and has witnessed extensive flooding at least 10 times at 5555 State Park Road. There have been five different owners of the property and each of them left

due to the repeated flooding. The current owner even asked her to provide an affidavit in his lawsuit concerning the severe history of flooding in the home.

Ms. Robinson has a Master's Degree in Hydrology and Urban Geology, and her thesis was on the impact of floods. She has done a great deal of analysis since the May meeting. The water in the area flows from the property at 5555 State Park Road to her home and even a modest amount of building would contribute to additional flooding. She requested that the applicant build the addition within the setbacks that are provided for by the Ordinances.

Responding to Ms. Robinson's comment, Ms. Loy stated that there will be less hard surface with the addition because they will be removing the brick patio that is currently there. She understands that the basement floods and she is prepared to deal with that. She does not believe the decision of whether to grant the variance should be based on past flooding of the home.

Chairman Shank asked if others would like to comment on this item. Hearing none, he closed the public hearing.

Boardmember Wiederaenders stated that he is impressed with the number of neighbors who have indicated they are not opposed to the granting of the variance. He is concerned about the neighbor who has flooding concerns. He does think the applicant has made a good faith effort to try to satisfy the City's concerns; however, the addition will still encroach by three feet. He would like to know if there is some other way for the addition to be constructed within the rear setback line. At this point, he would not be in favor of granting the variance.

Boardmember Ho also appreciates that the applicant has modifications to the plan so it is less of an intrusion into the setback. At least two neighbors have indicated they are not in favor of granting the variance. Based on those comments, he does not think the criteria no. 2 has been met that relates to impact to neighboring properties.

Boardmember Berlau is not in favor of granting the variance. She agrees the applicant has made a good faith effort, but their addition is what is prompting the variance. Thus, she does not believe that criteria no. 1 has been met. She knows it is a difficult site but thinks that the City has done the best it can to make accommodations for oddly shaped lots. She also has concerns about whether criteria no. 2 has been met with respect to impact to the neighbors.

Boardmember Huffman agreed with comments made by the other Boardmembers. He also has concerns about criteria no. 2 related to impact to adjoining properties. One neighbor is concerned about flooding and without a hydraulic study, it would be difficult to know the actual impact. He is not in favor of granting the variance.

Chairman Shank pointed out that it would be difficult to build any kind of an addition without intruding into the rear yard setback. He viewed the property and the fact that the applicant will be removing the brick patio and adding landscape would dramatically increase the permeability and make flooding less of a problem. He thinks the addition would be in character with the neighborhood and does not think it will impact neighbors adversely as to sight lines. The applicant has put forth a good faith effort to address the Board's prior concerns. The small amount of encroachment of 48 square feet compared to the increase in permeability of the backyard is a trade off that benefits everyone. That would satisfy his concern about the flooding and he believes all other criteria have been met. Clearly the house has some

challenges and he does not doubt that the internal floor plan makes it difficult to adjust the addition. For all those reasons, he would be in favor of granting the variance.

Boardmember Huffman stated that his concern as to criteria no. 2 relates to the flooding issue and he agrees with Chairman Shank that the removal of the brick patio would alleviate that concern.

Chairman Shank appreciated Boardmember Huffman's comments, and noted that three Boardmembers have indicated they would oppose the variance request. He requested a motion regarding this particular application.

Boardmember Ho agrees that removing the brick patio would allow for more permeable space so it would be a tradeoff, although the addition would still encroach. His overall concern is that if the variance request is approved, that the applicant could later put in additional hardscape. He asked if the variance could be written so that the area outside the rear setback could never be returned to hardscape. With that stipulation, he would approve the variance request.

Chairman Shank believes that stipulation could be included with staff's other recommendations.

Responding to Chairman Shank's question, Ms. Loy confirmed that she does intend to remove the large brick patio area and replace it with landscaping. She stated that her plan is to put landscaping and a small deck in the area.

Boardmember Ho presented the plan on the virtual screen highlighting the restricted area that would have to remain permeable.

Ms. Loy explained that her plan is that the doors from both the existing and new addition would open out onto a small deck. The remainder of the area would be landscaped, including planting horn beam trees around the perimeter.

Boardmember Wiederaenders stated that he would not have an objection to approving the variance with the additional stipulation as proposed.

Boardmember Berlau stated that the proposed stipulation would ease some of her hesitation in granting the variance; although she does think that the City is being nickel and dimed sometimes. While this is only 48 square feet and the variance is contingent upon a realty sale, she wondered what happens when Ms. Loy sells the home and the buyer wants to put in a brick patio and take out the deck. She agrees the lot is difficult and she appreciates the accommodations the applicant has made. If the remaining Boardmembers agree to approve the variance with the additional stipulations, she would agree as well.

Responding to Boardmember Ho's question, Chairman Shank stated that the condition of the variance would run with the land and show up in a title search if it is made a matter of public record. This would address Boardmember Berlau's concern about subsequent purchasers replacing the brick patio.

Special Zoning Counsel Krstulic explained that she would prepare a Resolution to include the stipulation discussed by Chairman Shank. The property owner would be required to pay the recording fee to file the Resolution in the public record.

Ms. Loy stated that she would agree to pay the recording fee.

Chairman Shank asked for a motion.

MOTION: Motion was made by Chairman Shank and seconded by Boardmember Ho to approve the variance request to encroach into the rear yard setback for an addition as submitted by Zim Loy, on behalf of Kevin Reichart, property owner, for property located at 5555 State Park Road, Fairway, Kansas, subject to staff recommendations, and with an additional stipulation to run with the land that the brick patio will be removed by the applicant and replaced with landscaping and permeable surface. The stipulation upon which the variance will be granted is an important criterion and probably the dispositive reason why the Board has approved the variance request. Special Zoning Counsel Krstulic will prepare a Resolution setting out the stipulation and the applicant has agreed to pay the appropriate recording fee.

City Clerk Young called for the roll call vote.

Motion carried unanimously.

- b. CONSIDER VARIANCE REQUEST TO ENCROACH INTO SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE AS SUBMITTED BY MICHAEL AND SHELLY BRABNER, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 5607 NORWOOD, FAIRWAY, KANSAS.

Chairman Shank asked City Clerk Young to present the staff report.

City Clerk Young explained that the applicant installed an accessory structure and was not aware of setback and permitting requirements. The structure is 13 feet high at the peak of the roof and therefore, requires a nine-foot side and rear setback. The structure is set approximately seven feet from the side property line, and more than nine feet from the rear property line. Staff does not think the applicant meets the first or third criteria required for granting a variance. However, should the variance request be approved, the following conditions should apply:

1. Three (3) complete sets of plans, and one electronic set (pdf) are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City code.
3. That the project must comply with all City Ordinances and the 2012 International Residential Code.
4. Application and approval are void if a building permit is not obtained within one year from the date of Board of Zoning Appeals approval.

The packet includes photographs of the accessory structure. The applicant misunderstood the Code requirements for the structure because it has an open porch. The enclosed portion of the structure is approximately 96 square feet; however, the covered porch area is an additional 48

square feet, for a total of 144 square. Accessory structures that are more than 120 feet must meet setback requirements. The applicant thought that the porch did not need to be taken into account when measuring the size of the structure. The Code does not differentiate between the covered porch and the actual enclosure, but measures the size by the actual footprint of the structure.

City Clerk Young said the exact location of the property line is unclear. There is an old stone retaining wall with a fence on top of it so it is difficult to determine where the property line is. In her estimation, the structure encroaches into the setback by about 1 ½ feet.

City Clerk Young reported that proper notices were sent to neighbors and she did not receive any comments from neighbors.

Chairman Shank asked if there were questions for staff.

Responding to Boardmember Ho's question, City Clerk Young explained that no application was requested for a building permit. Staff received a call from an adjacent property owner who was concerned about the height and location of the structure. City Administrator Nogelmeier went to the property at that time and the construction was nearly complete.

Boardmember Ho asked if Tuff Shed had built other sheds within the City.

City Clerk Young responded that Tuff Shed is listed in the system as a contractor so she is certain they have built other sheds within Fairway. She would hope that they would know the procedures for getting a building permit.

Chairman Shank asked if there were other questions for staff. Hearing none, he asked the applicant to address the Board.

Michael Brabner, 5607 Norwood, stated that he is the homeowner. He believes the structure is closer to 8 feet from the property line. The structure is a playhouse for his children. They did not mean to infringe on anyone's property or do anything improper.

Mr. Brabner addressed the five criteria for granting a variance, as follows:

1. Mr. Brabner explained there is nothing unique to their property. He and his wife built the playhouse so that their children could enjoy it for many years as they plan to be residents of Fairway for some time. The playhouse is temporary and can be dismantled. It is only 96 square feet, with an additional 48 square foot porch. They did not realize that based on the size of the structure, it would be considered an accessory structure. The playhouse is similar in color to their home.
2. Granting the variance will not adversely affect the rights of adjacent property owners. He has talked with the neighbor to the north, who has no issue with the proximity of the structure to the boundary. The neighbor to the east is almost 20 feet away and he is not sure why that neighbor would have an issue with the location. He has also talked with neighbors to the south and they too like the playhouse. The playhouse replaced an aging swing set, which had a greater span and a taller peak than the playhouse. The shrubs and Japanese maple tree mostly block the view of the playhouse to the east.

3. Denying the variance will create an unnecessary hardship because moving the structure an additional one foot will be costly. He assumes it can be done, but getting the necessary equipment through the narrow walkway to lift the playhouse could be a problem.
4. The granting of the variance has no effect on the neighbors and will not affect public welfare. The playhouse was tastefully done and they plan to add landscaping around the playhouse to add further appeal.
5. The granting of the variance will not be opposed to the general spirit and intent of the zoning Ordinance. The setback requirement is met on the east side of the property and is only about one foot short on the north boundary. The property owner to the north does not have an issue with the structure being in its current location.

Chairman Shank asked if there were questions for the property owner.

Responding to Boardmember Huffman's question, Mr. Brabner explained that structure has a metal frame with a board and batten sheet panels.

Responding to Boardmember Huffman's question, City Clerk Young explained that footings are not required for a shed. There is a requirement that they be tied down or anchored. Because the structure has not yet been through the permitting process, it has not been inspected.

Chairman Shank asked if there were further questions for the property owner. Hearing none, he asked for discussion from the Board.

Responding to Boardmember Ho's question, Mr. Brabner stated that he feels like the sales person from Tuff Shed had mentioned that there were necessary steps that they would take care of. He was surprised when City Administrator Nogelmeier started asking questions because he thought the issues were already covered.

Boardmember Wiederaenders asked if the applicant could talk with Tuff Shed because he believes it was partially their mistake in not checking the building and height requirements.

Mr. Brabner responded that he has already discussed the situation with Tuff Shed and they advised that moving the shed is not an option.

Chairman Shank opened the public hearing on this item.

Michele Kiehl, 5600 Suwanee Road, agreed with Boardmember Wiederaenders that the structure was not placed in the proper location and should be moved. She wondered if a survey could be done to determine exactly where the property line is located so that perhaps the structure would not need to be moved far.

Chairman Shank asked if there was additional public comment. Hearing none, he closed the public hearing.

Chairman Shank asked for discussion from the Board.

Boardmember Ho does not believe that the applicant meets criteria no. 1 because the problem was actually created by the owner or by Tuff Shed. Once the variance request does not meet one of the five criteria, he cannot agree to approve the variance request.

Boardmember Wiederaenders agrees. He is also concerned about setting a precedent and based on the fact that no one knows where the property line is, the structure could be encroaching more than two feet. He is not inclined to grant the variance request.

Boardmember Huffman also agrees. He hopes that the homeowner has some type of contract with Tuff Shed that states that Tuff Shed will meet the City Ordinances to help rectify the situation.

Boardmember Berlau agrees with the other Boardmembers. She would be interested to know where the actual property line lies because the shed may not need to be moved as much as anticipated.

Chairman Shank also agreed with the other Boardmembers. He does not see that the Board can approve the variance request based on the applicant's response to the criteria no. 1. He thinks it would be good to know where the boundary line is so that when people are told they are not within the boundary, they would at least know where the line is with some specificity.

Chairman Shank asked for a motion.

MOTION: Motion was made by Boardmember Wiederaenders and seconded by Boardmember Ho to deny the variance request to encroach into the side yard setback for an accessory structure as submitted by Michael and Shelly Brabner, property owners, for property located at 5607 Norwood, Fairway, Kansas.

City Clerk Young called the roll call vote.

Motion carried unanimously.

4. ADDITIONAL BUSINESS.

a. SET NEXT MEETING DATE.

City Clerk Young explained that she is not sure if she has any applications for a July meeting. A meeting notification will be posted on the website.

5. ADJOURNMENT.

MOTION: Motion was made by Boardmember Ho and seconded by Boardmember Huffman to adjourn at 7:04 P.M.

City Clerk Young administered the roll call vote.

Motion carried unanimously.

Kim H. Young, City Clerk

DRAFT



STAFF REPORT

**Board of Zoning Appeals
September 28, 2020**

TO: Chairman Chris Shank
Board of Zoning Appeals Members
Anna Krstulic, Zoning Counsel

FROM: Kim Young, City Clerk

APPLICANT: Jonalan and Alison Smith, Property Owners

The legal description for the lot(s) is: **5809 ALAHAMBRA STREET, BRYANTWOOD SOUTH PT LTS 12 13 & 14 BG 5' W SE COR LT 12 N TO PT 17.87' E NW COR LT 13 E 130' TO PT 62.87' E NW COR LT 14 S TO PT 30' E SW COR LT 14 W 105' TO BG BLK 4 FAC-0263 0075**

Fairway Municipal Code Section 15-298. - Special Conditions for Uses – (5) Play Structures.

Play structures primarily intended for use by children for recreational purposes, including but not limited to basketball goals, swingsets, jungle gyms, children's playhouses and slides, shall be allowed as an accessory use, subject to the following conditions:

- a. **No play structure shall be located in front of the front building line of the principal building, provided, however, that a single basketball goal or tether ball pole may be located in the front setback when the same is: located adjacent to the driveway, not less than twenty feet (20') from the front property line, and not less than three feet (3') from the side property line.**

Variance Request – Encroach into the 3-foot minimum side setback for basketball goal

The applicant is submitting a request for the location of a basketball goal that is approximately 1-foot from the property line. This goal system has an adjustable height for the hoop and projects away from the base several feet and into the driveway. The concrete pad for the system is a few inches away the property line and the adjustable rim/hoop is 6-feet 6-inches from the property line. The East property line angles easterly. The goal system meets the distance from the front property line.

The current location utilizes the existing driveway and is approximately 40 feet from the goal to the closest portion of the house to the East.

STAFF RECOMMENDATION:

Staff is not opposed to the request as proposed. Should the Board of Zoning Appeals grant the variance, the following conditions should apply:

1. Three (3) complete sets of plans are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City code.
3. That the project complies with all City ordinances and the 2012 International Residential Code.

4. Application and approval is void if a building permit is not obtained within one year from the date of Board of Zoning Appeals approval.

Criteria for Granting a Variance or Appeal of an Administrative Decision

A. Variance:

In specific cases the Board may authorize a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by zoning ordinance. A request for a variance may be granted in such case upon a finding of the Board that all the following conditions have been met. Applicant must provide a statement for each condition for granting a variance as follows:

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owners or applicant: The applicant's driveway is two feet (2') from the property line as required by Fairway Municipal Code section 15-297 3(c) – Site design standards- curb cuts and driveways. The basketball goal will be located adjacent to the driveway as required in Fairway Municipal Code 15-298 (5) a. - Special Conditions for Uses- Play Structures.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents: The intent behind the three-foot (3') side property line requirement in Fairway Municipal Code 15-298 (5) a. - Special Conditions for Uses- Play Structures is not entirely clear. Given that the ordinance for basketball goals is grouped with tetherball posts one might infer that the intent is to ensure no part of the equipment extends to the neighbor's property, for instance when a tether ball is hit around the pole or when a basketball misses the net or backboard (a google search of tetherball rope lengths indicates a typical length of 8 feet).

No part of the basketball goal on the applicant's driveway would extend into the neighbor's property and a property line survey has confirmed that the closest the pole comes to the property line at any point is 12 inches. In addition, the backboard of this goal extends well beyond the pole and is more than 6 feet from the property line. Shots that miss the backboard or net typically fall on the applicant's driveway.

It should be noted that the adjacent property owner's driveway is located almost immediately adjacent to the property line. This can make the basketball goal seem closer to the neighbor's driveway than it would be if the driveway was located two feet (2') from the side property as required by Fairway Municipal Code section 15-297 3(c) – Site design standards- curb cuts and driveways.

3. That the strict application of the provisions of the zoning ordinance for which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application: Due to the city easement in our neighborhood and to comply with the requirement that a basketball goal be "adjacent to the driveway" it is not possible for the applicant to place the basketball goal in a different location that is three feet (3') from the side property and twenty feet (20') from the front property line. Therefore, the placement of a basketball goal on our property will require either a variance to the side property measurement or the front property measurement. Given that we have already installed and subsequently removed the goal, our preference would be to reinstall it in its original location.
4. That the variance desired will not adversely affect the public welfare; and: We do not believe that this variance request, if approved, would adversely affect public welfare. Alternatively, neighbors have enjoyed playing on the goal prior to its removal.

5. That granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance: As previously stated, the intent behind the requirements in Fairway Municipal Code 15-298 (5) a. - Special Conditions for Uses- Play Structures is not entirely clear but we believe that the placement of our goal meets the spirit and intent of the ordinance.

B. Appeals of an Administrative Decision:

Appeals may be made to the Board of Zoning Appeals by anyone having direct interest in the property affected concerning the interpretation or administration of the Zoning Code by the Building Inspector/Codes Administrator or any other City Official. The appeal must be filed within thirty (30) days after the action/decision appealed and shall specify the grounds in writing. The Board shall hear oral and written testimony from the applicant and the Building Inspector/Codes Administrator at a public hearing. At the conclusion of the public hearing, the Board shall render its decision.



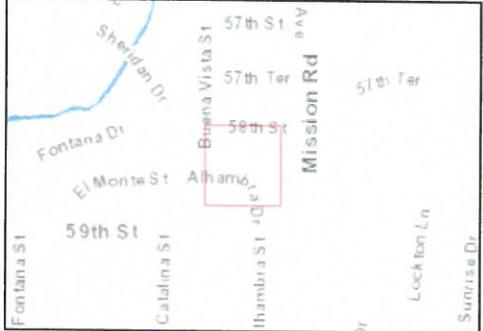




Johnson Co AIMS Map

LEGEND

- AIMS Imagery: 2019
- Address Point
- Building/Structure
- Property
 - Untaxed
 - Vertical
 - Unplatted
 - Mineral Rights
 - Common Interest
 - Platted
 - Right-of-way
 - Leased Land



Disclaimer: No person shall sell, give, reproduce, or receive for the purpose of selling or offering for sale, any portion of the data provided herein. Johnson County makes every effort to produce and publish the most current and accurate information possible. Johnson County assumes no liability whatsoever associated with the use or misuse of such data, and disclaims any representation or warranty as to the accuracy and currency of the data.

CERTIFICATE OF SURVEY

DATE: 1/22/2019
 JOB NUMBER: 34953
 PREPARED FOR: JONALAN SMITH

SECTION 9 TWP. 12 RG. 25
 CO. JOHNSON STATE KANSAS

LEGAL DESCRIPTION

(Per deed recorded in Book 201312, Page 002156)

ALL THAT PART OF LOTS 12 AND 13, LYING EASTERLY OF A STRAIGHT LINE DRAWN FROM A POINT LOCATED 5 FEET WESTERLY OF THE SOUTHEAST CORNER OF LOT 12 AS MEASURED ALONG THE FRONT LINE OF LOT 12, TO A POINT LOCATED 17.87 FEET EASTERLY OF THE NORTHWEST CORNER OF LOT 12, TO A POINT LOCATED 17.87 FEET EASTERLY OF THE NORTHWEST CORNER OF LOT 13, AS MEASURED ALONG THE REAR LINE OF LOT 13, BLOCK 4, BRYANTWOOD SOUTH, AND ALL THAT PART OF LOT 14, LYING WESTERLY OF A STRAIGHT LINE DRAWN FROM A POINT LOCATED 62.87 FEET EASTERLY OF THE NORTHWEST CORNER OF LOT 14, AS MEASURED ALONG THE REAR LINE OF LOT 14, TO A POINT LOCATED 30 FEET EASTERLY OF THE SOUTHWEST CORNER OF LOT 14 AS MEASURED ALONG THE FRONT LINE OF LOT 14, ALL IN BLOCK 4, BRYANTWOOD SOUTH, A SUBDIVISION IN THE CITY OF FAIRWAY, JOHNSON COUNTY, KANSAS.

BASIS OF BEARINGS: Kansas State Plane, North Zone.

NOTE: No title information was provided as a part of this survey.

THIS IS TO CERTIFY THAT ON THE 14TH DAY OF JANUARY 2020, THIS FIELD SURVEY WAS COMPLETED ON THE GROUND BY ME OR UNDER MY DIRECT SUPERVISION AND THAT SAID SURVEY MEETS OR EXCEEDS THE "KANSAS MINIMUM STANDARDS" FOR BOUNDARY SURVEYS PURSUANT TO K.A.R. 66-12-1.



SCALE: 1"=20'



**CIVIL ENGINEERS
 LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET
 OLAHIE, KANSAS 66061
 PHONE (913) 764-1976
 FAX (913) 764-8635

14 W. PEORIA
 PAOLA, KANSAS 66071
 PHONE (913) 552-1976
 FAX (913) 552-6904



LEGEND

- BAR FOUND AS DESCRIBED UNKNOWN ORIGIN UNLESS NOTED
- ⊙ SET 1/2" X 24" REBAR WITH PLASTIC KS CLS 93 CAP
- (M) MEASURED DISTANCE
- (R) RECORD DISTANCE

