Planning Commission
August 31, 2020

TO: Chairwoman Bailey
Planning Commission Members
Anna Krstulic, Zoning Counsel

FROM: Kim Young, City Clerk and Abbie Aldridge, Assistant City Clerk

APPLICANT: Melissa Tilson, Property Owner

The legal description for the lot(s) is: 5323 ABERDEEN, FAIRWAY LOT 5 BLK 9 FAC-0381

15-235 (a) Site Plan Review - Any application, regardless of the size or impact of the project, that requests and exception to the Dimension Standards in Section 15-296 or the Site Design Standards in Section 15-297.

The applicant is submitting an exception request to replace an existing fence along Shawnee Mission Parkway in the same location, same height and style. A statement is included from Ms. Tilson outlining the reasoning for the request and a diagram.

At the July 27, 2020 meeting, the Planning Commission considered the applicant’s request for an exception to the 12-foot street side setback for fences on corner lot. The Commission requested that staff get additional information regarding the Right-Of-Way and property line.

The Parkway is a State highway. Staff spoke with Bill Haverkamp, P.S. Chief at the KDOT Bureau of Right-of-Way. Mr. Haverkamp stated that the ROW ends at the back of the 5-foot sidewalk. Thus, the property line is at the edge of the sidewalk. While reviewing the parcels on JOCO AIMS, the property lines appear to be within the street. Public Works Director Bill Stogsdill said that the State likely did not replat the properties when the highway was realigned.

There are 24 residential properties on the Parkway between Mission Road and Belinder Avenue, 10 of which currently have legal nonconforming fences. The locations of these fences vary from about 1 foot to 6 feet from the sidewalk edge, with the majority being 2 or more feet back.

Only 2 of the 10 abut the sidewalk: 5323 Aberdeen and 5316 Fairway Road. These 2 properties are the closest to the Fairway Shops.

As noted a last month’s meeting, staff noted an error to the code language for legal, non-conforming fences in sub-sections c.d. and e. which reference height, material and design but not location.

Sec. 15-297 (e) h. - Any legal nonconforming fence or wall that does not meet the current standards of this section may be repaired, replaced and maintained at its present location; provided, however, that any repair or replacement shall not increase the degree of the nonconformity; and further provided, where fifty percent (50%) or more of the existing fence or wall is repaired or replaced, such fence or wall shall comply with Subsections c., d. and e. above (concerning height, materials and design). No property shall be allowed multiple permits over any eighteen (18) month period when the effect would be to circumvent this latter provision.

Staff has attached the mark-up of the code revision that was approved by Ordinance 1582 in 2014.

Staff is supportive of the request for the following reasons:
1. The existing fence is a legal, non-conforming and new fence is same height, material and design and being installed in same location.
2. Existing landscaping, sprinkler system are established in the yard,
3. Code as written is ambiguous.
4. The fence location is on the property line and outside of the Right-of-Way.

STAFF RECOMMENDATION:

Staff recommends approval of the exception request with the following recommendations:

1. Building permit must be obtained and fees paid.
2. Application and approval is void if a building permit is not obtained within one year from the date of Planning Commission approval
We purchased the home November 1, 2017 with an existing but dilapidated fence on three sides of the home. There has been a fence along the sidewalk that joins our backyard neighbor’s along the Parkway for more than 17 years. In May we joined in on a neighborhood fence beautification project to replace falling down fences, chain link fences etc. Our personal investment in the fence project totals at $5000.00. In the nearly three years we have lived here we have brought this property back to life but it has been a very expensive project. We invested thousands of dollars in landscaping, a sprinkler system, sump pump drain, and sod designed around our existing fences which will all be dollars lost if the fence is relocated. We signed a contract on June 3, 2020 with Burge Fence, a company that has been in business since 1920....100 years to be exact to replace our existing fences. Little did we know what a completely disorganized company this has become. We were informed July 20, 2020 that Burge had filed a permit but never paid for it and they had already started work on tearing out and replacing the new fence. It was brought to the attention of the city that we didn’t have a permit and a complaint was filed from a former planning commission member that our fence was not in compliance. Attached you will find an email from myself, Missy Tilson, to Jon DeWitt informing them of the violation and he admitting it was their fault. We were unaware of the ordinance pertaining to existing fences. Had we known this we would have replaced only 50% of the fence along the Parkway and then waited 18 months to do the other 50%. The Parkway fence only constitutes 30% of our fences total. It was not our intention to violate the laws or ordinances of the city of Fairway.

Attached you will find a diagram of our side yard from the front of our home to the back of our home. This is the area that is directly affected by changing the location of the Parkway fence. Currently our side yard is approximately 484 square feet. By moving the fence in 12’ our livable green space will be reduced to approximately 220 square feet. One of the reasons we purchased the home was because of the livable green space and being a corner lot on a busy highway the fence adds protection not only to us while out in our yard but to our home as well. By moving in the fence 12’ that will place the fence only 8’ from our dining room. We have a family of nine children with significant others and 4 grandchildren who are frequently at our home. The thought of a car crashing through the fence and only having 8’ before impact is unthinkable. The average length of a car is 14.7 feet and a car traveling at 40 mph travels 58.8 feet per second (30mph travels at 44.1 feet per second but no one goes 30mph along here). That leaves no time for anyone to survive. This is a deep concern for our family. The way our house is situated on the corner lot makes our home so much closer to the Parkway than most other homes in Fairway. It’s not that we don’t have concerns for pedestrians that occasionally walk down the sidewalk but we live here 24/7. There is a wide open sidewalk directly across from us on the south side of the Parkway that pedestrians could use to get from point A to point B. We watch speeding cars, trucks, motorcycles popping wheelies, ambulance, fire trucks, and police cars in high speed chases go by here daily. The livable green space that would become unlivable or dormant would also have to be maintained by my husband mowing. This puts him in danger weekly if the fence would have to be moved.

We also have concerns for a mature tree that will be disturbed by moving in the fence. The roots on this tree are well established and it is 13’ from the curb. We love the trees in Fairway and don’t want to see any of ours die.

Our neighbors behind us are strongly in support of our fence remaining in the same place. Ours abuts up to theirs with no gap. They installed a steel fence between our properties and by moving in our fence that would create a 12’ section of 4’ high fence. Anyone could easily hop the fence from the Parkway and gain entrance into our homes. The current fence has always promoted not only privacy but protection from crime and by moving it in we all lose both of those factors.
Tilson property

5323 Aberdeen Road
SIDE YARD
ADJACENT TO
THE PARKWAY

Front line of home

Existing fence line from front of home to backline of home

Proposed fence line

24' x 11' = 264'

26' x 11' = 286'

264' + 286' = 550'

Livable greenspace

Reduced to

2.20'