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 by telephone and video conference on Monday, July 27, 2020. The meeting was called to order at 6:00 P.M.

Present: Commissioners Wade Walker, Andrew Lonard, Jonalan Smith, Ron Denton, Paul Coury, Ben Zwick (all via phone).

Absent: None.

Presiding: Chairwoman Wendy Bailey (via phone).

Staff Present: City Clerk Kim Young; Zoning Counsel Anna Krstulic (via phone); Assistant City Clerk Abbie Aldridge; Recording Secretary Barb Fox (via phone).

Visitors: Libby and Bryce Gilman, 6132 Delmar; Melissa and Anthony Tilson, 5323 Aberdeen Road; Lauren Conderman, 5900 El Monte; Anton Peterson, 652 SW 120st Road, Holden, MO; Terry Tevis, Tevis Architects, 10820 Shawnee Mission Parkway, Suite 201, Shawnee, Kansas; John and Karen Yungmeyer, 6218 Howe Drive; Sean Ervin, 5250 W. 116th Place, Suite 400, Leawood, Kansas (all via phone).

Chairwoman Bailey outlined the virtual meeting rules. During the meeting, all attendees will have their video and audio disabled; however, attendees will be able to hear and see the members of the Commission and staff. Applicants for each agenda item will be unmuted at the appropriate time and should use the hand raise option to alert the Zoom facilitator that the applicant is associated with the item being discussed. The facilitator will share the applicant’s audio and video with the Commission. At the conclusion of the discussion for each agenda item, the applicant will be placed back into attendee mode with their ability to share video and audio disabled. Applicants should provide their first and last names and addresses for the public record.

Proper meeting decorum is expected of all attendees and anyone who fails to act properly may be removed from the meeting. The City reserves the right to discontinue the meeting if any improper behavior occurs that would interrupt the conduct of business. There is no public hearing on the agenda so there will be no public comment during the meeting.

I. APPROVAL OF MINUTES

Chairwoman Bailey asked for a motion to approve the minutes from the June 29, 2020 meeting.

MOTION: Motion was made by Commissioner Walker to approve the June 29, 2020 minutes. Commissioner Smith seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.
2. **INTRODUCE NEWLY APPOINTED COMMISSIONER**

Chairwoman Bailey introduced and welcomed the newly appointed Commissioner, Ben Zwick.

Commissioner Zwick stated that he looks forward to the opportunity to serve the City and to contribute and help provide some direction and guidance to the Commission.

3. **OLD BUSINESS**

a. **CONSIDER SITE PLAN AND EXCEPTION REQUEST TO GREENSPACE REQUIREMENT FOR ADDITION/REMODEL AS SUBMITTED BY BRYCE AND LIBBY GILMAN, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 6132 DELMAR, FAIRWAY, KANSAS.**

City Clerk Young stated that the applicant appeared before the Commission on June 29, 2020. Since that meeting, the applicant completed a watershed analysis and made some changes to the exterior facades. As a result, she believes the exception request for architectural relief has been met.

The applicant also requests an exception to the greenspace requirement. Staff remains concerned about the amount of hardscape being added to the lot and therefore, does not support this exception request. However, if the Commission approves the site plan and exception requests, the following conditions should apply:

1. Three (3) complete sets of revised plans and one electronic set are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City Code.
3. The project must comply with all City Code provisions and the 2012 International Residential Code.
4. Application and approval are void if the building permit is not obtained within one year of the date of Commission approval.
5. Submit engineer’s report that the structure can support the second-floor addition.

Chairwoman Bailey stated that she received an email from a resident who indicated they did not endorse the greenspace exception. She asked for questions for staff.

Commissioner Denton noted that there is a French drain down the north side of their property that exits into the right of way. City Clerk Young confirmed that the drain will need to be pulled back. Commissioner Denton said that he believes the applicant still has excess water and wondered if a retention basin should be added in the front yard to collect that excess water. He noted that the applicant has done a great job of improving the elevations, but the project is still almost 400 square feet over the allowed greenspace.

Chairwoman Bailey stated that she does not know if the Commission can require a retention basin because the applicant's proposal meets the Code.
Zoning Counsel Krstulic explained that the Commissioners have discretion to require modifications so if there is consensus that a retention basin should be added, then the Commission could require that as a condition.

Commissioner Denton indicated that if other Commissioners were amenable to approving the application, he suggested an alternative for the applicant reducing the size could be to require them to provide more retention.

City Clerk Young noted that in other situations where someone has exceeded the greenspace requirement, a retention basin has been installed to mitigate the water runoff.

Commissioner Coury stated that if the applicant was willing to install a catch basin, he would support the exception request.

Chairwoman Bailey asked for additional discussion from the Commission. Hearing none, she asked for the applicant to address the Commission.

Bryce Gilman, 6132 Delmar, stated that he and his wife Libby are the homeowners. He has talked with his neighbor to the north where the concern is for the water runoff. The neighbor is in full support of the exception request, although he does not have a formal letter from him.

With respect to the French drain, Mr. Gilman understands from the engineer that it is an improvement over the current state of the drainage. They thought they had met, if not exceeded, what was needed with respect to water runoff. To facilitate the extra water from having the greenspace taken up, the engineer conducted a survey and prepared a new design that improves the runoff situation from what it is currently. The new design directs water to the street.

Chairwoman Bailey responded that getting the water into the street is partially the goal. The other part of the goal is to mitigate the amount of water that is running off into the streets and storm sewer.

Commissioner Walker agreed that the stormwater analysis indicates that the drain will improve existing drainage conditions, but he thinks that the applicant needs to comply with the greenspace requirement or provide an alternative, which would be some design that retains the water and does not just improve the existing drainage conditions.

City Clerk Young explained that the calculations contained in the report indicate that the situation of the neighbor to the north will be improved as the additional water is directed into the stormwater system. The Code requires the watershed analysis to determine that the new construction will not adversely impact adjoining or downstream properties. The intention is that additional water be captured and slowed down.

Libby Gilman, 6132 Delmar, explained that they purchased the home last September. They have been living with her parents with their five children and desperately need to complete the house. She asked if the plans would be approved if they include a retention basin.
Chairwoman Bailey asked for discussion from the Commission.

Commissioner Lonard asked if there is some way to make the plan work without exceeding the greenspace requirement by almost 400 feet because from his perspective, that is too big of an exception to allow.

Commissioner Smith agreed with Commissioner Lonard. He said that he appreciates the applicant’s improvements to the architectural relief, but 400 square feet over the allowable greenspace is excessive.

Commissioner Walker said that he is comfortable with the architectural relief. He said that the site drainage needs to work properly and needs to be designed by the engineer. He does not think it would be a complicated design for the engineer.

Commissioner Denton agreed with the previous comments and said that his preference is to decrease the overall size of the house to meet the greenspace requirements. He said that he thinks the house has been overdesigned by almost 400 square feet and now the Commission is being asked to allow a retention basin in lieu of a redesign, which is not his first choice. He is not trying to keep the applicants out of their home, but the greenspace requirement has been in place for a long time.

Chairwoman Bailey asked if the applicants had comments on the suggestion to decrease the overall area of the building.

Mr. Gilman responded that the design of the home is based on their large family, but they are not trying to build a mansion. He had hoped that the design changes were enough but he understands they are not and they will continue to work on that. He asked for a clear direction for approval. He thought that they met all of the requirements except for greenspace and understood that the permeable driveway and French drain would address that concern. He stated that if a catch basin were required, they would agree to do that.

Ms. Gilman stated that they tried to reduce the square footage but with five children, they have not been able to figure out a way to do that.

Commissioner Coury said that he thinks that the applicants have done the best they can to get the home as small as possible and still be functional. He supports Commissioner Walker’s suggestion that if the applicant is willing to add a catch basin, he would be in favor of an exception for the 400 square foot greenspace overage.

Commissioner Zwick agreed that adding a catch basin would be a favorable solution, but he would like to understand from an engineer how that water would be conveyed. The grading shows that the property drops from 972 to 968 at the curb line, amounting to a 4-foot drop within a matter of 60 feet, which is a pretty steep slope. He said that the current design of the French drain will convey water to a point and then fill up and bubble up across the neighbor’s yard. The homeowner has spoken with the adjacent neighbor who probably considered the
current condition that everything is in. The future condition with the additional roof and all the gutters coming down will likely result in quite a bit more water.

Chairwoman Bailey asked the applicant what the permeable driveway will consist of to address some of the greenspace.

Mr. Gilman stated that the permeable driveway will be behind the home. The contractor plans to install Prolight permeable pavers.

Chairwoman Bailey asked for additional discussion from the Commission.

Commissioner Walker suggested that this item be continued to next month to allow the engineer to design a solution so that complies with the greenspace requirements.

Commissioner Denton suggested that if the decision is to go with an engineering solution, that the contractor provide information on the permeable material that he intends to use and how it would be installed. He noted that permeable pavers are not approved in the Code.

Commissioner Coury asked if staff could review the revised plans so that the applicant would not have to wait another month to come back to the Commission.

Commissioner Smith stated that he would rather the applicant come back before the Commission because of how much they exceeded the greenspace. He feels that requiring staff to approve the revised plans would put staff in a challenging position.

Commissioner Lonard stated that he would be happy to review the plans next month on a house that meets or is much closer to meeting the greenspace requirements. At the end of the day, the applicant is trying to build a house that is too big for the lot. There have been houses that have not met the greenspace requirement but 400 square feet seems a little extreme.

Chairwoman Bailey asked for a motion.

MOTION: Motion was made by Commissioner Walker to continue the site plan and exception request to greenspace requirement for addition/remodel as submitted by Bryce and Libby Gilman, property owners, for property located at 6132 Delmar, Fairway, Kansas, to the August 31, 2020 meeting. He requested that a civil engineer propose a solution that complies with the greenspace requirement. Commissioner Denton seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.
b. CONSIDER SITE PLAN AND EXCEPTION REQUEST FOR LOCATION OF BASKETBALL GOAL AS SUBMITTED BY JONALAN AND ALISON SMITH, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5809 ALHAMBRA, FAIRWAY, KANSAS.

Zoning Counsel Krstulic apologized for the inconvenience, but in reviewing the applicable Code provisions, she determined that the Commission does not have the authority to grant this exception request. The Commission can grant exceptions to dimension standards and site design standards, but there is no provision for exceptions to the special conditions for uses, which includes play equipment. The applicant will need to request a variance from the Board of Zoning Appeals. The matter will be set on the Board of Zoning Appeals agenda for next month and the Commission does not need to take any action on this item.

4. NEW BUSINESS

a. CONSIDER SITE PLAN AND EXCEPTION REQUEST FOR FENCE LOCATION AS SUBMITTED BY MELISSA TILSON, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5323 ABERDEEN, FAIRWAY, KANSAS.

City Clerk Young reported that the applicant is replacing a legal, nonconforming fence, which was being constructed without a permit. The contractor applied for a permit but the fees were not paid. The Code allows for replacement of legal, nonconforming fences that do not increase the degree of nonconformity and that comply with certain subsections "(concerning height, materials and design)." The applicable Code language changed in 2014, but the subsection references were not revised and appear to be incorrect because the language mentions nothing about height. This exception request is challenging because the fence has been there for quite some time and there is existing landscaping and a sprinkler system.

Staff supports the request for the following reasons:

1. The existing fence is legal, nonconforming and the new fence is being installed in the same location with the same height, material and design.
2. Existing landscaping and sprinkler system are established in the yard.
3. The Code as written is ambiguous.

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

1. Building permit must be obtained and fees paid.
2. Application and approval are void if the building permit is not obtained within one year of the date of Commission approval.

City Clerk Young added that Michele Kiehl reached out to staff concerning this item, indicating why she disagrees with the fence location.
Commissioner Denton said that he understood the Code language to allow nonconforming fences to be rebuilt or repaired, but replacement of more than 50% triggers location requirements. When the fences were originally built, they were built right at the sidewalk, but he thinks fences in that location degrade the appearance while driving down Shawnee Mission Parkway. He believes the intent of the Code is that as those fences need to be replaced, they should be moved away from the sidewalk to meet the Code requirements.

City Clerk Young stated that there was discussion about this issue during review of the Comprehensive Plan. She said that the homeowner is replacing two sides of the fence and the rear fence will be replaced by the rear neighbor, so she is not sure if the applicant’s portion will exceed 50% of the fence.

Chairwoman Bailey stated that she recalls during the discussions related to the Comprehensive Plan, that safety was also a concern, not just aesthetics.

Commissioner Smith asked if the fence is within the public utility easement.

City Clerk Young said her understanding is that the fence is in the right of way. The rights of way along Shawnee Mission Parkway vary and this particular lot has a 4-foot right of way. Many years ago the highway was realigned and removed part of Johnson Drive. As a result, there are irregularities along Shawnee Mission Parkway with respect to the location of property lines and right of way.

Commissioner Denton asked if the State of Kansas has any comments about homeowners building a fence in the right of way.

City Clerk Young replied that the risk the homeowner runs is that if the State performs work on the right of way, the State would have no obligation to repair any damage to the fence as it is in the State right of way.

Commissioner Denton asked if staff believes that the City does not have the authority to require the applicant to move the fence back to their own property line.

City Clerk Young replied that the current Code provisions for corner lots would require the applicant to move the fence, but the Code references to legal, nonconforming fences are ambiguous. She asked Zoning Counsel Krstulic to address the ambiguity.

Zoning Counsel Krstulic explained that the Code provision that refers to legal, nonconforming fences states that when 50% or more of the fence is replaced, the fence has to comply with specific subsections (c), (d) and (e) concerning height, materials and design. Those subsections address location, design and materials but do not address height so there is some ambiguity about which subsections apply. Because of the ambiguity, she suggested that staff seek some clarity from the Commission about the intent of this section.

Commissioner Denton stated that the intent is to get the existing nonconforming fences away from the sidewalk. He noted that the side fences on the east and on the north are not
nonconforming and he believes those fences can be replaced. The fence on the sidewalk is
the fence that is nonconforming. He does not know why they are grouping all the fences on
the whole yard into the 50% because it is only the fence on the sidewalk that is the issue.

Commissioner Lonard agreed that there is a question as to whether 50% of the fence is being
replaced, and if the subsections are not referenced properly in the Code, he does not think
that should be construed against the property owner.

Commissioner Walker asked if fence permits can be issued for fences off the property of an
owner because it sounds like the fence is not being built on the owner’s property. He said
that he does not think the property line is at the back of the sidewalk.

City Clerk Young responded that she did not ask the applicant to provide a survey to
determine the property line because the fence was being replaced in the same location. She
considered the fence to be legal, nonconforming, and the applicant was not changing the
height, material or design.

Commissioner Denton suggested that this item be continued to confirm the property lines.
He noted that one fence is not that big of an issue, but there are numerous other fences that
may also need to be replaced along Shawnee Mission Parkway.

Chairwoman Bailey asked for additional discussion. Hearing none, she asked the applicant
to address the Commission.

Melissa Tilson, 5323 Aberdeen Road, stated that she and her husband purchased the home 2
½ years ago. The fence is the ugliest fence in Fairway and they have been working with the
neighbors to replace it. They did not expect a problem with taking the fence down and
replacing it in the same location. She asked where the fence is required to be located.

City Clerk Young responded that the Code requires the fence to be placed 12 feet from the
property line.

Ms. Tilson responded that if the fence is required to be 12 feet from the property line, the
fence would nearly come to their sunroom and there would be a gap in the fence line where
the neighbor’s backyard will be visible. She stated that they have not conducted an official
survey, but the fence contractor found stakes in the yard on the edge of the sidewalk so she
assumes that is where the property line is.

Chairwoman Bailey confirmed that the Code requires the fence to be set in 12 feet, but there
are a few exceptions that would apply if less than 50% of the fence is being replaced or if the
enclosed area is smaller than 600 square feet.

Commissioner Denton suggested that this item be continued to research the location of the
property line. He does not think that setting the fence back 12 feet would be a good solution
because they would not have very much yard area, but he would like to see the fence move
from the property line of the State highway and away from the sidewalk.
Commissioner Coury indicated that if the fence is installed in the right of way, the applicants would be running the risk of having to remove the fence.

Ms. Tilson responded that they would accept that risk because they need the privacy and protection if a car goes off the road and hits their house.

Chairwoman Bailey suggested that this item be continued to determine the location of the property line, percentage of fence being replaced, and size of the yard that is being affected. She added that the Commission wants to know the linear feet of the fence being replaced and the area of the yard that they are enclosing.

City Clerk Young indicated that she did a rough calculation and the area of the yard they are enclosing is about 3,200 square feet.

Chairwoman Bailey asked for further discussion from the Commission. Hearing none, she asked for a motion.

MOTION: Motion was made by Commissioner Walker to continue the site plan and exception request for fence location as submitted by Melissa Tilson, property owner, for property located at 5323 Aberdeen, Fairway, Kansas to the August 31, 2020 meeting. Commissioner Lonard seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

b. CONSIDER SITE PLAN AND EXCEPTION REQUEST FOR FENCE LOCATION AS SUBMITTED BY LAURA FRACOL, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5300 FALMOUTH, FAIRWAY, KANSAS.

City Clerk Young reported that the applicant is submitting an exception request to replace an existing fence on a corner lot along 53rd Street in the same location, height and style. It is considered a legal, nonconforming fence. The property line is unknown. On the other side of the fence, they have an existing patio and historic well.

Staff supports the request for the following reasons:

1. The existing fence is legal, nonconforming and the new fence is being installed in the same location with the same height, material and design.
2. Existing landscaping, well and patio are established in the yard.
3. Code as written is ambiguous.

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

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 from the date of Commission approval.
Chairwoman Bailey stated that it would helpful to know where the current fence is located as it appears to be about 12 feet from the curb.

Assistant City Clerk Aldridge stated that in looking at the AIMS map, it appears that the fence is approximately 10 feet from the property line and the Code requires the replacement fence to be 12 feet from the property line.

Chairwoman Bailey asked for discussion.

Commissioner Denton questioned the Code language requiring that the fence be 12 feet from the property line because he thinks that would be prohibitive for any owner. He said that he considers this application to be a different situation than the previous request on Shawnee Mission Parkway and he supports this exception request.

Commissioner Walker asked about the specific Code requirements.

City Clerk Young replied that the Code states that in the case of a corner lot, the fence shall not be located closer to the street-side property line than the street-side building lines of any adjacent dwelling unit; provided, in no event shall any fence or wall be located any closer than 12 feet to any street-side property line.

Commissioner Walker said that he believes those Code requirements would be difficult for almost any corner lot situation in Fairway.

Commissioner Lonard asked about the 50% rule.

City Clerk Young replied that the 50% rule would not come into play because the applicant is replacing the entire fence.

Commissioner Smith stated that the proposed location of the fence does not concern him because the house is on the corner and not the fence. He thinks that the intent of the 12-foot requirement is to prevent the fence from blocking the view of turning vehicles. That would not be an issue in this situation because the house’s front yard allows for that visual.

Commissioner Denton stated that he is comfortable with allowing the exception request because the fence is currently 10 feet from the curb.

Commissioner Zwick agreed.

Commissioner Walker stated that he supports the application, assuming that the fence is on the property line or the owner’s property.

Chairwoman Bailey asked for further discussion from the Commission. Hearing none, she asked for a motion.

MOTION: Motion was made by Commissioner Smith to approve the site plan and exception request for fence locations as submitted by Laura Fracol, property owner,
for property located at 5300 Falmouth, Fairway, Kansas, subject to staff recommendations. Commissioner Walker seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

c. **CONSIDER SITE PLAN FOR ADDITION/REMODEL AS SUBMITTED BY WES WELCH ON BEHALF OF TRAVIS AND KAITLIN HOLT, FOR PROPERTY OWNERS, FOR PROPERTY LOCATED AT 5943 SUNRISE DRIVE, FAIRWAY, KANSAS.**

City Clerk Young reported that the Commission first reviewed this application at the February 24, 2020 meeting. This is an addition that adds more than 50% of the existing footprint. The applicants obtained a watershed analysis that proposes a retention basin.

Staff recommends approval of the site plan, with the following conditions:

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

Chairwoman Bailey asked if there were questions for staff. Hearing none, she asked if there were questions for the applicant. Hearing none, she asked for a motion.

**MOTION:** Motion was made by Commissioner Denton to approve the site plan for addition/remodel as submitted by Wes Welch, on behalf of Travis and Kaitlin Holt, property owners, for property located at 5943 Sunrise Drive, Fairway, Kansas, subject to staff recommendations. Commissioner Smith seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

d. **CONSIDER SITE PLAN FOR NEW SINGLE-FAMILY RESIDENCE AS SUBMITTED BY RICK MOSELY, CONTRACTOR, ON BEHALF OF MEJ REAL ESTATE, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5850 EL MONTE, FAIRWAY, KANSAS.**

City Clerk Young reported that the applicant is proposing a new single-family residence with a footprint of approximately 2,393 square feet. The property has a 35-foot setback and adjacent properties are also set back at 35 feet. The applicant is requesting an exception to the front setback, which they are allowed to do when the adjacent properties are at the same setback. The applicant has met all other Code requirements.

Staff recommends approval of the application with the following conditions:
1. Three (3) complete sets of revised plans and one electronic set are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City Code.
3. The project must comply with all City Code provisions and the 2012 International Residential Code.
4. Application and approval are void if the building permit is not obtained within one year of the date of Commission approval.

Chairwoman Bailey requested that a motion include whether or not the Commission is granting the exception.

Chairwoman Bailey asked if there were questions for staff. Hearing none, she asked if there were questions for the applicant or discussion. Hearing none, she asked for a motion.

MOTION: Motion was made by Commissioner Walker to approve the site plan for new single-family residence as submitted by Rick Mosely, contractor, on behalf of MEJ Real Estate, property owner, for property located at 5850 El Monte, Fairway, Kansas, subject to staff recommendations, including granting the exception to allow the 35-foot front yard setback. Commissioner Denton seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

e. CONSIDER SITE PLAN FOR ADDITION/REMODEL AND WAIVER TO WATERSHED ANALYSIS AS SUBMITTED BY STEPHANIE LEEDY, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5821 FONTANA DRIVE, FAIRWAY, KANSAS.

City Clerk Young reported that the proposed addition adds more than 50% of the existing footprint to the house. When staff initially spoke to the architect about this project, the Commission had recently approved the requirement that additions that are adding more than 50% require a watershed analysis. The applicant is requesting a waiver of that requirement. Staff did review the grade on AIMS, and the lot appears fairly level. The staff report includes information about the grade and where slight grade changes occur.

Staff are not opposed to granting the waiver to the watershed analysis. If the Commission recommends approval, the following conditions should apply:

1. Three (3) complete sets of revised plans and one electronic set are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City Code.
3. The project must comply with all City Code provisions and the 2012 International Residential Code.
4. Application and approval are void if the building permit is not obtained within one year of the date of Commission approval.
For clarification, Commissioner Walker asked if the application was in process when the Commission changed the requirement for a stormwater analysis.

City Clerk Young responded that when she initially spoke to the architect, the Commission had not yet added that requirement. When the architect brought in the plans later, City Clerk Young determined that the addition was more than 50% of the existing footprint and she asked if the applicant had obtained a watershed analysis. They did not and are now requesting the waiver.

Chairwoman Bailey asked if there was discussion or questions for the applicant. Hearing none, she asked for a motion.

**MOTION:** Motion was made by Commissioner Denton to approve the site plan for addition/remodel and waiver to watershed analysis as submitted by Stephanie Leeley, property owner, for property located at 5821 Fontana Drive, Fairway, Kansas, subject to staff recommendations. Commissioner Smith seconded the motion.

City Clerk Young conducted the roll call vote.

Commissioner Lonard voted no.
Commissioner Walker voted yes.
Commissioner Zwick voted no.
Commissioner Denton voted yes.
Commissioner Smith voted yes.
Commissioner Coury voted yes.

The motion carried 4 to 2.

f. **CONSIDER SITE PLAN AND EXCEPTION REQUESTS FOR WINDOW/DOOR OPENINGS AND ARCHITECTURAL RELIEF FOR NEW SINGLE-FAMILY RESIDENCE AS SUBMITTED BY LAUREN CONDERMAN OF BIG CAT DESIGNS ON BEHALF OF LINDA CONDERMAN, PROPERTY OWNER, FOR PROPERTY LOCATED AT 5900 EL MONTE, FAIRWAY, KANSAS.**

City Clerk Young reported that the applicant submitted a site plan for a new single-family residence and is requesting two exceptions. The first is for the left façade, which has only 14.5% window and door openings. The Code requires 15% window and door openings on each façade. The second exception relates to the rear façade, which has a wall plane of 664 square feet without architectural relief. The Code states that no façade shall exceed more than 600 square feet without relief. There are three different wall plans on the rear façade, and the largest wall plane is 664 square feet.

Staff is not opposed to the exception request relating to the wall plane because it is at the rear of the home. The style of the home is stucco so there are not many architectural elements to provide relief. Staff believes that the 15% window and door openings could be met. The watershed analysis states that the overall site will be decreased, and this will reduce the
runoff. Existing draining patterns should stay the same. If the Commission recommends approval and grants the exceptions, the following conditions should apply:

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

Chairwoman Bailey asked if there were questions for staff. Hearing none, she asked if there were questions for the applicant or discussion.

Commissioner Lonard asked why the window/door opening requirements cannot be met.

Lauren Conderman, 5900 El Monte, responded that there is no reason why the window and door openings cannot be met, although she would like to explain why she prefers not to increase the windows. When she designs a home, she considers what it is like to live inside the home and what the neighbors will see when they look out. Frequently, in cities like Fairway where the houses are smaller and people build larger homes next door, the larger home with lots of windows can look down into a smaller home. She tries not to exceed the 15% requirement unless it is an unusual situation. In this case, the house next door is small and she considered that the neighbor probably does not want to look into the neighbor’s house either. When the calculations came to 14.5%, she did not want to make the windows bigger but she can if the Commission requires it.

With respect to the rear façade, Ms. Conderman stated that she made a mistake in not realizing the 600 square foot requirement.

Chairwoman Bailey said that she would round to the decimal and treat 14.5% the same as 15%.

Commissioner Smith agreed, but said that he would like to see improved architectural relief on the rear façade. The house is on a corner lot and the rear is very visible compared to most.

Ms. Conderman agreed that the rear façade is visible, but noted that the large section is on the side that is not next to the road.

Commissioner Walker said that he would also like to see the rear façade comply with the architectural relief requirements. The home is new construction and it would be easy to comply.

Chairwoman Bailey asked if staff would be allowed to review the architectural relief to confirm that the requirement is met.
Commissioner Walker agreed that staff should be allowed to review and approve the architectural relief because he doubts that the design of the house will change.

The other Commissioners agreed.

Chairwoman Bailey asked for a motion.

MOTION: Motion was made by Commissioner Walker to approve the site plan and exception requests for window/door openings and architectural relief for new single-family residence as submitted by Lauren Conderman of Big Cat Designs on behalf of Linda Conderman, property owner, for property located at 5900 El Monte, Fairway, Kansas, subject to staff recommendations, approving the exception to the window and door openings on the left façade at 14.5%, and requiring that the rear façade comply with the 600 square foot limitation for architectural relief. Commissioner Denton seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

CONSIDER SITE PLAN AND EXCEPTION REQUESTS TO FRONT SETBACK AND WINDOW/DOOR OPENING REQUIREMENT AS SUBMITTED BY ANTON PETERSON ON BEHALF OF CHRIS NICKS, PROPERTY OWNER FOR PROPERTY LOCATED AT 5838 FONTANA DRIVE, FAIRWAY, KANSAS.

City Clerk Young reported that the applicant is requesting two exceptions for a very small addition. The first exception request is to the front setback. The existing house is at 35 feet, and they are continuing a small portion of the addition in line with the existing house. The garage is bumped out about 18 inches farther, and therefore increases the degree of nonconformity. The garage is still behind the 35-foot setback and the adjacent properties are also at that setback, so the Commission can grant the exception.

The second exception is to the window/door opening requirement. On the new garage, the applicant did not add a window and the existing façade does not meet the window and door opening requirements.

Staff recommends approval of the front setback exception and is neutral on the exception to the window requirement. If the Commission grants approval, the following conditions should apply:

1. Three (3) complete sets of revised plans and one electronic set are submitted for plan review and approval.
2. Building permit must be obtained and fees paid, as required by City Code.
3. The project must comply with all City Code provisions and the 2012 International Residential Code.
4. Application and approval are void if the building permit is not obtained within one year of the date of Commission approval.
Chairwoman Bailey asked if there were questions for staff. Hearing none, she asked if there was discussion or questions for the applicant.

Commissioner Smith asked if the applicant could meet the window/door opening requirement.

Anton Peterson, 5838 Fontana Drive, replied that he could install a false window or enlarge the existing window on the home that is on the garage elevation.

Discussion followed concerning the square footage of the side of the garage. City Clerk Young estimated that if a window were added, it would need to be at least 9.9 square feet.

Mr. Peterson explained that he could add a high window to the current façade to meet the requirement. He offered to do whatever the Commission required.

Chairwoman Bailey stated that the current window is only 10 square feet and taking into account the old and the new portion of the façade, 45 square feet of windows or two large windows would be required. She explained that the Code allows the property owner to use either the new portion or the entire façade when calculating window and door openings. In this case, the current wall plane is not conforming. She thinks that adding a smaller window to the new addition would be a more straightforward solution.

Mr. Peterson agreed.

Chairwoman Bailey asked if there were additional questions for the applicant. Hearing none, she asked for discussion from the Commission.

Commissioner Lonard explained that the nonconformity is not an issue of inconvenience or hardship so he thinks the applicant should add a window to meet the requirement.

Chairwoman Bailey asked for a motion.

MOTION: Motion was made by Commissioner Denton to approve the site plan and exception requests to front setback and window/door opening requirement as submitted by Anton Peterson, on behalf of Chris Nicks, property owner, for property located at 5838 Fontana Drive, Fairway, Kansas, subject to staff recommendations, granting the exception to the front setback, but requiring the applicant to install a window to meet the window/door opening requirements in either the addition or on the side of the home, however the contractor chooses to proceed. Commissioner Walker seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

h. CONSIDER SITE PLAN AND EXCEPTION REQUEST TO GREENSPACE REQUIREMENT TO ALLOW ADDITIONAL HARDSCAPE AS SUBMITTED BY TERRY TEVIS OF TEVIS ARCHITECT ON BEHALF OF JOHN AND KAREN
YUNGMUEYER, PROPERTY OWNERS, FOR PROPERTY LOCATED AT 6218 HOWE DRIVE, FAIRWAY, KANSAS.

City Clerk Young reported that in December 2017, the Commission approved the new home with a site plan that met the greenspace requirements. In October 2019, staff was inspecting the project and noticed that hardscape had been installed that was not shown on the approved site plan. The applicant appeared before the Commission on November 25, 2019 with revisions to the previously approved site plan. At that meeting, the applicant produced Option A and Option B. The Commission approved the revised site plan with Option B.

In June 2020, while reviewing the driveway, staff again noted discrepancies between the approved site plan versus the installation. The patio and courtyard were not installed per Option B, as approved on November 25, 2019.

The applicant is requesting approval of a new proposed site plan. The architect’s calculations consider the pervious pavers as permeable, which they are; however, the Code defines greenspace as permeable and uncovered. Included in the packet are photos. In the permeable area calculations, the architect included the driveway, egress wells, patio pavers, and courtyard deck, in addition to the planted greenspace.

Staff recommends denial of the exception request and recommends that the patio be installed as approved at the November 25, 2019 Commission meeting. If the Commission approves the exception request, the following conditions should apply:

1. Three (3) complete sets of revised plans and one electronic set are submitted for plan review and approval.
2. Submit a revised watershed analysis correlating to the site plan.
3. The project must comply with all City Code provisions and the 2012 International Residential Code.

City Clerk Young added that the packet includes a letter from the applicant’s attorney discussing how the permeable areas were calculated.

Chairwoman Bailey asked if there were questions for staff.

Commissioner Denton asked what Option B included.

City Clerk Young explained that Option B had a greenspace area between the house and the patio that went out to the fireplace. There was a walkway and then a much smaller patio with a fireplace. In the plan the applicant submitted, that greenspace has been replaced with a patio.

Chairwoman Bailey asked if there were additional questions for staff. Hearing none, she asked the applicant to address the Commission.
Terry Tevis, Tevis Architects, 10820 Shawnee Mission Parkway, Suite 201, Shawnee, Kansas, stated that they did construct Option B that was approved. At the time the Public Works representative came and did the field measurements, there were some discrepancies as to the length of the retaining walls and size of window wells so they made those revisions. After some discussions between the Yungmeyers and their landscape contractor, they elected to install pervious areas in the back yard in lieu of solid concrete as was shown on the approved plans. They also used pervious pavers in the courtyard, which is almost fully enclosed at the back of the house. The area is dirt and has an opening in the roof above it. They removed a small stairway and put in a deck. These changes did not change the groundwater that is being absorbed based on the design.

In reviewing the Code provisions with legal counsel, they felt that they were in compliance with the impervious and permeable areas on the site plan. He tabulated that data and submitted a revised site plan based on those calculations.

Mr. Tevis explained that the area in question is a sunken area in the back yard that has no visible access to neighbors. The courtyard area does not impact neighboring property and enhances the living conditions of the house immeasurably. They believe that what has been constructed is an asset to not only the neighborhood but to the City as well.

Commissioner Denton related that when the applicant came to the Commission with Option A and Option B, the Commission was concerned about the amount of permeable area and chose Option B. He is concerned that during construction, the owners wanted to do something different so they just did it, got caught, and are now trying to explain their way out of it. He asked why the owners did not come back to the Commission to explain the situation and try to get approval.

Mr. Tevis responded that he does not believe there was any intent to try to do something under cover. The Yungmeyers were in charge of the construction activities of the landscape contractor. Option B was constructed and the Yungmeyers elected to move the improvements further, but not in a way that was detrimental to the Code or their design. He does not intend to defend or justify why the applicant is back before the Commission. He believes that history should be reflected on and he would like to address the application that is before the Commission.

Mr. Tevis explained that the runoff on the property is not being increased. He has requested the civil engineer to submit a revised watershed analysis and he will submit it upon receipt.

Mr. Tevis asked if Sean Ervin, legal counsel, would be allowed to speak to the Commission.

Chairwoman Bailey noted that Mr. Ervin submitted a letter to the Commission and if Commissioners had questions, they would be allowed to ask Mr. Ervin. She asked if Commissioners had questions for Mr. Ervin. Hearing none, she asked for further discussion from the Commission.
Commissioner Denton explained that the main issue is the City’s versus the applicant’s interpretation of impervious. The Code does not recognize permeable driveways. No information has been provided by the applicant concerning how the permeable surfaces were installed and the same is true with the gravel bed in the back. The applicant assumes that their definition of permeable and impermeable is the correct interpretation. He thinks it would have been wise for the applicant to notify the Commission that they were going to do something different than what was approved.

Mr. Tevis apologized for the situation. He said that he thinks the Code requirements are to benefit the community and allow people to have the ability to enjoy their homes. In reviewing the Code with legal counsel, they believe they are in direct compliance. They have a viable application before the Commission and would appreciate approval.

Commissioner Denton stated that the applicant came to the November meeting with two options and Option B was approved. Then, the applicant basically built Option A and now they want the Commission to go along with it.

Mr. Tevis responded that Option A is not what was actually built. They built Option B, but the improvements they made were the addition of the permeable substrates. The pavers can be lifted and it would be easy for an engineer to inspect them and provide a report back to the Commission that demonstrates they were installed and behave in a permeable fashion.

Chairwoman Bailey asked when the area of the permeable patio was calculated, whether the applicant calculated the entire area of the patio even though the pavers are not permeable.

Mr. Tevis explained that the calculations assume that both the pavers and the aggregate between the pavers are permeable. Water falls on the pavers and is absorbed in the aggregate between the pavers. Underneath the pavers is a drainage system that runs through crushed rock and is basically an extended French drain that goes to the overflow outlets to the street. The runoff that is not absorbed into the substrate underneath those pavers is then carried through a perforated drain line that discharges at the setback line.

Commissioner Lonard said that from the outset, the property owners have had professionals that they employed to design and implement the project and to come before the Commission. Those professionals continually show up, get something approved and then the City finds out that it was not done according to the approved plans. He is having a hard time believing that this situation is not just professionals ignoring what has been approved. He was at the meeting and involved in the discussions concerning Option A and Option B. He remembers having a very similar conversation with Mr. Tevis about how there was a misunderstanding and the issue would be fixed. He said that it seems as though the applicants do not like the rules and they want them to be different.

Mr. Tevis apologized that he gave that impression. He has tried to represent the Yungmeyers appropriately throughout the process. They have hired a third party who also has a professional responsibility, and who agreed to look at the interpretation of the Code and how they have complied with it. They are not trying to give the Yungmeyers any misinformation.
The property owners have the right to make their own decisions and some of those decisions were probably made outside of his purview.

Chairwoman Bailey asked if there were other questions for the applicant or individuals representing them.

John Yungmeyer, 6218 Howe Drive, stated that he is the property owner. He explained that they did not willfully go against the plans. They consulted with their landscaper about ways to make the home more livable. The lot is very steep and narrow and there are all sorts of drainage issues that they worked very hard to solve. The watershed analysis for the new plans is better than for the old house that was torn down. With respect to the area with the pavers set in gravel, the landscape architect indicated that area is permeable. There are several feet of gravel under the pavers and a drainage system underneath. It functions as a sort of retention basin. If their obligation was to come to the Commission again for approval before installation, he sincerely apologizes.

Mr. Yungmeyer explained that the permeable driveway was installed to specifications and he can get the specifications of its permeability. He watched during a heavy rain and the water did not sheet off the driveway into the street. Personally, he considers the paver driveway to be permeable space. It improves the functionality and livability of their home and does not affect drainage to the neighbors.

Chairwoman Bailey explained that in November, the project did not meet the greenspace requirements but the Commission granted an exception. She said that the goal is not necessarily to appease the neighbors, but to prevent additional drainage into the overall system.

Mr. Yungmeyer stated that the pavers set in the gravel and on top of the gravel was done with the purpose of decreasing stormwater runoff, but it also makes the patio much more usable. They were very cognizant of the fact that they were doing things that needed to comply with the Code requirements related to permeable/impermeable surfaces. They went through the Code to try to figure out was permeable and what was not permeable. They believe that they met the definition of open space, which is permeable and uncovered, because there is no roof over it and the water goes right through it into the substrate. They were trying to do the right thing.

Commissioner Denton asked where the Code classifies pavers and gravel as permeable.

Mr. Yungmeyer agreed that the Code does not classify permeable driveways or a gravel bed as permeable. However, it seemed to them that based on the definition of permeable, the driveway met that definition.

Karen Yungmeyer, 6218 Howe Drive, recalled that the permeable driveway was installed based on the Commission’s recommendation at the November meeting.
Chairwoman Bailey responded that the Commission compromised and accepted the permeable driveway because the greenspace requirements were not met.

City Clerk Young stated that the site design standards state that greenspace must be permeable and uncovered. She recalled that at the November meeting there was a lengthy discussion that even though they were using permeable surface on the driveway, it was still counted as hardscape because it was not uncovered.

Mr. Yungmeyer stated that he assumed that uncovered meant that there was not a roof over the area.

Assistant City Clerk Aldridge also pointed out that the Code defines impervious surface as any area of the lot that is covered with a structure, material or other physical element that does not allow infiltration of groundwater and cannot be planted with landscape materials. Pavers in the driveway would therefore be considered impervious because they cannot be planted with landscape materials.

Chairwoman Bailey asked if there were further questions for the applicant. Hearing none, she asked for discussion from the Commission.

Commissioner Lonard said that he knows the property owners’ attorney wrote a letter, and he thinks it would be acceptable if they would like their attorney to say something on their behalf.

Sean Ervin, 5250 W. 116th Place, Suite 400, Leawood, Kansas, stated that after he first talked with the Yungmeyers and Mr. Tevis, he reviewed the Code to find the definitions of impervious and permeable. The definition of impervious is any area of a lot that is covered with structure, material or other fixed element that does not allow the infiltration of groundwater and cannot be planted with landscape materials. His interpretation is that in order to be considered impervious, the area would have to both not allow the infiltration of water and not be able to be planted with landscape materials. Thus, he views the driveway as permeable because it allows for the infiltration of water. He referred to his letter wherein he states that the Code should be interpreted in a way that brings about the general purpose of the article. He feels like the plan that is before the Commission does that.

Chairwoman Bailey asked if there were other questions for the applicant or their representatives. Hearing none, she asked for comments from the Commission.

Commissioner Lonard stated that he had no additional comments.

Commissioner Walker stated that he supports staff’s recommendation for denial. The project is 6% under the greenspace required by the Code. He is not in favor of approving the exception request.

Commissioner Zwick stated that he had no comments.
Commissioner Denton agreed that the application should be denied based on staff’s recommendation. He said that he feels like the applicant’s end solution was probably good for their site, but the way they went about it feels like it was held under cover. It would have been very easy for their landscape architect to submit a revised plan showing what they wanted to do and why they wanted to do it and be up front rather than having to be caught and then have to justify what they did. He does not know if the City has the option to assess a fine on somebody who does not comply with the Code, but he feels like that might be a better option rather than requiring removal. He said that if the Commission agreed with the applicant’s interpretation of permeable and impermeable, they would meet the requirements. However, those interpretations do not conform to the Commission’s interpretations of those terms.

Chairwoman Bailey noted that the Commission has not discussed whether it agrees with the applicant’s interpretation of permeable or impermeable.

Commissioner Smith agreed with Commissioner Walker’s comments. He asked what the next step would be for staff since the project has already been completed.

City Clerk Young explained that the situation would be discussed with the applicant and she believes that ultimately a citation would be issued.

Commissioner Coury asked what the applicant’s options are if the Commission denies the request based on the principal of what happened.

Zoning Counsel Krstulic explained that they have the right to appeal to District Court because she does not see where the Code allows for the Board of Zoning Appeals consideration of this type of an appeal.

As for the interpretation of pervious surfaces, she noted that Section 15-297(a)(2)b. refers to permeable and uncovered surface. Subsection (a)(2)g. states that all of the remaining minimum permeable and uncovered surfaces on residential lots shall be planted to vegetation.

Commissioner Lonard referred to Commissioner Coury’s comment about denying the application based on principal. He does not believe that Commissioner Coury was suggesting that is the reason why Commissioners would deny the request. His denial is primarily based on the applicant’s interpretation of the Code as it relates to permeable versus impermeable surfaces.

Commissioner Smith agreed and added that he does not think that the applicant met the requirements of the process for approval.

Chairwoman Bailey asked for a motion.

MOTION: Motion was made by Commissioner Walker to deny the site plan and exception request to greenspace requirement to allow additional hardscape as submitted by Terry Tevis of TevisArchitect on behalf of John and Karen Yungmeyer,
property owners, for property located at 6218 Howe Drive, Fairway, Kansas. Commissioner Denton seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

5. **ADDITIONAL BUSINESS**

a. **NEXT MEETING**

City Clerk Young stated that the next meeting is scheduled for August 31, 2020. Chairwoman Bailey stated that the Commission should plan to begin to review those items that the City Council has requested. Specifically, she would like to address the generator and fence issues. She suggested that City Clerk Young and Zoning Counsel Krstulic put together proposed language. The Commission will discuss these items at the next meeting and a public hearing would be held at a later time.

6. **ADJOURNMENT**

**MOTION:** Motion was made by Commissioner Walker to adjourn. Commissioner Smith seconded the motion.

City Clerk Young conducted the roll call vote. The motion carried unanimously.

Hearing no further business, the meeting adjourned at 8:27 P.M.

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Kim H. Young, City Clerk