

# City of Lee's Summit

## Development Services Department

July 12, 2024

TO: Board of Zoning Adjustments  
FROM: Hector Soto, Jr., AICP, Senior Planner  
RE: **PUBLIC HEARING – Application #PL2024-155 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Rear Yard Setback – 4105 NE Edgewater Ct; Tyler Burns, applicant**

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### Recommendation

The Development Services Department recommends **APPROVAL** of a 14' variance to the minimum 25' rear setback requirement for an uncovered deck in the R-1 zoning district, to allow an uncovered deck to maintain an 11' setback from the rear property line.

The Development Services Department recommends **APPROVAL** of a 10' variance to the minimum 30' rear setback requirement for a covered deck in the R-1 zoning district, to allow a covered deck to maintain a 20' setback from the rear property line.

### Request

**Variance Requested:** a non-use variance to the rear yard setback requirement for a partially covered deck

### Site Characteristics

**Location:** 4105 NE Edgewater Ct

**Zoning:** R-1 (Single-Family Residential)

**Property Owner:** Tyler Burns, Jill Burns and Brett Hines

**Surrounding Zoning and Uses:**

**North (across NE Edgewater Ct):** R-1 – single-family residential

**South:** R-1 – common area tract and lake

**East:** R-1 – single-family residential

**West:** R-1 – single-family residential

### Background

- August 1, 1985 – A building permit (Permit No. 85-615) was issued for construction of the existing single-family residence. An administrative variance was granted to allow the residence a 27' rear yard setback (versus a minimum 30' rear yard setback) due to the irregular lot configuration. The plot plan did not show any deck on the subject property. The existing attached deck was presumably constructed at the same time as the residence.

### Ordinance Requirement

**Rear Yard Setback Requirements.** The Unified Development Ordinance requires residences to maintain a minimum 30' setback from the rear property line in the R-1 zoning district (UDO Article 6, Section 6.040, Table 6-3). Uncovered, attached decks associated with single-family residences

may encroach five (5) feet into a required rear yard, resulting in a 25' rear yard setback (UDO Section 6.1350.B.5). Covered, attached decks shall meet the same side and rear setbacks as the principal structure.

**Existing Conditions.** The single-family residence has an existing 40' wide x 12' deep second-story partially covered deck. The uncovered portion is set back 15' from the rear property line, whereas the covered portion is set back 20' from the rear property line.



Figure 1 – Photo of existing deck.

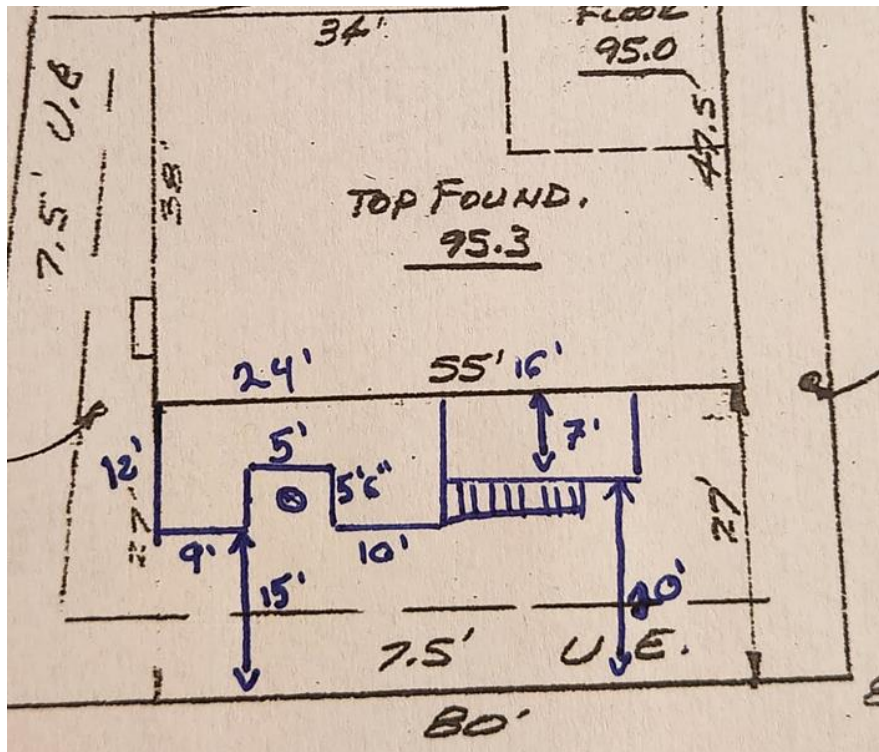


Figure 2 - Configuration of existing deck.

The subject property sits along the shore of Lakewood Lake. Between the subject property and the lake is common area consisting of treed shoreline. The nearest residences to the rear of the property are located across the lake approximately 300' to the south.

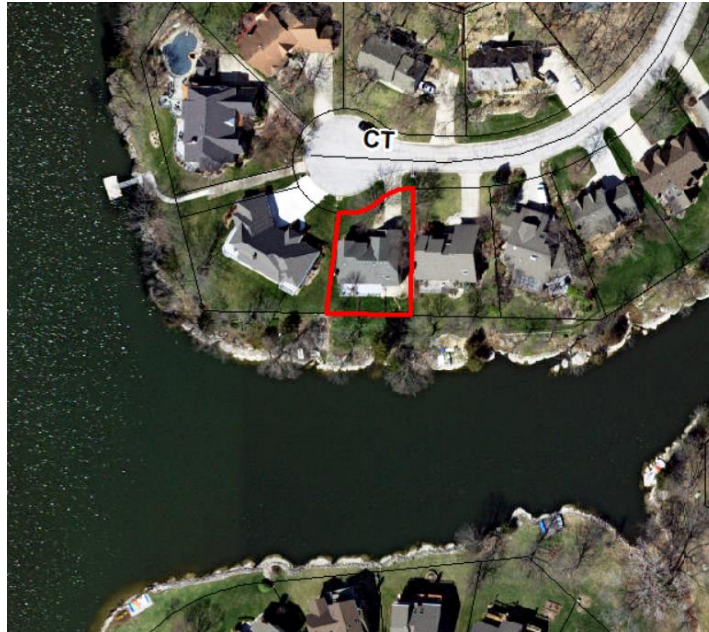


Figure 3 – Subject property with abutting common area.

**Request.** The applicant proposes to replace the existing partially covered deck with another partially covered deck. The deck is composed of three (3) 16'-wide segments of varying depth. The segments range from 7' to 16' in depth. The uncovered portion will be set back 11' from the rear property line at its closest point, which is 4' closer than the existing deck. The covered portion will maintain the same dimensions and 20' setback from the rear property line as the existing deck.

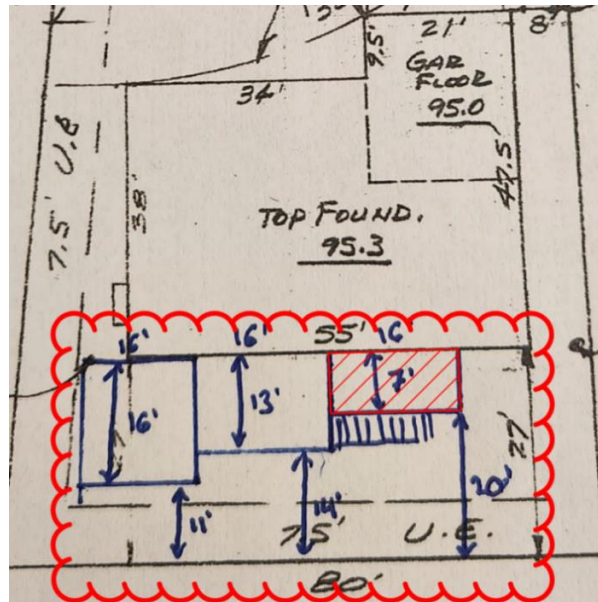


Figure 4 - Plot plan showing proposed partially covered replacement deck. Covered portion shown with hatching.

## Analysis of Variance

With respect to all variances, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.3.:

*Criteria #1 – The granting of the variance will not adversely affect the rights of adjacent landowners or residents.*

Granting the requested variance is not expected to adversely affect the rights of adjacent landowners or residents. The proposed replacement deck complies with the side yard setbacks. The setback encroachments are to the rear yard in the direction of the lake. The deeper deck does not significantly impact sight lines of the common area and lake from the adjacent residences.

*Criteria #2 – The granting of the variance will not be opposed to the general spirit and intent of this Ordinance.*

The intent of setbacks is to maintain an expectation of privacy and separation between uses and structures in order to allow for the enjoyment of one's property. The proposed encroachments are not toward the abutting residences to the west or east. The encroachments are toward the common area and lake. The nearest residence in the direction of the encroachment is 300' away across the lake.

*Criteria #3 – The variance desired will not adversely affect the public health, safety or general welfare.*

Granting a variance to the rear yard setback in order to allow for a larger deck in the direction of the lake will not create an increased risk in the health, safety, morals and general welfare.

*Criteria #4 – The variance requested arises from a condition that is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant.*

The need for a variance is unique in that the irregular lot shape resulted in a home that doesn't meet the 30' rear setback requirement for the R-1 zoning district and required approval of an administrative variance to allow the home's existing 27' rear yard setback at the time of its construction in 1985. The house is designed with two elevated doors on the rear of the house that require an elevated deck for access. The proposed replacement deck will provide continued access to the two doors, but require variance approval to do so.

*Criteria #5 – Substantial justice will be done.*

Substantial justice would be done by granting a variance. The applicant proposes to replace an existing deck with a larger one that encroaches an additional 4' into the rear yard setback. The setback encroachment is in the direction of the lake. The nearest residence in the direction of the encroachment is over 300' away.

## Analysis of Non-Use Variance

With respect to a non-use variance, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.2.:

*Criteria #1 – Whether practical difficulties exist that would make it impossible to carry out the strict letter of the Ordinance.*

It is impractical to comply with the 25' rear yard setback for the uncovered portion of the proposed deck, and impossible to comply with the 30' rear yard setback for the covered portion of the

proposed deck. The residence maintains a 27' rear yard setback. An uncovered deck constructed to be compliant with the 25' minimum rear yard setback requirement would yield a 2' deep deck, which is unusable. No covered deck can be constructed to be compliant with the 30' minimum rear yard setback because the house itself already encroaches into said rear yard setback by 3'.

In making such recommendation, the Staff has analyzed the following considerations set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.2.:

*Consideration #1 – How substantial the variation is, in relation to the requirement.*

The applicant requests a variance of 14' to the minimum 25' rear yard setback for an uncovered deck, to allow an 11' rear yard setback.

The applicant requests a variance of 10' to the minimum 30' rear yard setback for a covered deck, to allow a 20' rear yard setback.

*Consideration #2 – If the variance is allowed, the effect of increased population density, if any, on available public facilities and services.*

Approval of the setback encroachments will not increase population and thus would have minimal, if any, effect on the available public facilities.

*Consideration #3 – Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties is created.*

Granting a variance will not substantially change the character of the neighborhood or be a substantial detriment to adjoining properties. The proposed second story partially covered deck will replace an existing partially covered deck that has existed since the residence's construction in 1985. The subject property backs up to common area and lake, with the nearest residence in the direction of the encroachments being approximately 300' away.

*Consideration #4 – Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance.*

The subject variance application is the only feasible and practical path for the applicant to pursue approval of a replacement deck.

*Consideration #5 – Whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.*

The need for a variance stems from the irregular shape of the subject property that resulted in the existing residence being set back only 27' from the rear property line versus a minimum of 30' as required in the R-1 (Single-family Residential) zoning district. The house is designed with two elevated rear doorways that can only be accessed via an elevated platform such as a deck. The only practical manner to construct a deck to provide access to the rear doorways is via the subject variance request.

Any impacts resulting from the requested encroachments into the rear yard setback are mitigated by the fact that the subject property backs up to common area and lake, whose presence ensures that the UDO's intent and purpose for setbacks to provide separation and privacy between properties is maintained.

*Consideration #6 – Conditions of the land in question, and not conditions personal to the landowner. Evidence of the applicant's personal financial hardship unrelated to any economic impact upon the land shall not be considered.*

The subject property backs up to common area and a lake. These conditions provide a buffer between the subject property and area properties in the direction of the encroachments to the south to ensure that separation and privacy are maintained.

Attachments:

1. Variance Application, uploaded June 19, 2024 – 7 pages
2. Plot Plan showing existing deck, uploaded June 26, 2024
3. Photo of existing deck (front view), uploaded June 26, 2024
4. Photo of existing deck (side view #1), uploaded June 26, 2024
5. Photo of existing deck (side view #2), uploaded June 26, 2024
6. Plot Plan showing proposed deck, uploaded June 26, 2024
7. Dimensioned deck plan (proposed), uploaded June 26, 2024
8. Location Map