

# 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 #PL2024-159 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Rear Yard Setback – 5286 NE Ash Grove Ct; Graber Outdoors, applicant**

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### Recommendation

The Development Services Department recommends **APPROVAL** of a 1'-7" 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 a 23'-5" setback from the rear property line.

### Request

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

### Site Characteristics

**Location:** 5286 NE Ash Grove Ct

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

**Property Owner:** Don and Terresa Meek

**Surrounding Zoning and Uses:**

**North:** R-1 – large-acres single-family residential lot

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

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

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

### Background

- August 11, 1987 – The City Council approved the final plat (Appl. #1987-130) of *Ash Grove, 3<sup>rd</sup> Plat, Lots 22-32* by Ordinance No. 3033. The subject property was platted as Lot 30.
- December 15, 1992 – The City Council approved the final plat (Appl. #1992-126) of *Ash Grove, 4<sup>th</sup> Plat, Lots 33-38* by Ordinance No. 3773. The subject property was re-platted as part of this plat and renamed Lot 38. The subject property was slightly enlarged by adding property to the northeast corner of the property.
- October 14, 1994 – A building permit (Permit No. 94-1326) was approved for construction of the existing single-family residence. An administrative variance was granted to allow the residence a 25'-3" rear yard setback (versus a minimum 30' rear yard setback) due to the irregular lot configuration resulting from two side property lines of significantly different length. The plot plan showed a 4' x 6' landing on the rear of the house, but did not show any deck on the subject property. The existing attached decks were presumably

constructed at the same time as the residence. At their closest point, the decks were set back 13'-3" from the rear property line.

- October 25, 1994 – The City Council approved a final plat (Appl. #1994-132) replatting the subject property for the purpose of further enlarging the property. The lot was deepened by adding more property along the rear property line.

## 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).

**Existing Conditions.** The single-family residence has two elevated decks on the back side, each approximately 12' deep x 20' wide. The decks are set back 23'-5" from the rear property line at their closest point.



Figure 1 – Photo of existing decks.



Figure 2 - Configuration of existing upper- and lower-level decks.

The subject property backs up to a densely-wooded, 9-acre single-family residential lot. The residence on the 9-acre lot is located approximately 400' to the west. The nearest residence to the rear of the subject property is located approximately 150' to the northeast and is separated from the subject property by a dense stand of trees.



Figure 3 – Subject property with abutting common area.

**Request.** The applicant proposes to replace the two (2) existing decks with one (1) upper level deck of the same dimensions as the existing upper level deck and one (1) lower level catwalk with stairs down to the back yard. The upper level deck will be 12' deep x 20' wide and maintain the existing 23'-5" rear yard setback. The lower level catwalk will be 4'-6" wide and come out 16'-6" from the house, to allow access from a back door to the back yard. The catwalk will be set back 28'-8" from the rear property line, which complies with the minimum 25' rear yard setback.



Figure 4 - Plot plan showing proposed replacement deck and catwalk shaded in red. Stairs shown with hatching.

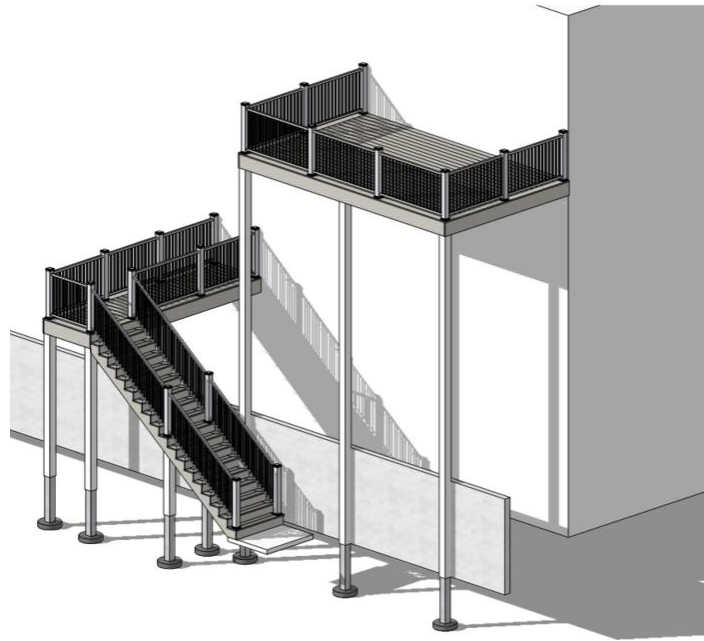


Figure 5 - 3D rendering of replacement deck and catwalk.

## 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 and catwalk comply with the side yard setbacks. The setback encroachment is to the rear yard in the direction of the abutting heavily wooded 9-acre residential lot. The existing decks encroach 1'-7" into the minimum required 25' rear yard setback. The proposed replacement structures will not increase the existing encroachment.

*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 setback encroachment is toward the wooded 9-acre residential lot to the north. The nearest residence in the direction of the encroachment is approximately 150' to the northeast.

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

Granting a variance to allow the replacement structures to maintain the existing rear yard setback 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 didn't meet the 30' rear setback requirement for the R-1 zoning district and required approval of an administrative variance to allow a 25'-3" rear yard setback (measured from its closest point) at the time of its construction in 1994. The subject property has since been deepened slightly by acquiring additional property to the rear. The house is designed with two elevated doors on the rear of the house that require an elevated deck for access. The proposed replacement structures 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 two (2) existing decks with two (2) new structures that will maintain the same setback at its closest point to the rear property line. The setback encroachment is in the direction of a wooded 9-acre residential lot. The nearest residence in the direction of the encroachment is approximately 150' away. The existing decks have maintained a 1'-7" encroachment into the rear yard setback since 1994.

### **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 not impossible for the replacement structures to comply with the 25' rear yard setback. This will require reducing the depth of the upper level deck by 1'-7", yielding a deck with a reasonable depth of 10'-5". The catwalk meets the rear yard setback requirements under its proposed configuration.

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 1'-7" to the minimum 25' rear yard setback for an uncovered deck, to allow a 23'-5" 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 encroachment will not increase population and thus would have no 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 replacement upper deck that encroaches into the rear yard setback will maintain the same dimensions that have existed since 1994.

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

The need for a variance can feasibly be obviated by reducing the depth of the proposed replacement upper deck by 1'-7" from 12' to 10'-5". However, the applicant seeks a replacement deck with the same 12' x 20' dimensions that have existed on the property since 1994.

*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 not meeting minimum setback requirements at that the time of its construction and needing an administrative variance to said setback requirements. As such, the existing decks providing access to two elevated rear doorways never complied with rear setback requirements and have encroached 1'-7" into the setback since 1994 with no apparent negative impact on any area property.

*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 is irregular in shape. Construction of the residence required approval of an administrative variance to the rear yard setback. The existing decks on the rear of the residence encroach 1'-7" into the rear yard setback. These existing conditions were not created by the applicant, but do require action by the property owner in the form of the subject application to be able to construct the replacement upper level to the same dimensions as the existing deck.

Attachments:

1. Variance Application, uploaded June 21, 2024 – 7 pages
2. Plot Plan showing existing decks, uploaded July 3, 2024
3. Photo of existing deck (front view), uploaded June 21, 2024
4. Photo of existing deck (side view), uploaded June 21, 2024
5. Plot Plan showing proposed deck, uploaded June 21, 2024
6. Dimensioned deck plans (proposed), uploaded June 21, 2024 – 15 pages
7. Location Map