

City of Lee's Summit

Development Services Department

April 21, 2022

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2022-127 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3 and Section 6.1350.B.5, Rear Yard Setback – 508 SW Seagull St; Dewey Roberts, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the minimum 25' rear setback requirement for an uncovered deck in the R-1 zoning district, to allow a reconstructed uncovered deck to maintain a 12'-4" setback from the northeast property line.

The Development Services Department recommends **APPROVAL** of a variance to the minimum 25' rear setback requirement for an uncovered deck in the R-1 zoning district, to allow a 10' expansion to an existing deck that yields a 22'-4" and 23' setback from the northeast and northwest property lines, respectively.

Request

Variance Requested: a non-use variance to the rear yard setback requirement.

Site Characteristics

Location: 508 SW Seagull St

Zoning: R-1 (Single-Family Residential)

Property Owner: Dewey and Robin Roberts

Surrounding Zoning and Uses:

North: R-1 – common area and single-family residential

South (across SW Seagull St): R-1 – single-family residential

West: R-1 – common area and lake

East: R-1 – single-family residential

Background

- October 14, 1991 – A building permit (#91-881) was issued for construction of a single-family residence and rectangular 12' x 20' deck on the subject property. At its closest point, the approved deck was shown with a 22' setback from the northeast rear property line.
- January 20, 2022 – The Board of Zoning Adjustments denied a variance request (Appl. #PL2021-423) to the rear yard setback for a 14' x 22'-9" covered addition at the northeast corner of the existing single-family residence. The proposed covered addition would have replaced an existing uncovered deck at that same location.

Ordinance Requirement

The applicant further requests that the Board consider approval of a variance to allow a 10' deck expansion along the back of the house toward the west where the deepest part of the lot is located. The westernmost point of the proposed expansion would yield a 22'-4" setback from the nearest rear property line, meaning it would be 2'-8" short of the minimum setback.



Figure 3 - Proposed deck expansion.

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 either requested variance is not expected to adversely affect the rights of adjacent landowners or residents. The initial request is to allow for identical reconstruction of a deck that has existed for over 20 years. The existing setback encroachment of 12'-8" is toward the rear where the subject property backs up to common area and Raintree Lake. The nearest residence in the direction of the encroachment is across common area, approximately 60 feet away. 900 feet away.

The second request is to allow a 10' expansion to the west. The lot's deepest point is located to the west of the existing deck location. The westernmost edge of the proposed expanded deck aligns with the lot's deepest point. As a result, the resulting setback encroachment is 2'-8", which is 10' less of an encroachment than that of the existing octagonal deck.

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

The intent of setbacks is to keep privacy and separation between uses and structures. The proposed encroachment is not toward the two adjacent single-family lots to the east and south. The encroachment is toward the large common area, lake and residences located across common area to the north.

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

It is not anticipated that a variance to allow the reduced setback will create an increased risk in the health, safety, morals and general welfare. Whereas the previous variance request made by the applicant under separate application for a covered addition would produce some obstruction of sight lines to the lake from existing residences to the east, both the proposed reconstructed deck and proposed expanded deck options are for uncovered decks.

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 subject property is located on a cul-de-sac bulb. The irregular curving nature of the front property line causes the lot's buildable envelope to be smaller than that of a typical rectangular lot. This is a result of cul-de-sac bulbs causing setback lines, and thus homes, to be pushed further back into the smaller buildable envelope.

Compounding this particular issue on the subject property is the fact that the two side property lines are of unequal length and results in an angular rear property that doesn't follow a uniform alignment relative to the existing residence. The west side property line is 130' in length. The east side property line is 99' in length, yielding a difference of 31'.



Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The applicant requests that at a minimum, approval of a variance to reconstruct an existing octagonal deck with a 12'-4" setback from the northeast property line be granted. The shape of the lot on the cul-de-sac bulb impacts the ability to satisfy the required rear yard setback for the existing deck.

As it relates to the variance request to allow a 10' expansion of the existing deck toward the west along the rear of the house, the lot depth increases toward the middle of the lot. Although the

resulting expanded deck still yields an encroachment into the required rear yard setback, the degree of encroachment is significantly less (by 10') than that of the existing deck. If the requested variance is granted, the proposed setback encroachment is mostly toward common area and the 235-acre Raintree Lake.

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 possible to reconstruct the existing octagonal deck in compliance with the minimum rear yard setback due to the irregular configuration of the cul-de-sac lot. It is also not possible to construct the proposed deck expansion in compliance with the minimum rear yard setback.

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 12'-8" variance from the northeast property line to allow for reconstruction of the existing octagonal deck.

The applicant further requests approval for a 10' deck expansion that requires a 2'-8" variance from the northeast property line and 3' variance from the northwest property line when measured from the northwest corner of the expanded deck.

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 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 applicant seeks a variance to allow for identical reconstruction of a deck that has existed for over 20 years. The existing encroachment is toward common area and Raintree Lake. While there is an adjacent residence in the direction of the encroachment from the northeast property line, the existing residence in that direction is approximately 60' away across a common area tract. The typical back yard separation between principal structures in the R-1 zoning district is 60', so the requested variance to the rear yard setback still maintains the separation typical to what is found in single-family subdivisions.

The applicant's further request to allow for a 10' deck expansion to the west along the back of the home requires a variance to the rear yard setback. The expansion is parallel to the deepest point of the lot. So as the deck is expanded to the west, the separation between the deck and rear property line is increasing. The expansion still requires a variance to the rear yard setback, but the degree of non-conformity is less than that of the existing octagonal deck that has existed for over 20 years.



Figure 4 – Existing plus proposed expanded deck.

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 to reconstruct the existing deck cannot be obviated due to the existing lot configuration.

The proposed expanded deck is not a need. It is a request by the applicant to increase the amount and functionality of the home's deck space. The expanded deck cannot be constructed without approval of a variance.

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.

Justice will be served to allow for reconstruction of the existing octagonal deck. The 12'-8" encroachment into the rear yard setback has existed for over 20 years with seemingly no negative impact on surrounding property owners. The non-compliant deck was presumably constructed by the homebuilder, for which the City has no record of any building permit.

The request by the applicant to allow a 10' expansion to the west along the back of the house is not expected to create any new negative impacts on surrounding properties. The expanded deck portion will be located further away from the property lines as the lot depth increases in the area parallel to the expanded deck. The resulting expanded deck will be 10' further away from the property lines as the existing octagonal deck.

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 unusual or unique conditions associated with the property and the requested setback variance are the reduced buildable envelope created by the lot being on a cul-de-sac bulb and the presence of common area and Raintree Lake to the north and west that buffers the requested setback encroachments. The existing octagonal deck at the northeast corner of the house does not meet current setback requirements and has existed for at least 21 years without seemingly any negative impacts.

Attachments:

1. Plot plans showing existing deck and proposed deck expansion – 2 pages
2. Pictures of existing deck – 3 pages
3. Location Map