

City of Lee's Summit

Development Services Department

May 12, 2023

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., AICP, Senior Planner
RE: **PUBLIC HEARING – Application #PL2023-085 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Rear Yard Setback – 102 SE Carolina Ct; Grant Shields, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the minimum 30' rear setback requirement for a principal structure in the R-1 zoning district, to allow a screened deck/porch addition to maintain a 27'-4" setback from the rear property line.

Request

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

Site Characteristics

Location: 102 SE Carolina Ct

Zoning: R-1 (Single-Family Residential)

Property Owner: Grant Shields

Surrounding Zoning and Uses:

North: R-1 – common area tract; NE Langsford Rd; and single-family residential (across NE Langsford Rd)

South: R-1 –single-family residential

East: R-1 – single-family residential

West: R-1 – single-family residential

Background

- October 25, 1995 – A building permit (#95-1241) was issued for construction of a single-family residence on the subject property. At its closest point, the house on the approved plot plan was shown with a 41' foot setback from the rear property line.

The originally approved plot plan did not show any deck at the rear of the residence, but historical aerial photography shows that the residence has had an uncovered rear deck since at least 2001.

Ordinance Requirement

Rear Yard Setback Requirements. The Unified Development Ordinance requires a minimum setback of 30' from the rear property line for properties zoned R-1 (UDO Article 6, Section 6.040, Table 6-3).

Existing Conditions. A single-family residence with an uncovered deck exists on the subject property. The residence itself is set back approximately 40' from the rear property line; the

existing attached uncovered deck is set back approximately 25'-10" from the rear property line, which complies with the 25' minimum setback requirement for an attached uncovered deck. Uncovered attached decks associated with single-family residences may encroach into a required rear yard by five (5) feet, resulting in a 25' rear yard setback (UDO Section 6.1350.B.5).

The residence backs up to a portion of a 4.1-acre common area tract that separates area residences from the adjacent NE Langsford Rd. The nearest residence to the rear of the subject property is located across both the common area tract and NE Langsford Rd, approximately 257' away.



Figure 1 – Subject property with abutting common area.

Request. The applicant proposes to remove the existing uncovered deck at the rear of the residence and replace it with a 21'-8" wide x 12'-6" deep covered, screened-in porch/deck. The proposed screened-in porch results in a 27'-4" rear yard setback, which encroaches 2'-8" into the 30' rear yard setback for a principal building (i.e. residence). Because the screened-in porch is a

roofed structure, it is considered to be an addition to the house and therefore is subject to the same 30' setback requirement as the house.

Current Deck



Figure 2 – Existing uncovered deck (with dimensions).

Proposed Deck/ Screened Porch



Figure 3 – Proposed screened-in porch/deck (with dimensions).

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 addition complies with the side yard setbacks. The setback encroachment is to the rear yard in the direction of a portion of a 4.1-acre common area tract. The nearest residence in the direction of the encroachment is approximately 257' away, across the abutting common area tract and NE Langsford Rd.

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 keep privacy and separation between uses and structures. The proposed encroachment is not toward the two adjacent single-family lots to the east and west. The encroachment is toward the common area tract and NE Langsford Rd to the rear.

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.

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 variance request does not arise from any condition that is unique to the property in question, but rather from the homeowner's desire to replace an uncovered deck with a screened-in roofed structure that will provide useable outdoor space that is out of the elements.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The proposed encroachment is toward a common area tract and a major arterial road where the nearest residence in the direction of the encroachment is approximately 257' away. The subject property's back yard is fully fenced, which provides a visual screen that will help to mitigate any impacts of a reduced setback. It should be noted that the proposed screened-in porch will be located 1'-6" further away from the rear property line than the uncovered deck it is proposed to replace.

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 to construct a screened-in porch in compliance with the minimum 30' rear yard setback. However, the uncovered deck would have a depth of under 10' and thus have more limited functionality.

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 2'-8" to the minimum 30' principal structure rear yard setback, to allow a 27'-4" rear yard setback for a screened-in porch addition.

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 is not expected to substantially change the character of the neighborhood or be a substantial detriment to adjoining properties. While the proposed deck will encroach into the rear yard setback, the subject property backs up to a portion of a 4.1-acre common area tract and NE Langsford Rd. The nearest residence in the direction of the encroachment is approximately 257' away. Additionally, the proposed structure is shallower than the existing uncovered deck it will replace and so will be located 1'-6" further from the rear property line.

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 be obviated by only constructing a 9'-10" deep structure versus the proposed 12'-6" structure.

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 arose from the property owner's desire to replace an existing uncovered deck with a smaller roofed structure to create an outdoor space that is protected from the elements. Whereas the existing uncovered deck is subject to a 25' rear yard setback, the smaller screened-in porch is subject to a more stringent 30' rear yard setback because the roofed structure is considered to be an addition to the residence.

Justice will be served by allowing the proposed addition based on the fact that the subject property abuts a portion of a 4.1-acre common area tract as well as NE Langsford Rd to the north, which ensures that the UDO's intent and purpose for setbacks to provide separation and privacy between properties is maintained. Additionally, the smaller screened-in porch results in a structure that is located 1'-6" further away from the rear property line than the existing uncovered 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 subject property backs up to both a portion of a 4.1-acre common area tract and NE Langsford Rd, which together provide a mitigating presence as buffers between area properties to ensure the maintenance of separation and privacy.

Attachments:

1. Variance application and supporting drawings, uploaded April 14, 2023 – 8 pages
2. Location Map