

# 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 #PL2023-092 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, and Section 6.1350B.5, Rear Yard Setback – 4525 NE Sherwood Dr; Royal Enterprises of KC, applicant**

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### 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 an uncovered deck addition to maintain an 18' setback from the rear property line.

### Request

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

### Site Characteristics

**Location:** 4525 NE Sherwood Dr

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

**Property Owner:** Kevin and Heidi McClelland

**Surrounding Zoning and Uses:**

**North (across NE Sherwood Dr):** R-1 – single-family residential

**South:** R-1 – common area tract and single-family residential

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

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

### Background

- October 19, 2017 – A building permit (#PRRES20173209) was issued for construction of a single-family residence with covered attached deck on the subject property. At its closest point, the approved house with covered attached deck was shown with a 30' foot setback from the rear property line.

### 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). 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).

**Existing Conditions.** A single-family residence with covered deck exists on the subject property. The residence is set back 30' from the rear property line. The residence backs up to a wooded 2.2-acre common area tract in the Park Ridge subdivision. The nearest residence located across the wooded common area tract to the south is approximately 190 feet away.

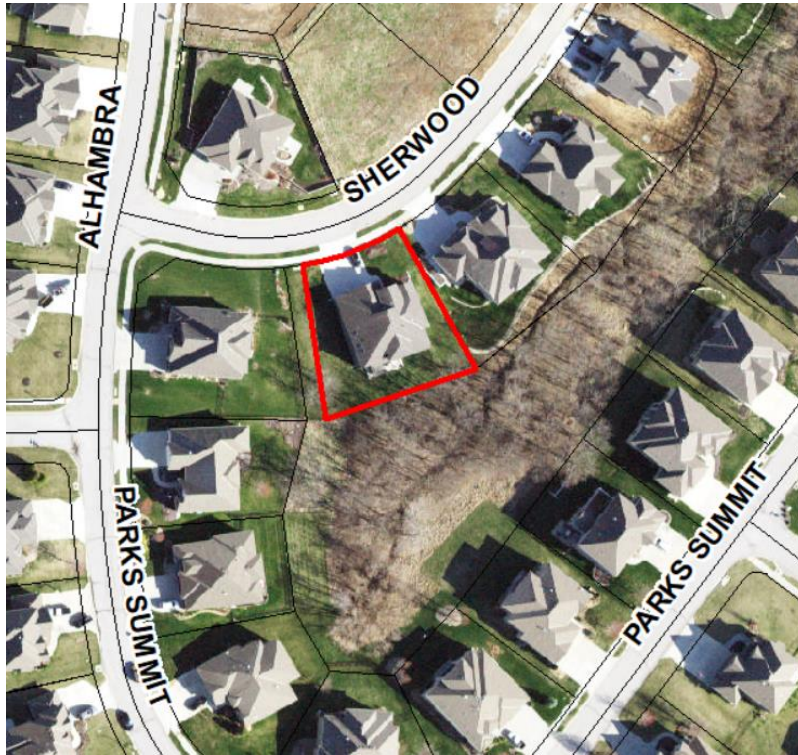


Figure 1 – Subject property with abutting common area.

**Request.** The applicant proposes to construct a 12'x12' second-story uncovered deck that will be connected to an existing second-story covered deck at the rear of the residence. The proposed uncovered deck results in an 18' rear yard setback, which equates to a 7' encroachment into the 25' rear yard setback for an uncovered deck.

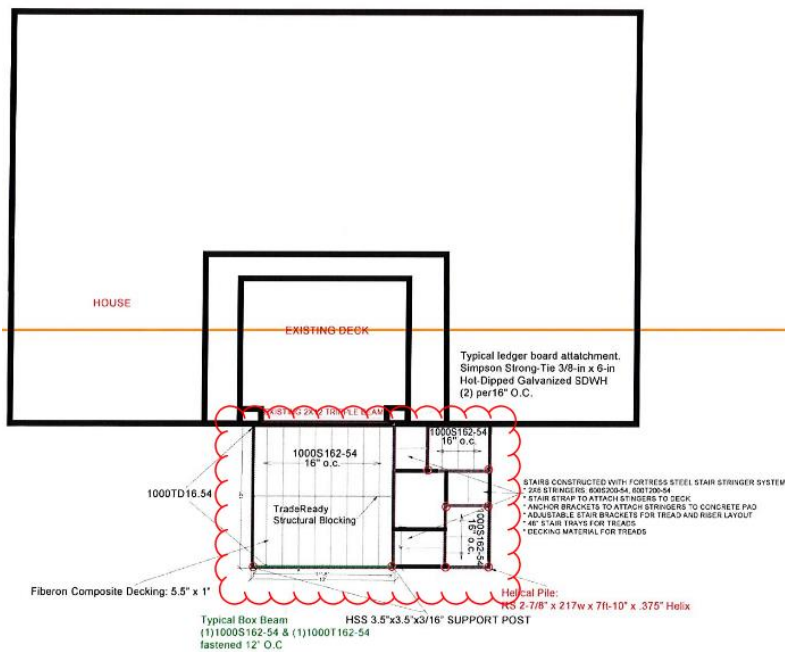


Figure 2 – Proposed uncovered deck addition.



Figure 3 – Plot plan with proposed 12' x 12' uncovered deck.

## 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 the wooded 2.2-acre common area tract. The nearest residence in the direction of the encroachment is approximately 190' away, across the abutting common area tract.

*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 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 construct a second-story uncovered deck of certain dimensions that result in an encroachment into the rear yard setback. However, said encroachment is toward an abutting 2.2-acre common area tract that will buffer and mitigate the impact of the proposed setback encroachment on area properties.

*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 where the nearest residence in the direction of the encroachment is approximately 190' away. The abutting 2.2-acre common area tract serves as a buffer that ensures that the spirit and intent of setbacks to provide privacy and separation between buildings is maintained.

### **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 an uncovered deck in compliance with the minimum 25' rear yard setback. However, the uncovered deck would only have a depth of 5' and thus have 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 7' to the minimum 25' rear yard setback for an uncovered attached deck, to allow an 18' 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 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 wooded 2.2-acre common area tract that will maintain separation and privacy between area lots. The nearest residence in the direction of the encroachment is approximately 190' away.

*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 5' deep uncovered deck versus the proposed 12' deep uncovered 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 arose from the property owners' desire for an uncovered deck addition of certain dimensions that results in a rear yard setback of 18' versus the minimum 25' setback. However, justice will be served by allowing the proposed addition based on the fact that the abutting 2.2-acre common area tract to the rear ensures that the UDO's intent and purpose for setbacks to provide separation and privacy between properties is maintained. The nearest residence in the direction of the encroachment is approximately 190' away.

*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 a wooded 2.2-acre common area tract that provides a mitigating presence as a buffer between area properties to ensure the maintenance of separation and privacy.

Attachments:

1. Variance application and supporting drawings, uploaded April 19, 2022 – 9 pages
2. Location Map