

# City of Lee's Summit

## Development Services Department

August 12, 2019

TO: Board of Zoning Adjustments  
FROM: Hector Soto, Jr., AICP, Planning Manager  
RE: **PUBLIC HEARING – Application #PL2019-243 – Variance to Unified Development Ordinance Article 6, Section 6.040, Table 6-3, Front Yard Setback – 300 NW Anderson Dr; Kevin T. and Denise A. Burke, applicants**

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### Recommendation

The Development Services Department recommends **APPROVAL** of the variance, as requested.

### Request

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

### Site Characteristics

**Location:** 300 NW Anderson Dr

**Zoning:** AG (Agricultural)

**Property Owner:** Kevin T. and Denise A. Burke

**Surrounding Zoning and Uses:**

**North:** AG – vacant Jackson County-owned land

**South (across NW Anderson Dr):** AG and PI (Planned Industrial) – vacant large acreage

**West (across NW Lee's Summit Rd):** AG – vacant large acreage outside city limits

**East:** AG – large-acreage single-family residences

### Background

- Circa 1920 – The original portion of the existing single-family residence was built on the subject property.
- December 3, 2007 – A building permit (Permit #B0702525) was issued for a 30' x 30' house addition on the east side of the original single-family home. The addition is connected to the original residence by a 12' long enclosed breezeway.
- April 3, 2014 – A building permit (Permit #PRRES20140510) was issued for a 1,500 sq. ft. detached garage.

### Ordinance Requirement

**Front Yard Setback Requirements.** The Unified Development Ordinance requires a minimum setback of 100 feet or as established by existing homes on the same side of the street from the front property line for properties zoned AG (UDO Article 6, Section 6.040, Table 6-3).

**Existing Conditions.** The subject property under the ownership of the applicant totals 3.65 acres. The property is located in two municipalities. Approximately 3.22 acres is located in Lee's Summit, and approximately 0.43 acres is located in Kansas City. While the property is actually a

single contiguous piece of property, it is divided into separate parcels with unique tax parcel identification numbers because they are located in different corporate and taxing jurisdictions.

The existing residence is set back approximately 5' from the corporate limit line that separates Lee's Summit from Kansas City, and also functions as the dividing parcel line. The existing residence is set back approximately 80' from the westernmost property line for the subject property located on the Kansas City side.

**Request.** The applicant intends to raze the original portion of the existing residence and reconstruct on the same footprint, except that the house will be expanded approximately 20' to the south. The proposed expansion to the south can be accomplished in accordance with current setback requirements.

The act of razing the original portion of the existing residence causes the property owner to lose the lawful non-conforming (i.e. grandfathered) condition of having a reduced front setback from the front property line. Under the UDO, the new structure may only be reconstructed in accordance with all current setback requirements of the UDO, unless a variance is granted to allow the new structure to maintain the same setback from the west property line as the original structure.

### **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 variance will not adversely affect the adjacent property owners. The encroachment is toward NW Lee's Summit Rd and not in the direction of any abutting or adjacent residence. Additionally, the request is to continue an existing setback that has existed approximately 99 years without any obvious impact on surrounding properties.

*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. Granting the requested variance will not be opposed to the spirit and intent of the ordinance as the request does not reduce the setback from that which has existed for the last approximately 99 years.

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

It is not anticipated that enclosing the existing deck area as proposed will create any 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 existing original residence was constructed circa 1920, approximately 44 years prior to the property's annexation into the city. The existing reduced setback that the applicants request to continue has existed for approximately 99 years.

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

Substantial justice will be done by granting a variance to allow the applicants the ability to maintain the same setback toward NW Lee's Summit Rd that has existed for approximately 99 years.

### **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.*

There is a practical difficulty in carrying out the strict letter of the Ordinance to meet the 100' front setback. Compliance with the setback standard would require removal of the original residence, the addition constructed in 2007 and perhaps the removal of the detached garage to shift the location of the home further east. However, doing so likely could not be done without encroaching into the 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 applicants request a 95' variance to the 100' front yard setback requirement.

*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 anticipated to produce a substantial change in the character of the neighborhood. The existing home has maintained the same setback as is being requested for approximately 99 years.

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

There does not appear to be a feasible manner for the applicant to maintain the historical location of the residence on the property without encroaching into a required setback.

*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 existing home site has been maintained on the property for approximately 99 years. The applicants wish to maintain the historical location of the residence on the property, while also making an improvement to their 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 variance request stems from the applicants' desire to replace an approximately 99 year old residence with a new one that retains the historic location of said structure on the property.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Map of 300 NW Anderson Dr – 1 page
3. Copy of Plot Plan of existing and proposed structures – 2 pages
4. Location Map