

City of Lee's Summit

Development Services Department

February 14, 2020

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-006 – Variance to Unified Development Ordinance (UDO) Article 6, Table 6.IV-1, Side Yard Setback – 1300 SW Hook Rd; Joe and Sheri Lauber, applicants**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the 35 feet minimum side yard setback, to allow a detached garage with a 15 foot side yard setback.

Request

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

Site Characteristics

Location: 1300 SW Hook Rd

Zoning: AG (Agricultural)

Property Owner: Joe and Sheri Lauber

Surrounding Zoning and Uses:

North: AG – Lee's Summit West High School

South (across SW Hook Rd): AG – single-family residential on large acreage

West: AG – single-family residential on large acreage

East: AG – single-family residential on large acreage

Background

- January 14, 1997 – A building permit (#97-36) was issued for construction of a single-family residence on the subject 4.8-acre property. The residence was in conformance with all setback requirements in effect at that time under Ordinance No. 715, which called for the following minimum setback requirements for properties in the A (Agricultural) zoning district: 30 feet – front yard; 15 feet – side yard; and 30 feet – rear yard.

Ordinance Requirement

Side Yard Setback Requirements. The Unified Development Ordinance requires a minimum 35-foot setback from the side property line for detached garages on AG property (UDO Article 6, Table 6.IV-1).

Existing Conditions. The subject property is developed with a single-family residence. As mentioned above, the residence complied with all setback requirements in effect at the time of its construction in 1997. Ordinance No. 715 was replaced by the UDO as the city's governing development ordinance on November 1, 2001. The advent of the UDO introduced significant changes to the development standards for AG-zoned properties by increasing the minimum lot

size from 5 acres to 10 acres and by increasing side yard setbacks from 15 feet for both principal and accessory buildings to 50 feet for principal buildings and 35 feet for accessory buildings.

The existing residence complies with all current setback requirements for the AG zoning district, save for the side yard setback from the west property line. The existing residence maintains a 34-foot setback from the west property line. The UDO requires a minimum 50-foot setback. However, this is a lawful non-conforming (i.e. “grandfathered”) characteristic because the house complied with the 15-foot setback requirement in effect at the time of its construction. No action is required to address this situation.

Request. The applicants request a 20 foot variance to the minimum 35 foot setback required for a detached garage in the AG zoning district, yielding a 15 foot side yard setback from the east property line.

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 is not expected to adversely affect the adjacent property owners. The proposed encroachment is toward the east property line. At its closest point, the proposed detached garage will sit approximately 75 feet from the existing residence located on the lot to the east. The proposed detached garage will also sit further north (i.e. behind) the relative location of the existing home to the east. Additionally, existing mature trees between the proposed detached garage’s location and the existing home to the east serve as a visual and physical buffer between the two structures.

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 stated above, the nearest residence in the direction of the encroachment is approximately 75 feet away. The subject and neighboring properties in the area were developed pre-UDO. The setback requirements in effect at that time were significantly less than those currently in effect. In fact, the setbacks for agricultural property were not significantly different than those of a standard single-family residential subdivision. The proposed separation of structures between the subject property and the abutting property to the east is not unusual for the area.

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 primarily arises from a condition unique to agriculturally-zoned property in this area. The subject lot was originally created and developed under agricultural standards that called for a minimum lot size of 5 acres; minimum lot width of 165 feet; and minimum side yard setback of 15 feet. The subject and neighboring properties were laid out in accordance with these

standards. All of these standards increased at least two-fold at the time the UDO went into effect in 2001. The setback standards currently in effect under the UDO are based on 10-acre lots, which is the current minimum lot size in an agricultural zoning district. The current UDO requirements do not take into account lots created under previous standards, and thus place a disproportionate burden on smaller “grandfathered” lots.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting the requested variance to the side yard setback. The governing UDO development standards have a disproportionate impact on lots established and developed pre-UDO. The proposed detached garage with a 15 foot side yard setback would have complied with the development ordinance (Ordinance No. 715) in effect at the time the property was developed. It is not expected that a variance will have any negative impact on any surrounding property.

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 impractical for the applicants to carry out the strict letter of the ordinance. Situating the proposed detached garage in compliance with the required side yard setback would create a conflict between the garage and/or driveway serving the garage with an existing septic sewer line serving the residence.

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 20 foot variance to the 35 foot side yard setback for a detached garage in the AG zoning district, yielding a 15 foot side 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 the variance request is not anticipated to produce a change in the character of the neighborhood. Similarly situated agriculturally-zoned single-family residences in the area have existing detached garages and other accessory structures with side yard setbacks ranging from 15 feet to 50 feet.

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

The applicants cannot feasibly pursue another method to meet the setback requirement. The presence of a septic sewer lateral line places practical limitations on where a detached garage can reasonably be located.

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 interests of justice would be served by allowing the variance. The development standards currently in effect for AG-zoned properties under the UDO are disproportionate when applied to smaller AG-zoned lots created prior to the UDO, as is the case with the subject property. Furthermore, the existing septic sewer system serving the property limits the placement of a detached garage on the site.

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.

Two overarching conditions do not allow the landowners to meet the setback requirements for the proposed detached garage. The first is that the UDO's setback requirements disproportionately impacts existing properties created and developed prior to the UDO going into effect. The second is that the existing septic system on the property places practical limitations on where the proposed detached garage can be located.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 8 pages
2. Copy of plot plan for building permit for the existing single-family residence issued on January 14, 1997 – 1 page
3. Site plan showing existing single-family residence, swimming pool, deck and proposed detached garage – 1 page
4. Copy of *Charles Estates* subdivision plat
5. Location Map