

City of Lee's Summit

Development Services Department

November 19, 2020

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-268 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, and Section 6.1350, Rear Yard Setback – 418 SW Seaside Sparrow St; Gary Prochelo, 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 an uncovered deck with a 16' rear yard setback.

Request

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

Site Characteristics

Location: 418 SW Seaside Sparrow St

Zoning: R-1 (Single-Family Residential)

Property Owner: Gary & Sara Prochelo

Surrounding Zoning and Uses:

North: R-1 – common area and Raintree Lake

South: R-1 – single-family residential

West: R-1 – common area and Raintree Lake

East: R-1 – single-family residential

Background

- October 26, 2000 – The Board of Zoning Adjustment granted a variance (VAR #641) to allow a 1' garage encroachment into the front setback and a 9'-6" deck encroachment into the rear setback for a new single-family residence on the subject property.
- March 5, 2001 – A building permit (#B0001316) was issued for construction of a single-family residence on the subject property.

Ordinance Requirement

Rear Yard Setback Requirements. The Unified Development Ordinance requires a minimum setback of 30 feet from the rear property line for properties zoned R-1 (UDO Article 6, Section 6.040, Table 6-3). However, the UDO allows uncovered decks on single-family homes to encroach 5 feet into the rear yard setback, to allow a 25 foot rear yard setback (UDO Article 6, Section 6.1350.B.5).

Existing Conditions. The subject property was developed with a single-family home in 2001. Variances were granted by the BZA in 2000 to allow for a 1' garage encroachment into the front yard setback and an approximately 4.5' deck encroachment into the rear yard setback.

Request. The applicant proposes to expand an existing screened in deck with an uncovered deck of the same depth. The proposed 12' wide x 15' deep uncovered deck yields a 16' rear yard setback, requiring a 9' variance to 25' rear yard setback requirement for an 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 variance will not adversely affect the adjacent property owners. The proposed encroachment is toward the rear (northwest) side of the property, which backs up to common area composed of a walking trail and Raintree Lake. The nearest residence in the direction of the encroachment is across the lake, approximately 920' away.

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 located over 900' away across a lake.

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 for the proposed uncovered deck stems in part from the property owner's desire for a larger deck. The variance request also stems from characteristics of the subject property inherent to cul-de-sac lots that result in a reduced buildable area compared to a typical rectilinear lot. The curved front property line taken in conjunction with the straight rear property line creates a lot with variable depths of buildable area.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a 9' variance for the proposed uncovered deck. While the need for the variance arises from the property owner's desire for a certain dimension of covered patio, the encroachment is toward a 235-acre lake. 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 impossible to expand the deck in compliance with rear yard setback requirements due to the shape of the lot and the resulting shallow buildable area. A typical rectilinear single-family residential lot (70' wide x 120' deep) has a 60' deep buildable area. The subject pie-shaped lot with side property lines of 115' and 120' in length has only a 45' deep buildable area. Cul-de-sac lots have a much shallower buildable area due to the curvature of the front lot line that protrudes into the lot and results in a varying lot depth.

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 9' variance to the 25' rear yard setback for an uncovered patio.

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. The expansive open common area to the northwest, which includes Raintree Lake, mitigates any potential negative impacts the reduced setback may have on adjacent properties.

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

Pursuit of the proposed uncovered deck is only possible through the granting of a variance. The existing screened in deck had to receive a variance in 2000 because there was no feasible manner to construct a reasonably functional deck on the lot due to the lot shape.

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 proposed 9' encroachment into the rear yard setback is the result of the homeowner's desire for an uncovered deck, as well as the characteristics inherent to a cul-de-sac lot that results in a shallow buildable area. The subject property backs up to Raintree Lake, there granting a variance for a reduced rear yard setback for an uncovered will not negatively impact any adjacent property owner. The nearest residence in the direction of the variance is over 900' away and thus preserving the maintenance of separation and privacy between residences.

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 in part stems from characteristics of the cul-de-sac lot itself. The combination of the curvature of the front lot line along the cul-de-sac bulb plus the radial nature

of the side property lines results in a shallower lot with a reduced buildable area compare to a typical rectilinear lot.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Copy of plot plan showing existing screened-in covered deck plus proposed 12' x 15' uncovered deck
3. Location Map