

City of Lee's Summit

Development Services Department

May 17, 2021

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2021-104 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Rear Yard Setback – 1523 SW Blackstone PI; Engineering Solutions, LLC, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the minimum 30' rear setback requirement for a covered deck in the R-1 zoning district, to allow a 22.08' setback.

Request

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

Site Characteristics

Location: 1523 SW Blackstone PI
Zoning: R-1 (Single-Family Residential)
Property Owner: Engineering Solutions, LLC
Surrounding Zoning and Uses:
North (across SW Blackstone PI): R-1 – single-family residential
South: R-1 – common area and single-family residential
West: R-1 – single-family residential
East: R-1 – single-family residential

Background

- May 12, 2020 – A building permit (#PRRES20211961) was issued for construction of a single-family residence on the subject property. The building permit was issued showing an uncovered deck meeting the minimum 25' rear yard setback.

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). Whereas the UDO allows uncovered decks on single-family homes to encroach 5 feet into the rear yard setback (UDO Article 6, Section 6.1350.B.5), **covered decks are required to meet the same 30 foot rear yard setback as the home.**

Existing Conditions. A single-family residence is currently under construction on the subject property. The lot backs up to part of a larger 12.5-acre common area tract that houses a detention facility and is located in the floodplain. Located across the common area tract is a future phase of the same Napa Valley subdivision.

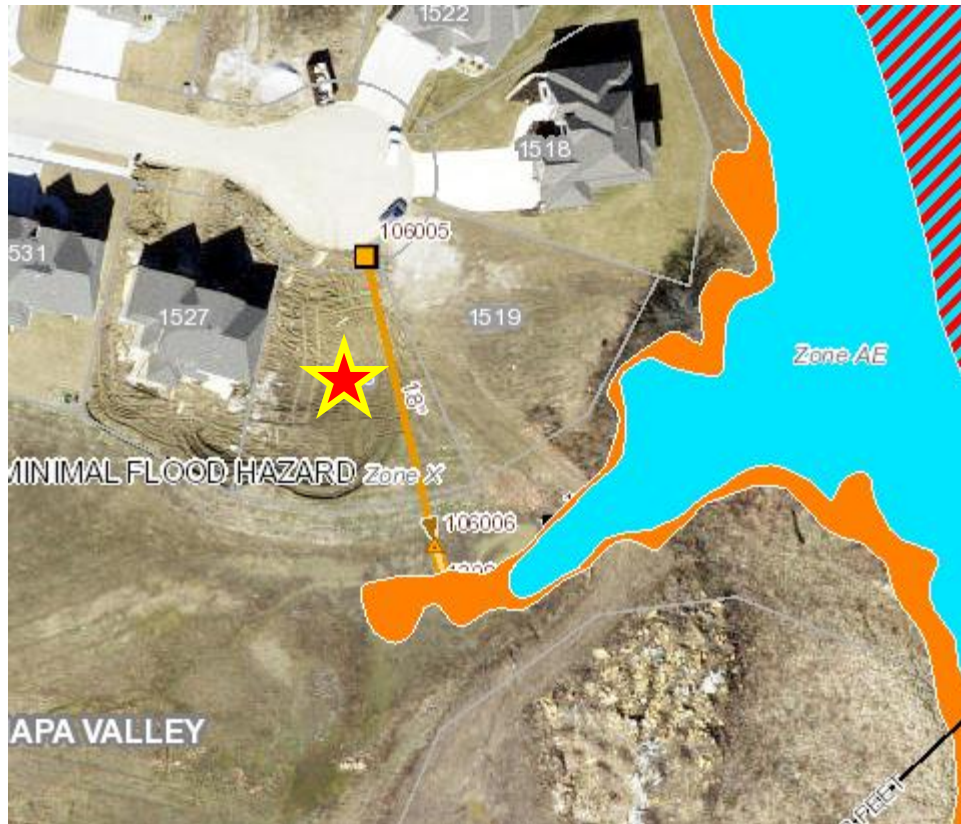


Figure 1 – Subject property with abutting common area to the south. 100-year and 500-year floodplain boundaries depicted in blue and orange, respectively.

Request. A single-family home is currently under construction on the subject property. The approved plot plan associated with the building permit shows a 9' deep x 16' wide uncovered deck at the southwest corner of the house. The uncovered deck meets the minimum 25-foot rear yard setback. However, the homebuilder desires to cover and increase the size of the deck by increasing its depth to 12', resulting in a 12' deep x 16' wide covered deck. The larger covered deck results in a 22.08' rear yard setback, equating to a 7.92' encroachment into the rear yard setback.

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 a variance is not expected to adversely affect the right of adjacent landowners or residents. The proposed setback encroachment is in the direction of a 12.5-acre common area tract in the floodplain to the south. The proposed deck complies with the required setbacks in the direction of the two abutting residential lots to the east and west.

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. Without a variance, the nearest future residence across the abutting 12.5-acre to the south will be approximately 145' away. With a variance, the nearest future residence to the south will be approximately 142' away.

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 subject property is located on a cul-de-sac bulb. The irregular curving nature of the front property line causes the lot's buildable envelope to be smaller than that of the rectangular lot. Additionally, cul-de-sac bulbs cause homes to be pushed further back into the smaller buildable envelope and therefore compounds the challenge in complying with rear yard setbacks.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The shape of the lot on the cul-de-sac bulb impacts the ability to satisfy the required rear yard setback for a covered deck. The fact that the subject property backs up to a 12.5-acre common area tract in the floodplain provides a physical buffer that will mitigate any negative impacts from the requested rear yard setback encroachment.

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 carry out the strict letter of the ordinance. The building permit for the single-family home was approved with a 25' rear yard setback for an uncovered deck, which complies with the UDO. However, it is not possible to construct a functional covered deck that complies with the required 30' 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 applicant requests a 7.92' variance to the 30' rear yard setback for a covered deck.

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. Ample separation between the subject property and the future residences to the south would continue to exist if a variance is granted. Without a variance, approximately 145' between residences would exist. With a variance, approximately 142' between residences would exist.

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 simply constructing an uncovered deck that is 9' deep versus the proposed 12' deep covered deck. However, the future homeowner prefers the larger covered deck for improved functionality.

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 variance stems from a desire for a larger covered deck versus a smaller uncovered deck. However, the impacts of the proposed setback encroachment are mitigated by the presence of a large acreage common area tract and floodplain that ensures separation between the nearest future homes to the south.

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 unusual or unique conditions associated with the property and the requested setback variance are the reduced buildable envelope created by the lot being on a cul-de-sac bulb, and the presence of common area and floodplain to the south that buffers the requested setback encroachment.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Copy of proposed plot plan needing variance to rear setback, signed and sealed March 16, 2021
3. Copy of plot plan complying with rear setback, stamped approved on May 12, 2021
4. Location Map