

# City of Lee's Summit

## Development Services Department

September 10, 2021

TO: Board of Zoning Adjustments  
FROM: Hector Soto, Jr., Planning Manager  
RE: **CONTINUED PUBLIC HEARING – Application #PL2021-235 – VARIANCE TO A LOFT DWELLING UNIT ABOVE A DETACHED GARAGE – 302 NE Douglas St; Kurt Pycior, applicant**

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### Recommendation

The Development Services Department recommends **APPROVAL** of a variance to a loft dwelling unit above a detached garage, to allow an accessory loft dwelling unit to extend to the ground floor of a detached garage.

The Development Services Department recommends **APPROVAL** of a variance to the minimum 30' rear yard setback for a loft dwelling unit over a detached garage, to allow a 25' rear yard setback. *(Previously approved by the Board of Zoning Adjustments on August 19, 2021)*

### Request

**Variance Requested:** The applicant seeks a variance to allow a loft dwelling unit in a detached garage to have living space on both the ground floor and upper floor of said structure.

The applicant also requests a 5' variance to the minimum 30' rear yard setback for a detached garage with a loft dwelling unit. *(Previously approved by the Board of Zoning Adjustments on August 19, 2021)*

### Site Characteristics

**Location:** 302 NE Douglas St

**Zoning:** RP-2 (Planned Two-family Residential District)

**Lot Area:** 17,743 sq. ft. (0.41 acres)

**Property Owner:** Kurt & Elizabeth Pycior

**Surrounding Zoning and Uses:**

**North:** RP-2 – single-family and two-family residential

**South:** RP-2 – single-family residential

**West:** RP-2 – single-family and two-family residential

**East (NE Douglas St):** R-1 (Single-family Residential) – single-family residential

### Ordinance Requirement

#### Background.

- Circa 1930 – The existing single-family residence was constructed.
- December 18, 2021 – Mr. Pycior submitted a building permit application and supporting documents to the Development Services Department for construction of a detached

garage at 302 NE Douglas St. (See accompanying staff determination dated April 26, 2021 for more detailed history and background.)

- December 22, 2021 – The Development Services Department issued a building permit (#PRRES20204857) for construction of only a detached garage at 302 NE Douglas St.

## Ordinance Regulations

**Loft Dwelling Unit Above a Detached Garage.** The UDO allows a loft dwelling unit above a detached garage as an accessory use to a permitted single-family residential use in all residential districts, except the R-1 district within the Old Lee's Summit area, subject to certain conditions (UDO Section 6.1350.M and Table 6.IV-1).

A loft dwelling unit above a detached garage is required to maintain a minimum 30' rear yard setback in the RP-2 zoning district (UDO Article 6, Table 6.IV-1).

**Existing Conditions.** The applicant has constructed a detached garage that has partially finished living space. The garage is intended to have finished living space on the upper floor and the ground floor.

**Request.** The applicant requests a variance to the regulation that an accessory loft dwelling unit is only limited to an upper floor above a detached garage and cannot have living space on the ground level.

A variance to allow a 25' rear yard setback versus the minimum required 30' rear yard setback for a loft dwelling unit over a detached garage.

## 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.:

<i>Criteria #1 – The granting of the variance will not adversely affect the rights of adjacent property owners or residents.</i>
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Granting a variance to extend the living area of an accessory loft dwelling unit living to the ground floor is not expected to adversely affect the rights of adjacent property owners or residents. The request is not to introduce accessory dwelling units into a zoning district where they are currently not allowed. The UDO already allows for accessory dwelling units (in the form of loft dwelling units within detached garages) in the RP-2 zoning district or by special use permit on R-1 zoned property within Lee's Summit historic downtown.

Approval of a 5' variance to allow a 25' rear yard setback versus the minimum required 30' is not expected to adversely affect the rights of adjacent property owners or residents. In comparison, a detached garage of the same size with no accessory dwelling unit is only required to maintain a 10' rear yard setback on properties under 1 acre in size, so the garage on the subject property will maintain a setback that is 2.5x that of the typical detached garage.

<i>Criteria #2 – The granting of the variance will not be opposed to the general spirit and intent of the ordinance from which the variance is sought.</i>
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Approval of the variance to extend accessory living space to the ground floor will not be opposed to the general spirit and intent of the ordinance. The intent of allowing an accessory dwelling unit on a single-family residential property is to allow for greater housing and lifestyle choices that are responsive to evolving demographic and economic conditions. Accessory dwelling units can provide housing for extended family members, students, in-home health care providers, the

disabled and others within existing neighborhoods. It also provides homeowners the opportunity to benefit from added income through the provision of rental housing.

Approval of a 5' variance to the 30' rear setback, to allow a 25' rear yard setback, for a detached garage with a loft dwelling unit will not be opposed to general spirit and intent of the ordinance. A detached garage with no accessory dwelling unit can be located as close as 10' to the rear property line. Additionally, a primary residence in the RP-2 zoning district can be located as close as 20' to the rear property line.

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

Allowing an accessory dwelling unit to have living space on the ground floor of a detached garage set back 25' from the rear property line will not adversely affect the public health, safety, morals or general welfare of the community.

*Criteria #4 – The variance requested arises from a condition that is unique and peculiar to the property in question and which is not ordinarily found in the same zone or district, and further, is not created by an action or actions of the property owner or applicant.*

The variance request stems from the applicant's desire to provide for accessory living space on both the upper floor and ground floor of a detached garage.

The subject property is an irregular-shaped lot with side property lines of differing lengths. The north property line is 58' longer than the south property line. The detached garage in which the accessory dwelling space is to be constructed is located on the shallower side of the lot.

*Criteria #5 – Substantial justice will be done by the granting of the variance.*

Substantial justice would be done by approving the variance. The request simply expands where within the confines of the enclosed structure (i.e., the detached garage) living area for an allowed accessory dwelling unit living area can be located. There is no discernable visual difference if living space within the fully enclosed detached garage is allowed to extend to the ground floor versus confining it to the upper floor.

Furthermore, the City's newly adopted Ignite Comprehensive Plan identifies a number of goals and objectives intended to guide policy for the community's continued growth over the next 20 years, including increasing the mix of affordable housing types for all ages and abilities. Identified strategies include expanding opportunities for accessory dwelling units to address evolving community and household needs, particularly accessory dwelling units intended for use by family members with disabilities and the elderly. With higher rates of ambulatory challenges found in elderly populations and individuals with disabilities, limiting living space to the upper level of an accessory structure runs contrary to the need and desire to make housing options accessible across the community's entire cross-section. Constructing universally accessible living space under the existing UDO language requires the installation of a residential elevator, which serves as an economic barrier to the provision of an identified housing need.

### **Analysis of Non-Use Variance**

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 – Whether practical difficulties exist that would make it impossible to carry out the strict letter of the Ordinance.*

Strict application of the ordinance does not preclude the applicant from constructing a loft dwelling unit within a detached garage. However, it does significantly reduce the amount of potential living space by limiting its location to the structure's upper floor.

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.*

By definition a loft dwelling unit above a detached garage is limited to the upper floor. The request is to extend living space to the ground floor.

*Consideration #2 – If the variance is allowed, the effect of increased population density, if any, on available public facilities and services.*

While the requested variance increases the amount of living space in the detached garage, granting a variance is expected to have little potential increase in population density for the larger neighborhood or impact on public facilities and services. The purpose of extending living space to the ground floor is not to create a second accessory dwelling unit within the detached garage, but rather to expand the square footage of the single accessory dwelling unit.

*Consideration #3 – Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties is created.*

Approval of the variance will not alter the character of the neighborhood. Detached garages are an allowed accessory use in residential zoning districts. Loft dwelling units over a detached garage are an allowed accessory use in residential zoning districts. Whether the accessory living space is limited to only the upper floor or allowed to be located on a ground floor and/or upper floor has no discernable visual impact on the area, thus is not expected to have any impact on the neighborhood's character.

Allowing a 5' variance to the rear yard setback for the detached garage with accessory dwelling unit to allow 25' rear yard setback will not alter the character of the neighborhood. Similar detached garages (but with no accessory dwelling unit) are allowed in the neighborhood with 10' setbacks.

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

The applicant can obviate the need for a variance by simply limiting living space to the upper level as required by ordinance.

*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 request regarding the location of living space within the detached garage stems from the applicant's desire to provide for accessory living space on both the upper floor and ground floor of a detached garage.

Regarding the setback variance, the subject property is an irregular-shaped lot with side property lines of differing lengths. The north property line is 58' longer than the south property line. The detached garage in which the accessory dwelling space is to be constructed is located on the shallower side of the lot.

*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.*

There are no conditions inherent to the land that contribute to the need for a variance.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria and supporting documents – 29 pages
2. Copy of Staff Determination Letter, dated April 26, 2021
3. Location Map