

# City of Lee's Summit

## Development Services Department

October 18, 2021

TO: Board of Zoning Adjustments  
FROM: Hector Soto, Jr., Planning Manager  
RE: **PUBLIC HEARING – Application #PL2021-370 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Side Yard Setback – 2414 NE Douglas St; Andrew Boldrey, applicant**

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### Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the minimum 50' side yard setback requirement in the AG zoning district, to allow a 17' side yard setback from the north property line and a 38' side yard setback from the south property line.

### Request

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

### Site Characteristics

**Location:** 2414 NE Douglas St

**Zoning:** AG (Agricultural)

**Property Owner:** Andrew Boldrey

**Surrounding Zoning and Uses:**

**North:** AG – single-family residential

**South:** R-1 (Single-family Residential) and RDR (Rural Density Residential) – single-family residential

**West:** AG – large-acreage single-family residential

**East (across NE Douglas St):** PI – office-warehouse

### Background

- Circa 1965 – The recently demolished single-family residence was constructed on the subject property.
- September 1, 2021 – A building permit application was submitted for construction of a new home on the subject property.

### Ordinance Requirement

**Front Yard Setback Requirements.** The Unified Development Ordinance requires a minimum setback of 50 feet from the side (north and south) property lines for properties zoned AG (UDO Article 6, Section 6.040, Table 6-3).

**Existing Conditions.** The subject property was developed with a single-family home circa 1965. The property is a “flag” lot that is 125' wide at the front and 235' wide at the rear. The original home was set back approximately 100' from the front property line; approximately 17' from the

north (side) property line; and approximately 38' from the south (side) property line. The home was recently demolished to allow for construction of a new residence.

The minimum side yard setback in effect for AG zoned property at the time the original home was constructed in 1965 was 15'. The original home met the setback requirements in effect in 1965. The minimum side yard setback for AG zoned property increased to 50' when the UDO went into effect in 2001.

**Request.** The applicant proposes to construct a new single-family residence on the same footprint as the original home. The applicant requests a variance to the side yard setbacks to maintain the same setbacks as the original home.

Because the original home was voluntarily demolished, as opposed to demolished due to damage from an accident or an act of God, the lawful non-conforming status of the original home's setbacks are now lost. Reconstruction on the same footprint as the original house requires approval a variance.

### **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 for reduced setbacks will not adversely affect the rights of adjacent landowners or residents. The new home will maintain the same setbacks as the original home that stood on the subject property for 56 years.

*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. The new home will not be any closer to any existing area home than the original home.

*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 setbacks 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 arises from the applicant's desire to replace a recently demolished 56-year old home with a modern home.

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

Substantial justice would be done by granting a variance. The new home will be constructed on the same footprint as that of the original home built in 1965. The same side yard setbacks that have been maintained on the property for 56 years will continue to exist if the variance is granted.

### **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.*

While it isn't impossible to construct a home that complies with current side yard setbacks in the same location as the original home, the resulting home would only be 25' wide. The original home, as well as the new home, was 66' wide.

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 minimum side yard setback is 50'. The applicant requests a 33' variance from the north property line and a 12' variance from the south property line.

*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 encroachments 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 requested variance will not produce a substantial change in the character of the neighborhood. The new home will maintain the same setbacks that have existed for 56 years on the subject property.

*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 only be obviated by reducing the width of the new home's design from 66' to 25'.

*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 need for the variance stems from the homeowner's desire to build a home on the same footprint as that of the original home that stood on the property since 1965. The proposed setbacks are identical to those of the original home and thus will not create any new impacts on surrounding properties.

*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 subject property is a "flag" lot whose front portion is half the width of the rear portion. The narrowness of the front half where the house is located was suited to meet the setback requirements in effect when the original home on the property was constructed in 1965. The adoption of the UDO in 2001 imposed much stricter setbacks that resulted in the original home falling out of compliance with the new setback requirements.

Attachments:

1. Board of Zoning Adjustment Application, Variance Criteria and supporting documents – 12 pages
2. Location Map