

City of Lee's Summit

Development Services Department

January 19, 2023

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., AICP, Senior Planner
RE: **PUBLIC HEARING – Application #PL2022-438 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Minimum Principal Building Setbacks – 3603 SW Crane Rd; Tara Atkins, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the minimum 50' side yard setback in the AG zoning district, to allow a 42' setback from the west side property line.

Request

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

Site Characteristics

Location: 3603 SW Crane Rd

Zoning: AG (Agricultural)

Lot Size: 30,221 sq. ft. (0.69 acres)

Property Owner: Tara and Jason Atkins

Surrounding Zoning and Uses:

North: PMIX (Planned Mixed Use) – future single-family residential (Arborwalk development)

South (across SW Crane Rd): AG – single-family residential

East: AG – single-family residential

West: AG – single-family residential

Background

- Circa 1952 – County records indicate that the existing 894 sq. ft. residence was constructed in the calendar year of 1952.
- September 14, 1953 – The final plat of *Grand Summit View, Lots 1-18* was recorded by the Jackson County Recorder of Deeds office by Instrument #1953-I-0611511.
- December 31, 1964 – The Grand Summit View subdivision was annexed into the corporate limits of Lee's Summit as part of a 24,429-acre (38.2 sq. miles) annexation. The subdivision was located in unincorporated Jackson County prior to its annexation. The subdivision was zoned Agricultural while under the County's jurisdiction and retained its agricultural zoning when it was annexed into Lee's Summit.

It is the City's policy to maintain a property's existing zoning classification at the time of annexation, or to assign the closest equivalent zoning classification available under the City's zoning code in effect at that time.

Ordinance Requirement

Setback Requirements. The Unified Development Ordinance requires a minimum principal structure setback of 50 feet from all property lines for properties zoned AG (UDO Article 6, Section 6.040, Table 6-3). The current 50' setback requirement went into effect on November 1, 2001, with the adoption of the Unified Development Ordinance. From 1962 through the adoption of the UDO, the minimum side yard setback on AG zoned property was 15'.

Existing Conditions. A single-story, single-family residence exists on the subject property. At its closest point, the house is set back 65' from the west property line when measured perpendicularly from the northwest house corner. The lot is a tapered, irregularly-shaped parcel. Whereas the east property line runs in a straight line perpendicular to the SW Crane Rd right-of-way line, the west property line runs at an angle. The lot is approximately 60' wider at the front than it is at the rear, which results in a variable setback between the west side of the house and the west property line. The lot is 200' deep.

All of the lots in the Grand Summit View subdivision have lawful non-conforming characteristics, most notably as it relates to minimum lot size. Current UDO standards for the AG zoning district require a minimum 10-acre lot size. The Grand Summit View subdivision was originally developed with lots ranging in size from 19,792 sq. ft. (0.45 acres) to 30,221 sq. ft. (0.69 acres). Additionally, all but one homesite has at least one lawful non-conforming side yard setback. With one exception where two ½-acre lots were combined to create a 200'-wide, 1-acre homesite, side yard setbacks for existing homes in the subdivision range from 10' to approximately 45', which fall short of the current 50' minimum requirement.



Figure 1 – Aerial view of subject property.

Request. The applicant proposes to construct a 26'-wide addition onto the west side of the house. The addition results in a 42' side yard setback when measured to its closest point from the northwest house corner. This equates to an 8' encroachment into the minimum 50' side yard setback. The proposed 42' side yard setback falls within the range of existing side yard setbacks for similar lots in the subdivision.



Figure 2 – Proposed additions.



Figure 3 – Proposed front addition elevation

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 requested variance is not expected to adversely affect the rights of adjacent landowners or residents. The proposed western side yard setback of 42' falls within the range of existing side yard setbacks found within the same subdivision. The nearest residence in the direction of the encroachment is approximately 100' away.

Criteria #2 – The granting of 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. With the addition onto the west side of the house, the separation to the nearest home to the west will be approximately 80'. A mature tree line along the shared common property line provides a physical and visual buffer between the abutting parcels.

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 side yard 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 is attributed to the homeowner's desire to construct an addition in order to increase the structure's functionality to suit the long-term needs of the family. But the variance request is also attributed to the incongruity of applying the current AG district setback requirements designed for 10-acre lots to an approximately 70-year old subdivision developed with approximately ½-acre lots.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The proposed addition's encroachment yields a side setback that falls within the range of existing lawful non-conforming setback for comparable lots within the same subdivision. The existing lawful non-conforming side yard setbacks found throughout the subdivision are attributed to the increase from 15' to 50' upon the adoption of the UDO in November of 2001.

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 if the applicants chose to construct a smaller, narrower addition. However, a smaller addition would not satisfy the family's long-term needs for space and function.

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.

An 8' variance is requested to the minimum 50' side yard setback for the proposed addition onto the west side of the existing single-family home.

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 a variance is not expected to substantially change the character of the neighborhood or be a substantial detriment to adjoining properties. The proposed 42' side yard setback falls within the range of existing 10' to 45' side yard setbacks within the same subdivision. The nearest residence in the direction of the encroachment will be approximately 80' away.

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 cannot be feasibly obviated through another method. The existing home is not designed for vertical expansion and a smaller horizontal addition yields compromised functionality for the family's long-term use of the structure.

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 granting a variance to the side yard setback. The proposed addition's encroachment yields a side setback that falls within the range of existing lawful non-conforming setback for comparable lots within the same subdivision. The existing lawful non-conforming side yard setbacks found throughout the subdivision are attributed to the increase from 15' to 50' upon the adoption of the UDO in November of 2001.

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 general nature of the subdivision that was developed in the early 1950s with ½-acre lots under agricultural zoning conflicts with the current development standards for the AG district that are designed around having a minimum 10-acre lot size. The character of the existing subdivision is closer to that of a standard subdivision than that of a rural, large-acreage setting.

Attachments:

1. Variance drawings – 3 pages
2. Variance narrative written by Tara Atkins
3. Copy of variance application completed by the applicant, uploaded December 20, 2022 – 6 pages
4. Color copy of dimension plot plan prepared by staff
5. Location Map