

City of Lee's Summit

Development Services Department

August 9, 2024

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., AICP, Senior Planner
RE: **PUBLIC HEARING – Application #PL2024-189 – VARIANCE to rear yard setback – 2739 SW Heartland Rd; Walker Custom Homes, LLC, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a 6.77' variance to the minimum 30' rear setback requirement for a covered patio in the R-1 zoning district, to allow a covered patio to maintain a 23.23' setback from the rear property line.

Request

Variance Requested: a non-use variance to the rear yard setback requirement for a covered patio

Site Characteristics

Location: 2739 SW Heartland Rd

Zoning: R-1 (Single-Family Residential)

Property Owner: Zach Viter

Surrounding Zoning and Uses:

North: R-1 – common area tract and floodplain

South (south SW Heartland Rd): R-1 – single-family residential

East: R-1 – single-family residential

West: R-1 – single-family residential

Ordinance Requirement

Rear Yard Setback Requirements. The Unified Development Ordinance (UDO) requires residences to maintain a minimum 30' setback from the rear property line in the R-1 zoning district (UDO Article 6, Section 6.040, Table 6-3). Uncovered open patios are not subject to any setback requirements. However, attached covered patios are viewed from a setback perspective to be similar to a house addition and therefore are subject to the same side and rear setbacks as the principal structure (i.e. the house).

Existing Conditions. The subject property is a vacant single-family residential lot in The Retreat at Hook Farms subdivision. There are two (2) existing residences to the immediate west and a home currently under construction to the immediate east. The lot backs up to a heavily vegetated common area tract and floodplain. The nearest residential lot to the northeast across the common area tract and floodplain is located approximately 470' away.



Figure 1 – Street view of subject property.



Figure 2 - View toward common area/floodplain from the proposed covered patio location.

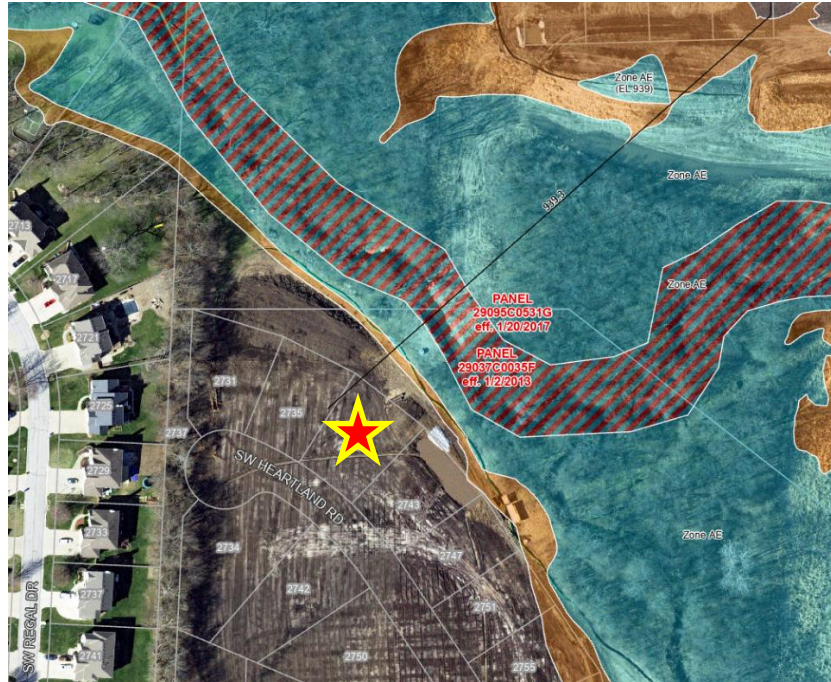


Figure 3 – Subject property (identified by red star) with abutting common area and floodplain (100-year floodplain boundary in teal; 500-year floodplain boundary in orange; floodway boundary hatched in red)..

Request. The applicant proposes to construct a single-family residence with covered patio on the subject property. The proposed covered patio encroaches 6.77' into the minimum 30' rear yard setback. The proposed covered patio complies with the minimum side yard setbacks.

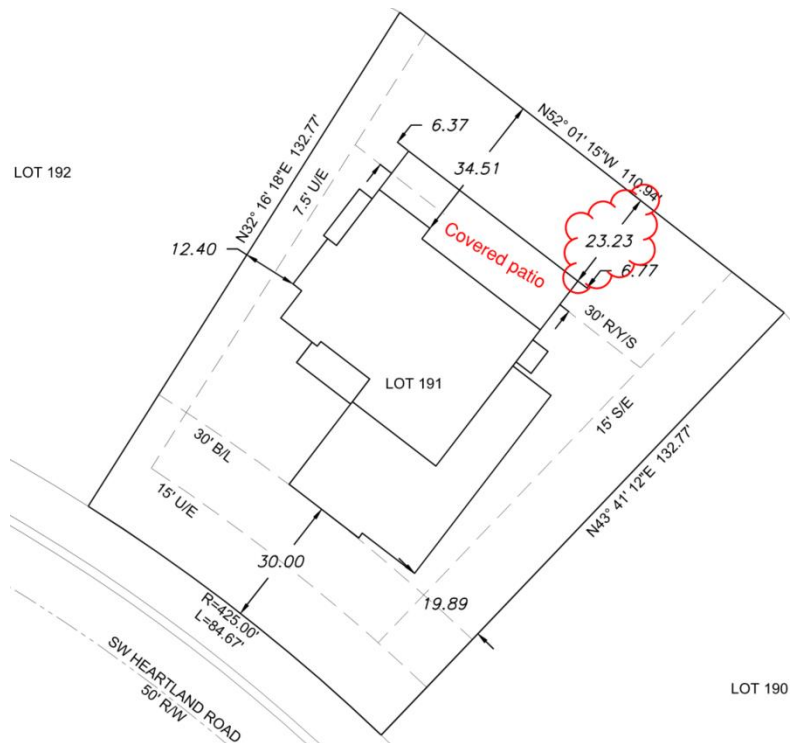


Figure 4 - Plot plan showing proposed partially covered replacement deck. Covered portion shown with hatching.

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 covered patio complies with the side yard setbacks. The setback encroachment is to the rear yard in the direction of a common area tract and floodplain.

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 maintain an expectation of privacy and separation between uses and structures in order to allow for the enjoyment of one's property. The proposed encroachment is not toward the existing and future residences to the west or east, respectively. The encroachment is toward the common area and floodplain. The nearest homesite in the direction of the encroachment is approximately 470' to the northeast across the common area tract and floodplain.

Criteria #3 – The variance desired will not adversely affect the public health, safety or general welfare.

Granting a variance to the rear yard setback in order to allow a covered patio in the direction of the common area and floodplain will not 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 lot is neither unique in shape nor in dimensions. The variance request stems from the future homeowner's desire for a covered patio of certain dimensions that results in an encroachment into the rear yard setback.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The subject property backs up to approximately 67 acres of common area and floodplain. The proposed setback encroachment is in the direction of said common area and floodplain. The nearest residence in the direction of the encroachment is approximately 470' away.

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.

No practical difficulties exist that would make it impossible to carry out the strict letter of the Ordinance. Uncovered patios are not subject to any setback requirements, so an uncovered patio of the same dimensions as the proposed covered patio can be constructed and not need a variance. Also, a partially covered patio with the edge of the roof no closer than 30' to the rear property line could be constructed, which would result in 7' of the 14' deep patio being covered.

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 variance of 6.77' to the minimum 30' rear yard setback for a covered deck, to allow a 23.23' rear yard setback.

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 will not produce a substantial change in the character of the neighborhood or a substantial detriment to the adjoining properties. The subject property is located in a new subdivision that remains mostly undeveloped. Also, the subject property backs up to common area and floodplain, with the nearest homesite in the direction of the encroachment being approximately 470' away. The proposed covered patio complies with the side yard setbacks.

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 constructing an uncovered patio of the same dimensions as the proposed covered patio or by constructing a partially covered patio whose roof is set back a minimum 30' from the rear property line.

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 a variance does not stem from any unique or irregular condition of the subject property. The variance request stems from the future homeowner's desire for a covered patio of certain dimensions that results in an encroachment into the rear yard setback. The proposed covered patio is not unusual in its dimensions. The covered patio runs the width of the back of the home (48.5') and is 14' deep at its deepest point. Compliance with the setback requirements would require the depth of the covered patio to be cut by half, or to keep the patio depth and cut the roof back by half (i.e. 7').

However, any impacts resulting from the requested encroachment into the rear yard setback are mitigated by the fact that the subject property backs up to 67 acres of common area and floodplain, whose presence ensures that the UDO's intent and purpose for setbacks to provide separation and privacy between properties is maintained.

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 backs up to 67 acres of common area and floodplain. These conditions provide a buffer between the subject property and area properties in the direction of the encroachment to the northeast to ensure that both separation and privacy are maintained.

Attachments:

1. Variance Application, uploaded July 23, 2024 – 6 pages

2. Plot Plan showing proposed covered patio, dated July 10, 2024
3. Photos of subject property, uploaded July 23, 2024 – 4 pages
4. Location Map