



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS

PLANNING COMMISSION/BOARD OF ZONING APPEALS

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STAFF REPORT

July 24, 2018

TO: Marion County Planning Commission/Board of Zoning Appeals

FROM: Emma Tajchman, Director of Planning and Zoning

SUBJECT: Case No. BZA-18-01- Wiebe Siding and Construction, Inc., on behalf of Mitchell and Janet Garner, requesting a Variance for a side yard setback requirement in the "LL" Marion County Lake Lot Residential District at 53 Lakeshore, Marion, Kansas.

Background: This is the application of Wiebe Siding and Construction, Inc., on behalf of Mitchell and Janet Garner, requesting a variance for a side yard setback requirement at 53 Lakeshore, Marion, Kansas. The applicant owns the property, further described as part of Lot 7 and part of Lot 8 and all of Lot 9, John L. Scott Subdivision, adjacent to Marion County Park and Lake. For the full legal description, please reference the Warranty Deed.

This application was submitted post construction for an addition onto the front porch of the existing structure. The residence at 53 Lakeshore was constructed prior to the implementation of zoning in Marion County, and considered "grandfathered" from the height, area, and bulk regulations detailed in Article 7 Marion County Lake Lot Residential District of the Marion County Zoning Regulations. The structure did not comply with the side yard setback requirements set forth in Article 7 prior to the addition addressed in this application. Furthermore the house is not constructed square with the property lines. When the addition was built onto the front of the home, lot lines were not verified and a building permit was not obtained. It was assumed by the applicant that the existing structure was square with the property lines. The property was surveyed in 1994 and these pins were located onsite. Upon post construction verification of the addition in relationship to the property lines, it was determined that the newly constructed porch extended onto the property south of the residence. The applicant removed the encroachment; however, the side yard setback requirement of 8 feet remains to be met. An application for a post construction building permit is on file with the Marion County Planning and Zoning department, but cannot be approved as constructed. This application is requesting a variance for a zero foot side yard setback from the south property line.

Article 21-103 of the Marion County Zoning Regulations authorizes the Board of Zoning Appeals to approve Variances from the bulk regulations of any district, which includes property line setback requirements. The regulations also provide conditions that must be met in order for a variance to be approved. These are listed below.

A request for a variance may be granted in such case, upon a finding by the board that ALL of the following conditions have been met:

- A. *The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner(s) or of the applicant;*
Staff believes that there are conditions unique to the lot including the general shape of the parcel and the orientation of the structure thereon; however, the situation in question may have been prevented had a building permit application been filed and property lines verified prior to construction. Staff believes that this variance request is considered a self-imposed hardship, and this condition is not met.
- B. *The granting of the variance will not adversely affect the rights of adjacent property owners or residents;*
Staff believes that without imposing specific conditions to address drainage concerns, this variance may negatively impact properties downslope from the structure. With conditions requiring proper drainage, this condition may be met.
- C. *The strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;*
Strict enforcement of the regulations would require a large portion of the addition be removed, which may be considered a hardship to the property owner. Landscaping and a sprinkler system have also been installed, which would be impacted by removal of the addition as well.
- D. *The variance desired will not adversely affect the public health, safety, order, convenience, prosperity, or general welfare, and;*
Staff believes this condition may be met by addressing potential drainage issues.
- E. *That granting the variance desired will not be opposed to the general spirit and intent of these Regulations.*
Staff believes this application is not consistent with the spirit and intent of the regulations and does not consider this condition to be met.

The Marion County Zoning Regulations further provide in Article 21-106, in approving any action including a Variance, the Board of Zoning Appeals has certain guidelines for consideration of any conditions deemed appropriate for the specific case. Those guidelines are as follows.

Guidelines for Conditions: *Where, in these Regulations, special exceptions are permitted, provided they are approved by the Board of Zoning Appeals where the Board is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances; such approval, decision, or authorization shall be limited by such conditions as the case may require, including, if necessary, any of the following specifications:*

1. *No outside signs or advertising structures except professional or directional signs.*
2. *Limitations of signs as to size, type, color, location or illumination.*
3. *Amount, direction, and location of outdoor lighting.*
4. *Amount and location of off-street parking and loading space.*
5. *Maintenance requirements including cleaning and painting of buildings, structures or facilities.*
6. *Type of roof (i.e., gable, flat, etc.).*
7. *Construction design and type of construction materials to be used.*
8. *Whether the buildings, if multiple buildings are proposed, can be connected or not.*
9. *Exit, entrance, door and window locations.*
10. *The type and amount of paving, landscaping, fencing, screening and other such features.*
11. *Hours of operation, including limitations on nighttime hours.*
12. *Limitations on structural alterations to existing buildings.*
13. *Plans for the control or elimination of smoke, dust, gas, noise or vibration caused by the proposed use.*
14. *Such other conditions and/or limitations that are deemed necessary.*

Given all of the above, staff does not believe that the application meets all of the requirements for approval of a variance, specifically the requirement that the variance not be caused by a self-imposed hardship. If the board does approve the variance, staff recommends that concerns of neighboring property owners be addressed. The adjacent property owner to the south has contacted staff regarding drainage onto their lot. Proper guttering directing drainage away from the neighboring structure may be considered as a condition.

Staff Recommendation: It is staff's opinion, based on the facts in this case outlined above, the requested Variance be denied by the Board of Zoning Appeals for the reasons stated above.

Suggested Motion:

I move that Case No. BZA-18-01, a variance application by Wiebe Siding and Construction, Inc., on behalf of Mitchell and Janet Garner, requesting a variance for a zero foot south side yard setback requirement in the "LL" Marion County Lake Lot Residential District at 53 Lakeshore, Marion, Kansas, be denied.

