

## Board of Zoning Appeals Staff Report

### Applicant

Jeffrey & Renessa Saxton  
21 Jerome  
Marion, KS 66861  
Marion County Lake

BZ 11-21

Set  
50X100

### Application

Applicant is requesting a side yard variance in the "LL" Lake Lot District to allow for a 2 foot setback on primary residence because of an eave projection ( see photo ).

### Project Description

The applicant is constructing of a new single family residence. This residence will sit atop the lower level, which is a two-car garage. The applicant has changed the original plans, which did not show the deck extension beyond the wall, and has now constructed a full deck that encroaches into the side yard setback and is only two feet from the neighboring property line. This situation was simply built by the applicant with no contact to this office regarding whether it was permitted or not.

### Planning Issues

The Public Hearing Notice and adjacent property owner notification was completed in accordance with the Marion County Zoning Regulations. No comments have been received as of March 8, 2011. The surrounding properties are all zoned "LL".

Yard variances are allowed by the Board of Zoning Appeals to relieve hardships caused by exceptional narrowness, shallowness, shape or topographic conditions of a specific piece of property. The changes made in the Zoning Regulations to create the Lake Lot zoning district was designed to allow the greatest buildable area possible without having properties right on top of one another.

The Zoning Regulations provide that the Board of Zoning Appeals must find that all the following conditions are present in order to grant a variance:

1. 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.
2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. The strict application of the provisions of the zoning regulations of which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
5. That granting the variance will not be opposed to the general spirit and intent of these Regulations. The purpose of the variance is to provide relief where normal adherence to the Regulations is not possible.

**Staff Recommendation**

The situation was created exclusively by an action of the property owner, which means the first standard listed above can not be met. As such, by law this request should be denied. Therefore, staff's recommendation is to deny request for the variance in the side yard setback at 21 Jermoe.