

Board of Zoning Appeals Staff Report

Applicant

Larry D. and Marilyn Hamler
1608 Suncrest
McPherson, KS 67460

Variance requested for Lot 25 of Lakeside Subdivision, also known as 57 Lakeshore Drive at the Marion County Lake.

Application

Applicant is requesting a rear yard variance in the "V-1" Village Zoning District to construct a deck on the north side of his residence

Project Description

The proposed project would utilize the existing door on the north side of the home. It would extend even with the west wall of the home from the north wall approximately 12 feet and south approximately 17.5 feet. This will make the final separation distances from adjacent properties to be 7 feet from the rear property line and 6 feet from the side property line

Planning Issues

The Public Hearing Notice and adjacent property owner notification was completed in accordance with the Marion County Zoning Regulations. No written comments have been received as of November 1, 2007. Verbal comments have been received from Jerry Richardson, landowner at 2 Prairie Lane. Mr. Richardson states the retaining wall and garage on the property in question have been constructed within the right-of-way easement between his and the applicants' property. He would like to see the full 20' for the access easement to be utilized for access and not encroached upon by the applicant. He states he has a survey depicting the location of the easement, but has not presented it to this office as of this date.

Yard variances are provided for in the Zoning Regulations to relieve hardships caused by exceptional narrowness, shallowness or shape of a specific piece of property. Typically lots are large enough to provide ample building space. Because the existing lots were platted prior to subdivision and zoning regulations being adopted in Marion County, some lots in the Village District are unique and thus do not provide adequate space with respect to setback requirements.

The Zoning Regulations provide that the following conditions must be met 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.** There was no zoning in the county at the time this parcel was created. When zoning was created and districts assigned, it was assumed there would inherently be conditions that would be unique to certain properties. This is one such property.
2. **The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.** There is some discrepancy as to whether the property rights of adjacent owners will be adversely affected. The BZA should be aware that there is a closed case on this property stemming from violations committed in prior years by the current owners. The case was settled by Diversion Agreement in District Court in March, 2005 (see attached).
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.** Creating a hardship on the property owner is a determination that should be taken literally. There is not adequate room on the property to strictly adhere to the minimum setback requirements, due, in part, to the shape of the lot and the total square footage.
4. **The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.** Whether or not approval of this variance will affect the public health, safety, morals, order, convenience, prosperity or general welfare is an issue that should be determined after presentation of the facts from surrounding landowners at the public hearing. Questions have been raised about the specific location of the lot lines and whether there are already existing encroachments into the easement. No survey of either property has been presented to verify either side of this issue. Easements have been granted and are necessary in this case to prevent land-lock issues for several parcels in this area.
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. Normal adherence to the regulations would be possible if the landowner chose to just erect a porch for the existing door, rather than a 12' x 17.5' deck. However, for a lakeside home, a deck is not an unreasonable or uncommon request and one of this size is certainly not considered extravagant by any means.

Staff Recommendation

Appraiser's maps with parcel lines are undergoing an update and the parcel lines have not been accurately placed on the aerial photography. In order to address concerns broached by an adjacent landowner, right-of-way encroachment must be determined to be a valid or non-valid issue. I have inspected the property and was unable to locate any identifying markers by which property lines could be determined. Without the location of corner pins on the property and being able to run a line from one pin to the next, it is unlikely that any property line dispute or easement encroachment will be settled. In order for the BZA to make findings of fact as a quasi-judicial board, there should not be any issues unsettled with regards to the distance from the property line. Due to the inability to acquire a parcel map from the appraiser's office and the lack of a metes and bounds description on the deed to this property, the BZA is well within their right to table discussion of this application until such time as a survey with a metes and bounds description has been submitted. In prior cases, BZA findings have been issued with specific distances of both the amount of the variance and the distance from the property lines allowed under an application. Until there is some clear indication of the location of the property lines, and the fact that this board's ruling is final, staff recommends the BZA table the request, pending submittal of a survey with permanent corner pins located on the property. The next scheduled meeting is January 24, 2008. This should allow ample time for a survey to be completed and submitted to the board.

