

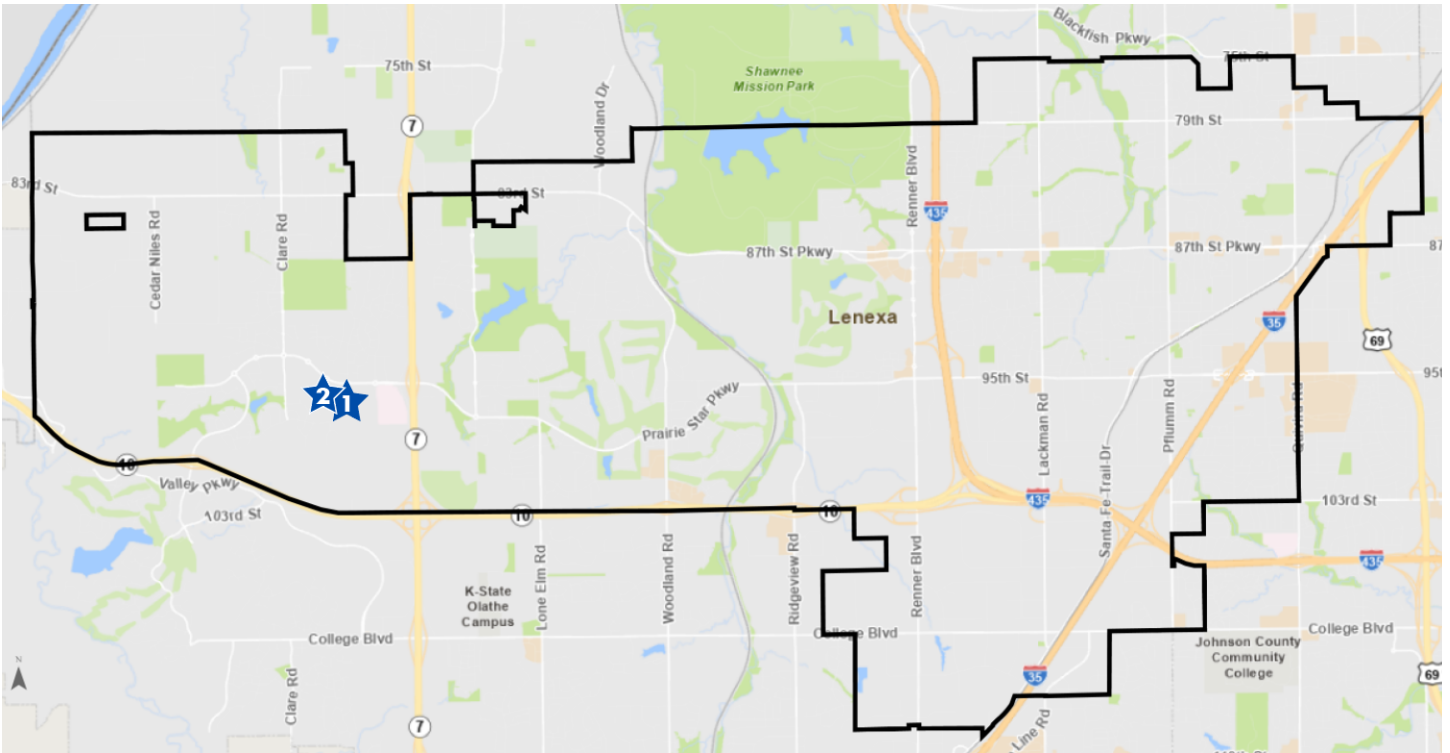
BOARD OF ZONING APPEALS AGENDA

JANUARY 8, 2024 at 7:00 PM

Community Forum at City Hall
17101 W. 87th Street Parkway
Lenexa, KS 66219



AGENDA MAP



CALL TO ORDER

ROLL CALL

APPROVE MINUTES

REGULAR AGENDA

1. **Wheatley Point Lot 8 - Consideration of a variance from the rear yard setback requirement on property located at 24109 West 95th Street within the RP-2, Planned Residential (Intermediate Density) District. BZ24-01**
2. **Wheatley Point Lot 9 - Consideration of two variances from the rear yard setback requirement on property located at 24110 & 24112 West 95th Street within the RP-2, Planned Residential (Intermediate Density) District. BZ24-02**

ADJOURN

APPENDIX

3. Draft Minutes - November 6, 2023

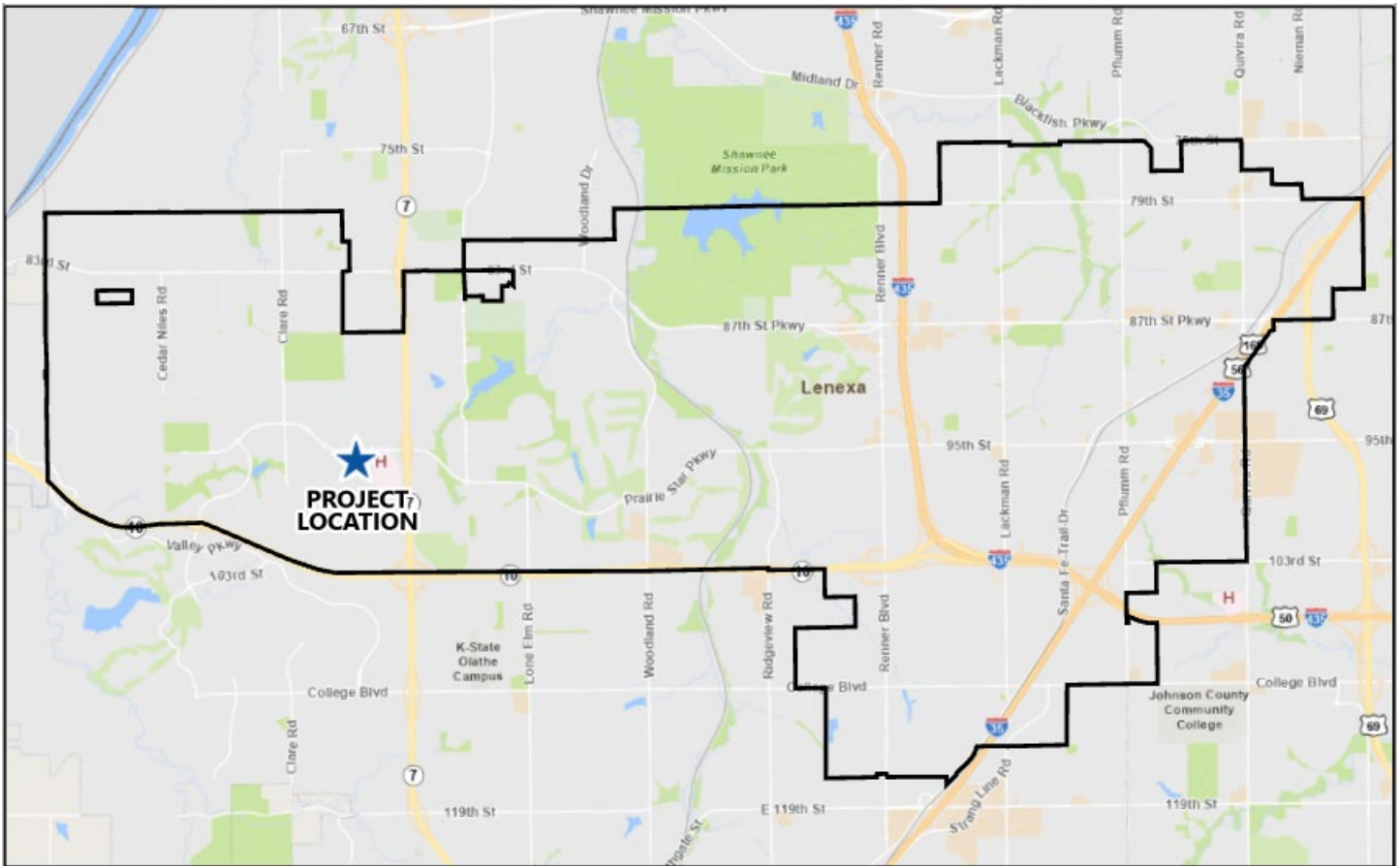
If you have any questions about this agenda, please contact Stephanie Kisler, Planning Manager, at skisler@lenexa.com.

*If you need any accommodations for the meeting, please contact the City ADA Coordinator at 913-477-7550 at least 48 hours prior to the meeting.
Kansas Relay Service: 800-766-3777*

Assistive Listening Devices are available for use in the Community Forum by request.

WHEATLEY POINT LOT 8 REAR YARD SETBACK VARIANCE

Project #:	BZ24-01	Location:	24109 W. 95 th Street
Applicant:	Dan Foster, Schlagel & Associates	Project Type:	Variance
Staff Planner:	Logan Strasburger	Proposed Use:	Duplex



PROJECT SUMMARY

The applicant requests one variance for Lot 8 of Wheatley Point First Plat located at 24109 W. 95th Street. The variance request relates to encroachment of the rear yard setback requirement in the RP-2, Planned Residential (Intermediate Density) District. The proposed building footprint does not meet the rear yard setback requirement of 20-feet. The applicant seeks approval of a 1.29-foot variance to construct a duplex at an 18.71-foot rear yard setback. **A public hearing is required.**

STAFF RECOMMENDATION: APPROVAL

SITE INFORMATION

The site is located at the southeast corner of Prairie Star Parkway and McCormack Drive. The two future dwelling units within Lot 8 of Wheatley Point are addressed as 24109 and 24111 W. 95th Street. The Wheatley Point subdivision was approved and rezoned from NP-O to RP-2 on December 15, 2020. Following the rezoning, Wheatley Point First Plat was approved by the Governing Body March 16, 2021. The plat was recorded August 10, 2023.

LAND AREA (AC)	BUILDING AREA (SF)	CURRENT ZONING	COMP. PLAN
0.30	24109: 1,846 24111: 1,846	RP-2	Office/Employment Center



Exhibit 1: Aerial Image of Subject Site



Exhibit 2: Street view from Prairie Star Parkway looking South towards Lot 8.

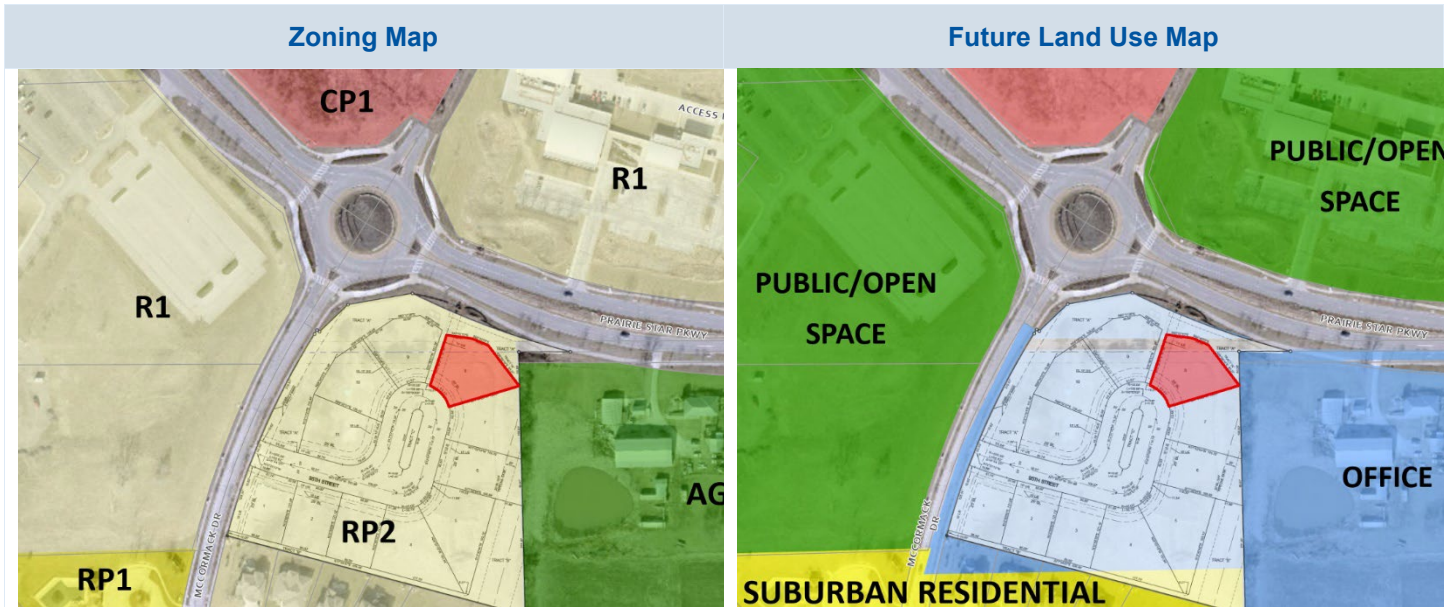


TABLE 1: COMPARISON OF SURROUNDING PROPERTIES

Vicinity	Land Use Designation	Zoning	Current Use
Subject Property	Office/Employment Center	RP-2, Planned Residential (Intermediate Density) District	Undeveloped
North	Pubic/Open Space; Neighborhood Retail	CP-1, Planned Neighborhood Commercial District; R-1, Single-Family Residential District	Public safety services; Single-family
South	Suburban Residential	RP-2, Planned Residential (Intermediate Density) District; R-1, Single-Family Residential District	Single-family; School, elementary
East	Office; Suburban Residential	AG, Agricultural District; CP-O, Planned General Office District	Single-family; Hospital
West	Open Space; Mixed Use	R-1, Single-Family Residential District	School, elementary and secondary; Single-family

VARIANCE REVIEW

The applicant is requesting one variance from [Section 4-1-B-7-F](#) of the UDC to allow the proposed footprint of the structure on Lot 8, specifically the area of the west covered deck, to encroach into the minimum required rear yard setback of 20-feet. The applicant proposes to encroach a maximum of approximately 2-feet into the required 20-foot rear yard setback.

The conflict with the rear yard setback requirement was not identified at the time of the plat approval; likely due to the deck being identified in the corner of the building footprint and Staff not realizing that it would be covered by the main roofline. The UDC considers the covered deck as part of the primary footprint of the home since it is enclosed within the same roofline, thus it must meet the same setback requirements as the main building footprint.

TABLE 2: REQUESTED VARIANCE

Lot/Area		Required Minimum Rear Yard Setback	Proposed Rear Yard Setback	Difference
8	West Deck (24109)	20'	18.71'	-1.29'

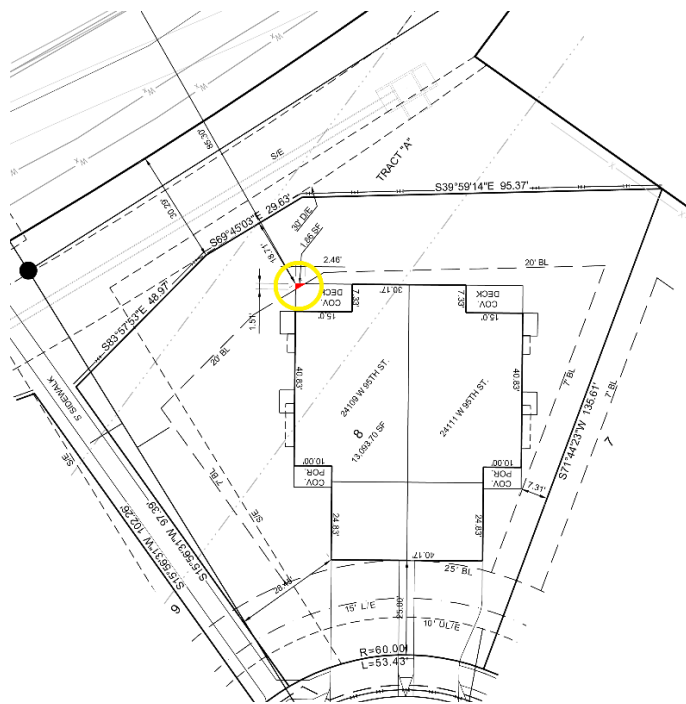


Exhibit 3: Lot 8 Variance Request.

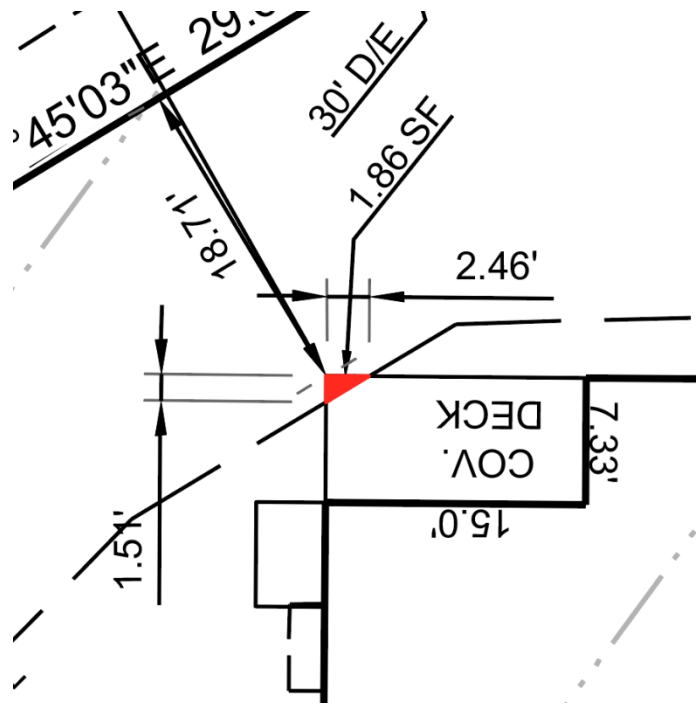


Exhibit 4: Closer view of Lot 8 Variance Request.

The Wheatley Point subdivision was approved with a tract of land (Tract A) separating the lots from the adjacent public rights-of-way. Tract A provides a buffer between the residential lots and the right-of-way and is at least 30' wide as it runs adjacent to Lot 8 and Lot 9.

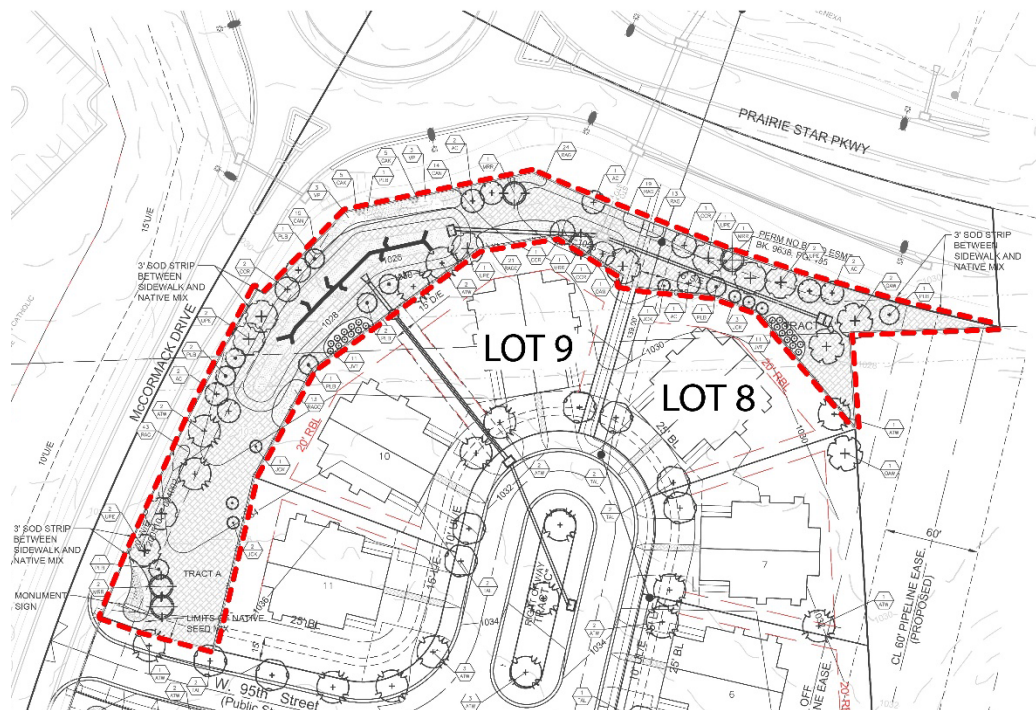


Exhibit 5: Section of the Wheatley Point First Plat approved landscape plan. Tract A is outlined in the dashed red line.

VARIANCE CRITERIA

The Board of Zoning Appeals may approve a variance from any zoning requirements of the UDC, provided the variance is not contrary to the public interest and special conditions exist that cause enforcement of the code to result in an unnecessary hardship. Section 4-1-K-4 of the UDC lists six criteria that a variance application must meet. Criteria are provided as follows with a summary of staff's analysis of each. The applicant's responses to the criteria are attached in a separate document.

1. ***That the variance requested arises from 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 of the property owner or the applicant;***

Lot 8 features unique lot line orientations from other lots in Wheatley Point First Plat and are subject to Section 4-1-B-26-C, which requires a minimum setback of 50-feet from parkways (Prairie Star Parkway in this instance) and therefore creates additional space between the structure and the public right-of-way. Most other lots in Wheatley Point First Plat are not subject to this additional setback requirement as they are not oriented along a parkway. The lots are unique because they include additional open space between the structure and the public right-of-way.

The request is created by the applicant in proposing to construct duplexes consistent with their other duplex structures in the subdivision.

- 2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;***

The purpose of the minimum rear yard setback is to protect the privacy of property owners and to provide adequate open space in the rear yard. Given that the deck will be facing Tract A, a 30-foot landscape buffer located between Prairie Star Parkway and the subject lots, Staff does not believe granting the variance will negatively affect rights of adjacent property owners or residents.

- 3. That the strict application of the provisions of this Chapter from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;***

Denial of the variance request will require the property owner to alter the planned building footprint. Adjusting the building design would result in a customized build that differs from other duplexes within the Wheatley Point development and could cause a lack of uniformity in building footprints within the subdivision. In this specific context, the strict application of the rear yard setback regulations could cause unnecessary hardship to the applicant because additional open space exists between the lot and the adjacent public right-of-way and the proposed variances will cause negligible visual impact. The main reasons for rear yard setback regulations include, but are not limited to, creating appropriate spacing between structures, and creating appropriate spacing between structures and the public right-of-way. In this case, there are no adjacent structures that will be impacted by the variance request and there is already additional space within Tract A to buffer between the structure and the nearest public right-of-way.

- 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City;***

Granting the variance as requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare of the harmonious development of the City. The purpose and intent of the minimum rear yard setback requirement is to provide privacy for both the subject site occupants and neighboring properties and adequate open space for the rear yard. The deck will be facing Tract A, a 30-foot vegetative buffer located between the lot and Prairie Star Parkway, which reduces privacy concerns for future residents and neighboring lots.

- 5. That granting the variance desired will not be opposed to the general spirit and intent of this Chapter; and***

The granting of this variance is consistent with the spirit and intent of the RP-2 Zoning District. The reduction in the minimum rear yard setback at such a minimum degree will not alter the character of the community. Staff believes that if the variances were granted, it would not be in opposition to the spirit and intent of the code.

- 6. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.***

If the variance were granted it would be the minimum amount of variance that would afford relief and would be the least amount of modification possible of the provisions of this Chapter in question.

The impact of the proposed variance will be limited because only a small corner section of the proposed duplex deck will encroach into the rear yard setback, not the entire structure.

RECOMMENDATION FROM PROFESSIONAL STAFF

- ★ Conduct a Public Hearing.
- ★ Staff recommends approval of the proposed Wheatley Point Lot 8 Rear Yard Setback Variance.

VARIANCE

Staff recommends **APPROVAL** of **BZ24-01, Wheatley Point Lot 8 Rear Yard Setback Variance**, for a 1.29-foot variance from the 20-foot rear yard setback requirement to allow an enclosed deck associated with a duplex to be constructed at a 18.7-foot setback from the north property line located at 24109 W. 95th Street in the RP-2, Planned Residential (Intermediate Density) District.



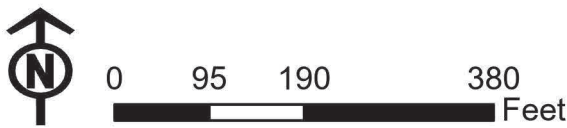
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Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

Wheatley Point, Lot 8

Rear Yard Setback Variance

BZ24-01



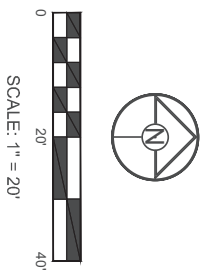
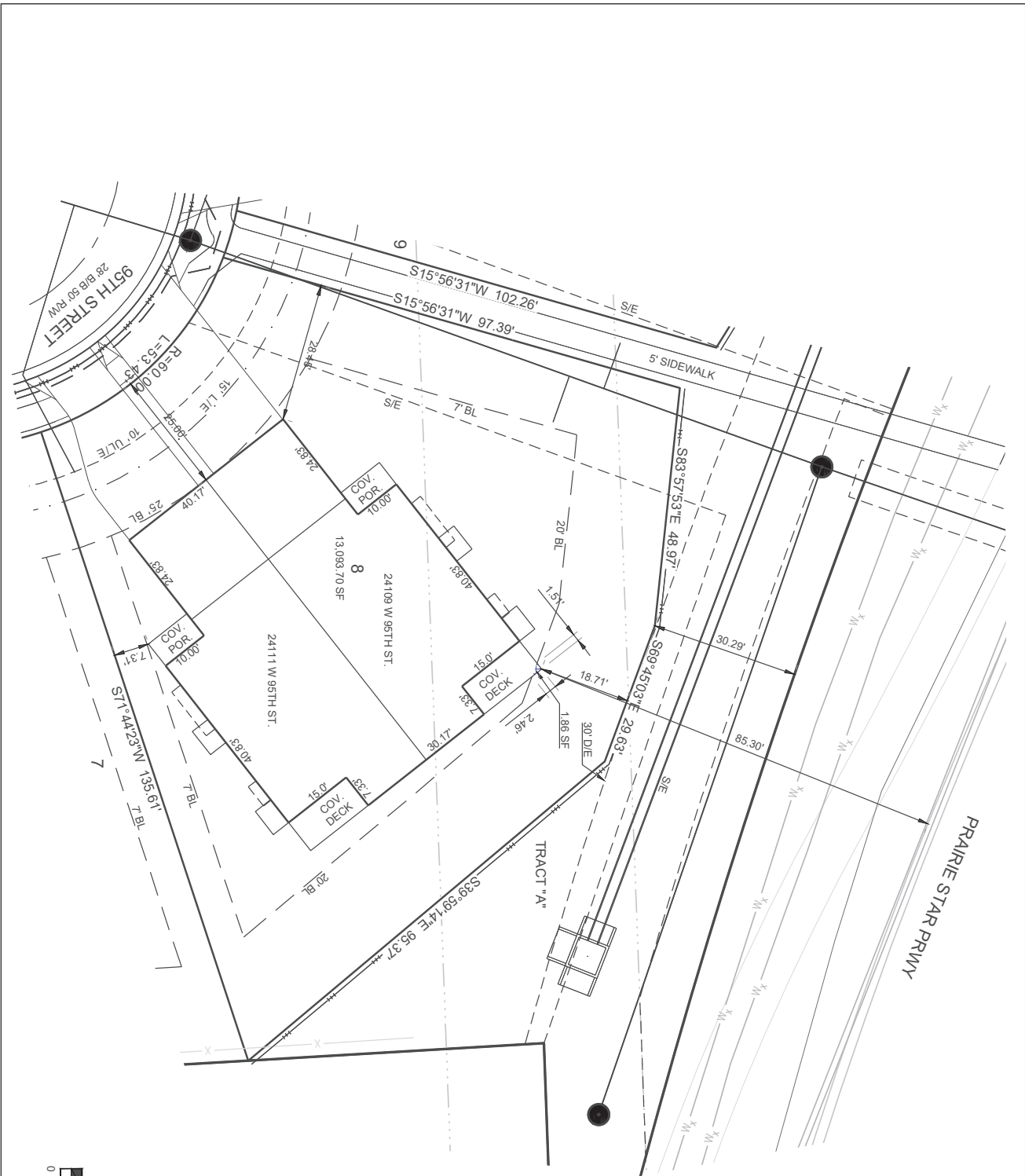


EXHIBIT	DRAWN BY:	AC
	DATE PREPARED:	12.01.23
	PROJ. NUMBER:	23-219
	SHEET	
	1	

LOT 8
 WHEATLEY POINT
 FIRST PLAT
 24109 / 24111 W 95TH ST
 LENEXA, KS

SCHLAGEL

ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS
 14920 West 107th Street Lenexa, Kansas 66215
 (913) 492-5158 Fax: (913) 492-8400
 WWW.SCHLAGELASSOCIATES.COM
 Kansas State Certificates of Authority
 #E-296 #LA-29 #LS-54

Wheatley Point Lot 8 Variance Request Narrative

Requested Variance:

The owner of the property is requesting a variance to the 20' rear yard setback to allow an 18' rear yard setback. The encroachment is a very small triangular area with an area of 1.86 square feet. The proposed building includes a deck with a roof attached to the main structure. Per UDO Article 4-1-B-26-B-7-a "Decks, Porches and Patios (no more than 18 inches above the natural grade along the perimeter may encroach a maximum of 3 feet into a required yard setback but no closer than 2 feet to any property line." However, according to City staff because the proposed deck has a roof attached to house it is considered part of the structure and must obtain a deviation or variance to allow an encroachment or setback reduction. As discussed with staff, the roof is not the reason for the variance since roof overhangs are allowed encroachment in the setback per this same section. The variance is needed for the footing and post at the corner of the covered deck since per UDO Article 4-1-B-26-B-7 "Setbacks shall be measured as the minimum horizontal distance between a property line and the foundation of the structure". UDO Article 4-1-B-26-B-7-a allows porches to encroach into the required setback which would have a footing, post and roof attached to the house which similar to the proposed covered deck. The position of the house on the lot allows for a greater rear yard setback for the remainder of the building rear wall resulting in more open space in the rear yard. Wheatley Point Lot 8 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 30' wide adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and separate row of ornamental and shade trees so the deck will be well screened from Prairie Star Parkway.

Variance Analysis:

1. That the variance requested arises from 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 of the property owner or the applicant;

The property has a unique irregular shape which creates an angled rear property line. The property was platted prior to determining that the proposed covered deck would not be allowed to encroach into the rear setback in the same manner as a porch, uncovered deck or patio. Reduced rear setbacks have been allowed on other projects in the City. There are other attached villa projects within the City that have buildings with a smaller rear setback (Fairway Villas Lot 24 is approximately 12'). The variance is needed in order to allow the house approved with the final plans to be constructed on the unique irregular shaped lot.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

There are no adjacent property owners or residents. Wheatley Point Lot 8 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 30' wide adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and separate row of ornamental and shade trees so the deck will be well

screened from Prairie Star Parkway. The granting of the variance will not adversely affect the rights of adjacent property owners or residents

3. That the strict application of the provisions of this Chapter from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Decks, Porches(which would also have a footing, post and roof attached to the main house) and Patios (no more than 18 inches above the natural grade along the perimeter are allowed to encroach a maximum of 3 feet into a required yard setback but no closer than 2 feet to any property line. Not allowing a covered deck (which is similar to a porch) to encroach the same amount creates hardship to the owner. In addition, there are other attached villa projects within the City that have buildings with a smaller setback (Fairway Villas Lot 24 is approximately 12')

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City;

Wheatley Point Lot 8 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 30' wide adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and separate row of ornamental and shade trees so the deck will be well screened from Prairie Star Parkway. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City

5. That granting the variance desired will not be opposed to the general spirit and intent of this Chapter; and

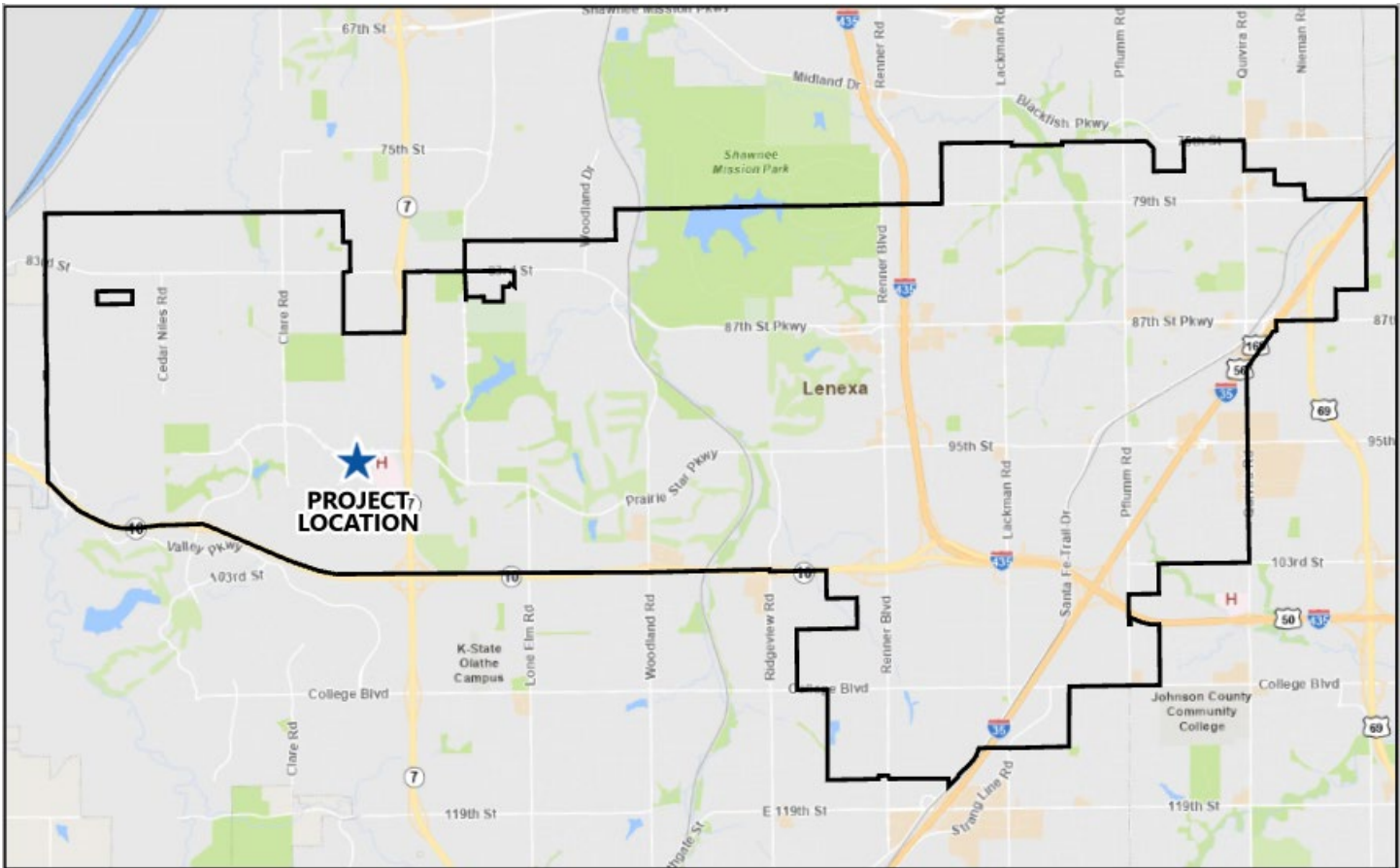
The intent of the setback is to create open space in the rear of the lot. The requested variance is a very small triangular shaped parcel with an area of 1.86 square feet. The position of the house on the lot allows for a greater rear yard setback for the remainder of the building rear wall resulting in more open space in other areas of the rear yard. The open space on this lot far exceeds the typical open space for the code required setback so the request will allow the lot to meet the spirit and intent of the code.

6. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.

The requested variance is a very small triangular shaped parcel with an area of 1.86 square feet. This is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.

WHEATLEY POINT LOT 9 REAR YARD SETBACK VARIANCES

Project #:	BZ24-02	Location:	24110 & 24112 W. 95 th Street
Applicant:	Dan Foster, Schlagel & Associates	Project Type:	Variance
Staff Planner:	Logan Strasburger	Proposed Use:	Duplex



PROJECT SUMMARY

The applicant requests two variances for Lot 9 of Wheatley Point First Plat located at 24110 & 24112 W. 95th Street. The variance requests relate to encroachment within the rear yard setback requirement in the RP-2, Planned Residential (Intermediate Density) District. The proposed building footprint does not meet the rear yard setback requirement of 20-feet. The applicant seeks approval of 3.80-4.05-foot variances to construct a duplex at a minimum setback of 15.95-feet from the rear property line. **A public hearing is required.**

STAFF RECOMMENDATION: APPROVAL

SITE INFORMATION

The site is located at the southeast corner of Prairie Star Parkway and McCormack Drive. The two future dwelling units within Lot 9 of Wheatley Point are addressed as 24110 and 24112 W. 95th Street. The Wheatley Point subdivision was approved and rezoned from NP-O to RP-2 on December 15, 2020. Following the rezoning, Wheatley Point First Plat was approved by the Governing Body March 16, 2021. The plat was recorded August 10, 2023.

LAND AREA (AC)	BUILDING AREA (SF)	CURRENT ZONING	COMP. PLAN
0.28	12110: 1,846 12112: 1,846	RP-2	Office/Employment Center

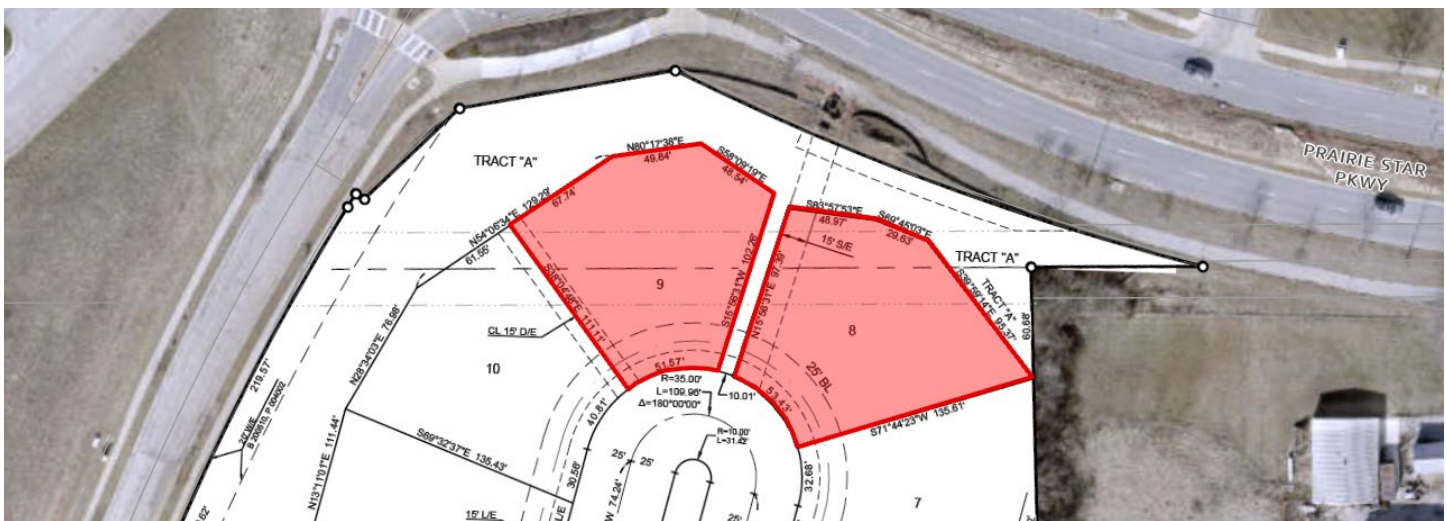


Exhibit 1: Aerial Image of Subject Site



Exhibit 2: Street view from Prairie Star Parkway looking south towards Lot 9

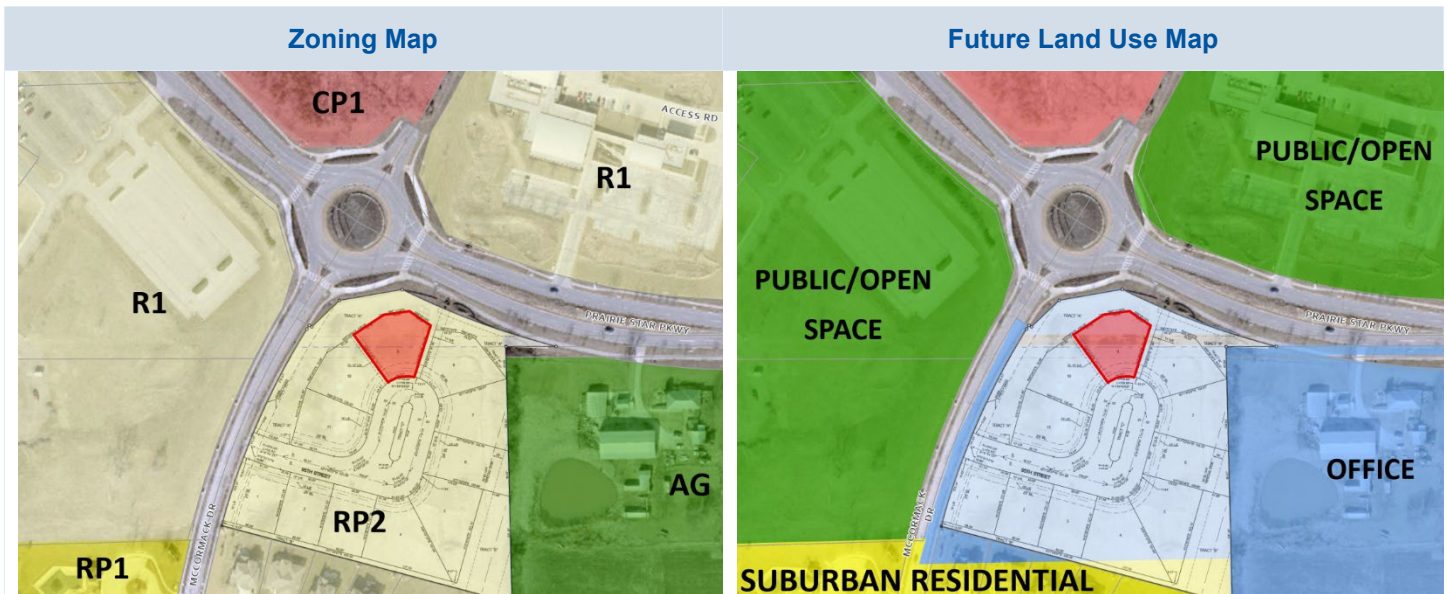


TABLE 1: COMPARISON OF SURROUNDING PROPERTIES

Vicinity	Land Use Designation	Zoning	Current Use
Subject Property	Office/Employment Center	RP-2, Planned Residential (Intermediate Density) District	Undeveloped
North	Pubic/Open Space; Neighborhood Retail	CP-1, Planned Neighborhood Commercial District; R-1, Single-Family Residential District	Public safety services; Single-family
South	Suburban Residential	RP-2, Planned Residential (Intermediate Density) District; R-1, Single-Family Residential District	Single-family; School, elementary
East	Office; Suburban Residential	AG, Agricultural District; CP-O, Planned General Office District	Single-family; Hospital
West	Open Space; Mixed Use	R-1, Single-Family Residential District	School, elementary and secondary; Single-family

VARIANCE REVIEW

The applicant is requesting two variances from [Section 4-1-B-7-F](#) of the UDC to allow the proposed footprint of the structure on Lot 9, specifically the area of the covered decks, to encroach into the minimum required rear yard setback of 20-feet. The applicant proposes to encroach a maximum of approximately 4-feet into the required 20-foot rear yard setback.

The conflict with the rear yard setback requirement was not identified at the time of the plat approval; likely due to the deck being identified in the corner of the building footprint and Staff not realizing that it would be covered by the main roofline. The UDC considers the covered deck as part of the primary footprint of the home since it is enclosed within the same roofline, thus it must meet the same setback requirements as the main building footprint.

TABLE 2: REQUESTED VARIANCES

Lot/Area		Required Minimum Rear Yard Setback	Proposed Rear Yard Setback	Difference
9	West Deck (24112)	20'	15.95'	-4.05'
	East Deck (24110)		16.20'	-3.80'

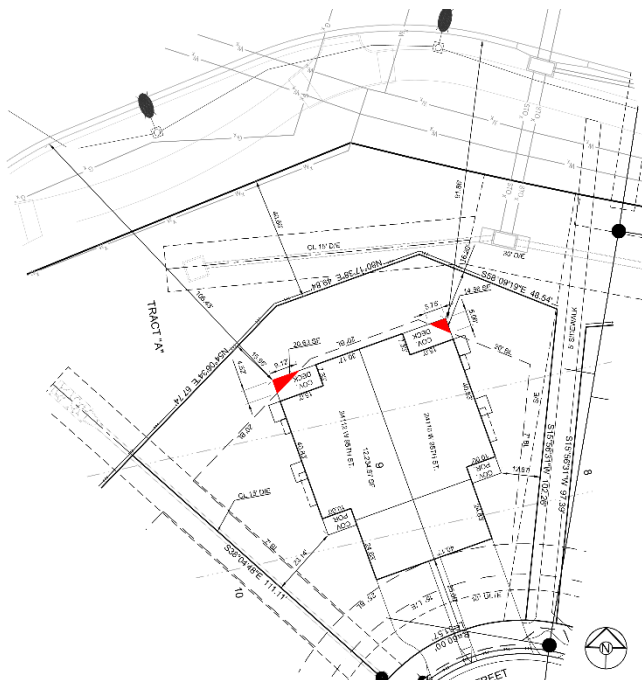


Exhibit 3: Lot 9 Variance Request.



Exhibit 4: Closer view of Lot 9 Variance Request.

The Wheatley Point subdivision was approved with a tract of land (Tract A) separating the lots from the adjacent public rights-of-way. Tract A provides a buffer between the residential lots and the right-of-way and is at least 30' wide as it runs adjacent to Lot 8 and Lot 9.

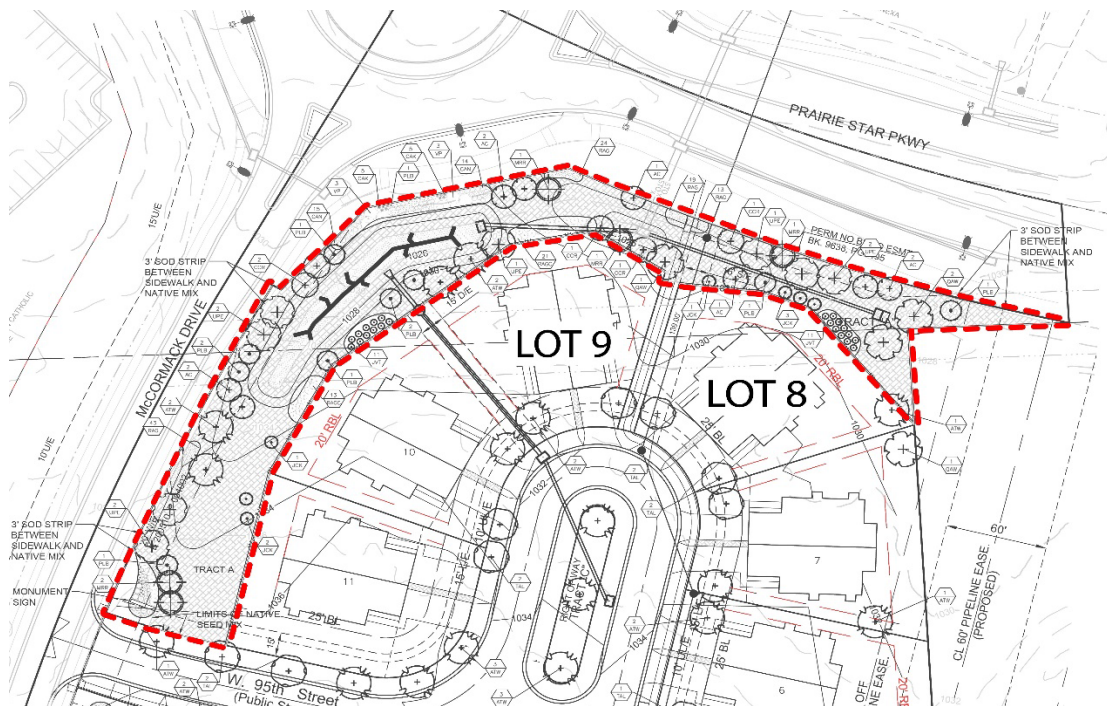


Exhibit 5: Section of the Wheatley Point First Plat approved landscape plan. Tract A is outlined in the dashed red line.

VARIANCE CRITERIA

The Board of Zoning Appeals may approve a variance from any zoning requirements of the UDC, provided the variance is not contrary to the public interest and special conditions exist that cause enforcement of the code to result in an unnecessary hardship. Section 4-1-K-4 of the UDC lists six criteria that a variance application must meet. Criteria are provided as follows with a summary of Staff’s analysis of each. The applicant’s responses to the criteria are attached in a separate document.

1. ***That the variance requested arises from 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 of the property owner or the applicant;***

Lot 9 features unique lot line orientations from other lots in Wheatley Point First Plat and is subject to Section 4-1-B-26-C, which requires a minimum setback of 50-feet from parkways (Prairie Star Parkway in this instance) and therefore creates additional space between the structure and the public right-of-way. Most other lots in Wheatley Point First Plat are not subject to this additional setback requirement as they are not oriented along a parkway. The lot is unique because it includes additional open space between the structure and the public right-of-way.

The applicant requests the variance in order to be able to utilize the same building plans that will be used on other lots within the subdivision. The applicant is not asking for approval ex-post facto.

- 2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;***

The purpose of the minimum rear yard setback is to protect the privacy of property owners and to provide adequate open space in the rear yard. Given that the decks will be facing Tract A, a 30-foot landscape buffer located between Prairie Star Parkway and the subject lots, Staff does not believe granting the variance will negatively affect rights of adjacent property owners or residents.

- 3. That the strict application of the provisions of this Chapter from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;***

Denial of the variance requests will require the property owner to alter the planned building footprint. Adjusting the building design would result in a customized build that differs from other duplexes within the Wheatley Point development and could cause a lack of uniformity in building footprints within the subdivision. In this specific context, the strict application of the rear yard setback regulations could cause unnecessary hardship to the applicant because additional open space exists between the lot and the adjacent public right-of-way and the proposed variances will cause negligible visual impact. The main reasons for rear yard setback regulations include, but are not limited to, creating appropriate spacing between structures, and creating appropriate spacing between structures and the public right-of-way. In this case, there are no adjacent structures that will be impacted by the variance requests and there is already additional space within Tract A to buffer between the structure and the nearest public right-of-way.

- 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City;***

Granting the variances as requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare of the harmonious development of the City. The purpose and intent of the minimum rear yard setback requirement is to provide privacy for both the subject site occupants and neighboring properties and adequate open space for the rear yard. The decks will be facing Tract A, a 30-foot vegetative buffer located between the lot and Prairie Star Parkway, which reduces privacy concerns for future residents and neighboring lots.

- 5. That granting the variance desired will not be opposed to the general spirit and intent of this Chapter; and***

The granting of this variance is consistent with the spirit and intent of the RP-2 Zoning District. The reduction in the minimum rear yard setback at such a minimum degree will not alter the character of the community. Staff believes that if the variances were granted, it would not be in opposition to the spirit and intent of the code.

- 6. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.***

If the variance were granted it would be the minimum amount of variance that would afford relief and would be the least amount of modification possible of the provisions of this Chapter in question.

The impact of the proposed variances will be limited because only small corner sections of the proposed duplex decks will encroach into the rear yard setback, not the entire structure.

RECOMMENDATION FROM PROFESSIONAL STAFF

- ★ Conduct a Public Hearing.
- ★ Staff recommends approval of the proposed Wheatley Point Lot 9 Rear Yard Setback Variances.

VARIANCE

Staff recommends **APPROVAL** of **BZ24-02, Wheatley Point Lot 9 Rear Yard Setback Variances**, for:

1. A 4.05-foot variance from the 20-foot rear yard setback requirement to allow enclosed decks associated with a duplex to be constructed at a 15.95-foot setback from the north property line located at 24112 W. 95th Street in the RP-2, Planned Residential (Intermediate Density) District.
2. A 3.80-foot variance from the 20-foot rear yard setback requirement to allow enclosed decks associated with a duplex to be constructed at a 16.20-foot setback from the north property line located at 24110 W. 95th Street in the RP-2, Planned Residential (Intermediate Density) District.



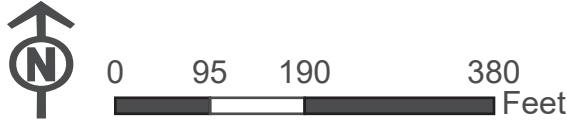
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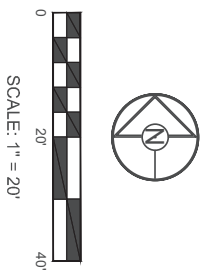
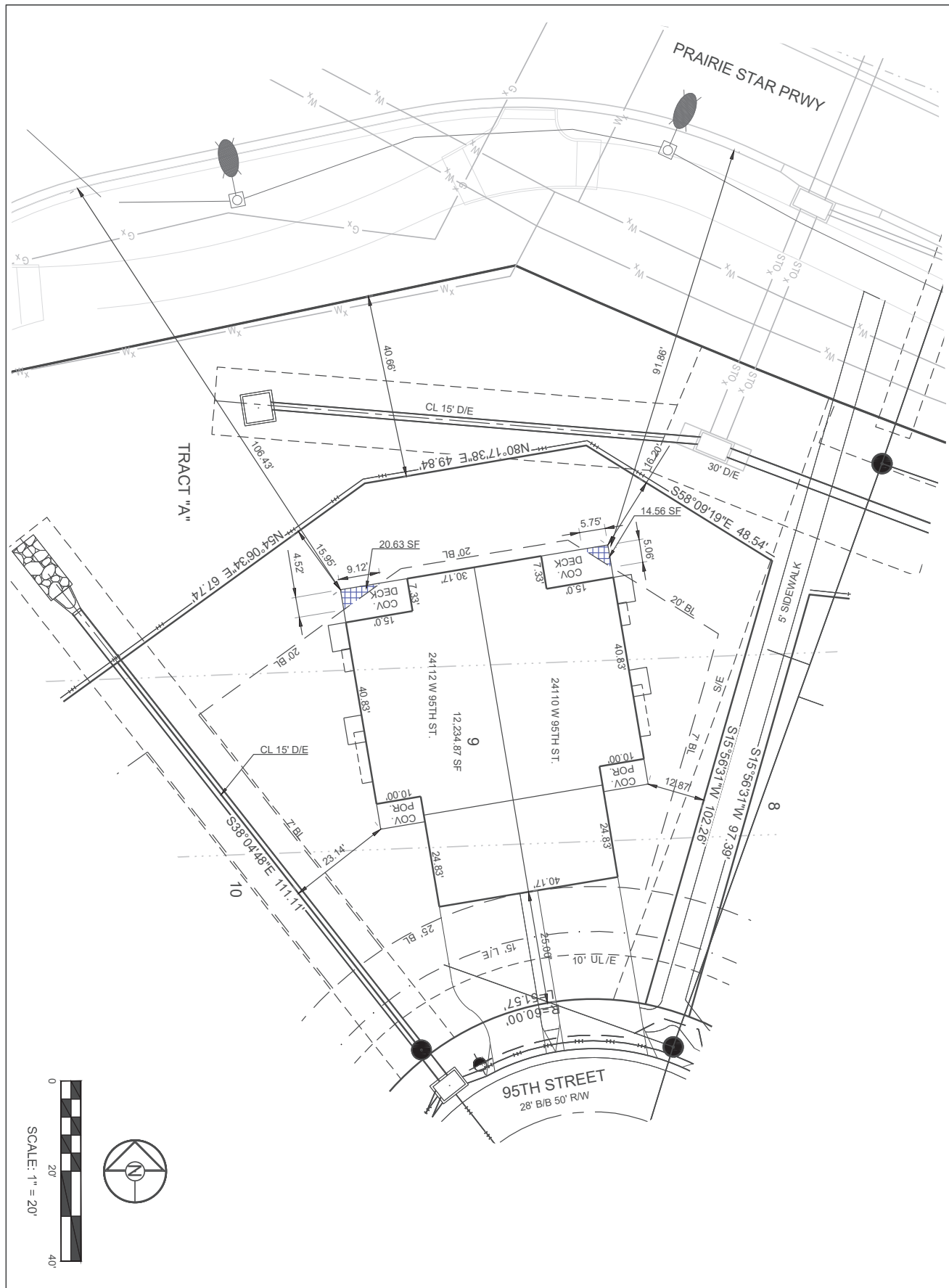
Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

Wheatley Point, Lot 9

Rear Yard Setback Variances

BZ24-02





SHEET
1

EXHIBIT	DRAWN BY:	AC
	DATE PREPARED:	11.29.23
	PROJ. NUMBER:	23-220

LOT 9
WHEATLEY POINT
FIRST PLAT
24110 / 24112 W 95TH ST
LENEXA, KS

SCHLAGEL

ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS

14920 West 107th Street Lenexa, Kansas 66215
 (913) 492-5158 Fax: (913) 492-8400
 WWW.SCHLAGELASSOCIATES.COM

Kansas State Certificates of Authority
 #E-296 #LA-29 #LS-54

Wheatley Point Lot 9 Variance Request Narrative

Requested Variance:

The owner of the property is requesting a variance to the 20' rear yard setback to allow an 15' rear yard setback on one rear house corner and a 16' setback on the other rear house corner. The encroachments are a very small triangular area with an area of 20.63 square feet and 14.56 square feet. The proposed building includes a deck with a roof attached to the main structure. Per UDO Article 4-1-B-26-B-7-a "Decks, Porches and Patios (no more than 18 inches above the natural grade along the perimeter may encroach a maximum of 3 feet into a required yard setback but no closer than 2 feet to any property line." However, according to City staff because the proposed deck has a roof attached to house it is considered part of the structure and must obtain a deviation or variance to allow an encroachment or setback reduction. As discussed with staff, the roof is not the reason for the variance since roof overhangs are allowed encroachment in the setback per this same section. The variance is needed for the footing and post at the corner of the covered deck since per UDO Article 4-1-B-26-B-7 "Setbacks shall be measured as the minimum horizontal distance between a property line and the foundation of the structure". UDO Article 4-1-B-26-B-7-a allows porches to encroach into the required setback which would have a footing, post and roof attached to the house which similar to the proposed covered deck. The position of the house on the lot allows for a greater rear yard setback for the remainder of the building rear wall resulting in more open space in the rear yard. Wheatley Point Lot 9 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 40' wide, at narrowest point, adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and shrubs and separate row of ornamental and shade trees so the deck will be well screened from Prairie Star Parkway.

Variance Analysis:

1. That the variance requested arises from 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 of the property owner or the applicant;

The property has a unique irregular shape which creates an angled rear property line. The property was platted prior to determining that the proposed covered deck would not be allowed to encroach into the rear setback in the same manner as a porch, uncovered deck or patio. Reduced rear setbacks have been allowed on other projects in the City. There are other attached villa projects within the City that have buildings with a smaller rear setback (Fairway Villas Lot 24 is approximately 12'). The variance is needed in order to allow the house approved with the final plans to be constructed on the unique irregular shaped lot.

2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

There are no adjacent property owners or residents. Wheatley Point Lot 9 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 40' wide, at narrowest point, adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and shrubs and separate row of ornamental and

shade trees so the decks will be well screened from Prairie Star Parkway. The granting of the variance will not adversely affect the rights of adjacent property owners or residents

3. That the strict application of the provisions of this Chapter from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Decks, Porches(which would also have a footing, post and roof attached to the main house) and Patios (no more than 18 inches above the natural grade along the perimeter are allowed to encroach a maximum of 3 feet into a required yard setback but no closer than 2 feet to any property line. Not allowing a covered deck (which is similar to a porch) to encroach the same amount creates hardship to the owner. In addition, there are other attached villa projects within the City that have buildings with a smaller setback (Fairway Villas Lot 24 is approximately 12')

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City;

Wheatley Point Lot 9 backs to Prairie Star Parkway and is adjacent to open space buffer Tract A that is 40' wide, at narrowest point, adjacent to the proposed deck encroachment. The proposed landscape in Tract A approved by the City includes a row of evergreen trees and separate row of ornamental and shade trees so the deck will be well screened from Prairie Star Parkway. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, the general welfare or the harmonious development of the City

5. That granting the variance desired will not be opposed to the general spirit and intent of this Chapter; and

The intent of the setback is to create open space in the rear of the lot. The requested variance are very small triangular shaped parcel with an area of 20.63 square feet and 14.56 square feet. The position of the house on the lot allows for a greater rear yard setback for the remainder of the building rear wall resulting in more open space in other areas of the rear yard. The open space on this lot far exceeds the typical open space for the code required setback so the request will allow the lot to meet the spirit and intent of the code.

6. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.

The requested variance are very small triangular shaped parcel with an area of 20.63 square feet and 14.56 square feet. This is the minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question.

CALL TO ORDER

Chairman Poss called the regular meeting of the Lenexa Board of Zoning Appeals to order at 7:00 p.m. on Monday, November 6, 2023. The meeting was held in the Community Forum at Lenexa City Hall at 17101 W. 87th Street Parkway, Lenexa, Kansas.

ROLL CALL

COMMISSIONERS PRESENT

Chairman Chris Poss
Vice-Chairman Mike Burson
Commissioner Ben Harber
Commissioner Don Horine
Commissioner David Woolf
Commissioner John Handley
Commissioner Brenda Macke
Commissioner Cara Wagner

COMMISSIONERS ABSENT

Commissioner Curt Katterhenry

STAFF PRESENT

Stephanie Kisler, Planning Manager
Tim Green, Deputy Director of Community Development
Andrew Diekemper, Assistant Chief – Fire Prevention
Spencer Throssell, Assistant City Attorney II
Kim Portillo, Planner III
Dave Dalecky, Planner II
Logan Strasburger, Planner I
Will Sharp, Planning Intern
Colter Stevenson, Management Analyst
Gloria Lambert, Senior Administrative Assistant
Mike Nolan, Assistant City Manager

APPROVAL OF MINUTES

The minutes of the October 2, 2023 meeting were presented for approval. Chairman Poss entertained a motion to **APPROVE** the minutes. Moved by Commissioner Handley, seconded by Commissioner Burson, and **APPROVED** by a unanimous voice vote.

REGULAR AGENDA

- 1. Aguilera Fence Appeal - Consideration of an appeal to Staff's denial of an administrative deviation to allow a fence constructed in violation of the approved fence permit to be set back two-feet from the south property line. BZ23-03**

APPLICANT PRESENTATION

Carlos Aguilera, property owner of 10249 Caenen Street, stated he was in attendance of the meeting because Heather Loo, All About Fencing, contacted him to let him know that she would be unable to attend the meeting this evening. He explained that he hired All About Fencing to build the fence and agreed to their plan. He said after he contracted the fence company, they applied for a building permit with the City of Lenexa and charged him for the plans that were agreed upon by both parties. He received the permit number from the fence company but never saw the actual building permit.

Mr. Aguilera explained that after the fence was built, he thought everything was fine until he received a letter from the City of Lenexa a month later stating that the fence was in violation of City Code. The contractor mentioned it was supposed to be 6-feet from the sidewalk and Mr. Aguilera thought the setback from the sidewalk was only about 2 or 3 feet. He received the letter of violation stating it was 25-feet out of compliance, so he understood the City's position because that was a big difference. Mr. Aguilera said he hired the fence contractor in good faith and did not try to take short cuts. He stated he had taken all the appropriate steps. He said it has been tough working with the contractor because things seem to always come up and tonight was no different. When he found out Ms. Loo would be unable to attend the meeting, he knew it was important for him to be here. He said it would have been worse if no one would have shown up. By his understanding, their fence appeal was scheduled for last month but was continued to this evening because Ms. Loo broke her leg, she has had a concussion, and today he was told her child was sick.

Mr. Aguilera stated he understands there is a code and does not believe the fence is hurting anyone. He knows he is the homeowner but feels the contractors have put him at a disadvantage concerning the fence. He hopes the fence can remain in its current location because he knows he will have to fight a battle with the contractor to have them move it if the current location is not approved.

STAFF PRESENTATION

Stephanie Kisler presented the Staff Report. Ms. Kisler said she would provide context to how it all occurred and then share the location. The process was that the fence company applied for a building permit, then upon issuance of the permit the fence was constructed, and then Staff inspected the fence and found out that it was not installed in compliance with the approved permit plans.

Ms. Kisler noted the homeowner and fence company had a couple of options: they could move the fence to the code compliant location or ask for an administrative deviation. The property owner decided to request an administrative deviation, which is a process allowed by the new fence code that was approved earlier this year. Staff evaluated the request and found that the deviation was not appropriate with the criteria of the City's Code and therefore denied the request for an administrative deviation. The applicant then had a choice to either appeal Staff's decision of denial or move the fence into compliance with the approved plans.

Ms. Kisler said the applicant chose to move forward with the appeal of Staff's decision of denial. The approved plan was at a 24-foot setback from the south property line to the property line along 103rd Street and 22-feet into that 24-foot setback. The fence is currently installed 2-feet from the south property line

or 3-feet from the sidewalk. She displayed several pictures of the fence and shared aerial views of the location. The property is at the northeast corner of Caenen Street & 103rd Street, which is between Pflumm Road & Quivira Road. She pointed out that Overland Park city limits are on the south side of 103rd Street, so there are different fence regulations that apply to properties to the south of 103rd Street. Lenexa has jurisdiction on the north side of 103rd Street. She then displayed the approved permit plan, pointing out that the fence was set back inside the 25-foot building setback line and was not near the 103rd Street sidewalk. The plans contained a note that the fence location was approved from the sidewalk and not the south property line. That is why there is a discrepancy of 24-feet to 25-feet, because the sidewalk is typically one foot off from the private property line. She showed an aerial image of the site pointing out the area that would not be included in the fence line and where the fence would have been installed in compliance with the City's Code. She then showed another aerial image of where the fence was installed, at a 3-foot setback from the sidewalk or 2-feet from the property line.

Ms. Kisler noted the fence was approved slightly further behind the required setback than Code allows, so if the applicant wanted to apply for a new fence permit and get a few extra feet fenced in, they could do so by-right. She showed another image that displayed the 20-foot setback and explained that the applicant also has an option to modify the fence and apply for a 4-foot-tall open style design and gain an extra 5-feet because of the new fence code, as it pertains to corner lots. The property owner's fence is currently a solid, privacy style, 6-foot-tall vinyl fence.

Ms. Kisler said the applicant noted other fences along 103rd Street that are closer to the sidewalk and may not meet fence requirement. She reiterated that Overland Park is on the south side so those fences cannot be compared to fences subject to Lenexa's regulations. She pointed out a couple of fences on the Lenexa side of 103rd Street that complied with code and a couple of examples that were out of compliance. She stated that in the case of an older fence, the homeowner would need to apply for a new permit at time of replacement to bring the fence into compliance. She then pointed out a relatively new fence that code enforcement will pursue for consistency depending on the outcome of this appeal case. If this appeal is granted to the applicant, City Staff would make sure that there would be a similar administrative allowance for this nearby fence to be fair to others in the vicinity.

Ms. Kisler showed fence plans the fence contractor submitted that were within the build line, but the plans did not show dimensions. At the time of review Staff requested the fence contractor provide dimensions. Staff ended up with plans that included dimensions and that also showed 25-feet from the sidewalk. She visually compared the approved plans and what the fence contractor installed. She displayed the Criteria for Review. Staff determined the fence in question did not meet the criteria. The Board of Zoning Appeals has a responsibility to hear and decide whether Staff made an error in their decision to deny the appeal. She provided the options the Board must consider when deciding what action will be taken:

1. **Find that Staff did not make an error in its decision and uphold Staff's decision and DENY** the applicant's appeal for a deviation for the fence to encroach 22-feet into the plan approved 24-foot setback. This results in the applicant having to remove the noncompliant fencing with the options to reinstall the fencing in compliance with the approved fence permit at a 24-foot setback from the south property line or apply for a new fence permit and relocate it to the code-allowed 20-foot setback.
2. **Find that Staff did make an error in its decision and reverse Staff's decision and APPROVE** the deviation request but **MODIFY** the amount of encroachment into the street-side yard setback to a specified distance the Board of Zoning Appeals determines is reasonable. This results in the applicant modifying the location of the fencing as discussed by the Board.
3. **Find that Staff did make an error in its decision and reverse Staff's decision and APPROVE** the deviation request as proposed by the applicant to encroach 22-feet into the plan approved 24-foot

setback. This results in the applicant keeping the fencing as installed at a 2-foot setback from the property line.

PUBLIC HEARING

Chairman Poss **OPENED** the Public Hearing and asked if anyone wished to speak on this item. No one from the audience came forward.

Chairman Poss entertained a motion to **CLOSE** the Public Hearing. Moved by Commissioner Horine, seconded by Commissioner Woolf, and carried by a unanimous voice vote.

PLANNING COMMISSION DISCUSSION

Chairman Poss asked Mr. Aguilera how the fence was built out of compliance after the contractor submitted plans that showed in compliance of the City's Code. Mr. Aguilera said he agreed to the plans the contractor prepared and never knew the fence was built out of compliance until he received the letter of violation.

Commissioner Woolf believes the applicant never saw the plans the contractor submitted on the fence permit, and although he feels for the applicant, he agrees with Staff's decision to deny the deviation.

Commissioner Handley commented that in keeping with the Code it is hard to accept and feels for the applicant.

Commissioner Harber asked Staff if they run into the situation of a contractor submitting plans, getting approval, and building a noncompliant fence. Ms. Kisler asked Colter Stevenson to come forward to address the issue of fences concerning homeowners' verses fence companies. Tim Green stated that the homeowner typically gets a copy of the approved plans back but unfortunately in this case the homeowner was not the permit applicant, so Mr. Aguilera did not get a copy of the approved plans. Colter Stevenson said that usually the person that applies for the permit gets the plans back and when homeowners hire contractors to build the fence for them, the contractor goes through the application process and that is who gets the plans back. The applicant has access to the City's online permit portal and the homeowner's information is generally not in our system, so the information goes to the contractor.

Commissioner Macke asked when it goes into enforcement, are we enforcing against the fence company or against the property owner. Mr. Stevenson said ultimately the violation is against the property owner because it is their property but in this case the contractor submitted for one thing and built another the City can pursue them for enforcement. A letter of violation was sent to both the contractor and property owner in this case.

Commissioner Harber said that when looking at the other noncompliant fences nearby it sets a precedent that the next person says, "they got away with it, why can't I?" He said as painful as it is, we must uphold the Code.

Commissioner Wagner agrees that we must uphold the Code and feels bad for the situation the homeowner is in. She stated there is no real consistency for how far back the sidewalk is from the street so when enforcing the Code there could be a large difference related to spacing between a sidewalk and a fence. She talked about the consideration for additional green space allowed by existing easements between the street and sidewalk. She would want to consider a corner lot owner with a fence. She does understand the Code as it is today and enforcement of that Code and agrees with Staff's decision. Ms. Kisler said normally when there is additional right-of-way space from sidewalk to sidewalk it is in

anticipation of being able to eventually expand the width of the street at some point in the future. She said the curb location or sidewalk location may change within the right-of-way within the next twenty years, but today the decision is being weighed on today's conditions and the current code.

Chairman Poss said he feels for the applicant, but he sees it as black and white. The Commission has spent the last year contemplating fence requirements, especially corner lots. The contractor installed a fence out of compliance with the Code and it is straight forward. Chairman Poss asked if the homeowner would have any assistance in regard to the fence contractor. Spencer Throssell said unfortunately the enforcement is directed toward the homeowner and if we need to move the fence, we would not be suing the contractor on behalf of the homeowner. The homeowner would have the right to do so, but we cannot give legal advice on what that would be.

Commissioner Harber asked if they have a right to not allow the fence company any more permits during this fence inspection. Ms. Kisler said that is something they can look at, but certainly when Staff sees a fence permit for that contractor they will take an extra look and be mindful at inspection time.

MOTION

Chairman Poss entertained a motion to recommend denial of an appeal to an administrative deviation request related to the property line setback for a fence located at 10249 Caenen Street in the R-1, Residential Single-Family Zoning District, finding that Staff did not make an error in its decision to deny the administrative deviation and uphold Staff's decision.

Moved by Commissioner Woolf, seconded by Commissioner Horine, and carried by a unanimous voice vote.

ADJOURNMENT

Chairman Poss ended the regular meeting of the Lenexa Board of Zoning Appeals at 7:34 p.m. on Monday, November 6, 2023.