

LAWRENCE BOARD OF ZONING APPEALS

AGENDA

SEPTEMBER 7, 2017 – 6:30 P.M., CITY COMMISSION MEETING ROOM

1st FLOOR OF CITY HALL AT 6th AND MASSACHUSETTS STREET, LAWRENCE, KANSAS

CALL THE MEETING TO ORDER

TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT

ITEM NO. 1 COMMUNICATIONS

- a) Acknowledge communications to come before the Board.
- b) Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration.
- c) Announce any agenda items that will be deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the August 3, 2017 meeting of the Board.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 VARIANCE FROM THE REAR BUILDING SETBACKS FOR A
RESIDENTIAL DWELLING; 5120 CODY CT [JSC]**

B-17-00375: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance from the 30 foot rear setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the rear setback to a minimum of 17.5 feet to allow for the construction of a covered attached deck. The property is located at 5120 Cody Court. Submitted by Jim and Allison Nye, property owners of record.

ITEM NO. 4 MISCELLANEOUS

- a) Consider any other business to come before the Board.

LAWRENCE BOARD OF ZONING APPEALS

Meeting Minutes of August 3, 2017

Members present: Clark, Gardner, Holley, Wilbur, Wisner
Staff present: Cargill, Crick

ITEM NO. 1 COMMUNICATIONS

- a) There were no communications to come before the Board.
- b) There were no abstentions.
- c) There were no agenda items deferred.

Wilbur mentioned that the McClain's Bakery item was deferred by the City Commission at their meeting last night, August 2, 2017.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the July 6, 2017 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the minutes from the July 6, 2017 meeting of the Board.

Unanimously approved 5-0.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE SIDE BUILDING SETBACKS FOR A RESIDENTIAL DWELLING; 524 OHIO STREET [JSC]

B-17-00307: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2017 edition. The request is for a variance from the 5 foot interior side setback standard required by Section 20-601(a) of the City Code for the RS5 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the interior side setback to a minimum of 2.5 feet from the southern property line, and to a minimum of 3.16 feet from the northern property line. The property is located at 524 Ohio Street. Submitted by David Sane, Rockhill & Associates, for Kami Day and Michele Eodice, property owners of record.

STAFF PRESENTATION

Crick presented the item.

APPLICANT PRESENTATION

Mr. David Sain, Rockhill & Associates, said this is a brick 1871 house. They removed the siding, found evidence of a wraparound porch, and at the recommendation of the Historic Resources Commission (HRC) they decided to rebuild the wraparound porch.

There was no public comment.

ACTION TAKEN

Motioned by Gardner, second by Holley, to close public comment for the item.

Unanimously approved 5-0.

BOARD DISCUSSION

Gardner said he thinks it's great that the applicant is working to restore a historic home in Kansas.

Holley asked Gardner if he agrees with staff's findings.

Gardner said he does.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to approve the variance as outlined in the staff report.

Unanimously approved 5-0.

ITEM NO. 4 VARIANCE FROM THE FRONT BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 1415 E 18TH STREET [JSC]

B-17-00337: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2017 edition. The request is for a variance from the 25 foot front setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the front setback to a minimum of 1 foot to allow for the construction of a roofed 22 foot long attached car port. The property is located at 1415 E. 18th Street. Submitted by Todd LaPrad, property owners of record.

STAFF PRESENTATION

Crick presented the item.

Wilbur asked about a similar variance request on Maple Lane.

Crick said they consider requests on a case-by-case basis, but explained some similarities with this project.

Wisner asked if the request on Maple Lane was requested prior to construction

Crick said it appears that request was approved prior to construction.

Gardner asked how the setback could be only one foot from the property line.

Crick said the roadway is wider than normal and the right-of-way extends up to about a foot

before the carport.

Clark asked if this request arose from a code enforcement issue.

Crick said it was investigated by code enforcement, likely due to a complaint. Code Enforcement verified the carport was there and referred the property to work with Development Services department.

Holley asked what the next step will be if a variance is not granted.

Crick said the applicant can contest the action in court or code enforcement can begin the procedure to remove the structure.

Holley asked if staff has had any additional communication with the property owner.

Crick said he spoke with the owner on one occasion while obtaining all necessary application materials. A pre-application meeting was not conducted because Planning staff was not aware of the variance application until it was formally submitted.

Wilbur said he doesn't understand the determination on Criteria 4. He asked if staff's concern is that other people might start building carports.

Crick said that's a possibility, but the real concern is that the structure might be in the way of future street expansion or possible sidewalk or utility work in the right-of-way.

Gardner asked if there are similar structures in the neighborhood.

Crick said there is, although he's not sure if they were constructed with a permit.

Clark asked when the subject structure was constructed.

Crick said staff does not know, but it appears to be newly constructed.

The applicant was not present.

There was no public comment.

BOARD DISCUSSION

Wilbur said he doesn't see the unnecessary hardship. The applicant chose to build the carport.

Wisner doesn't have a problem with Criteria 4, but has an issue with meeting Criteria 5 because the structure is so close (to the right-of-way). He didn't see many other similar structures in the area.

Gardner said he saw one that was almost identical. He said the street will never be a major thoroughfare. He asked for the width of the right-of-way.

Crick said an average street right-of-way for this type of street is 50-60 foot wide.

Gardner asked for clarification as to how the setback is measured.

Crick explained where the setback measurement begins, noting that the normal setback is 25 feet. This variance would reduce it to 1 foot.

Holley further explained challenges with right-of-way.

Gardner commented on the location of a possible future sidewalk.

Crick mentioned that the Utilities department commented that the age of the pipe in that area would require maintenance at some point in the near future. He further reiterated what could occur within the right-of-way and the issue with the proposed setback.

Clark said it seems the carport will be a problem either now or later. He noted that the applicant indicated he hopes to move soon which means he'll pass the burden on to someone else.

Wilbur said he has a problem particularly with Criteria 3, but also Criteria 4 and 5.

ACTION TAKEN

Motioned by Clark, seconded by Wisner, to deny the variance request because it does not meet the criteria required for a variance.

Unanimously approved 5-0.

ITEM NO. 5 MISCELLANEOUS

a) Consider any other business to come before the Board.

Crick said staff anticipates a meeting next month. He mentioned that the City Commission will have a meeting regarding advisory boards on Aug 8th at 5:45 pm.

ADJOURN 7:02 PM

ITEM NO. 3 **VARIANCE FROM THE REAR BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 5120 CODY COURT [JSC]**

B-17-00375: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance from the 30 foot rear setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the rear setback to a minimum of 17.5 feet to allow for the construction of a covered attached deck. The property is located at 5120 Cody Court. Submitted by Jim and Allison Nye, property owners of record.

B. REASON FOR REQUEST

Applicant's Request – *“Property has an existing deck on back of house that was built in the rear setback of lot. Due to the recent loss of a large oak tree over said deck, homeowner is requesting approval to:*

1. Reconstruct deck in same location/size to address decay
 - a. The deck was built around the oak tree. The tree provided additional stability for the deck. That is now gone.
2. Construct a roof over the deck to replace the lost shade tree.
3. Screen in deck for insect barrier.

C. ZONING AND LAND USE

Current Zoning & Land Use: RS7 (Single-Dwelling Residential) District; residential dwelling

Surrounding Zoning and Land Use: RS7 (Single-Dwelling Residential) District; residential dwellings.

D. ZONING ORDINANCE REQUIREMENTS

Section 20-601(a), “Density and Dimensional Standards; Occupancy Limits – Residential Districts,” has standards defining the minimum building setbacks for residential dwellings based upon each residential zoning district. In the RS7 District, the minimum rear building setback is listed to be 30 feet.

E. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Development Code lists the five requisite conditions that have to be met for a variance to be approved.

1. The variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zone or district; and are not created by an action or actions of the property owner or applicant.

Applicant response: *"Deck has been properly maintained but rot/decay needs to be addressed. Tree over deck had begun to decay and needed to be removed as it had become a liability to the home."*

This request does not result from a unique condition that originates from the [Land Development Code](#). The property was platted in 2002 as Lot 22 in Westwood Hills, 3rd Plat. When the property was constructed in 2003, the [1966 Zoning Code](#) was in effect. The RS-2 setbacks applicable then are identical to the existing RS7 setbacks that are in effect today: Front Setback minimum of 25 feet, interior side setback of 5 feet from each side line, and a rear setback of 30 feet. Staff believes the allowance of the existing deck would have been permitted under [Section 20-1504\(c\)](#) of the 1966 Zoning Code, which stated, "In the RS-1, RS-2 and RM-D districts, a principal building may be located no closer than 20 feet to the nearest property line opposite the front lot line; provided the rear yard area is no less than 30 percent of the total lot area. (Code 1979, 20-1204; [Ord. 5792](#))" As platted, this lot currently contains 9,397 square feet. Based on estimated GIS calculation, staff believes the rear yard contains 30% of the total lot area (2,797 square feet), which at the time of construction, the deck would have complied with the reduced rear setback as permitted under this superseded code section. The current Land Development Code does not contain a similar provision for this rear setback reduction.

The original building permit approving the construction of the residence shows the placement of a deck that was consistent with the setbacks as permitted by the Section 20-1504(c) exception. Staff could not locate a permit showing approvals for the deck as currently constructed. Staff inquired with Development Services to see if a permit was issued for the deck as presently constructed, but Development Services does not have record of that construction being approved. The removal of the existing deck and the construction of a replacement would require new construction to comply with the Land Development Code standards.

While the loss of a large tree is a difficulty, it is not a hardship that is directly related to the Land Development Code's Density and Dimensional Standards requirements or by the recorded plat. However, the existence of the deck was permissible under the exception noted within the 1966 Zoning Code. The Planning Director has determined that due to the deck being legally constructed, and with the change in from the 1966 Zoning Code to the 2006 Land Development Code, the requested variance originates from a unique condition due to the discontinuation of this particular exception. Therefore, the hardship being imposed in this instance is not due to an action undertaken by the property owner; instead it is one imposed on them by the changes in the setback standards and exceptions.

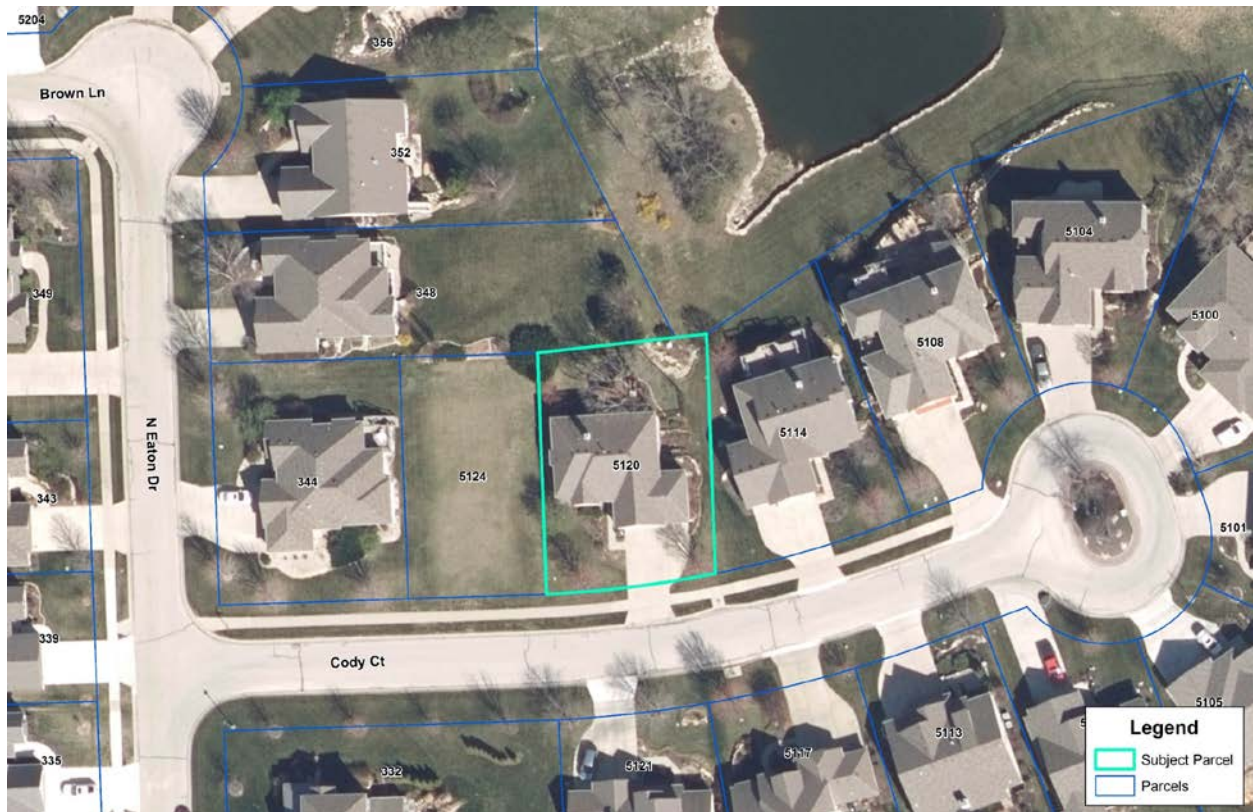


Figure 1: Subject Property

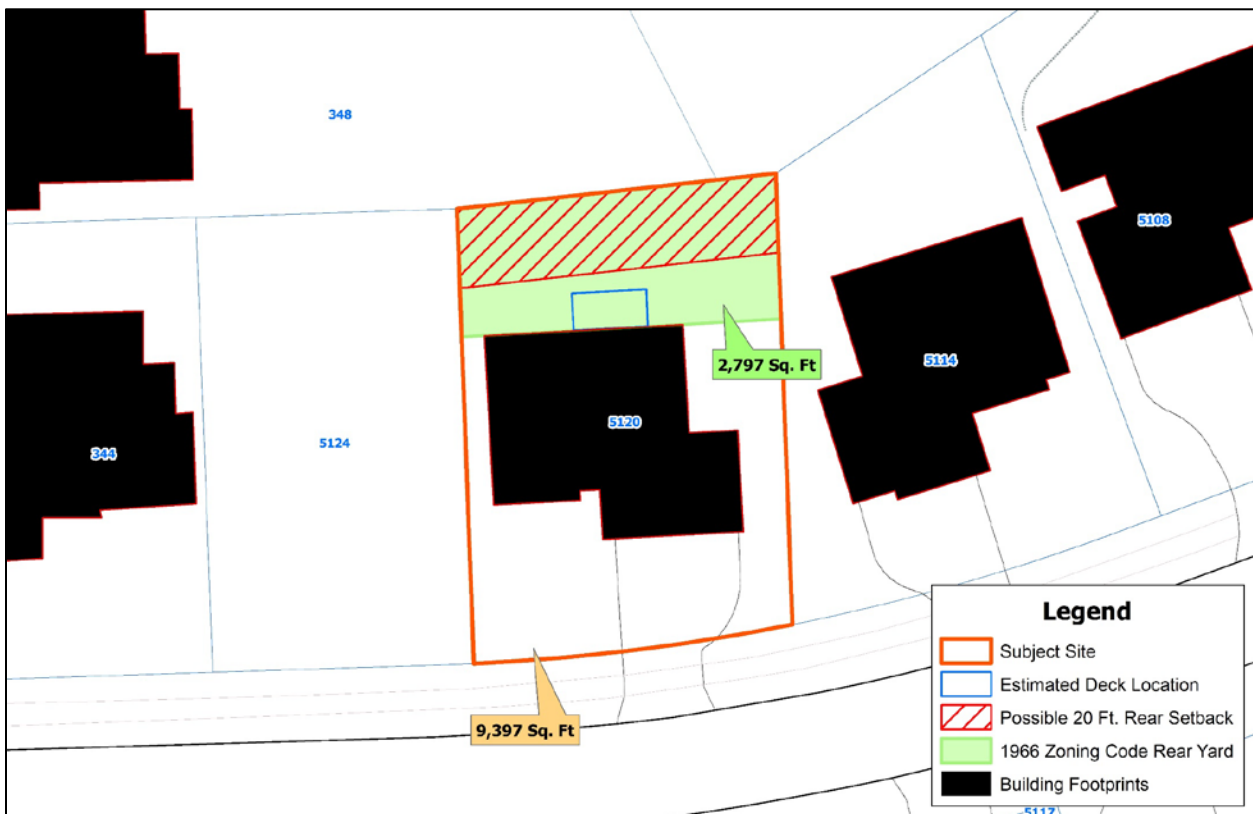


Figure 2: Possible Setbacks and Land Ratio Under 1966 Zoning Code §20-1504(c) Exception

Hand-drawn site plan showing property boundaries and proposed structures. The plan includes the following elements:

- Property Boundary:** A line running across the top with bearings $N. 83^{\circ} 38' 35'' E.$ and distances 66.04 and 15.02 .
- Common Space, Retention Pond:** Indicated by an arrow pointing to the top right corner.
- Existing Residence:** A large rectangle at the bottom with a width of $51.0'$.
- New Covered Deck:** A shaded rectangle with dimensions $19.0' \times 18.0'$, located adjacent to the existing residence.
- Rear Yard:** The area between the existing residence and the new deck, with a width of $17.5'$.
- Other Dimensions:**
 - $10.0' 4/E$ (width of the area to the left of the rear yard)
 - $8.5'$ (width of the area to the right of the new deck)
 - $10.0' D/E$ (width of the area to the right of the existing residence)
- Note:** NEW COVERED DECK IS THE SAME SIZE ($18' \times 19'$) AS EXISTING DECK. THERE ARE NO EXTERIOR STAIRS.

Figure 4: Submitted Plot Plan for Proposed Structure

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

Applicant response: "With no residents directly behind property, roof structure would not adversely affect any neighboring properties."

In staff's opinion, the requested variance would not adversely affect the rights of adjacent property owners or residents. Notice was provided to property owners within 400 foot of the subject property informing them of the application filed by the property owner. As of the time this report was written, staff has not been contacted by any property owner expressing concerns or objections to the applicant's request.

3. That the strict application of the provisions of this chapter for which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

Applicant response: "Unnecessary hardship would be due to lack of shade that was formerly provided by tree since home was purchased."

While the loss of the tree and deck reconstruction may be a hardship, it is not one created by a condition due to the application of the code. However, given the details of the residence, the applicable zoning, and this lot, the condition may constitute an unnecessary hardship. Since the change in the setback standards and exceptions were not an action undertaken by or at the property owner's request, and given that the deck and residence were constructed to comply with the applicable code in 2004, the strict application of the 2006 Land Development Code may constitute an unnecessary hardship.

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

Applicant response: "Said deck and roof structure would be less visually invasive than previous state with large tree."

In staff's opinion, granting the requested variance will not create an adverse effect upon the public health, safety, morals, order, convenience, prosperity or general welfare. The request in question is contained within the parcel owned by the applicant. This structure would not create any spill-over noxious effects to the surrounding area.

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

Applicant response: "Granting of variance would have an overwhelming positive impact on the current homeowners and no negative impact on the surrounding environment."

In staff's opinion, granting the setback variance would be consistent to the general spirit and intent of the Land Development Code. Strict adherence to the code requiring the 30 foot rear building setback may be an unnecessary hardship in this instance as defined within the purview of the Board. The

conditions surrounding this requested hardship variance do not originate from a condition that is unique to the property in question, and/or not ordinarily found in the same zone or district; however, they originate due to the noted setback standards and exception changes that occurred between the current Land Development Code and the supersede Zoning Code.

Conclusions:

Staff's analysis of this variance application finds the request does meet all five conditions set forth in Section 20-1309(g)(1) of the Land Development Code that the Board must find existing to grant a variance.

Recommendation:

Staff recommends approval of the rear yard building setback variance based upon the findings in the staff report concluding that the request does not meet the five conditions outlined in Section 20-1309(g)(1).



6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

RECEIVED

JUL 26 2017

City County Planning Office
Lawrence, Kansas

Name(s) Jim and Alison Nye
 Contact Jim Nye 785-760-2181
 Address 5120 Cody Ct
 City Lawr. State KS ZIP 66049
 Phone (785) 760-2181 Fax ()
 E-mail jnye@sunflower.com Mobile/Pager ()

Contact same as above

Company _____

Address _____

City _____ State _____ ZIP _____

Phone (____) _____ Fax (____) _____

E-mail _____ Mobile/Pager (____) _____

Pre-Application Meeting Date NA per Planner _____
Katherine S.

Present Zoning District residential Present Land Use _____
Proposed Land Use " _____
Legal Description (*may be attached*) Westwood Hills 3rd Plat Blk 1, Lot 22
Address of Property 520 Cindy Ct _____
Total Site Area approx 9,200 sq ft _____
Number and Description of Existing Improvements or Structures 1 roof over deck _____

B-17-00375



Description of variance requested:

Property has an existing deck on back of house that was built in the rear set back of lot.

Due to recent loss of a large oak tree over said deck, homeowner is requesting approval to:

1. Reconstruct deck in same location/size to address decay
 - the deck was built around the oak tree ~~the~~ The tree provided additional stability for the deck. That is now gone.
2. Construct a roof over the deck to replace the lost shade tree.
3. Screen in deck for insect barrier.

See attached docs. for site references and dimensions, along with photos of the tree and deck.



UNNECESSARY HARDSHIP CRITERIA

The Board of Zoning Appeals may approve a zoning variance if it finds that all of the following criteria have been met. The Development Code places the burden on the applicant to show that an application complies with such criteria. Please respond to each criterion to the best of your knowledge. (Attach additional sheets if needed.)

1. That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property owner or applicant:

• Deck has been properly maintained but rot/decay needs to be addressed.

• Tree over deck had begun to decay and needed to be removed as it had become a liability to the home.

2. That granting the variance would not adversely affect the rights of adjacent property owners or residents:

With no residents directly behind the property, roof structure would not adversely affect any neighboring properties.



- 3. That strict application of the provisions of this chapter for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application:**

Unnecessary hardship would be due to lack of shade that was formerly provided by the tree since the home was purchased.

- 4. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare:**

Said deck and roof structure would be less visually invasive than previous state with large tree.



City of Lawrence
Douglas County

PLANNING & DEVELOPMENT SERVICES

Lawrence Douglas County
Metropolitan Planning Office

6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

5. That granting the variance desired would not be opposed to the general spirit and intent of the Development Code:

Granting of Variance would have an
overwhelmingly positive impact on the
current homeowners and no negative
impact on the surrounding environment

SIGNATURE

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(Circle One)** of the
aforementioned property. By execution of my/our signature, I/we do hereby officially apply for
variances as indicated above.

Signature(s): James L. Nye Date 7-24-2017

Alison L. Nye Date 7-24-17

____ Date _____

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____



PROPERTY OWNERSHIP LIST CERTIFICATION

As required by Article 13, Section 20-1301(q) of the Development Code, the applicant is responsible for providing certified Ownership information (including names and mailing addresses) of all real property owners within a defined radius from the subject property. The Planning Department is required by the Development Code to use the submitted Ownership list to mail notice of the public hearing to surrounding property owners regarding this Application.

Ownership Information

The applicant is responsible for providing certified Ownership information. Current Ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered **current** if it is **no more than 30 days old** at the time an application is submitted to the Planning Department.

Radius of Notification

The Ownership list shall include the record Owner of the subject property and all Owners of property located within 400 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

A map of the "Radius of Notification" can be obtained **at the Applicant's request** at the Planning Office. The map indicates ownership of each property and can be used to check the accuracy and completeness of the Ownership List. The map will be supplied **at the Applicant's expense**. **Allow 10 business days** to receive the map.

THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

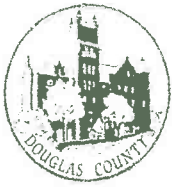
I certify that I have read and understood the above information and that the submitted Ownership list:

1. was a) obtained from and b) certified by the Douglas County Clerk,
2. is current (**no more than 30 days old**), and
3. includes all property owners within the required notification radius of the subject property.

Alison J. Nye
Signature

5-25-14
Date

Alison J. Nye
Printed Name



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044

Marni Penrod-Chief Deputy Clerk
Heather Dill-Deputy Clerk Elections

May 25, 2017

A CERTIFIED PROPERTY OWNERSHIP LIST WITHIN 400 FT OF 5120 CODY CT
(U13959-106). 05/25/2017. REQUESTED BY ALISON NYE.

JOHN R. NICHOLS
DOUGLAS COUNTY CLERK'S OFFICE
1100 MASSACHUSETTS ST
LAWRENCE, KS 66044

785-832-5147

jnichols@douglas-county.com

Douglas County Real Estate Division
County Clerk's Office. I do hereby certify
the Property Ownership listed hereto, to be
true and accurate.

POL WITHIN 400 FT OF 5120 CODY CT
(U13959-106)



5120 Cody Ct.

Not to Scale:

Drainage
Pond

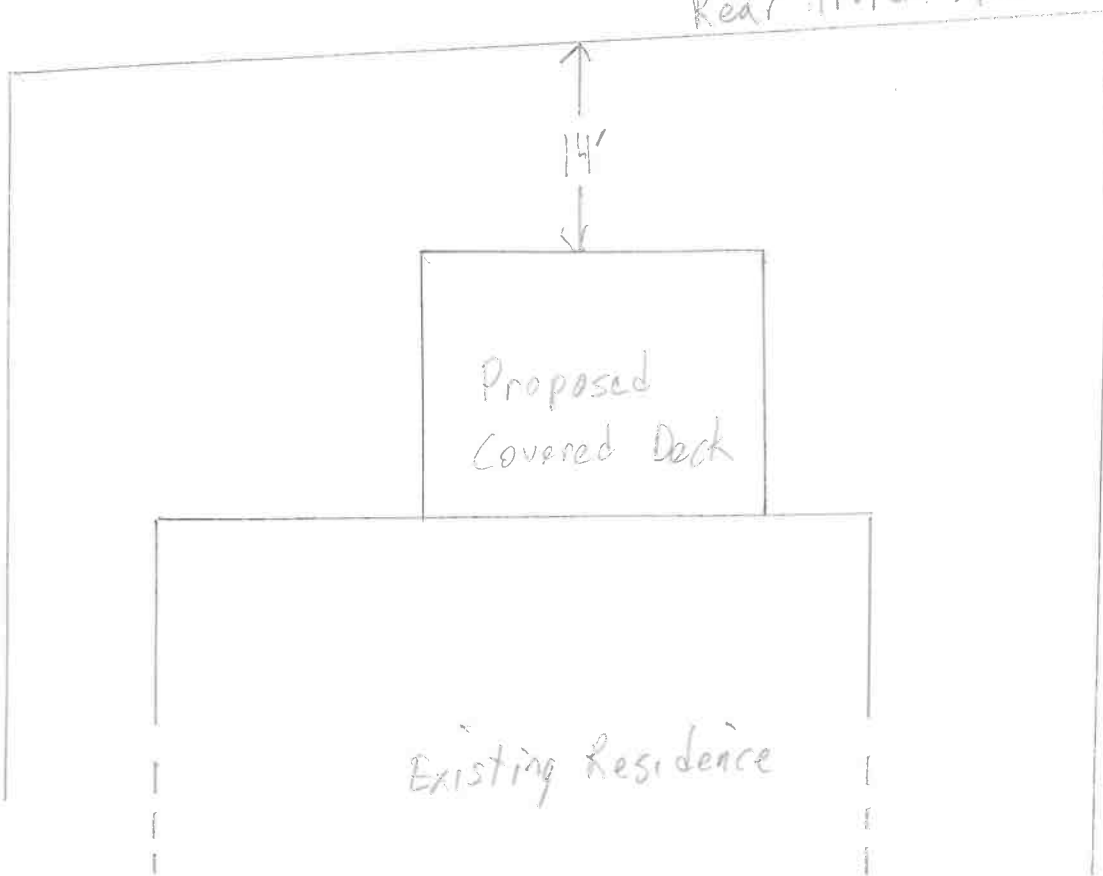
Westwood Hills
Green space

Rear Property Line

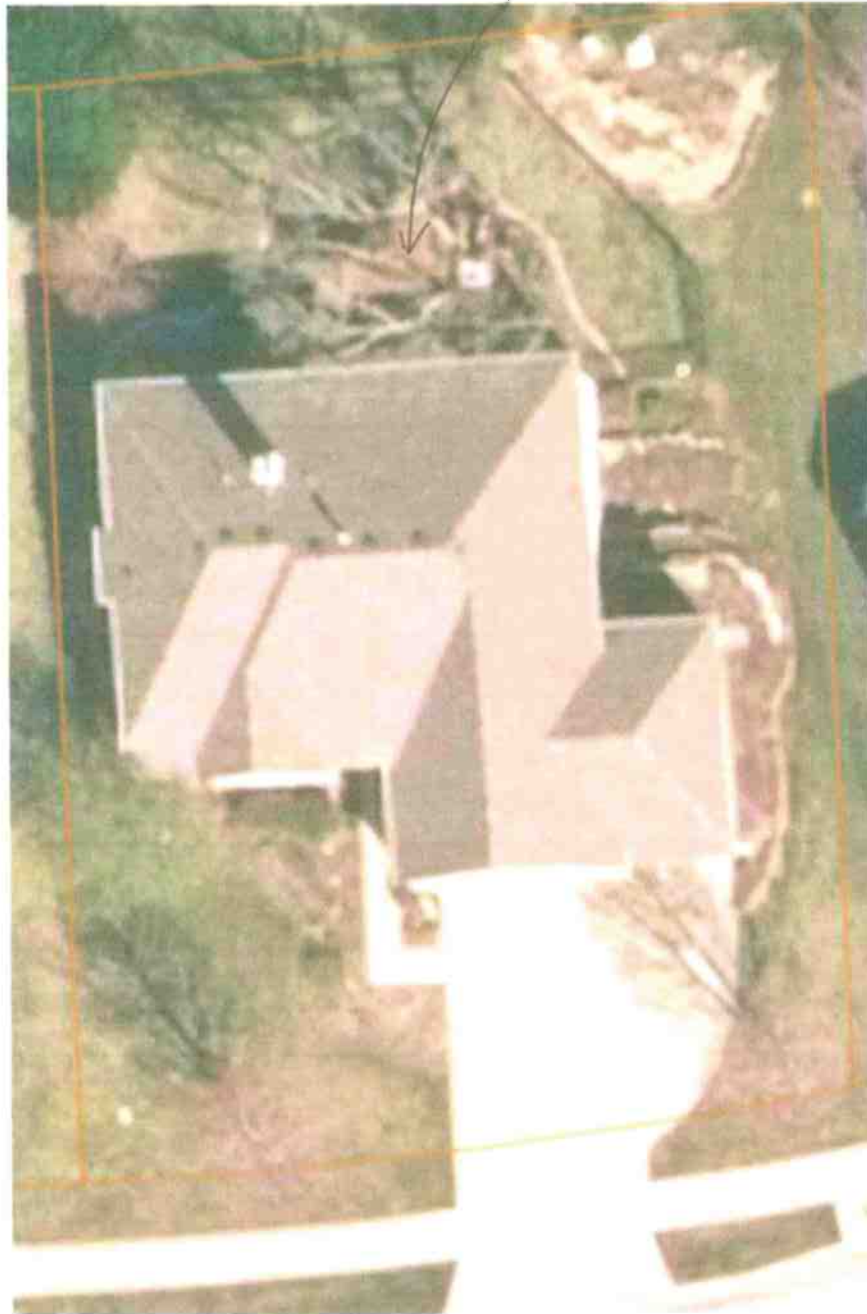
14'

Proposed
Covered Deck

Existing Residence



Existing deck location

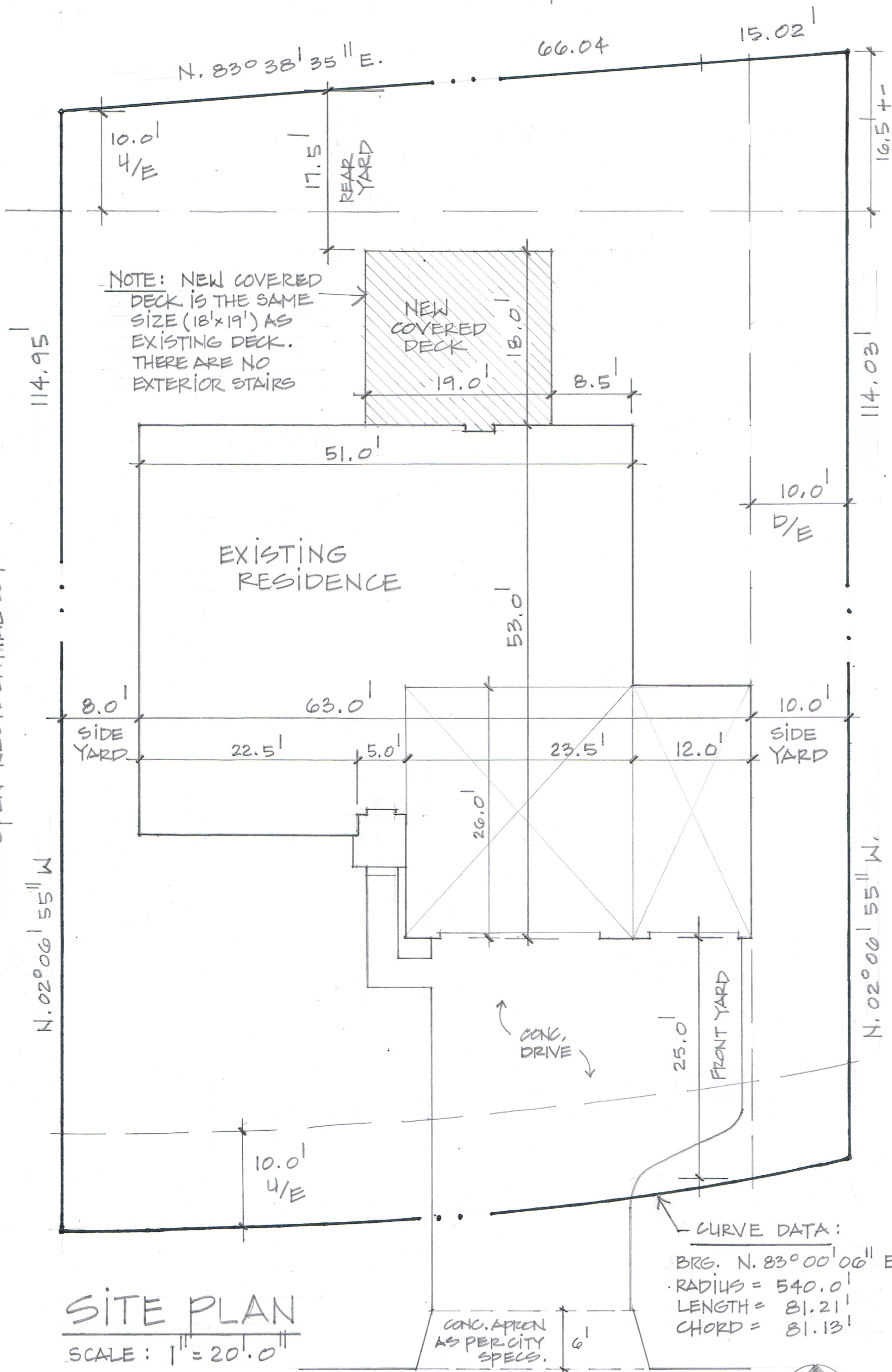


Former shade tree
covering deck.
(Removed)



OPEN RESIDENTIAL LOT

COMMON SPACE,
RETENTION POND



SITE PLAN

SCALE: 1" = 20.0'

LEGAL:

LOT # 22, BLOCK # ONE
WESTWOOD HILLS, 3RD PLAT,
CITY OF LAWRENCE, COUNTY
OF DOUGLAS, STATE OF KANSAS.

CODY COURT

