City of Independence

Request for a Variance from the Side Yard Setbacks for the Property Located at 4618 South Lake Sarah Drive

To:	City Council
From:	Mark Kaltsas, City Planner
Meeting Date:	June 14, 2016
Applicant:	Jay and Rebecca Fogelson
Owner:	Jay and Rebecca Fogelson
Location:	1). 4618 South Lake Sarah Drive

Request:

Jay and Rebecca Fogelson (Applicant) request that the City consider the following action for the property located at 4618 Lake Sarah Drive South (PID No.02-118-24-21-0005):

a. A variance to allow a reduced side yard setback on both sides of the property which would permit a home, deck and garage addition.

Property/Site Information:

The subject property is located at 4618 South Lake Sarah Drive. The property is a legal non-conforming property that does not meet the current lot and setback requirements. There is an existing home and detached garage on the subject property.

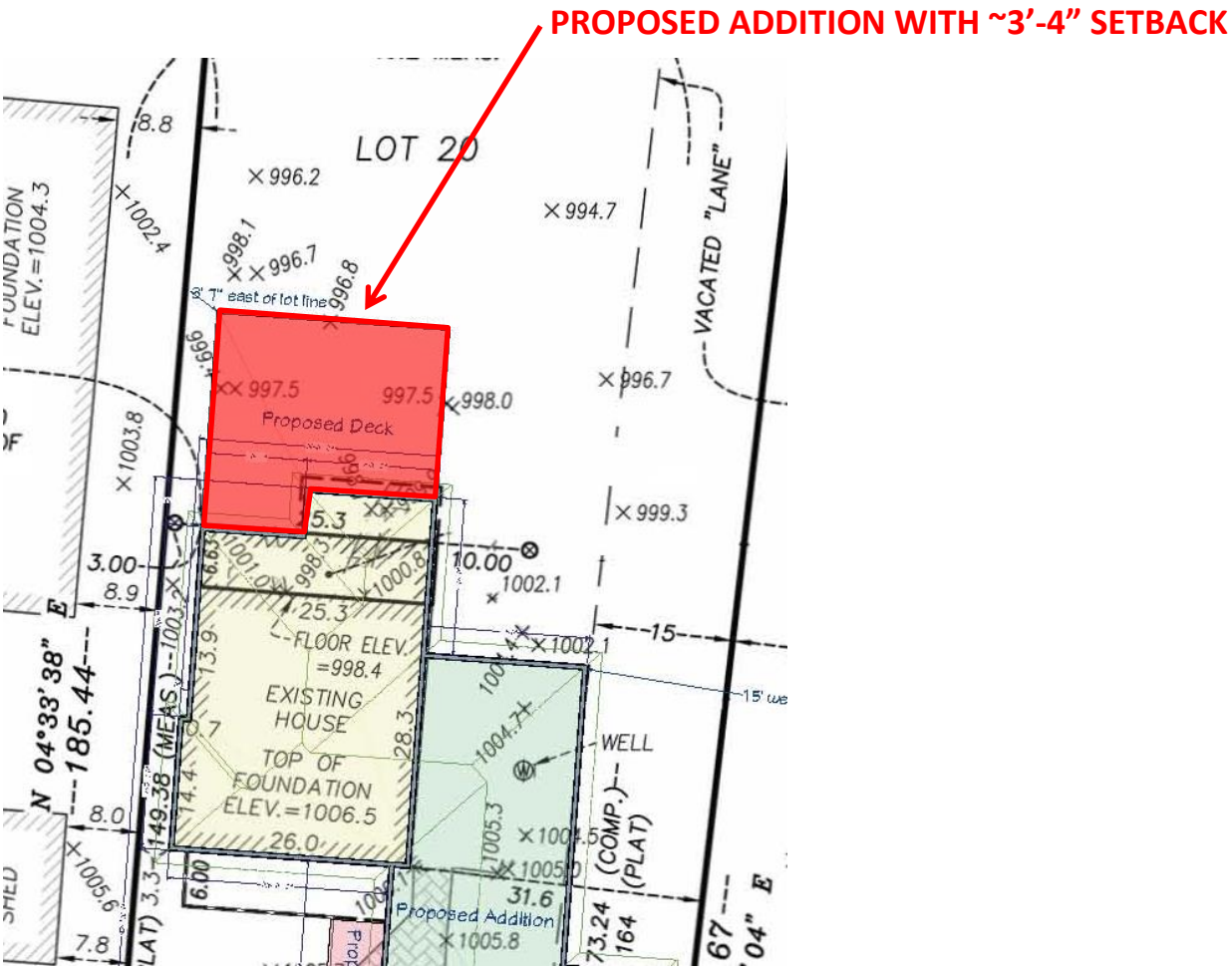
Property Information: ***4618 South Lake Sarah Drive***
Zoning: *Rural Residential (Shoreland Overlay)*
Comprehensive Plan: *Rural Residential*
Acreage: 0.55 *acres (23,031 square feet)*
Impervious Surface Maximum*: 25% (5,757.75 square feet)*

4618 South Lake Sarah Drive (blue outline)

Discussion:

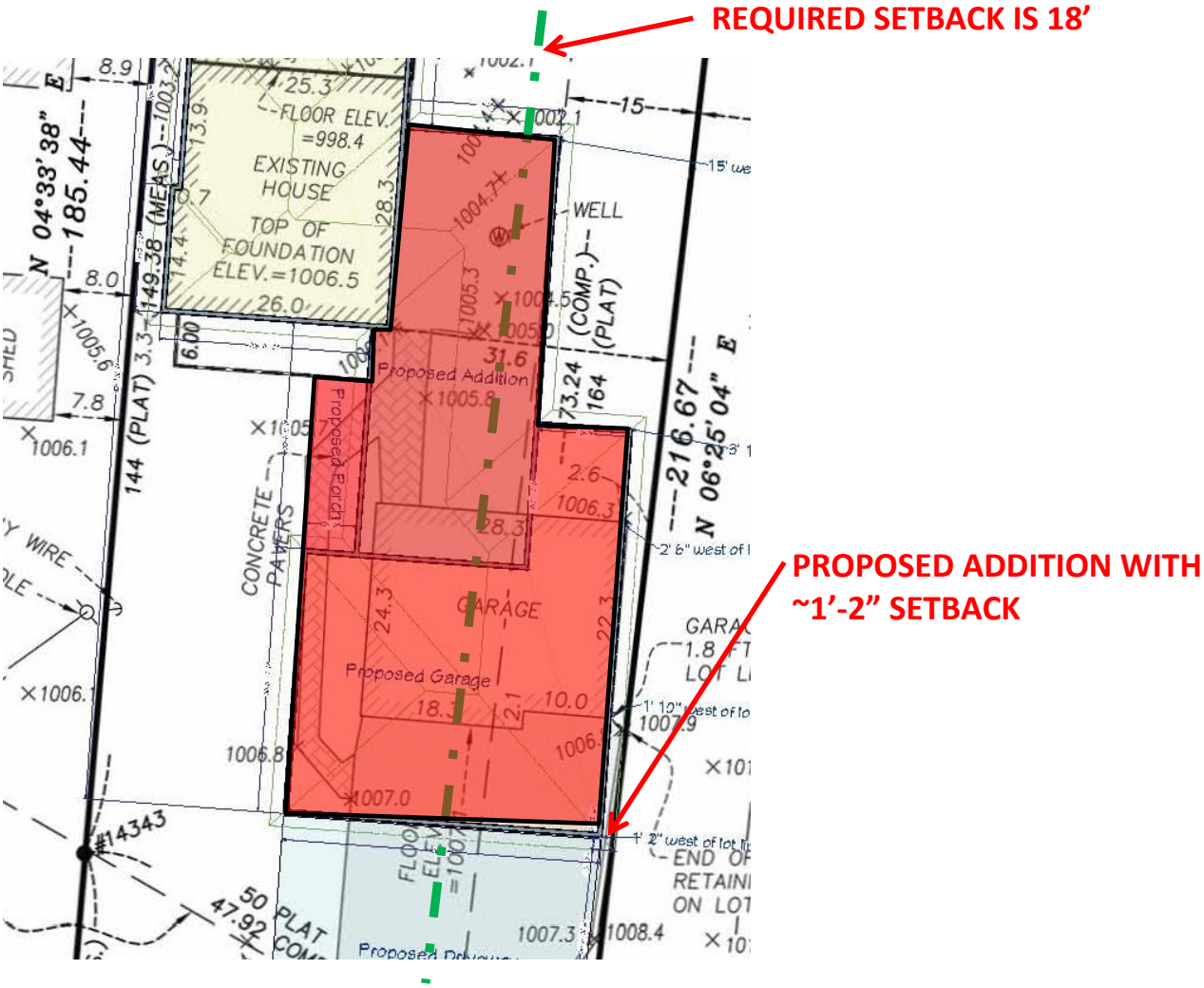
The City granted a variance for this property in 2008 to allow the expansion of the existing home on the property. The variance that was previously granted, allowed the expansion of the home along the west property line, utilizing the existing 3.4 foot setback. The variance allowed the expansion of the home up, allowing a second story, and out (to the north) for additional space. Those improvements were made to the home in 2014 and now the applicant would like to expand the home again.

The applicant would like the City to consider granting two variances to the property. The first variance requested would allow the construction of deck to the north of the home (lakeside) utilizing the existing setback of approximately 3.4 feet from the west property line. The deck is proposed to be constructed in line with the existing west wall of the home. The home and proposed deck are setback a significant distance from the OHWL and would not encroach into the shoreland setback.



The second variance requested is to allow the expansion of the house and garage towards the east property line. The applicant would like to expand the house and replace the existing garage. The applicant is proposing to expand the house and garage by constructing a connected garage and addition between

the existing home and new garage. The applicant is proposing to utilize the "east line" of the existing detached garage as the setback for the new structure. The proposed setback would be 1'-2" from the east property line. The current detached garage is setback approximately 1'-10" from the east property line.



The subject property is considered a substandard lot of record in accordance with the City's Shoreland Ordinance Section 505.15.

> *505.15. <u>Substandard lots</u>. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:*
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> > *(a) such use is permitted in the zoning district;*

(b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and

(c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.

Setbacks for properties located in the shoreland ordinance are as follows:

Subd. 2. Lot standards.

	Unsewered Areas			Sewered Areas		
	NE Waters	RD Waters	Tributary Streams	NE Waters	RD Waters	Tributary Streams
Lot Area	2.5 acres	2.5 acres	2.5 acres	1.0 acre	1.0 acre	1.0 acre
Water frontage and lot width at building line	200 ft	200 ft	200 ft	125 ft	100 ft	100 ft
Structure setback from ordinary high water mark	150 ft	100 ft	100 ft	150 ft	100 ft	100 ft
Structure setback from roads and highways	85 ft from centerline or 50 ft. from right-of-way, whichever is greater					
Structure height limitation	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft
Maximum lot area covered by impervious surface	25%	25%	25%	25%	25%	25%
Sewage system setback from ordinary high water mark	150 ft	75 ft (RR) 150 ft (AG)	75 ft (RR) 150 ft (AG)	125 ft	75 ft	75 ft

Front Yard Setback:

Required: 85 feet from centerline or 50 feet from the ROW (@ 60% = 30 feet from right of way)
Proposed: 48 feet from the right of way

Side Yard Setback:

Required: 30 feet (@ 60% = 18 feet)
Provided (West): 3'-4" (variance of 14'-8")
Provided (East): 1'-2" (variance of 16'-10")

Lakeshore Setback (East Side):

Required: 100 feet from Ordinary High Water Mark (@ 60% = 60 feet)
Proposed: 100+ feet

In addition to the setback requirements, properties located in the shoreland district can have a maximum impervious surface coverage of 25%. This property can have a maximum coverage of *5,757.75* square feet. The proposed house and impervious site improvements have a total approximate impervious coverage area of approximately 4,900 square feet or 21%. The proposed house and site improvements would not exceed the required maximum impervious coverage allowed under the Shoreland Ordinance.

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

(a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

(b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;

(c) the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that exceeds the typical setback granted for properties in this area.

b. Each property in this area is non-conforming and can require relief from certain setbacks. The City will need to determine if the requested variance is unique to this property.

c. The character of the surrounding area is residential. The proposed single family home is in keeping with the City's comprehensive plan.

The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance. Several additional considerations that could be considered are as follows:

1. This lot was developed prior to the establishment of the setbacks in the current ordinance being adopted.

2. The adjacent property to the west received a variance to allow an addition (attached garage and bonus room) that has an 8 foot setback (10 foot variance) from the side yard setback.

3. The property to the east appears to meet the side yard setback of 18 feet.

4. The applicant currently has access to the lakeside of the home via an opening between the existing home and detached garage. This access is approximately 20 feet in width and allows for an open (non-covered) access to the remainder of the property. The proposed addition would significantly restrict access to the remainder of the property and would make it difficult to maintain the proposed structure or property from the applicant's property without encroaching onto the neighbor's property.

5. The building code requires a minimum of a 5 foot separation between a building and a property line (without making more onerous fire preventive building improvements). Based on this separation, the proposed building would potentially restrict the development of the adjacent property due to the limited setback.

6. The proposed configuration does not appear to be the only layout that could accommodate the applicants proposed improvements. It is possible that the garage addition could be shifted to the west to provide for a greater setback along the east property line. The City could consider requiring an increased setback along one side of the property to maintain a reasonable access to the lakeshore property.

7. The existing detached garage is located approximately 1'-10" from the east property line and can remain in its current location. The applicant could connect the existing detached garage to the existing home as long as all applicable setbacks are maintained. It appears that this connection would be possible without any variances. If this were to occur, the access to the back (lakeshore) property would be restricted.

8. The applicant will need to provide the City with an actual impervious surface calculation.

9. The applicant will need to provide the City with an engineered grading plan that depicts how the property will be graded so that no water is discharged onto the neighboring properties.

10. The home is connected to City sewer.

Staff is seeking direction and feedback from the Planning Commission relating to the proposed addition and requested variances. The variance along the west property line to allow the construction of the deck is consistent with the previously granted variance. The proposed expansion of the house and garage to the east will limit access to the lakeshore property and will make it difficult to maintain the new structure. The City has typically considered granting variances for non-conforming properties in this area. The City will need to determine if there is a hardship that warrants the requested variance and determine what a reasonable setback would be for the proposed expansion.

Public Comments:

The City received comments from the neighboring property owner to the east. He stated that he was concerned with the proximity of proposed addition and spoke to that point at the public hearing. He was concerned that the close proximity of the proposed addition would negatively impact his property. He was also concerned with the impact to his property during construction noting that the proposed addition could not be constructed without construction encroaching onto his property. He recommended that the City consider an increased setback from the east property line.

Planning Commission Discussion:

Commissioners discussed the requested variance and asked questions of staff and the applicant. Commissioners asked staff if the fire code stipulated any setback requirements that should be noted. Staff discussed that the building code has a minimum setback requirement of 5 feet from a property line. Commissioners expressed concerns relating to the close proximity of the proposed addition on the east side of the property. Commissioners asked how the addition could be maintained without having to go on the neighboring property. Commissioners also discussed that the proposed addition would limit access to the rear of the property. Planning Commissioners discussed whether or not the addition could be located further to the west to provide for a larger setback. The applicant stated that moving the addition to the west would encroach on the front door of the home. Commissioners believed that the proposed addition to the east could not be recommended for approval as proposed and asked the applicant to consider revising the plans and coming back with a proposal that addressed their concerns. Commissioners asked if they could separate the request and did recommend approval of the variance on the west property line to allow the construction of the proposed deck. The applicant will be bringing back a revised plan at the next Planning Commission Meeting for further review and consideration by the Planning Commission.

Recommendation:

The Planning Commission recommended approval of the requested variance to allow a 3'-4" setback on the west property to allow the construction of the proposed deck with the following findings and conditions:

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.

2. The variance allows allow a 3'-4" setback on the west property line to allow the construction of the proposed deck. Any changes to the configuration of the deck as proposed or future expansion will require City Council approval through the variance review process.

3. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The Applicant shall submit a survey which provides impervious surface calculations to the City.

4. The Applicant shall pay for all costs associated with the City's review of the requested variance.

5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts.

Attachments:

1. Application
2. Site Plan