

The public may attend the meeting in person or view it online at
<http://pvkansas.com/livestreaming>.

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE
TUESDAY, OCTOBER 1, 2024
7700 MISSION ROAD
COUNCIL CHAMBERS
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF BZA MINUTES - June 4, 2024

III. PUBLIC HEARINGS

BZA2024-04 Variance of required side setback
3507 W. 79th Street
Zoning: R-1A
Applicant: Jake Vanderlugt

IV. OTHER BUSINESS

V. ADJOURNMENT

Plans available at City Hall if applicable
If you cannot be present, comments can be made by e-mail to
cityclerk@pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, JUNE 4, 2024**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, June 4, 2024, at 6:30 p.m. in the Council Chambers of the Municipal Building at 7700 Mission Road. Chair Jonathan Birkel called the meeting to order at 6:30 p.m. with the following members present: James Breneman, James Kersten, Greg Wolf, Melissa Brown, Melissa Temple and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Board of Zoning Appeals: Chris Brewster, Multistudio; Nickie Lee, Deputy City Administrator; Terry O'Toole, Council Liaison; Mitch Dringman, Building Official; Adam Geffert, City Clerk/Board Secretary.

APPROVAL OF MINUTES

Mr. Breneman moved for the approval of the minutes of the May 7, 2024, Board of Zoning Appeals meeting as presented. Ms. Brown seconded the motion, which passed 5-0, with Mr. Wolf and Mr. Valentino in abstention.

PUBLIC HEARINGS

BZA2024-05 Variance of required side setback for construction of deck
2214 W. 72nd Street
Zoning: R-1B
Applicant: Margaret Walsh

Mr. Brewster stated that the applicant was requesting a side setback variance from 6' to approximately 5' on the west side lot line to allow for the replacement of an existing deck. The proposed deck would be approximately 8' wide and 13' deep and sit within a reverse corner on the northwest side of the home. The 8' width would place the deck approximately 5' from the west property line. The deck would also extend to the rear of the house along the side setback for approximately 13', which is slightly larger than the current deck. The adjacent house is approximately 9' from the existing house, but the deck is more than 12' from any structure due to the floor plan of the adjacent house.

The property is a 60' wide by 130' deep lot, which is typical of most lots on the block, with some variation. The house was built prior to adoption of the zoning regulations, and both it and the deck are legal non-conforming structures situated approximately 5' from the west property boundary. Mr. Brewster noted that the R-1B zoning district was amended

in 2018 to change the minimum side setback from 4' to 6'. A replacement that complies with the required setback would either involve shortening the deck to approximately 7' in width, lowering it two steps down from the doorway, or cantilevering it over foundational elements that comply with the setback.

Mr. Brewster said that side setbacks were intended to manage the relationship of adjacent buildings. In this case, the buildings will maintain a relationship similar to the existing condition. The deck is proposed as a continuation of the side setback line of the principle structure, and will not encroach into the setback more than the principal structure or existing deck. It will also sit at or below the first-floor elevation of the existing home and will remain open and unenclosed.

Mr. Brewster stated that Section 19.54.030 of the zoning regulations required the Board to find that all five of the following "golden factors" be met to grant a variance:

1. Uniqueness - That the variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the applicant.
2. Adjacent Property - That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.
3. Hardship - That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.
4. Public Interest - That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
5. Spirit and Intent of the Regulation - That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

He added that if the board approved the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application and based on submitted plans.
2. The variance, if approved, shall be recorded with the County Register of Deeds within one year of approval.

Margaret Walsh, resident and owner of the property, was present at the meeting.

Mr. Birkel opened the public hearing at 6:36 p.m. With no one present to speak, the public hearing was closed at 6:37 p.m.

Mr. Wolf made a motion to approve the variance with the conditions recommended by staff. Mr. Valentino seconded the motion, which passed unanimously.

OTHER BUSINESS

None.

ADJOURNMENT

Chair Jonathan Birkel adjourned the meeting of the Board of Zoning Appeals at 6:38 p.m.

Adam Geffert
City Clerk/Board Secretary

STAFF REPORT

TO: Prairie Village Board of Zoning Appeals
FROM: Chris Brewster, Multistudio, Planning Consultant
DATE: October 1, 2024 Board of Zoning Appeals Meeting

Application: BZA 2024-04

Request: Variance to the side yard setback from 7 feet to approximately 1.5 feet, to allow the replacement of an existing deck.

Action: *A variance request requires the Board of Zoning Appeals to evaluate facts and weigh evidence, and a majority of the Board must find that all 5 criteria for a variance have been met in order to approve the request.*

Property Address: 3507 W. 79th Street

Applicant: Colin Gardner; Jake Vanderlught (current owner)

Current Zoning & Use: R1-A Single-Family Residential – Single-family Dwelling

Surrounding Zoning & Use: **North:** R-1A Single-Family Residential – Single-Family Dwellings
East: R-1A Single-Family Residential - Single-Family Dwellings
South: R-1A Single-Family Residential - Single-Family Dwellings
West: R-1A Single-Family Residential – Single-Family Dwellings

Legal Description: CORINTH ESTATES LOT 1 PVC-0614 0001

Property Area: 0.31 acres (13,709.25 s.f.)

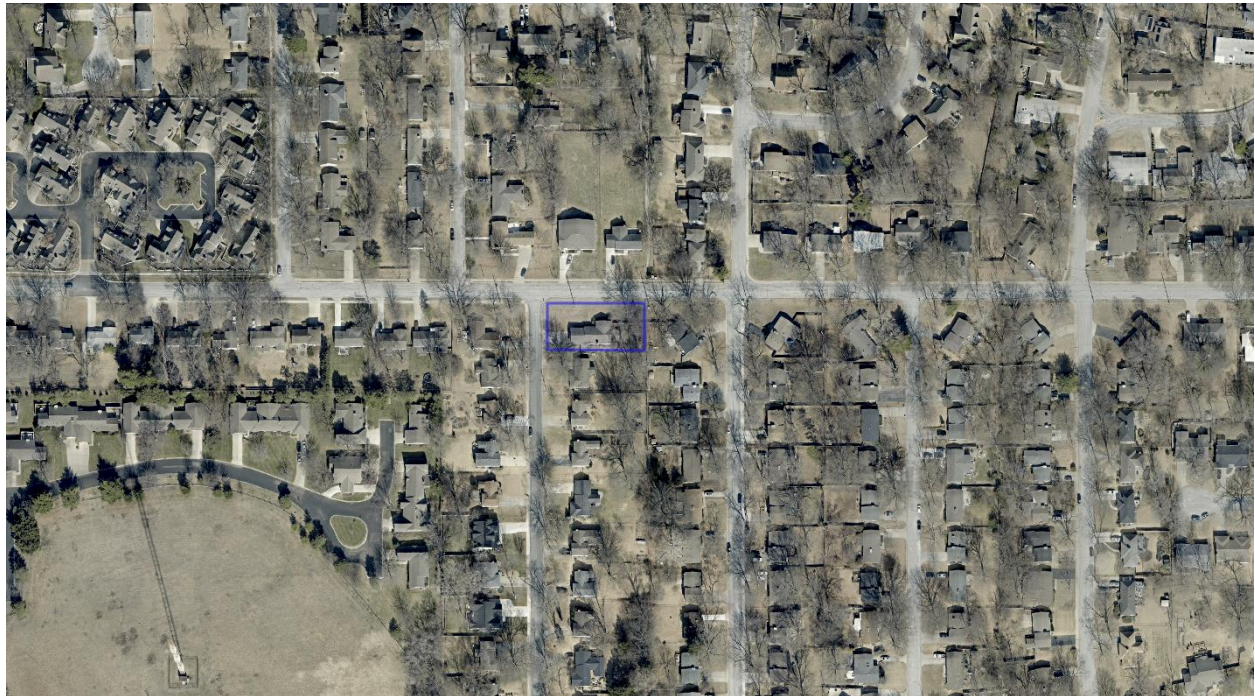
Related Case Files: None

Attachments: Application, variance request form, lot and deck plans.

General Location – Map



Aerial Map



Aerial Site



Birdseye View



Birdseye View



Street View



Looking east from Reinhardt – Subject on the left and subject lot line in the middle

SUMMARY:

This application requests a variance for the side setback from 7 feet to approximately 1.25 feet on the south side lot line to allow the construction of a deck to replace a concrete patio. The deck is approximately 12 feet wide and 33 feet deep and will be situated on the southeast side of the rear of the house. The 12 feet width places the deck approximately 1.5 feet from the south property line, which is the rear of the home but shares a side lot line orientation with the house to the south.

DETAILS:

The property is zoned R-1A and is used as a single-family dwelling. All property in the vicinity is similarly zoned and used. R-1A which requires the following for side setbacks:

- 7' [\[19.06.015\(a\)\]](#)
- 3' for open and uncovered porches, decks or patios less than 30 inches high. [\[19.44.020.\(d\)\]](#)

The applicant is requesting a variance from these standards to allow the construction of a deck to replace an existing concrete patio. The deck is at the first floor elevation but due to the slope of the lot extends to approximately 43 inches above grade on the south side so it is subject to the R-1A 7-foot side setback requirement. The deck is approximately 12 feet wide and 33 feet deep and is situated on the southeast side of the home which is the rear of the lot. The 12 feet width places the deck approximately 1.5 feet from the south property lot line. It extends to the rear of the house even with the side setback of the house for approximately 13 feet (a slight expansion to the current deck). The adjacent house is approximately 9 feet from the common lot line, so the deck will be approximately 10 to 11 feet from the house. This is the garage side (north side) of the adjacent house.

The subject lot is a “reverse corner lot” in that the house faces the side street (north – 79th Street) while other houses on the block are oriented to Reinhard Street. [See [19.44.020\(e\)\(2\)](#)] The house to the east on 79th Street has an intersection orientation where it faces the corner, and has irregular side and rear yards. The subject house has a very shallow rear yard (approximately 14 feet), that shares a common side lot line with the house to the south. The larger yard for the subject house is to the east is a side yard. This results in a very narrow yard off the rear of the house to then access the larger yard to the side of the house. This is the location of the proposed deck.

This application was originally filed in April by a prior owner, but due to issues with the neighborhood meeting, it was never scheduled for a Board of Adjustment hearing. The current owner/ applicant held the required neighborhood meeting on August 20, 2024 as required by the Prairie Village Resident Participation Policy and has supplemented the application with background on that meeting.

VARIANCE ANALYSIS (BOARD OF ZONING APPEALS):

[Section 19.54.030](#) of the Zoning Ordinance requires the Board to find that **all five** of the following conditions are met in order to grant a variance. If the Board finds that any one of these conditions is not met, a variance should not be granted:

A. Uniqueness

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

The property is a 80-foot wide by 170-foot deep lot (the minimum width in R-1A is 80 feet.) It is typical of most lots on this block, although there are wider lots and irregular patterns of 70-, 100-, and 120+-feet wide lot on surrounding blocks. A number of these lots are legal non-conforming lots with respect to width (70' rather than the required 80 feet). This lot has a reverse corner orientation, with the front on 79th street, and an expanded side yard setback on Reinhard Street to align with the rest of the homes fronting Reinhardt to the south. It also has a front hard setback on 79th Street to orient similarly to other homes on the north and south side of 79th Street. As a result, the rear of the home meets the side yard setback requirement (7 feet minimum) at the rear of the home but does not meet the required rear yard setback (25 feet minimum). The house was built in 1960 – prior to adoption of the ordinance and is a legal non-conforming structure.

B. Adjacent Property

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

The existing house is a legal non-conforming structure and is situated approximately 14 feet from the south property boundary, which is the rear of this home but the side yard of the adjacent home. The existing house on the adjacent lot is approximately 9 feet from the property boundary (23-foot separation of buildings) and this is the garage side of the adjacent home.

C. Hardship

That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

The existing house is legal nonconforming structure, and it is a reverse corner lot. This results in a very shallow rear lot. Additionally, the slope of the lot means that a deck extending at the first-floor elevation of the home (approximately 1 foot high) is approximately 3.5 feet high as it extends out from the home, and therefore has to comply with the side setback for structures. This means that no deck could be built in this location that complies with the ordinance (the house does not comply

with the rear lot setback, so any deck would not), unless it were stepped down to below 30 inches and shortened by approximately 1.5 to 2 feet. This would create a complex flooring arrangement for the long and narrow space. Alternatively grading and replacement of a narrow patio similar to the current situation would be required resulting in less usable space.

D. Public Interest

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

The proposed deck is to the interior of the lot and is not highly visible from either streetscape, and only impacts the two adjacent lots. Reinhardt street presents the greatest visibility of the proposed deck, but it will be setback over 70 feet from the street and will have a similar appearance and scale as a side privacy fence. Additionally, the deck is open and unenclosed and will not add any scale or massing to the principal structure.

E. Spirit and Intent of the Regulation

That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

Side setbacks are intended to manage the relationship of adjacent buildings. In this case the buildings will maintain a relationship similar to the current condition, although the deck will be slightly more elevated than the existing patio as it extends closer to the adjacent side lot line due to the slope of the yard (approximately 2 feet higher and approximately 4 feet closer, however it is also shifting further east from the current patio and will only be abutting the rear yard of the adjacent lot (not the building). Additionally, this is the garage side of the adjacent home.

EFFECT OF DECISION:

After reviewing the information submitted and considering the testimony during the public hearing, if the Board finds that **all five conditions** can be met as required by state statutes and [Section 19.54.030](#) of the Prairie Village Zoning Ordinance, then it may grant the variance. If the Board does approve the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application and based on submitted plans.
2. The variance, if approved, shall be recorded with the County Register of Deeds within 1 year of approval.

**CITY OF PRAIRIE VILLAGE, KANSAS
BOARD OF ZONING APPEALS
APPLICATION FOR APPEAL / VARIANCE / EXCEPTION
PROCEDURE FOR FILING APPLICATION**

1. Applications shall be made on forms prescribed by the Board of Zoning Appeals and filed with the Secretary of the Board.
2. A deposit of seventy-five dollars (\$75.00) shall accompany each application. If this sum is inadequate to cover incurred expenses; additional money will be required.
3. The applicant shall furnish, at the time of filing the application, a certified list of all the owners of property (not just occupants) located within two hundred (200) feet, excepting public streets and ways, of the area for which the Appeal / Variance has been requested, obtained from the County Clerk's Offices at the Johnson County Courthouses in Olathe or from a title company. The applicant shall also furnish a sketch, plan or information showing details of the variance requested. The applicant shall submit a written statement in response to the five criteria necessary for granting a variance. For an appeal, the applicant shall submit a written statement providing information justifying the appeal requested.
4. All applications shall be set for a public hearing before the Board of Zoning Appeals.
5. Notice of such hearing shall be published in one issue of the official newspaper of the City of Prairie Village; such notice to be published not less than twenty (20) days or more than forty (40) days, exclusive of the days of publications and hearing, prior to the date of said hearing of the Board.
6. The applicant shall mail, by certified mail, return receipt requested, a copy of the notice of hearing to all owners of property as set out in #3 at least twenty (20) days prior to the hearing, thus providing an opportunity to all interested persons to be heard.

OFFICE OF THE CITY CLERK
CITY OF PRAIRIE VILLAGE
7700 MISSION ROAD
PRAIRIE VILLAGE, KS 66208
913-381-6464

The Board may grant a variance only upon finding that the requirements of PVMC 19.44.070 have been met. The following is intended as a simplified discussion of the criteria considered in the request for a variance and is provided for your convenience and assistance in making your request. While this discussion is intended to be helpful, the Board is governed by its interpretation of PVMC 19.44.070 as applied to the facts and circumstances of your case and the following simplified discussion is not intended to be an exhaustive analysis of all applicable principles.

Criteria #1 – That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or applicant.

The variance must arise from a condition of the property. That condition must be unique to the property. That does not mean that the condition is “unique” but rather that it is “unique to the property;” that is, the condition relates solely to the property and not to external factors, structures, etc. The condition must not be ordinarily found in the zone or district; i.e., the condition must not exist with respect to a number of properties. Its occurrence must be infrequent. The owner/applicant cannot have done anything to the property which caused the condition. This does not refer to what the owner proposes with the variance, but some act done with the property; for example, subdividing a lot that causes the condition from which relief is sought.

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

The variance may not adversely affect the rights of adjacent property owners. The crucial terms here are “adversely” and “rights”. While objections of adjacent property holders will be heard and considered, the variance proceeding is not a plebiscite. The Board will consider whether or not any impact on adjacent property holders constitutes an adverse affect on their rights.

Criteria #3 – That the strict application of the provisions of this title of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

A variance may be granted where strict application will result in unnecessary hardship. Unnecessary hardship shall be considered to mean that the property owner cannot do with his property that which others can ordinarily do and/or that which is a reasonable expectation for a similar property owner and /or where special circumstances of the particular property exist.

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

The variance may not adversely affect the public interest. The Board shall consider the impact of the requested variance upon the concerns of the public; such as fire protection, environmental impact, police protection, vision, safety and morals.

Criteria #5 – That granting the variance desired will not be opposed to the general spirit and intent of this title.

The variance must not conflict with the intent and spirit of the zoning regulation. The Board shall consider that the zoning regulation was adopted for a purpose; such as, green space, traffic safety, light and air, neighborhood conformity, etc. Therefore, the Board will evaluate whether or not the variance requested will conflict with that purpose.

VARIANCE APPLICATION
BOARD OF ZONING APPEALS

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No: _____

Filing Fee: _____

Deposit: _____

Date Advertised: _____

Public Hearing Date: _____

APPLICANT: Colin Gardner PHONE: 913.957.2485
ADDRESS: 15717 Chadwick St Overland Park 66224 ZIP: 66208
OWNER: ' ' PHONE: ' '
ADDRESS ' ' ZIP: ' '
LOCATION OF PROPERTY: 3507 w 79th st
LEGAL DESCRIPTION: _____
CORINTH ESTATES LOT 1 PVC-0614 0001

Variance Requested _____

We are looking for a variance for a deck that was built at the rear/side yard of the home in an effort to make the space usable. It is within the property lines, but it encroaches on the deck setback requirement.

ADJACENT ZONING AND LAND USE:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>Residential</u>	<u>R-1a</u>
South	<u>Residential</u>	<u>R-1a</u>
East	<u>Residential</u>	<u>R-1a</u>
West	<u>Residential</u>	<u>R-1a</u>

Present use of Property: Residential

Proposed Use of Property: Residential

Utility lines or easements that would restrict proposed development:

_____ none _____

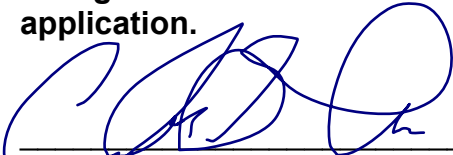
Please complete both pages of the form and return to:

City Clerk
City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

AGREEMENT TO PAY EXPENSES

As a result of the filing of said application, CITY may incur certain expenses, such as publication costs, consulting fees, attorney fees and court reporter fees.

APPLICANT hereby agrees to be responsible for and to CITY for all cost incurred by CITY as a result of said application. Said costs shall be paid within ten (10) days of receipt of any bill submitted by CITY to APPLICANT. It is understood that no requests granted by CITY or any of its commissions will be effective until all costs have been paid. Costs will be owing whether or not APPLICANT obtains the relief requested in the application.



Applicant's Signature/Date

4/19/2024



Owner's Signature/Date

4/19/2024

Please indicate below the extent to which the following standards are met, in the applicant's opinion. *Provide an explanation on a separate sheet for each standard which is found to be met.*

1. *UNIQUENESS* Yes No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

2. *ADJACENT PROPERTY* Yes No

The granting of the variance will not be materially detrimental of adversely affect the rights of adjacent property owners or residents.

3. *HARDSHIP* Yes No

The strict application of the provision of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be sufficient reason by itself to justify the variance.

4. *PUBLIC INTEREST* Yes No


The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

5. *SPIRIT AND INTENT* Yes No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

6. *MINIMUM VARIANCE* Yes No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

SIGNATURE:  DATE 4/19/2024

BY: _____
TITLE: _____

1. Uniqueness

- a. This house is orientated longways on a lot that was designed to be oriented on the short side. This lot has a large front yard to meet setback requirements in the 1950s and line it up with other homes on the street. But in this, it makes the backyard very shallow. Only ~14ft deep. All other backyards are 50ft+ in depth and all other houses adjacent face the Reinhardt street. All other lots on 79th have extended rear yards as well.

3. Hardship

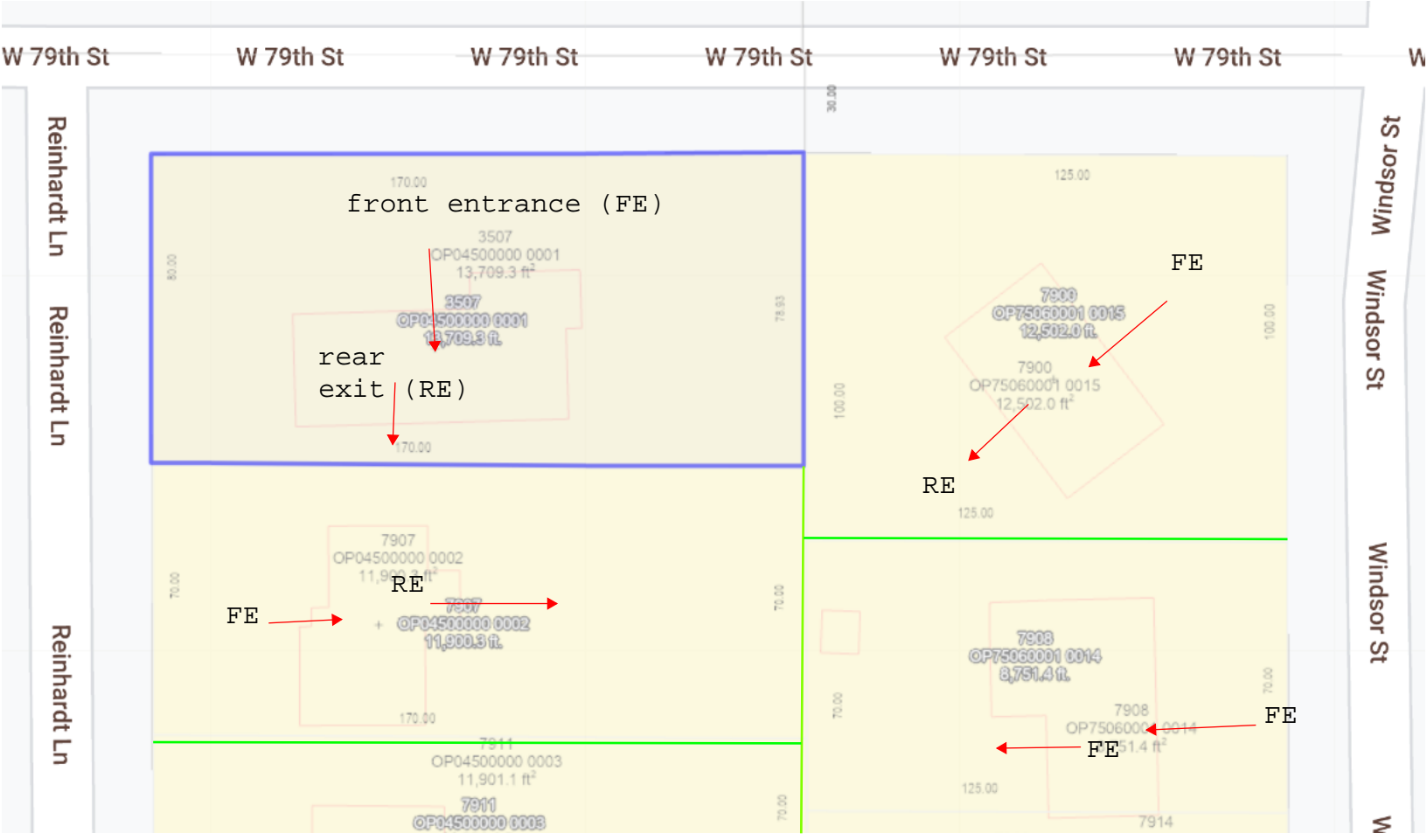
- a. The previous owners were using the side yard as a backyard of sorts. The area of the lot in interest where the deck was built also is quite sloped. This makes it hard to make the area useful or safe to walk on when exiting out the back door and a concrete patio was not possible due to this slope. Installing the deck was an effort to make the true backyard useful to its inhabitants and better connect to the side yard. The amount of people tripping when trying to walk to the side yard made me nervous.

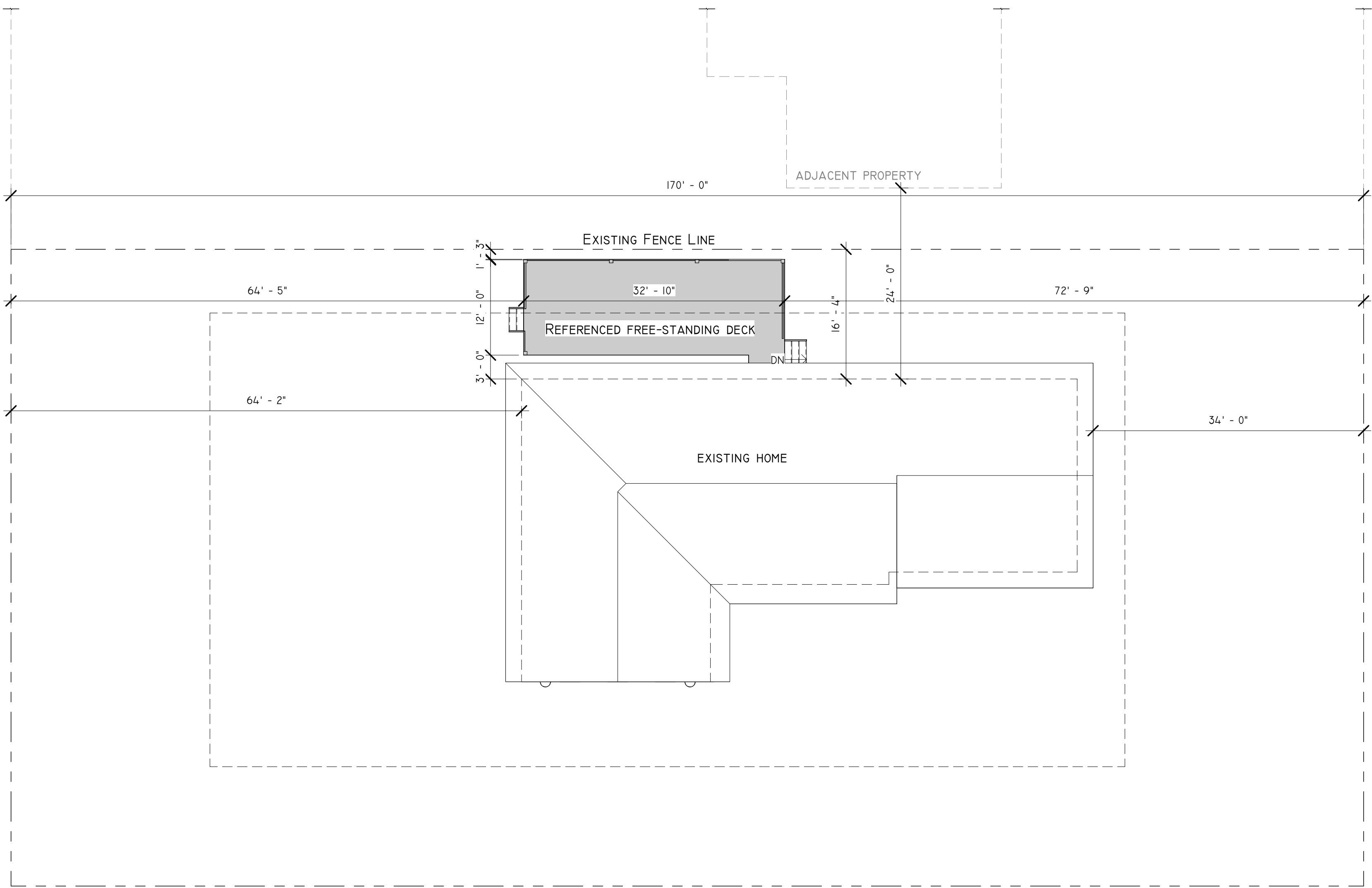
5. Spirit and Intent

- a. The zoning regulations are created to ensure a beautiful, sound, and flowing community. This home is no exception, and the deck was designed and built with sturdiness and thoughtful design in mind just like the home was. The front of the home is not obstructed by any means of the deck, and the deck also cannot be easily seen from the street.

6. Minimum variance

- a. The remodel of the home did not change any footprint of the existing structure and this variance is the minimum to allow for reasonable and safe use of the lot in its entirety.

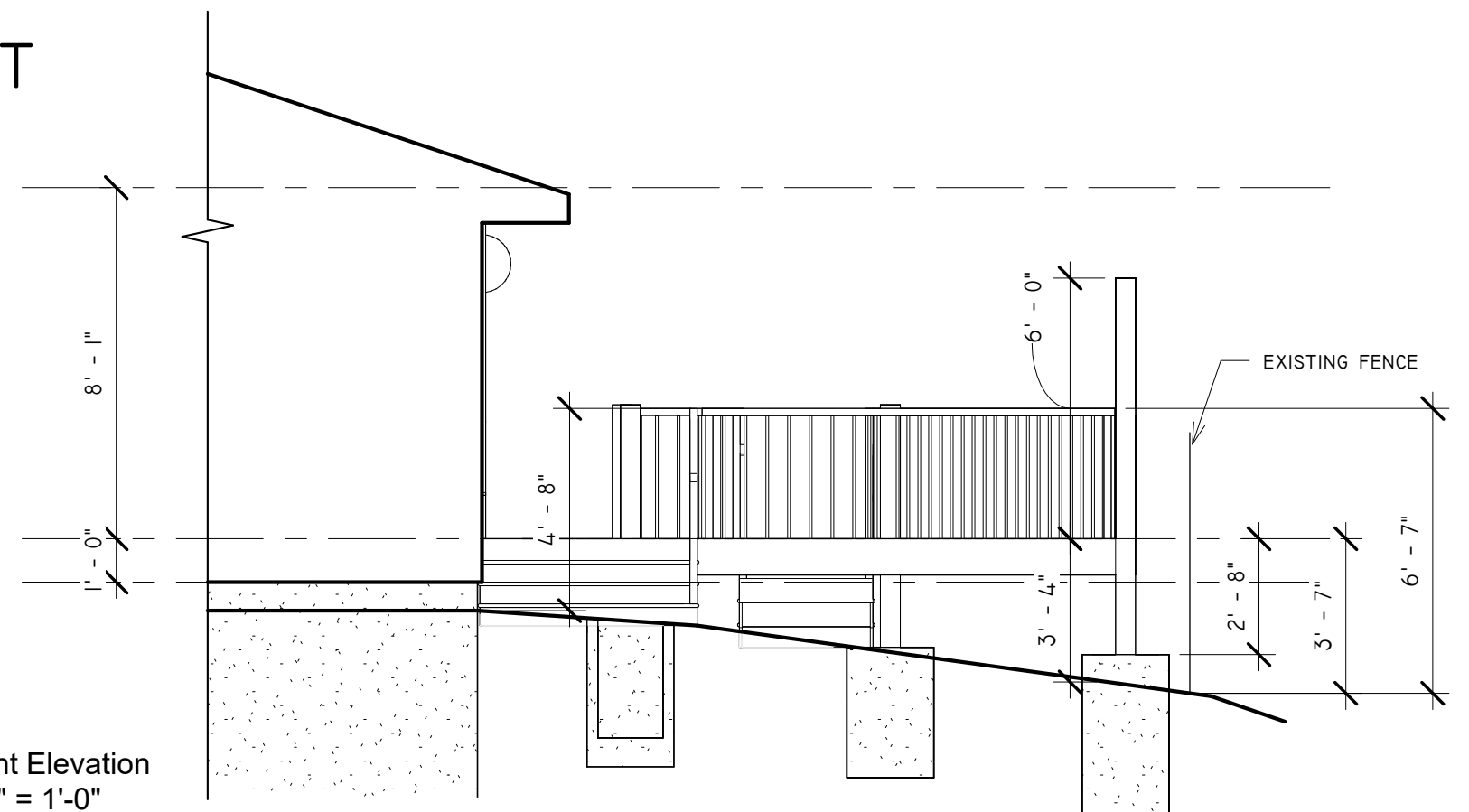
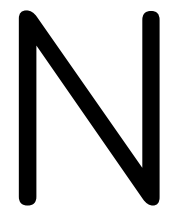




REINHART ST

① Site Plan
1" = 10'-0"

79TH ST



② Right Elevation
1/4" = 1'-0"

3507 W 79th St
Prairie Village, KS
Remodel
Deck Specific Site

Project number	723
Date	4/20/2023
Drawn by	Colin Gardner
S1.1	
Scale	As indicated

August 7th, 2024

Jake Vanderlugt
3507 W 79th St.
Prairie Village, KS 66208

Dear Neighbors,

I am writing to make you aware of the deck on our side yard at 3507 W 79th St. which was built by the previous owners. Recently, we were contacted by the City of Prairie Village letting us know the built deck still needed to be approved.

I am requesting a variance from the City of Prairie Village Board of Zoning Appeals (PVBZA) to approve the deck closer to the side property line than what is proscribed by the zoning regulations. The regulations stipulate those structures be no closer to the property line than 3 feet, there be a minimum of 12 feet to neighboring structures, and be no taller than 6 feet.

My request is to approve the built deck as is which is on the property line then there is a 6 foot fence built onto the deck and is 3-4 feet above the 6 foot requirement.

As required by the Board of Zoning Appeals, I am providing our neighbors with an opportunity to raise any questions or concerns regarding our request for this variance. Accordingly, I am holding a meeting on the driveway of our home at 3507 W 79th St for you to express those concerns and to answer your questions regarding my request. You are invited but not required to attend. I will submit a record of this meeting to the PVBZA identifying attendees and describing any concerns expressed.

The meeting will be held on Tuesday, August 20th at 7:30pm

The BZA meeting will be held at Prairie Village City Hall on Tuesday, October 1st at 6:30 pm

Thank you,

Jake Vanderlugt
3507 W 79th St.
Prairie Village, KS 66208

Sign in sheet

EVENT: 3507 W. 79th St.
Deac Meeting

DATE: August 20, 2024

NO.	NAME	
1	MONTY & CATE HUNTZ	
2	CHRIS RUSSELL	
3		
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Hi Adam,

I actually had the neighborhood meeting earlier this week Tuesday before I left town for work travel. We had two families come out and view the deck and were very supportive. We even had a few more families on Wednesday in passing apologize for not making the meeting Tuesday but let us know they love what has been updated with the house.

Thank you for checking in and I will talk with you soon!

Jake