CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

November 21, 2016

Don D. Rutherford
807 W. 2nd St. N.
Wichita, KS 67203

Christopher Clark
7701 E. Kellogg Dr. Ste. 630
Wichita, KS 67207

RE: BZA2016-00044 – City variance to eliminate the parking requirement, generally located south of 13th Street North and west of River Boulevard at 1059 N. Porter

Dear Applicant:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **November 17, 2016.** This resolution reflects the official action of the Board and is forwarded for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,

Scott Knebel, AICP
BZA Secretary

cc: Kyle McLaren, MABCD
Mike Gable, MABCD
JR Cox, MABCD
Janet Miller, WCC VI CM
Martha Sanchez, CL VI

BZA RESOLUTION NO. BZA2016-00044

WHEREAS, Don D. Rutherford (owner/applicant) and Christopher Clark (Agent) pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, requests a Variance to eliminate the parking requirement, generally located south of 13th Street North and west of River Boulevard at 1059 N. Porter.

Legal Description: Lots 141-143, Porter Avenue, Riverside Addition, Wichita, Sedgwick County, Kansas.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of November 17, 2016, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759 *et. seq.*; and

WHEREAS, the Board of Zoning Appeals has found that this property is unique inasmuch as the property is in the historic Riverside neighborhood that was developed primarily in the 1920s with pockets of commercial buildings and a mixture of residential housing types. Since much of the neighborhood was developed prior to the City of Wichita establishing zoning, many of the properties in the neighborhood do not conform to one or more the UZC development standards such as parking, screening, or setbacks.

WHEREAS, the Board of Zoning Appeals has found that the variances requested will not adversely affect the property has existed in the neighborhood for many decades without providing any off- street parking, and the applicant has secured access to ample off-street parking with an adjacent property to the north.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as the property cannot be improved by greater than 50 percent of its value without meeting the UZC parking requirement. The ability to make economic use of a commercial building long-term requires periodic remodeling as tenants change.

WHEREAS, the Board of Zoning Appeals has found that the requested variances are not adverse to the public interest inasmuch as the public has an interest in supporting continued reinvestment in historic neighborhoods, including permitting upgrades of existing properties through the approval of variances, especially when non-conformities with UZC development standards are prevalent in the neighborhood.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variances do not oppose the general spirit and intent of the zoning regulations, inasmuch as the primary intent

off-street parking requirements is to ensure that parking from one property does not encroach upon another. Additionally, the UZC permits off-site parking similar to agreement the applicant has with the adjacent church, and the applicant's off- site parking agreement meets the spirit and intent of the UZC.

WHEREAS, each of the five conditions required by Kansas Statutes Annotated 12-759 *et. seq.*, are found to be present for a variance to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, requests a Variance to eliminate the parking requirement, generally located south of 13th Street North and west of River Boulevard at 1059 N. Porter.

Legal Description: Lots 141-143, Porter Avenue, Riverside Addition, Wichita, Sedgwick County, Kansas.

The variances are hereby GRANTED, subject to the following conditions:

1. No use of the subject property with a parking requirement greater than that of a restaurant shall be permitted.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 17th Day of November, 2016.

BZA Board Chair, David W. Foster

ATTEST:

Scott Knebel
Acting BZA Secretary

BOARD OF ZONING APPEALS
SEDGWICK COUNTY, KANSAS

AGENDA ITEM NO. 2
November 17, 2016

SECRETARY'S REPORT

CASE NUMBER: BZA2016-00044

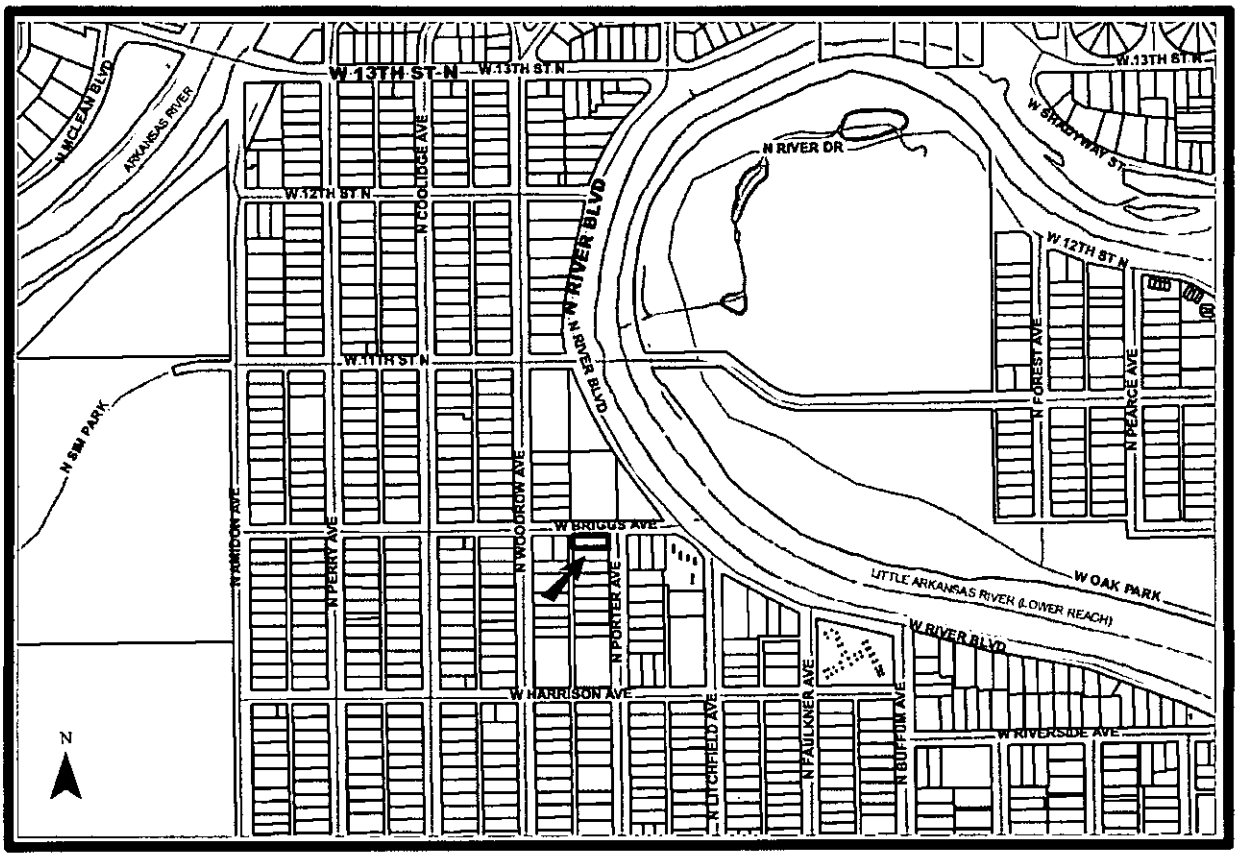
APPLICANT/AGENT: Don D. Rutherford (Owner/Applicant); Christopher Clark (Agent)

REQUEST: Variance to eliminate the parking requirement

CURRENT ZONING: LC Limited Commercial

SITE SIZE: 0.16 acres

LOCATION: South of 13th Street North and west of River Boulevard at 1059 N. Porter



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Kansas Statutes Annotated 12-759 *et. seq.* The Board may grant the request when all five conditions, as required by the statutes, are found to exist.

BACKGROUND: The applicant proposes to remodel an existing commercial building in order to open a Ziggy's Pizza restaurant (see attached site plan). The existing building has no off-street parking. The Unified Zoning Code requires that when the value of remodeling exceeds 50 percent of the building's value then the UZC off-street parking requirement must be met.

In the case of the subject property, 35 off-street parking spaces are required for remodeled the building (see attached written justification). The UZC allows off-street parking to be provided off-site, and the applicant has an agreement (see attached) with the church located across Briggs Avenue to the north to provide the 35 required parking spaces. However, the church is zoned TF-3 Two-Family Residential, and the UZC requires off-site parking to have the same or more intensive zoning than is required for the use served. Additionally, off-site parking has to be secured by a permanent deed restriction, and the church is unwilling to provide such a restriction. Therefore, a variance is required to eliminate the parking requirement for the subject property in order for it to be remodeled.

ADJACENT ZONING AND LAND USE:

NORTH	TF-3	Church
SOUTH	LC	Single-family residence
EAST	LC	Duplex
WEST	TF-3	Single-family residence

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is in the historic Riverside neighborhood that was developed primarily in the 1920s with pockets of commercial buildings and a mixture of residential housing types. Since much of the neighborhood was developed prior to the City of Wichita establishing zoning, many of the properties in the neighborhood do not conform to one or more the UZC development standards such as parking, screening, or setbacks.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the property has existed in the neighborhood for many decades without providing any off-street parking, and the applicant has secured access to ample off-street parking with an adjacent property to the north.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as the property cannot be improved by greater than 50 percent of its value without meeting the UZC parking requirement. The ability to make economic use of a commercial building long-term requires periodic remodeling as tenants change.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting continued reinvestment in historic neighborhoods, including permitting upgrades of existing properties through the approval of variances, especially when non-conformities with UZC development standards are prevalent in the neighborhood.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent off-street parking requirements is to ensure that parking from one property does not encroach upon another. Additionally, the UZC permits off-site parking similar to agreement the applicant has with the adjacent church, and the applicant's off-site parking agreement meets the spirit and intent of the UZC.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that a variance to eliminate the parking requirement be GRANTED, subject to the following conditions:

1. A copy of the executed Parking Lot Use Agreement with Gloria Dei Lutheran Church shall be submitted to the Planning Department prior to the issuance of a building permit.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

APPROVED

BZA-2016-00044

Date: 11-17-16

1 SITE PLAN
1" = 50'-0"

0' 25' 50' 100' 200'

OWNER:
RUTHERFORD DONALD D TEST TRUST

PROJECT:
ZIGGY'S PIZZA RIVERSIDE

DATE:
09/27/16

NOTE: THESE DRAWINGS ARE CONCEPTUAL AND SHALL NOT BE USED FOR CONSTRUCTION.

CLARKITECTURE
CLARKITECTURE.NET
(316) 302-4472
7701 E KELLOGG DR. SUITE 630
WICHITA, KS 67207