6. Case No. BZA 12-64 - Giant Investment, Inc., requests a variance to allow a self-service car wash operation on property legally described as follows: Beginning at the southwest corner of the unpaved area of the Giant Merchandising Association parking lot, said point being 1,338.1' south of the NE corner of Section 2, Township 28 South, Range 1 East, and 293.75' west of the east line of said NE¼ of Section 2, Township 28 South, Range 1 East, thence northwesterly 150 feet along a line parallel to and 90 feet northeasterly from the center line of George Washington Boulevard, thence 150 feet easterly along a line parallel to the south line of the unpaved area in said parking lot, thence southeasterly 150 feet parallel to the line of beginning, thence southwesterly 150 feet to point of beginning along a line 40 feet north of the service station paving, being a tract in the northeast quarter lying north and east of George Washington Boulevard, in Section 2, Township 28 South, Range 2 East. Generally located on northeast side of George Washington Boulevard and west of Oliver.

Consideration of this application was deferred until later in the meeting, pending results of City Commission action with respect to an amendment to the zoning ordinance related to self-service car washes.

---

7. Case No. BZA 13-64 - L. A. Casado requests a variance to permit a self-service car wash operation on property legally described as follows: Lot 5, Lincoln Hills Addition. Generally located at the northwest corner of Woodlawn and Harry.

Consideration of this application was deferred until later in the meeting, pending results of City Commission action with respect to an amendment to the zoning ordinance related to self-service car washes.

---

8. Case No. BZA 17-64 - Wakeem R. and Ada Jerrine Azim request a variance to permit use of property for a residence and photographic studio, or any other professional use for which the premises may be adaptable, said property being legally described as follows: The north 15 feet of Lot 46 and all of Lot 48 on Oliver Street, and the south 30 feet of vacated Lewis Street adjacent on the north of Lot 48, all in Highland View Addition. Generally located on the east side of Oliver between Lewis and Kellogg.

a ratio of not less than two (2) parking spaces for each car washing stall. One off-street parking space shall be provided for each employee.

7. A plot plan showing points of ingress and egress, width of driveways, off-street parking spaces and interior traffic circulation shall be submitted to the Traffic Engineering Division of the Department of Public Works for approval prior to the time a permit is issued for such operation.

8. All drainage, both natural and that created by the operation, shall be handled on the site or in such a manner satisfactory to the Superintendent of Maintenance of the Department of Public Works.

9. The area shall be properly policed through inspections by the owner or operator for proper maintenance and removal of trash.

ADOPTED AT WICHITA, KANSAS, this 28th day of April, 1964.

S/ Harold Bauer
Harold Bauer, Chairman

ATTEST:

S/ Jack H. Galbraith
Jack H. Galbraith, Secretary

CASE NO. BZA 13-64 - See previously in these minutes for description of this case. The following written report was submitted by the Secretary:

APPLICANT: L. A. Casado, 302 North Main

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to allow a self-service car wash operation to be located in an "LC" Light Commercial district.

LOCATION: Generally located on the northwest corner of Woodlawn and Harry.

ZONING: The property in question is zoned "LC" Light Commercial. To the north is "RB" four family; east is "LC" Light commercial; south is "LC" Light Commercial and west is "RB" Four family.

LAND USE: The property in question is vacant. To the north is duplexes; east is two service stations and drive-in restaurant; south is a liquor store, tavern, clinic and nurses' home.

JURISDICTION: The Board has the authority to grant the variance as requested, when all four of the following conditions are found to exist:

1. Variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district.

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

3. Strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal.

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

GENERAL COMMENT

The applicant has submitted a statement of justification and a plot plan, which are included as Attachments #1 and #2 to this report.

UNIQUENESS

The applicant contends that the variance desired is unique and not ordinarily found in the same zoning district for the following reasons:

1. Self-service car washes were not in existence at the time of the adoption of the zoning ordinance.

2. Self-service car washes are compatible with other uses permitted in the "LC" districts, i.e., carry-out restaurants and service stations, which perform the same functions as car washes.

3. Adequate parking will be provided for those people waiting to use the car wash.

This lot was originally platted as Lot 5 in Lincoln Hills Addition. Usually when a lot as large as this one is platted into a single lot or reserve, it is usually platted that way for a purpose, the purpose usually being that at sometime in the future the lot will be developed as a unit. However, in this particular instance, the southeast corner of the lot has been sold off and developed as a service station, resulting in an "L-shaped" lot. Consequently, it is the opinion of the Secretary that this is a situation which has been self-created and, therefore, does not constitute sufficient justification for uniqueness.

ADJACENT PROPERTY

The Secretary is of the opinion that the granting of the variance should have no adverse affect on adjacent property, if the operation is properly policed and maintained, and proper screening provided.

HARDSHIP

The attorney for the applicant contends that the applicant will be burdened with an unnecessary hardship if the variance is not granted in view of the fact that the property is located directly adjacent to a service station and is unsuitable for other types of commercial use.

The Secretary is of the opinion that hardship cannot be found to exist, since the applicant has offered no evidence to indicate that this property is unsuitable for other types of light commercial use. Furthermore, if the variance is granted the applicant would be obtaining a privilege which would not be equally enjoyed by other property owners similarly situated.

PUBLIC INTEREST

The Secretary is of the opinion that the granting of the variance should in no way adverely affect the public interest.

RECOMMENDATION

It is the opinion of the Secretary that it is very doubtful that the requirements of hardship and uniqueness have been met and it is, therefore, recommended that the variance be denied.

The Secretary is of the opinion that, even though this particular use may not have been in existence at the time the ordinance was adopted (1958), and if self-service car washes are in fact uses which should be permitted in "LC" districts, the proper approach to the problem is to either:

1. Amend the zoning ordinance to permit self-service car washes as a use by right in the "LC" section of the ordinance, or

2. Amend the ordinance to allow the Board of Zoning Appeals to grant, as an exception, self-service car washes in certain "LC" areas, subject to certain conditions and requirements.

If it is not the desire of the governing body to amend the zoning ordinance to permit self-service car washes in an "LC" district, then a person wishing to establish such a use would have to request that the zoning map be amended to a zoning classification where the use is permitted, or would have to try to obtain property which is already appropriately zoned.

In the event it is the determination of the Board that all four requirements can be met, and the Board wishes to approve the variance, it is recommended that the following conditions be attached:

1. That drainage, both surface and runoff created by the operation, shall be handled in a manner which is satisfactory to the Superintendent of Maintenance of the Department of Public Works.

2. The hours of operation shall not extend beyond 12 p.m. or commence earlier than 6 a.m.

3. The entire area to be utilized by washing and drying operations, as well as areas of ingress and egress, shall be hardsurfaced with either concrete, asphalt, or asphaltic concrete.

4. Adequate maintenance shall be provided through inspection twice daily for proper maintenance and removal of trash.

5. No sound projecting devices or loudspeakers shall be used so as to be heard outside of any structure.

6. All lights shall be shielded to reflect or direct light away from adjoining property. No string type lighting shall be permitted.

7. The self-service car wash structure shall be constructed no closer than 90 feet to either the curb line of Harry or to the curb line of Woodlawn.

8. A six-foot high brick, masonry or combination thereof, or louvered redwood fence, shall be erected on the west and north property lines to protect adjacent properties from light, blowing debris and noise, and to preserve adjacent property values. Said fence shall not be constructed any closer than 5 feet to the platted alley which abuts the west and north property lines.

9. A performance bond in the amount of $_____ shall be filed with the Secretary of the Board within 30 days of the approval of this application, to guarantee that the fence shall be constructed, except that the bond shall not be required in the event the fence is erected within that time limit. (The form of the bond shall be approved by legal counsel for the Board).

10. A plot plan showing points of ingress and egress, width of driveways, interior traffic circulation, channelization, and off-street parking and automobile storage shall be submitted to the Traffic Engineering Division of the Department of Public Works for their approval.

11. The self-service car wash operation shall be constructed within 12 months from the effective date of the approval of this application or the permit shall be null and void.

ROY L. ROGERS, attorney, spoke in support of this application. It was his feeling that this application meets all the requirements of the amendment as approved by the City Commission, and that they will comply with whatever conditions are placed on an approval of this application.

LYMAN RAY spoke in opposition. He said that his objection in based on the fact that he has been trying to establish a competitive business in this same area but has been held off until the new regulations were in force. He felt that he should be permitted to start at the same time as this applicant, and that the two should be considered under the same rules and regulations.

GALBRAITH pointed out that the Board had instructed the Secretary not to accept any new applications for self-service car washes until the City Commission had acted on the amendment to the zoning ordinance. He reported that it has been considered by the City Commission only on first reading at this time. HARTSTEIN suggested that the Board should lift that restriction and authorize the Secretary to accept further applications, and this suggestion was concurred in by the entire Board.

JOHN TAYLOR felt that since the city has made these regulations then all persons should have to comply as far as number of stalls is concerned. It was his feeling that this area would not comply in that at least 60 feet could not be maintained between the operation and the residential zoning to the west.

The Chairman pointed out that this particular application has been on file two months and been delayed. He stated that this Board is not in a position to guarantee free enterprise, but that any self-service car wash established will have to comply with the new regulations as established by the City Commission.

LYMAN RAY suggested that this particular case does not comply because it does not meet the area requirements for four stalls. He felt this case should be checked and heard at the same time as others to be submitted, in order to give all an equal opportunity.

ROGERS noted that so far as area requirements are concerned that if this application is approved, they will have to comply with requirements and if only one stall can be established then that is all they can operate.

LYMAN RAY asked how much longer he would be delayed before he could make application. GALBRAITH said he did not see how a request under the exception clause could be filed when it has not actually been approved by the City Commission.

ROBERT A. LAKIN pointed out that the amendment is not a part of the ordinance yet and that it will be at least 3 weeks before the City Commission can consider it on final reading.

The Chairman suggested a decision be made on this case and the matter of uniqueness was discussed.

MOTION: ANDERSON moved, HARTSTEIN seconded and it carried unanimously that the request for a variance arises from a condition which is not found to be unique inasmuch as there is nothing which is unique about the property from a physical standpoint which would set it apart from other property in the area which is vacant and zoned "LC" and similarly situated.

MOTION: ANDERSON moved, HARTSTEIN seconded and it carried unanimously that the granting of the variance would not adversely affect the rights of adjacent property owners inasmuch as no one appeared in opposition to the application and further, the applicant has agreed to construct a fence along the west and north property lines, provide adequate off-street parking and keep the area properly maintained, which should all help to maintain adjacent property values.

In considering hardship, the Chairman asked the applicant to discuss in what respect he considered this case a hardship. COLBY SANDLIAN felt that it is a hardship in that in view of the location of the existing service station on the lot, it is very difficult to use the property for uses other than the one being proposed. He further stated that it depends upon whether or not you are allowing the highest and best use for a piece of property. In this particular location he considered what is proposed to be the highest and best use for this property. If it is not used as proposed, it might be a long time before it is used otherwise. He noted that it is definitely a hardship in that it has been available for development but vacant for a long time.

ROGERS pointed out that the Board has in the past considered that vacant land constituted a hardship in allowing variances for car washes.

MOTION: ANDERSON moved, HARTSTEIN seconded and it carried unanimously that the strict application of the enforcement provisions of the zoning ordinance will not constitute unnecessary hardship upon the applicant in that if a hardship does exist, it is one which has been self-created inasmuch as the property in question was originally held in a single

ownership and platted as one lot; however, a part of the original lot has since been sold off and developed as a service station, which resulted in an L-shaped lot that is difficult to develop; and further, the applicant has offered no evidence in support of his statement that the property in question is unsuitable for other types of "LC" uses; and the Board further determined that if the variance was granted the applicant would be obtaining a privilege which would not be equally enjoyed by other property owners in the same neighborhood and zone.

MOTION: ANDERSON moved, HARTSTEIN seconded and it carried unanimously that the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

MOTION: ANDERSON moved, HARTSTEIN seconded and it carried unanimously that inasmuch as all four of the conditions required to be found to exist before a variance can be granted have not been found to exist, that this application be denied.

R E S O L U T I O N NO. BZA 13-64

WHEREAS, L. A. Casado, 302 North Main, Wichita, Kansas, by Colby Sandlian and/or Roy L. Rogers, 443 North St. Francis, Wichita, Kansas, request a variance as provided in Section 2.12.590.2, Code of the City of Wichita, to permit a self-service car wash operation in an "LC" district, on property legally described as:

Block 5, in Lincoln Hills Addition, in the City of Wichita, Sedgwick County, Kansas. Generally located at the northwest corner of Woodlawn and Harry; and

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

WHEREAS, at the meeting of February 25, 1964, this application was deferred until the meeting of April 28, 1964; and;

WHEREAS, new written notices were mailed to all interested parties prior to said deferred hearing; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of April 28, 1964, consider said application; and

WHEREAS, the Board of Zoning Appeals determined that it had proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.2, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the request for a variance arises from a condition which is not found to be unique inasmuch as there is nothing which is unique about the property from a physical standpoint which would set it apart from other property in the area which is vacant and zoned "LC" and similarly situated; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance, as approved, would not adversely affect the rights of adjacent property owners inasmuch as no one appeared in opposition to the application; and further, the applicant has agreed to construct a fence along the west and north property lines, provide adequate off-street parking and keep the area properly maintained, which should all help to maintain adjacent property values; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the zoning ordinance will not constitute unnecessary hardship upon the applicant in that if a hardship does exist, it is one which has been self-created inasmuch as the property in question was originally held in a single ownership and platted as one lot; however, a part of the original lot has since been sold off and developed as a service station which resulted in an L-shaped lot that is difficult to develop; and further, the applicant has offered no evidence in support of his statement that the property in question is unsuitable for other types of "LC" uses; and the Board further determined that if the variance was granted the applicant would be obtaining a privilege which would not be equally enjoyed by other property owners in the same neighborhood and zone; and

WHEREAS, the Board of Zoning Appeals has found that the variance, as approved, will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and

WHEREAS, as shown above, all of the four conditions required to be found to exist before a variance can be granted have not been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the variance requested be denied.

ADOPTED AT WICHITA, KANSAS, this 28th day of April, 1964.

S/ Harold Bauer
Harold Bauer, Chairman

ATTEST:

S/ Jack H. Galbraith
Jack H. Galbraith, Secretary

CASE NO. BZA 6-64 - See previously in these minutes for description of this case. The following written report was submitted by the Secretary:

APPLICANTS: Howard C. and Nellie Irene Gresham, 3609 West Central

AGENT: Robert H. Nelson, 511 Union Center Building

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to allow a self-service car wash operation to be located in an "LC" Light Commercial zone.

ZONING: The property in question is zoned "LC" Light Commercial. To the east and south is "LC"; to the north and west is "AA".

LAND USE: Subject property is vacant. To the north is single family and duplex; to the east a drive-in restaurant, cleaning and pressing shop, service station, laundry, drive-in restaurant; south is shopping center, and west is single family.

JURISDICTION: The Board of Zoning Appeals has the authority to grant the variance requested, provided all four of the following conditions can be found to exist:

1. Variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district.