

BZA 1-73 Urban Construction and Development, Inc. requests variance for parking and stairwell setback at the SW corner of Rutan and English

ACTION

	DATE
BZA COMMITTEE	Deferred pending 2-27-73 approval of zone change
M.A.P.C.	Withdrawn and 4-6-73
	except request of applicant's attorney
B.C.C./B. CO.C.	

HOLMES, DARRAH & MELLOR
ATTORNEYS AT LAW
800 BROWN BUILDING
WICHITA, KANSAS 67202
TELEPHONE (316) 262-4403

R. L. HOLMES (1920-1928)
W. E. HOLMES (1927-1928)
RICHARD W. HOLMES
JOHN JAY DARRAH
PHILLIP MELLOR
JAMES R. SCHAEFER
GEORGE R. COMPTON
TYRUS C. KAUFMAN

WILBUR H. JONES
COUNSEL

April 5, 1973

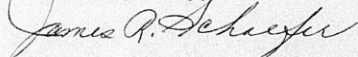
Mr. Jack H. Galbraith
Secretary
Board of Zoning Appeals
Metropolitan Area Planning Department
City Building Annex
104 South Main
Wichita, Kansas 67202

RE: Case No. BZA 1-73 - Request
For Variance

Dear Jack:

Inasmuch as the associated zoning case with the above request has been denied, we would, on behalf of applicants, request that the above case be closed and no further action taken relative thereto.

Yours very truly,



James R. Schaefer
of HOLMES, DARRAH AND MELLOR

JRS/ljl
CC: Mr. Larry Bottenberg



February 28, 1973

Mr. James R. Schaefer
Suite 800 - Brown Building
Wichita, Kansas 67202

Subject: Case No. BZA 1-73 - Request for Variance

Dear Mr. Schaefer:

The request by Urban Construction and Development, Inc. for a variance to reduce the required frontyard setback adjacent to the north property line from 20 feet to 0 feet for the west 69 feet and from 20 feet to 9 feet for the 15 feet immediately adjacent thereto on the east, on property for which the "B" Multiple Family Dwelling District has been requested, was considered by the Board of Zoning Appeals at its regular meeting on February 27, 1973.

Inasmuch as you had a conflict at the City Commission meeting, it was the action of the Board to defer the case. However, the Board instructed the Secretary to readvertise the case for a public hearing when and if the associated zone change becomes effective. We will keep you advised as to the time this case will be considered.

If you have any questions concerning this matter, please contact our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:rw

cc: Urban Construction and Development, Inc., 786 North
Ridge Road, 67212

SECRETARY'S REPORT
CASE NO. BZA 1-73

APPLICANT: Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, 67212.

AGENT: James R. Schaefer, Attorney at Law, Suite 800 - Brown Building, Wichita, Kansas 67202

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required frontyard setback adjacent to the north property line from 20 feet to 0 feet for the west 60 feet and from 20 feet to 9 feet for the 15 feet immediately adjacent thereto on the east, on property for which the "B" Multiple Family Dwelling District has been requested.

GENERAL LOCATION: Southwest corner of English and Rutan

ZONING: While subject property is currently zoned the "AA" One Family Dwelling District, the "B" Multiple Family Dwelling District has been requested. (Zone Case No. Z-1495 has been scheduled to be heard before the Planning Commission on February 22, 1973.) The "A" Two Family Dwelling zoning exists to the north and west, with the "AA" One Family to the south and the "B" Multiple Family to the east.

LAND USE: The single family structure which presently exists on subject property is in the process of being removed. The property to the east remains undeveloped. To the west is a duplex, and to the north and south are single family homes.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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 the applicant.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of Title 28

of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to reduce the required frontyard setback adjacent to the north property line from 20 feet to 0 feet for parking for the west 69 feet and from 20 feet to 9 feet for a stairway along the 15 feet immediately adjacent thereto on the east, on property for which the "B" Multiple Family District has been requested. Although "B" zoning exists to the east, voluntary restrictive covenants limit the total number of dwelling units which can be constructed on the 2 acre tract to 36 (Z-0823). The plot plan submitted by the applicant indicates that 35 dwelling units are to be constructed on the .48 acre site, and that 36 parking spaces shown on the plan can only be provided by granting the variance to allow parking in the frontyard setback.

Uniqueness:

It is difficult to justify uniqueness in this case because, in the opinion of the Secretary the need for a variance arises from the actions of the applicant who proposes to develop the subject property at a density which would necessitate utilization of the frontyard setback to provide only one parking space per unit, the minimum number required by ordinance.

Adjacent Property:

The "B" Multiple Family District has been requested for subject property, which requires a frontyard setback of 20 feet. The applicant, however, proposes to reduce this setback to 0 feet along 69 feet of the north property line, which is adjacent to single family homes.

The applicant states that the granting of the variance will not affect the rights of the adjacent property owners inasmuch as the area for which the variance is requested is separated from the adjacent property owners by a street, and both the stairway and the parking facilities are enclosed to insulate them from view. The plot plan, however, indicates one ingress and egress drive located in the area for which the variance has been requested and another adjacent to the property to the south which contains a single family home. It is the opinion of the Secretary that there is no way to adequately insulate the surrounding low density residential development from the increased traffic and on-street parking that would be generated by placing 35 dwelling units on a site of this size.

Hardship:

It is the opinion of the Secretary that it is difficult to justify hardship in this case since the need for a variance arises from the desire of the applicant to overbuild the site.

Public Interest:

The applicant states that the granting of the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the area. It is the opinion of the Secretary, however, that even with the granting of the variance, the applicant fails to provide sufficient off-street parking to alleviate potential on-street parking problems.

Spirit and Intent:

It is the opinion of the Secretary that the elimination of the frontyard setback violates the general spirit and intent of the zoning ordinance of the City of Wichita.

RECOMMENDATION:

Variances are usually granted when parking spaces are provided in addition to the minimum number required by ordinance. It is the opinion of the Secretary that a complete waiver cannot be justified as the applicant would be overdeveloping the site by constructing the proposed number of dwelling units, and it is therefore recommended that the request

BZA 1-73
Secretary's Report
Page 4

to reduce the required frontyard setback adjacent to the north property line from 20 feet to 0 feet for the west 69 feet and from 20 feet to 9 feet for the 15 feet immediately adjacent thereto on the east be denied.

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

February 7, 1973

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 1-73

An application has been filed by Urban Construction and Development, Inc., 786 N. Ridge Road, Wichita, Kansas, 67212, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required frontyard setback adjacent to the north property line from 20 feet to 0 feet for the west 69 feet and from 20 feet to 9 feet for the 15 feet immediately adjacent thereto on the east, on property for which the "B" Multiple Family Dwelling District has been requested, and legally described as follows:

Lots 12, 14, 16, 18, 20, and 22, on Maple, now English, B. D. Allen Addition, Wichita, Sedgwick County, Kansas. Generally located at the Southwest corner of Rutan and English.

This application has been assigned Case No. BZA 1-73, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, February 27, 1973, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

JACK H. GALBRAITH
Secretary

2.7.73 - 29 notices sent to Property Owners
8 " " " " Planning Commissioners

132A 19572
227-73

BOARD OF ZONING APPEALS

CASE NO. 132A 1-73

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant Urban Construction and Development, Inc.

Mailing Address 786 North Ridge Road 67212 Phone 942-1227

Name of Authorized Agent James R. Schaeffer

Mailing Address Suite 800-Brown Bldg. 67202 Phone 262-4403

Relationship of applicant to property is that of Contract Purchaser
(Owner, Tenant, Lessee, Other)

II. The variance requested is from the 20 foot set-back requirement

on English Street on the West 69 foot thereof for parking and
on a 15 x 9 foot tract immediately adjacent thereto on the East
for stairwell.

for property located at the Southwest corner of English and

Rutan Streets in Wichita

and legally described as: Lots 12, 14, 16, 18, 20 & 22, on

Maple, now English, B D ALLEN Addition,

_____ ^{"AA" with a "B"}
in the City of Wichita; and which is presently zoned request pending.

III. The applicant herein, or his authorized agent, acknowledges:

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Urban Construction and Development, Inc.
Applicant

James R. Schaeffer
Authorized Agent James R. Schaeffer

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 11:25 AM (a.m. - p.m.), Jan 24 19 73
together with appropriate fee of \$50.00.

T9-402

Curtis L. Newby
Signed

STATEMENT FOR JUSTIFICATION
OF VARIANCE

We are herewith submitting this statement with the Application For Variance as set forth in said application and in support thereof stated as follows:

Because of the dimensions of the ground in question upon which the proposed improvements are laid out as shown by the plot plan filed herewith, and in order to improve the astatic value of the property, the requested variance for stairway and parking is submitted. The layout of the proposed development as shown by the plot plan reflects the best possible way, both from a practical and astatic point, for utilizing the property without unduly crowding the area in question and still retain sufficient parking facilities which are required by the nature of the improvements proposed.

The granting of the permit for the variance will not adversely affect the rights of the adjacent property owners inasmuch as the requested variance for stairway and parking are separated from the adjacent property owners by a street. Both the stairway and the parking facilities are entirely enclosed to insulate them from view.

The strict application of the setback requirements provided in Title 28 of the Code of the City of Wichita from which a variance is requested, would cause a hardship upon the developer of the property for two reasons.

1. With regard to the stairway, the location thereof, other than as proposed, would compress the buildings into a smaller area which would not be to the best interests of the residents.

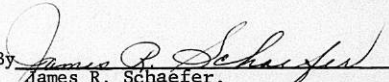
2. Without their required variance for parking along English Street, other areas of the proposed development would have to be utilized for parking rather than private facilities for the tenants of the property.

Applicant does not feel that the requested variance for either the stairway or parking will adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the area.

That the granting of the variance requested will not be opposed to the general spirit and intent of the zoning ordinances of the City of Wichita inasmuch as there will still remain sufficient setback which will be screened from the property owners across the street in question so as not to interfere with their right.

In summation, applicant respectfully submits that the minor variance requested will result in an improved site improvement without adversely affecting any property rights in the area.

URBAN CONSTRUCTION AND DEVELOPMENT, INC.

By 
James R. Schaefer
Attorney for Applicant

25% COTTON
EXCELERA
FOX RIVER

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FOX RIVER

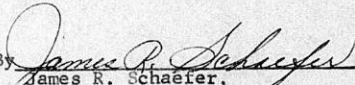
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James R. Schaefer,
Attorney for Applicant

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URBAN CONSTRUCTION AND DEVELOPMENT, INC.

By James R. Schaefer
James R. Schaefer
Attorney for Applicant

Form 22-71

PAYMENT NOTICE
City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
City Zone Change and BZA Variance	\$190.00

Name James Schaufa

Address 800 Braun Bldg

Type AA-407103 Due Date

Comments:

Date 1-24-73 By

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 1