

BZA 23-74 - Urban Const. & Development requests Variance to reduce side yard setback on the So. and No. on the east side of Rock Road in an area No. of Ks. Turnpike.

ACTION

DATE 8-27-74
9-24-74

BZA COMMITTEE
BZA

defered
Approved

MAPC.

B.C.C./R.C.C.

Map No. 6046
 Sec. 29
 Twp. 27S
 Range 2E

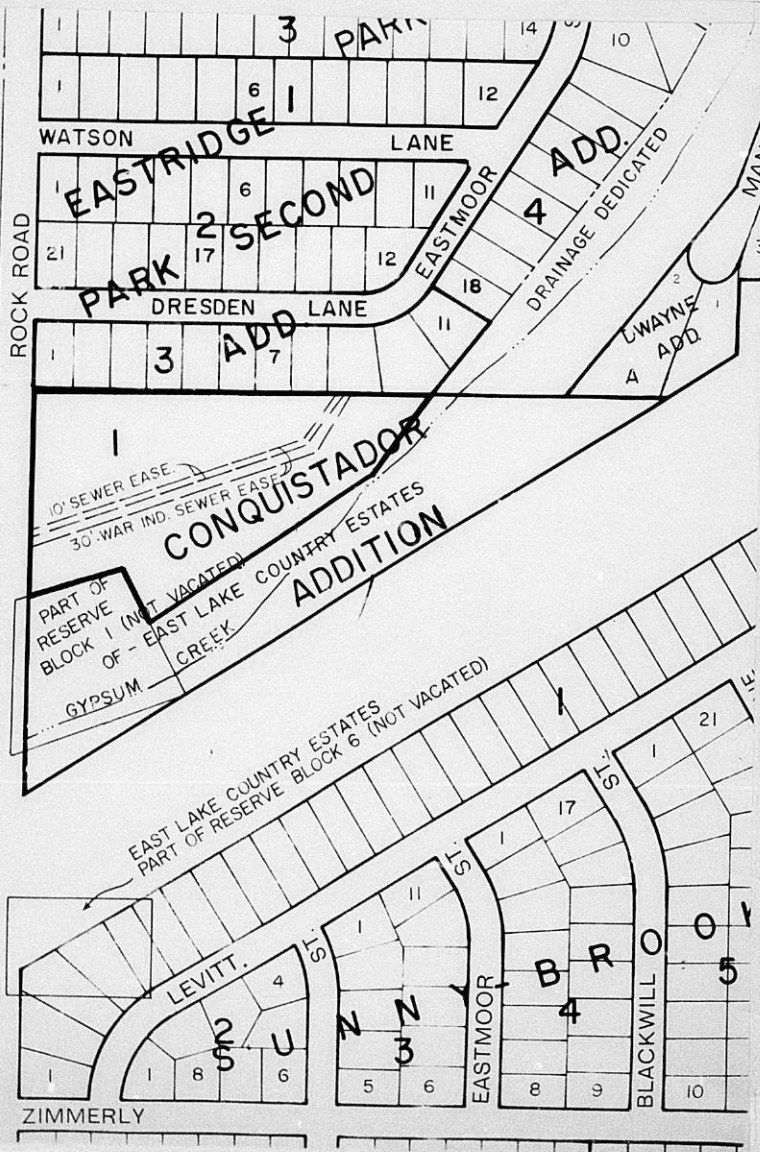
BZA- 23-74
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East _____ South _____
 West _____ North _____
4. Sketch Plan Land Use is for: _____
5. Present Land Use if for: _____
6. Area (is) (is not) platted. _____

PHOTO DATA:

Taken by _____ Date _____ Time _____



BOARD OF ZONING APPEALS
MINUTES

AUGUST 27, 1974

The regular meeting of the Board of Zoning Appeals was held on Tuesday, August 27, 1974, at 1:30 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas. The following members were present: James Richardson, Chairman; Harlan Clonts, Rosemarie Murphy, and Marjorie Taylor. The member absent was Priscilla Lee. City staff members present were Jack Galbraith, Secretary, Joe Bogle, Legal Counsel; Larry Dobson, Assistant Secretary, and Joyce Smith.

1. Approval of Minutes of July 1, 1974.

MOTION: TAYLOR moved, MURPHY seconded and it carried unanimously that the minutes of July 1, 1974, be approved as written and mailed.

2. Case No. BZA 23-74 - Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

GALBRAITH asked that the cases be taken out of order to enable the Board to consider the request of James Schaefer, attorney for Urban Construction and Development, Inc., to defer deliberation of their case until the next regular meeting of the Board. He requested the deferment to allow additional time to obtain a necessary survey showing certain encroachments into utility easements and drainage rights-of-way.

SCHAEFER said the survey had already been ordered, but was not completed yet so a deferral of one month was being requested of the Board.

MOTION: TAYLOR moved, MURPHY seconded and it carried unanimously that Case No. BZA 23-74 be deferred until the next meeting to allow the applicant time to obtain a required survey of the property.

3. Case No. BZA 20-74 - Donald F. West, 120 North Socora, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the extraction of fill dirt on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Beginning 1485 feet north of the southeast corner of the SW $\frac{1}{4}$ of Sec. 21-27-1W, thence west 640 feet, thence north 165 feet, thence east 640 feet, thence south 165 feet to the point of beginning. Generally located on the east side of Socora in an area north of Maple.

GALBRAITH said that on Monday, August 26, 1974, the attorney for the applicant in this case had verbally requested this matter not be considered by the Board of Zoning Appeals and stated that his client wished to withdraw the case.

ANDREW BOGNER, and RALPH Converse, adjacent property owners, asked GALBRAITH who they should contact to see what further action would be taken on this case since it had been withdrawn from consideration by the Board of Zoning Appeals. GALBRAITH advised them that the Office of Central Inspection interprets and enforces the zoning ordinance and if a violation exists they would be the ones to contact.

MOTION: TAYLOR moved, MURPHY seconded, and it carried unanimously that Case No. BZA 20-74 be stricken from the agenda and should now be considered withdrawn and closed.

4. Case No. BZA 14-74 - Dale Fair, 320 Page Court, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required front yard setback

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September 24, 1974

quarter section, 150 feet, thence east 334 feet, thence south 150 feet to the place of beginning, except the east 40 feet and the west 30 feet thereof for public road. Generally located between Richmond Avenue and Meridian Avenue in an area south of 13th Street North.

be denied.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.

S/S James Richardson
James Richardson, Chairman

ATTEST:

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

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3. Case No. BZA 23-74 - Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

GALBRAITH pointed out the area on the map and presented the following report of the Secretary.

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

On May 30, 1972 the Board of City Commissioners approved a zone change on subject property from "AA" Single Family to "R-6" General Residence, subject to platting. The associated plat was subsequently approved and recorded on November 6, 1972 providing for a sizeable drainage right-of-way to be dedicated along the south property line. The necessary building permits were obtained, the apartments were built and are now occupied. The applicant now comes to us and says an insurance company they are dealing with questions whether or not the buildings on subject property conform to the Zoning Ordinance. The "R-6" District requires a side yard of 10% of the lot width, not to be less than six feet nor more than 25 feet. A review of the applicant's plot plan reveals

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September 24, 1974

that the property is an irregular pie shaped lot approximately 400 feet wide at its widest point tapering to 0 feet where the two side yards meet. The maximum 25-foot side yard would apply. The ordinance setting forth this maximum side yard provision became effective on May 24, 1974, after completion of this project. Prior to that time the ordinance called for a side yard of 10% of the lot width, but no less than six feet, but made no provision for a maximum limit.

The plot plan shows the following setback violations: Along the north property line the side of one building comes within ten feet of the property line, another comes within 20 feet, and another comes within 24.9 feet. Along the south property line the corner of one building comes to the property line and the corners of two other buildings comes within approximately six feet of the property line.

It is not understood just how this situation was carried this far, or why, only at the questioning of a third party it was determined that there were violations to the setback requirements. By way of possible explanation it should be noted that there may have been confusion concerning the dedicated drainage right-of-way on the south as opposed to a drainage easement. In the case of a drainage easement, title to the land would remain with the landowner and no setback from an easement would have to be observed. No structures may be erected on an easement, but the easement area could be used to meet the setback requirements. However, in the case of a drainage right-of-way, title to the land is dedicated to the public and is no longer a part of the landowners holding. Building setbacks would then have to be maintained from the new property line.

There is no drainage right-of-way associated with the violation along the north property line, but there is a 10-foot utility easement that parallels the north property line. There were also significant sewer and water easements running through the center of the property which undoubtedly caused many problems in the development of this property. It is conceivable that in the effort to not construct on an easement, that the sideyard setbacks were either somehow overlooked or thought to be complied with through the process of designing around the easement problems.

There is one other item that has been called to the attention of the applicant and his attorney. In viewing this area in the field, it was noted that patio walls of Buildings 4A and 5 and

also concrete and fencing around the swimming pool encroach into the drainage right-of-way adjacent to the south property line. Also, it appears the patio walls on building #4 may extend into the utility easement along the north. The applicant has been requested to furnish a survey of these items prior to the meeting of the Board.

UNIQUENESS

It is the opinion of the Secretary that there are several items of uniqueness in this case. The fact that the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party is unique. The fact that subject property is irregular shaped with major interior easements is also somewhat unique.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance would not adversely affect the adjacent properties inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees.

HARDSHIP

It is the opinion of the Secretary that an unnecessary hardship would be placed upon the applicant if the variance were not granted inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance would not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare inasmuch as the general character of the area would not be appreciably altered.

SPIRIT AND INTENT

It is the opinion of the Secretary that inasmuch as the four previous conditions can be found to exist, that the granting of this variance would not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

RECOMMENDATION

It is the opinion of the Secretary that all five conditions necessary for the granting of the variance can be found to exist and therefore, it is recommended that the variance be granted to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, subject to the following condition:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.

GALBRAITH continued that if the request for a variance were approved by the Board he felt another condition would be appropriate in that the applicant should take whatever action is necessary to eliminate the existing encroachments into the utility easement on the north property line and the drainage right of way adjacent to the south property line.

JAMES SCHAEFER, attorney for the applicant, said he would try to give a brief history of the case and answer any questions of the Board. He said that the area was zoned for this development in 1972, but that it was difficult to develop because of large utility easements running through the land and the irregular shape of the land. He pointed out that the complex was not yet completed so far as grading, landscaping, etc. but that 111 apartments are completed and almost 100% occupied.

He continued that the Wichita-Valley Center Flood Control office is now surveying the drainage ditch to see if all the dedicated drainage right of way is really required, and if not, then perhaps part of the dedication could be vacated.

Schaefer said he felt the building encroachments would not adversely affect adjacent property owners because of the 120 foot drainage right of way to the south and east and the Kansas Turnpike.

TERRY O'KEEFE, attorney, said he represented property owners to the north who protested the granting of the variance on the north property line. He said the violation may be only five feet, but that was one-third of the required setback. He continued that the applicant's property had been built up higher than the properties to the north, the ten-foot setback which separated the apartment building from his client's property had been graveled and the water drains down and floods the rear yards of the properties to the north. He pointed out that one inducement to grant the zone change which permitted this development was that an existing row of trees would provide a sight barrier for the people to the north, yet forty-five feet of the trees had been uprooted and left in an unsightly manner in the newly developed area.

W. W. PURSSELLEY, property owner at 8033 Dresden Lane, said he felt some reparations were due him as he had to replace dirt in his rear yard where the drainage from the apartment building had caused it to wash away.

HAROLD HARLOW, property owner at 8037 Dresden Lane, said that since the trees had been removed the view from his patio looked like the city dump and he was concerned about the resale value of his property when he is ready to retire. He also wanted to know who paid for rerouting the drainage creeks.

In response to his question, Galbraith said the platlor was required to pay for the drainage improvements on the south as a condition of platting. He agreed the property was not developed to the ultimate design, but expected that it would be at a later date when the site could be graded and landscaped.

SCHAEFER responded that the trees that were removed were on the applicant's property; also that the grade level for the apartment complex was set by City standards, not the developer. He continued that the drainage easement was property still owned by the applicant and that structures could be built upon it.

GALBRAITH told him that was not permitted and read a section from the City Code that "no building shall be erected over or under any public easement."

RICHARDSON asked Galbraith for a clarification of the case and just what factors could be used to make a determination of the matter.

GALBRAITH responded that basically the Board must determine if all five conditions exist which are necessary before granting a variance request. He felt it would be for the Board to decide if the concern shown by the opposition regarding removal of trees, condition of unfinished landscaping and water drainage might be a factor in determining whether or not there was an adverse effect to adjacent property owners.

LELAND JOHNSON, Assistant Superintendent of Central Inspection, was asked to explain to the Board just how all this happened. He said the primary problem was on the north side of the development in that the 15-foot building setback was clearly marked on the plat, but when the structure was completed it was only set back ten feet. He thought this was possibly due to having two surveys of subject property which did not agree. He said they have tightened the inspection procedures in their department and hope to not have any more problems like this.

TAYLOR said she thought it was deplorable that the innocent seem to be the ones that suffer and that there is no way to reprimand those responsible. She asked how the Board felt about taking up the issue with the construction company when they are involved.

SCHAEFFER asked how they would determine who was at fault - the architect, developer, or builder.

CLONTS said he did not think that just because mistakes have already been made that they should be swept under the carpet.

TAYLOR asked what the procedure would be if the Board denied the request for the variances. BIELMAN, legal counsel to the Board, said it would surely be appealed to District Court. He said he could see no reason why the Board could not make it a condition of approval that the applicant make satisfactory arrangements to alleviate flooding of the property to the north and the Central Inspection Division would be charged with enforcement of this condition.

TAYLOR said she thought it would be in order for the Board to apprise the general construction industry that they will not look with favor on applications for variances that occur after the fact.

CLONTS asked the attorney for the opposition if he had any suggested conditions of approval for the Board to stipulate which would allow a compromise in this situation. O'Keefe suggested that the water drainage problem be solved and new trees be planted to provide a sight barrier.

MOTION: TAYLOR moved, MURPHY seconded that the five conditions necessary to the granting of a variance are found to exist and the request be approved subject to the conditions shown in the following adopted resolution. Motion carried with Clonts voting "no".

Resolution No. BZA 23-74

WHEREAS, Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

be approved subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.

S/S James Richardson
James Richardson, Chairman

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

RESOLUTION NO. BZA 23-74

WHEREAS, Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, on property zoned the "R-6" General Residence District and legally described as follows:

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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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

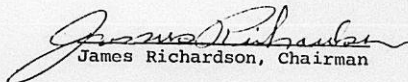
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

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1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.


James Richardson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

October 21, 1974

Larry Bottenberg
Bottenberg Construction Co., Inc.
786 North Ridge Road
Wichita, Kansas 67212

Dear Mr. Bottenberg:

I have been contacted requesting a letter authorizing certain encroachments on the utility easement at the north property line of the Conquistador Apartments (Case No. EZA 23-74). I can not authorize such an encroachment.

In the past, the City Commission in a very few cases has allowed similar encroachments by agreement between the property owner and the City. A sample copy of an agreement is attached. If you wish to have your attorney prepare a similar instrument, I will submit it to the City Commission for its action.

The Flood Control office has also been contacted regarding encroachments on the drainage easement along the south line of the Conquistador Apartments property. We have checked and find that all of the drainage easement is required for the design channel section and access. Therefore, encroachments can not be permitted.

Very truly yours,

G. H. Wilton
Superintendent
Public Works Maintenance

GH:wmk

Attachment:

CC: R. W. Bruggeman, Director of Public Works
Robert Feldner, Supt. of Central Inspection
Jack Galbraith, Chief Planner
M. S. Mitchell, Ass't. Supt. of P. W. Mtce.



THE CITY OF WICHITA

Delbrath


DEPARTMENT OF PUBLIC WORKS
CENTRAL INSPECTION DIVISION
262-0611 — AREA CODE 316
CITY BUILDING ANNEX
104 S. MAIN — WICHITA, KAN. 67202

September 27, 1974



Mr. Larry Bottenberg
Bottenberg Construction Co., Inc.
786 North Ridge Road
Wichita, Kansas 67212

Dear Mr. Bottenberg:

The Board of Zoning Appeals considered your application for variance of side yard set back on the north property line of the Conquistador apartment project. Mr. James Schaefer was present and doubtless has informed you of the board action.

The second problem in the matter of encroachments onto the drainage right-of-way is presently being studied by the Flood Control Division to determine if section profiles will require reworking present grades to the boundary limit. Their findings will be transmitted to you when the study has been completed.

A matter which requires your immediate attention is the projection of the privacy walls on the north side of building #4 and the chimney on the north side of building #5 shown on Hall & Associates survey dated June 4, 1974 as extending into a ten foot utility easement.

Section 28.04.160 (I) of the Code of the City of Wichita reads as follows:

"No building, nor any addition thereto, shall be erected over or under any public sewer or public utility lines, nor upon any platted or recorded easement unless permission is granted, in writing, by the city or the public utility whose lines are involved."

It will, therefore, be necessary for you to obtain permission, in writing,

Mr. Larry Bottenberg
Conquistador Apartm .s.
Page 2

with copies sent to this office, in order to leave the structural encroachments as built. The privacy walls qualify as structures by the definitions in the ordinance. (Page 1054 for "Easements"; page 1019 for "Building")

The above written permission shall be in this office by October 31, 1974. Failure to furnish the required documents will result in my request for further action by the legal department.

Sincerely,



Robert B. Feldner
Superintendent of Central Inspection

RBF:mm1

cc: Jack Galbraith, Secretary-Board of Zoning Appeals
James R. Schaefer, Suite 800, Brown Building
David Haines, 3208 East Douglas
M.S. Mitchell, Flood Control
John Dekker, City Attorney

September 25, 1974

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

Subject: Case No. RZA 23-74
Request for Variance

Dear Mr. Schaefer:

At the regular meeting of the Board of Zoning Appeals on September 24, 1974, your request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and generally located on the east side of Rock Road in an area north of the Kansas Turnpike, was considered.

It was the action of the Board to approve this request subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

James R. Schaefer
September 25, 1974

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as we have received letters from the Offices of Central Inspection and Flood Control indicating compliance with Conditions of Approval #2 and #3 listed above.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Urban Construction and Development, Inc., 786 N. Ridge Rd 67212
Woodrow W. Purselley, 8033 Dresden Lane 67207
Harold E. Harlow, 8037 Dresden Lane 67207
Terry O'Keefe, Olive W. Garvey Bldg, 67202
Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Leland Johnson, Building Code Engineer, Central Inspection Div.
Joe Donnelly, Maintenance Inspection Supervisor, Central Inspection

September 18, 1974

Robert Feldner, Superintendent of Central Inspection

Jack H. Galbraith, Chief Planner

Case No. BZA 23-74 (Conquistador Apartments)

Subject case is before the Board of Zoning Appeals as a request for the reduction of side yard setback requirements. In reviewing this case we made a field check of the Conquistador Apartment complex and noted what appeared to be encroachments of certain structures into the drainage right-of-way adjacent to the south property line and into the utility easement along the north property line. You received a copy of my letter of August 29, 1974, to James Schaefer, attorney for the applicant, pointing out our observations and requesting him to furnish us with a new survey of this development. We are in receipt of this survey, and a copy is attached for your review. You will note that the patio (privacy) walls on Building #4 encroach 4 to 5 feet into the utility easement along the north property line and that the fireplace on Building #5 also encroaches into this easement. Encroaching into the drainage right-of-way adjacent to the south property line is one patio (privacy) wall for both Building #5 and #6, a balcony on Building #2, a yard light, part of the concrete pool deck and fencing around the pool. As you pointed out several weeks ago, your plans review officer had particularly noted on the plans in your office that these encroachments were not to be constructed.

These encroachments are in violation of the building plans and are brought to your attention, and to the attention of those receiving copies of this memo, so that appropriate action can be taken to see that they are removed. Inasmuch as this problem will be pointed out to the Board at their meeting on Tuesday, September 24th, you may desire to attend that meeting.

JHG:js

cc: R. L. Bruggeman, Director of Public Works
George Wilton, Superintendent of Public Works Maintenance
W. S. Mitchell, Maintenance/Flood Control Supervisor
Robert A. Lakin, Director of Planning

August 28, 1974

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

Subject: Case No. BZA 23-74
Application for Variance

Dear Mr. Schaefer:

At the regular meeting of the Board of Zoning Appeals on August 27, 1974, your request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and generally located on the east side of Rock Road in an area north of the Kansas Turnpike, was considered.

At your request, the action of the Board was to defer this case to the next regular meeting so you would have additional time to obtain the necessary survey showing encroachments of patio and swimming pool walls into utility easements and drainage rights-of-way.

Therefore, this matter will be scheduled for the meeting of September 24, 1974, meeting to begin at 1:30 p.m. in Room 401 City Building Annex, 104 South Main.

If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Urban Construction and Development, Inc., 786 N. Ridge Road
Terry O'Keefe, Atty., Olive W. Garvey Bldg.

THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE August 23, 1974



TO Jack H. Gabraith, Chief Planner
FROM Robert B. Feldner ^{RBF} Superintendent of Central Inspection

SUBJECT Conquistador Apartments
BZA 23-74

I am attaching copies of two memos from our file relative to the above project.

I note in the last paragraph on page 2 of the Secretary's Report that it is stated that one building comes within 24.9' of the property line. Since this dimension is to a chimney projection and the building line is 27.1' from the line, this is allowable per 28.04.188 of the Zoning Ordinance.

The setback interpretation shown on the attached sketch is based on the unusual configuration of the lot and the restrictions placed on its use by the splitting of the lot by the 40' War Industries Utility easement.

If you have any questions, please contact me.

RBF:mml

Attachments



THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE July 1, 1974



TO Robert B. Feldner, Superintendent of Central Inspection

FROM John J. Adel, Building Plans Examiner

SUBJECT Platting, Drainage Dedication and
Yard Considerations at Drainageway
of the Conquistador Addition

To the best of my knowledge, the building line was established on the south line of the building site adjoining the drainage dedication as developed below:

The site plan page of the building plans indicated structures and fences extending onto the drainage dedication. I marked the plan so as to indicate such construction on the drainage dedication was not permissible. Building setback lines were also marked at that time for the structures on land adjoining the drainage dedication.

At some time during the platting process, a particular meeting had been held to discuss, among other considerations, the drainage dedication and adjoining yard requirements. Attending this meeting were: Jack Galbraith, M. S. Mitchell, Dick Linn, Larry Bottenberg, Rodger Brooks, David Haines.

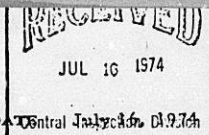
I received information (source now unknown) that consideration had been given to dedication of the drainage area by the owner and then a rededication back to the owner of sufficient area to satisfy yard requirements; but for some reason this approach was objectionable and the city legal department's opinion indicated the adjacent drainage dedication could be used to satisfy the yard requirement. Such was noted on the plans and all setback requirements were removed from the plan in this area.

The plans were released during a period of discussion on application of "R-5" and "R-6" zoning district setback requirements. The planning department suggested that they endeavor to include setback requirements on plats and CUP's. An agreeable policy was established to apply the zoning ordinance requirements only to yards on the perimeter of a site and to apply building code setback requirements to interior yards. A recent ordinance has established a maximum setback requirement of 25' for side yards.

The combination of the above actions has provided workable solutions for "R-5" and "R-6" yard requirements.

JJR:mmml

THE CITY OF WICHITA
OFFICE OF Director of Public Works



TO Ralph Wulz, City Manager
FROM R. W. Bruggeman, Director of Public Works

SUBJECT Building Set Backs - Conquistador Addition

Attached is a sketch showing buildings A, B and C that were constructed in the Conquistador Addition in addition to other buildings.

Building A was approved by the Central Inspection Division for construction 15' from the north property line. A recent survey shows this building was constructed 10' from the north property line.

Building C was to have been constructed a minimum of 25' from the north property line. A recent survey shows Building C was constructed 27' from the north property line.

It is the interpretation of the Central Inspection Division that Building B should have been constructed 19.05' from the north property line which would have been an uniform set back line drawn between Building A and Building C. A recent survey shows Building B was constructed 20' from the north property line.

The area along the south side of the Conquistador Addition was dedicated as a drainage right-of-way. Mr. Dekker has advised that drainage right-of-way can be used for building set back with a proper conveyance. Mr. Wilton has advised that he is in agreement with this interpretation. This interpretation was given by the Department of Law at the time that building plans for the Conquistador Addition were reviewed by the Central Inspection Division.

It is my recommendation that the owners of the Conquistador Addition go before the Board of Zoning Appeals to request waiver for Building A set back from the north property line and that they prepare the proper conveyance to provide for a joint usage of the drainage right-of-way as building set back and drainage easement.

A copy of the original building plans and a copy of the recent survey are available for your information.

RWB
R. W. Bruggeman
Director of Public Works

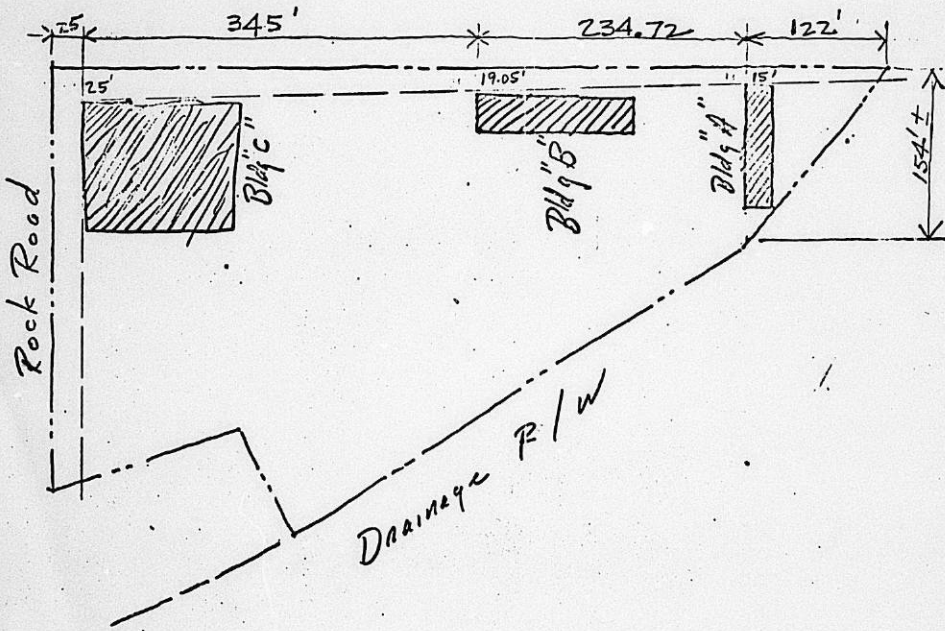
RWB:gr

Attachment

cc: Robert B. Feldner, Supt. of Central Inspection ✓

0172497' parcel

42-182 100 SHEETS
MAY 1983



August 20, 1974

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

Subject: Case No. BZA 23-74
Application for Variance

Dear Mr. Schaefer:

In reviewing the above referenced case we recently made a field check of the Conquistador Apartment complex. From our visual inspection it appeared that the southeast corner patio walls of buildings #4-A and 5 and also part of the concrete and fencing around the swimming pool encroach into the drainage right-of-way adjacent to the south property line. It was also noted that the patio walls of building #4 possibly extend into the utility easement along the north property line.

This drainage right-of-way was dedicated to the City of Wichita at the time of platting. We are informed by the Wichita-Sedgwick County Flood Control Office that a letter was sent to the architect, David Haines, advising him that the proposed location of the patio walls would not leave sufficient room for access for construction and maintenance equipment along the top of the bank and would not be acceptable as shown. Apparently this construction took place anyway.

Mr. James R. Schaefer
August 20, 1974

None of the above mentioned conditions are shown on the plot plan submitted with this application. Therefore, it will be necessary for you to furnish us with a survey of this development, specifically including the location of all the mentioned items, prior to this case being considered by the Board of Zoning Appeals.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

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

David Haines, Architect
3208 East Douglas
Wichita, Kansas 67208

Robert Feldner, Supt. of Central Inspection

M. S. Mitchell, Maintenance/Flood Control

SECRETARY'S REPORT

CASE NO. BZA 23-74

APPLICANT: Urban Construction and Development, Inc., 796 North Ridge Road, Wichita, Kansas

AGENT: James R. Schaefer, Suite 800 Brown Building, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line.

GENERAL LOCATION: East side of Rock Road in an area north of the Kansas Turnpike.

ZONING: Subject property is zoned the "R-6" General Residence District. Properties to the north, east and south are the "AA" Single Family Dwelling District. Properties to the west are zoned the "AA" District and the "LC" Light Commercial District.

LAND USE: Subject property is developed with an 111 unit apartment complex. Property to the north contains single family homes, to the west is a fire station and small shopping center, to the south and east is one single family residence, a drainage right of way and the Kansas Turnpike.

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.

Secretary's Report
Case NO. BZA 23-74
Page Two

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

1972 On May 30, 1972 the Board of City Commissioners approved a zone change on subject property from "AA" Single Family to "R-6" General Residence, subject to platting. The associated plat was subsequently approved and recorded on November 6, 1972 providing for a sizeable drainage right-of-way to be dedicated along the south property line. The necessary building permits were obtained, the apartments were built and are now occupied. The applicant now comes to us and says an insurance company they are dealing with questions whether or not the buildings on subject property conform to the Zoning Ordinance. The "R-6" District requires a side yard of 10% of the lot width, not to be less than six feet nor more than 25 feet. A review of the applicant's plot plan reveals that the property is an irregular pie shaped lot approximately 400 feet wide at its widest point tapering to 0 feet where the two side yards meet. The maximum 25-foot side yard would apply. The ordinance setting forth this maximum side yard provision became effective on May 24, 1974, after completion of this project. Prior to that time the ordinance called for a side yard of 10% of the lot width, but no less than six feet, but made no provision for a maximum limit.

Ord.
#

Violations The plot plan shows the following setback violations: Along the north property line the side of one building comes within ten feet of the property line, another comes within 20 feet, and another comes within 24.9 feet. Along the south property line the corner of one building comes to the property line and the corners of two other buildings come within approximately six feet of the property line.

Secretary's Report
Case No. BZA 23-74
Page Three

It is not understood just how this situation was carried this far. or why, only at the questioning of a third party it was determined that there were violations to the setback requirements. By way of possible explanation it should be noted that there may have been confusion concerning the dedicated drainage right-of-way on the south as opposed to a drainage easement. In the case of a drainage easement, title to the land would remain with the landowner and no setback from an easement would have to be observed. No structures may be erected on an easement, but the easement area could be used to meet the setback requirements. However, in the case of a drainage right-of-way, title to the land is dedicated to the public and is no longer a part of the landowners holding. Building setbacks would then have to be maintained from the new property line.

There is no drainage right-of-way associated with the violation along the north property line, but there is a 10-foot utility easement that parallels the north property line. There were also significant sewer and water easements running through the center of the property which undoubtedly caused many problems in the development of this property. It is conceivable that in the effort to not construct on an easement, that the sideyard setbacks were either somehow overlooked or thought to be complied with through the process of designing around the easement problems.

There is one other item that has been called to the attention of the applicant and his attorney. In viewing this area in the field, it was noted that patio walls of buildings 4A and 5 and also concrete and fencing around the swimming pool encroach into the drainage right-of-way adjacent to the south property line. Also, it appears the patio walls on building #4 may extend into the utility easement along the north. The applicant has been requested to furnish a survey of these items, prior to the meeting of the Board.

UNIQUENESS:

It is the opinion of the Secretary that there are several items of uniqueness in this case. The fact that the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party is unique. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique.

Secretary's Report
Case No. BZA 23-74
Page Four

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance would not adversely affect the adjacent properties inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees.

HARDSHIP

It is the opinion of the Secretary that an unnecessary hardship would be placed upon the applicant if the variance were not granted inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance would not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare inasmuch as the general character of the area would not be appreciably altered.

SPIRIT AND INTENT

It is the opinion of the Secretary that inasmuch as the four previous conditions can be found to exist, that the granting of this variance would not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

RECOMMENDATION

It is the opinion of the Secretary that all five conditions necessary for the granting of the variance can be found to exist and therefore it is recommended that the variance be granted to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, subject to the following condition:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.

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

August 7, 1974

CORRECTED NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 23-74

Our notice to you of August 6, 1974 advised you that an application had been filed by Urban Construction and Development, Inc., requesting a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line & from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

This notice was in error in that it advised you the case would be heard by the Board of Zoning Appeals at their regular meeting of September 27, 1974. This notice is to advise you that this meeting will be held on Tuesday, August 27, 1974, at 1:30 p.m. in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas.

JACK H. GALBRAITH
Secretary

THIS NOTICE MAILED ON THIS DATE TO 27 ADJACENT PROPERTY OWNERS AND 10 MAPC members.

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

August 6, 1974

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 23-74

*25 to 10
on north*

An application has been filed by Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

*25 to 0
on south*

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

This application has been assigned Case No. BZA 23-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 27, 1974, 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

27 NOTICES TO ADJOINING PROPERTY OWNERS mailed this date.
10 Notices mailed to MAPC members on this date

WICHITA-SEDGWICK COUNTY

DATE

June 18, 1974

METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert A. Lakin, Director of Planning

FROM Jack H. Galbraith, Chief Planner *JHG*

SUBJECT Location of Buildings in Conquistador Addition

Jim Schaefer contacted me yesterday and inquired as how certain apartment structures were permitted to locate within ten feet of the north property line on the above captioned plat. Specifically, he is to certify to the New York Life Insurance Company that the buildings conform to the Zoning Ordinance. The "R-6" District requires a side yard of 10% of the lot width, not to be less than 6 feet. Schaefer was reviewing a survey of the buildings and stated they were ten feet from the north property line and located on the property line on the south and the insurance company was questioning why they were permitted to locate and not conform to the 10% requirement.

Lytle reviewed the building plans with Riddell and did not get a reasonable explanation as to why the buildings did not conform to the setback requirements of the ordinance. The original plans apparently had buildings proposed to extend into the drainage dedication on the south; however, the plans reflect that the architect was advised to redesign the buildings. Both Glen and I remember briefly discussing the plans with Dave Haines, the architect, and advising that a Board of Zoning Appeals variance would be necessary. There are a reported 111 dwelling units on approximately 4.15 acres, which does not violate the density of the "R-6" District.

As this plat was irregular in shape, it would have been somewhat difficult to determine the side yard requirement based on the 10% factor. However, it appears that no attempt was made on the building plans to determine the required side yard set back.

JHG:js

CC. - Waly 6/21/74

BOARD OF ZONING APPEALS

CASE NO. 2A 23-74

CITY OF WICHITA, KANSAS

FILED 8-1-74

APPLICATION FOR VARIANCE

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

Mailing Address 786 North Ridge Road ^W Phone 942-1227

Name of Authorized Agent James R. Schaefer ✓

Mailing Address Suite 800 Brown Building Phone 262-4403

Relationship of applicant to property is that of _____
(Owner, Tenant, Lessee, Other) ?

II. The variance requested is reduction of the required side yard setbacks required to 0 feet on the south and 10 to 24.9 feet on the north as shown by the attached survey of the premises
for property located at 920 South Rock Road, Wichita, Kansas

and legally described as: Lot 1, Conquistador Addition

in the City of Wichita; and which is presently zoned R-6.

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

By: James R. Schaefer
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 11:00 (a.m. - p.m.), August 1 19 74
together with appropriate fee of \$50.00.

T9-402

Larry Robinson
Signed

STATEMENT OF
JUSTIFICATION FOR VARIANCE

1. The total acreage of the lot in question is 4.36 acres or 190,002.38 square feet which would justify the construction of 126+ units on the property. There are in fact 111 units located on the lot. The lot is unique in shape and is generally protected by natural barriers on the south and west. The north property line is protected from the adjacent property owners by a tree row along its entire length. Because of the location of the property adjacent to a major street and flood control right-of-way, the conditions which exist are unique to the property in question and not ordinarily found in the same zone or district. Further, the conditions were not created by any action of the property owner.

2. That the granting of the permit for variance will not adversely affect the rights of the adjacent property owners or residences inasmuch as there are no residences to the west or south, with exception of one house in the southwest corner of the property, and the property owners to the north are protected by a natural planting row.

3. That the strict application of the provisions of Title 28 of the Code of the City of Wichita of which variance is requested will constitute unnecessary hardships upon the property owner represented in the application because of the unique shape and design of the lot.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, for the reasons hereinabove set forth.

5. That granting the variance desired in this case will not be opposed to the general spirit and intent of Title 28 of the Code of the City of Wichita which is primarily, in this zoning classification, designed to provide sufficient clearances between zoning uses, and it is applicant's position that natural barriers form sufficient protection from the lot in question to adjacent owners.

URBAN CONSTRUCTION AND DEVELOPMENT, INC.

By: James R. Shacter
Attorney for Applicant

Not to be
forwarded until
conditions #2 & 3 are
complied with

RESOLUTION NO. BZA 23-74

WHEREAS, Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

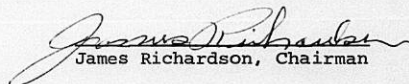
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

be approved subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.


James Richardson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

RESOLUTION NO. BZA 23-74

WHEREAS, Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

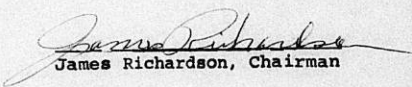
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

be approved subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.


James Richardson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

RESOLUTION NO. BZA 23-74

WHEREAS, Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation; and

Resolution No. BZA 23-74
Page Two

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

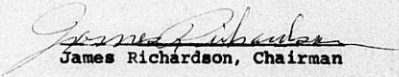
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be approved subject to the following conditions:

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2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

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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 at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

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Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

be approved subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.


James Richardson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

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WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance 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 inasmuch as the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique; and

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WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the general character of the area would not be appreciably altered; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the four previous conditions necessary to the granting of a variance have been found to exist; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

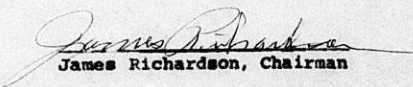
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WHEREAS, the Board of Zoning Appeals at the meeting of August 27, 1974, considered said application, and did, at the request of the applicant, defer this case until September 24, 1974; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 24, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

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be approved subject to the following conditions:

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3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

ADOPTED AT WICHITA, KANSAS, this 24th day of September, 1974.


James Richardson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

Nov. 14, 1975

John Dekker, Director of Law

Jack H. Galbraith

I wanted to keep you advised that I received this subpoena this date from Terry O'Keefe requesting that I be available on Monday, November 17, 1975, with Board of Zoning Appeals case 23-74.

O'Keefe represents adjacent property owners who are suing the owners of the Conquistador Apartments located on the east side of Rock Road south of Lincoln.

If you have any questions concerning this matter, please call.

Jack H. Galbraith
Chief Planner

JHG:el
Attachment
cc: Ralph Wulz, City Manager

For Clerk's Use Only

SUBPOENA DUCES TECUM

The State of Kansas }
Sedgwick County } etc Case Number C-31413
THE STATE OF KANSAS

Mr. Jack Galbraith
Board of Zoning Appeals
City Building Annex
104 S. Main Street
Wichita, Kansas 67202

RECEIVED
SHERIFF DEPARTMENT
SERVING PROCESS
NOV 13 11:33 AM '75

And bring with you your complete file in Case No. BZA 23-74.

(\$5.00 witness fee attached)

Fee Returned

WE COMMAND YOU to be and appear in your own proper person before the Judge of Division No. 8, of the District Court of the County of Sedgwick, at the Court House in Wichita, County of Sedgwick, on the 17th day of November, 1975, at 2:00 o'clock P.M., of that day, then and there to testify on behalf of the plaintiffs in a certain controversy now pending and undetermined in said court, wherein Woodrow Purselley, et al is plaintiff and Urban Construction defendant, and this do you in nowise omit under the penalty of the law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Wichita, this 12th day of November, A. D. 19 75.



DOROTHY I. VAN ARSDALE
Clerk

TERRY O'KEEFE Atty. for PLAINTIFFS

Maurice Graybill
Deputy Clerk

SHERIFF'S RETURN

Received this writ _____, 19____. Served the same by delivering a certified copy to each person named personally, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

Served the same by leaving a copy thereof at the usual place of residence, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

The following persons not found in Sedgwick County:

_____	19____	_____	19____
_____	19____	_____	19____

Serving first person \$	
Serving _____ copies	
Not found	
Mileage _____ at	<u>NO FEE</u>
TOTAL.....\$	

SHERIFF

DEPUTY

October 21, 1974

Larry Bottenberg
Bottenberg Construction Co., Inc.
786 North Ridge Road
Wichita, Kansas 67212

Dear Mr. Bottenberg:

I have been contacted requesting a letter authorizing certain encroachments on the utility easement at the north property line of the Conquistador Apartments (Case No. BZA 23-74). I can not authorize such an encroachment.

In the past, the City Commission in a very few cases has allowed similar encroachments by agreement between the property owner and the City. A sample copy of an agreement is attached. If you wish to have your attorney prepare a similar instrument, I will submit it to the City Commission for its action.

The Flood Control office has also been contacted regarding encroachments on the drainage easement along the south line of the Conquistador Apartments property. We have checked and find that all of the drainage easement is required for the design channel section and access. Therefore, encroachments can not be permitted.

Very truly yours,

G. H. Wilton
Superintendent
Public Works Maintenance

GHW:wmk

Attachment:

CC: R. W. Bruggeman, Director of Public Works
Robert Feldner, Supt. of Central Inspection
Jack Galbraith, Chief Planner
M. S. Mitchell, Ass't. Supt. of P. W. Mtce.



THE CITY OF WICHITA

Dilbrath



DEPARTMENT OF PUBLIC WORKS
CENTRAL INSPECTION DIVISION
252-0811 — AREA CODE 316
CITY BUILDING ANNEX
104 S. MAIN — WICHITA, KAN. 67202

September 27, 1974



Mr. Larry Bottenberg
Bottenberg Construction Co., Inc.
786 North Ridge Road
Wichita, Kansas 67212

Dear Mr. Bottenberg:

The Board of Zoning Appeals considered your application for variance of side yard set back on the north property line of the Conquistador apartment project. Mr. James Schaefer was present and doubtless has informed you of the board action.

The second problem in the matter of encroachments onto the drainage right-of-way is presently being studied by the Flood Control Division to determine if section profiles will require reworking present grades to the boundary limit. Their findings will be transmitted to you when the study has been completed.

A matter which requires your immediate attention is the projection of the privacy walls on the north side of building #4 and the chimney on the north side of building #5 shown on Hall & Associates survey dated June 4, 1974 as extending into a ten foot utility easement.

Section 28.04.160 (I) of the Code of the City of Wichita reads as follows:

"No building, nor any addition thereto, shall be erected over or under any public sewer or public utility lines, nor upon any platted or recorded easement unless permission is granted, in writing, by the city or the public utility whose lines are involved."

It will, therefore, be necessary for you to obtain permission, in writing,

September 27, 1974
Mr. Larry Bottenberg
Conquistador Apartments
Page 2

with copies sent to this office, in order to leave the structural encroachments as built. The privacy walls qualify as structures by the definitions in the ordinance. (Page 1054 for "Easements"; page 1019 for "Building")

The above written permission shall be in this office by October 31, 1974. Failure to furnish the required documents will result in my request for further action by the legal department.

Sincerely,



Robert B. Feldner
Superintendent of Central Inspection

RBF:mml

cc: Jack Galbraith, Secretary-Board of Zoning Appeals
James R. Schaefer, Suite 800, Brown Building
David Haines, 3208 East Douglas
M.S. Mitchell, Flood Control
John Dekker, City Attorney

September 25, 1974

James E. Schaefer
Suite 800 Brown Building
Wichita, Kansas 67202

Subject: Case No. MEA 23-74
Request for Variance

Dear Mr. Schaefer:

At the regular meeting of the Board of Zoning Appeals on September 24, 1974, your request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-4" General Residence District and generally located on the east side of Rock Road in an area north of the Kansas Turnpike, was considered.

It was the action of the Board to approve this request subject to the following conditions:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.
2. That the applicant shall take whatever appropriate action is necessary to eliminate existing encroachments into the utility easement along the north property line and into the drainage right-of-way adjacent to the south property line as detailed on the survey revised September 6, 1974.
3. That the applicant shall make satisfactory arrangements with the Office of Central Inspection and the Flood Control Division with the Department of Public Works to alleviate the drainage problems along the north property line.

James H. Schaefer
September 25, 1974

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as we have received letters from the Offices of Central Inspection and Flood Control indicating compliance with Conditions of Approval #2 and #3 listed above.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHS:js

cc: Urban Construction and Development, Inc., 786 N. Ridge Rd 67212
Woodrow W. Purselley, 8033 Dresden Lane 67207
Harold E. Harlow, 8037 Dresden Lane 67207
Terry O'Keefe, Olive W. Garvey Bldg, 67202
Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Leland Johnson, Building Code Engineer, Central Inspection Div.
Joe Donnelly, Maintenance Inspection Supervisor, Central Inspection

September 18, 1974

Robert Feldner, Superintendent of Central Inspection

Jack H. Galbraith, Chief Planner

Case No. BZA 23-74 (Conquistador Apartments)

Subject case is before the Board of Zoning Appeals as a request for the reduction of side yard setback requirements. In reviewing this case we made a field check of the Conquistador Apartment complex and noted what appeared to be encroachments of certain structures into the drainage right-of-way adjacent to the south property line and into the utility easement along the north property line. You received a copy of my letter of August 20, 1974, to James Schaefer, attorney for the applicant, pointing out our observations and requesting him to furnish us with a new survey of this development. We are in receipt of this survey, and a copy is attached for your review. You will note that the patio (privacy) walls on Building #4 encroach 4 to 5 feet into the utility easement along the north property line and that the fireplace on Building #5 also encroaches into this easement. Encroaching into the drainage right-of-way adjacent to the south property line is one patio (privacy) wall for both Building #5 and #6, a balcony on Building #2, a yard light, part of the concrete pool deck and fencing around the pool. As you pointed out several weeks ago, your plans review officer had particularly noted on the plans in your office that these encroachments were not to be constructed.

These encroachments are in violation of the building plans and are brought to your attention, and to the attention of those receiving copies of this memo, so that appropriate action can be taken to see that they are removed. Inasmuch as this problem will be pointed out to the Board at their meeting on Tuesday, September 24th, you may desire to attend that meeting.

JHG:js

cc: R. L. Bruggeman, Director of Public Works
George Wilton, Superintendent of Public Works Maintenance
M. S. Mitchell, Maintenance/Flood Control Supervisor
Robert A. Lakin, Director of Planning

August 28, 1974

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

Subject: Case No. BZA 23-74
Application for Variance

Dear Mr. Schaefer:

At the regular meeting of the Board of Zoning Appeals on August 27, 1974, your request for a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and generally located on the east side of Rock Road in an area north of the Kansas Turnpike, was considered.

At your request, the action of the Board was to defer this case to the next regular meeting so you would have additional time to obtain the necessary survey showing encroachments of patio and swimming pool walls into utility easements and drainage rights-of-way.

Therefore, this matter will be scheduled for the meeting of September 24, 1974, meeting to begin at 1:30 p.m. in Room 401 City Building Annex, 104 South Main.

If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Urban Construction and Development, Inc., 786 N. Ridge Road
Terry O'Keefe, Atty., Olive W. Garvey Bldg.

THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE August 23, 1974



**ON SAFETY
PHASE II**

TO Jack H. Gabraith, Chief Planner
FROM Robert B. Feldner^{RBF} Superintendent of Central Inspection

SUBJECT Conquistador Apartments
BZA 23-74

I am attaching copies of two memos from our file relative to the above project.

I note in the last paragraph on page 2 of the Secretary's Report that it is stated that one building comes within 24.9' of the property line. Since this dimension is to a chimney projection and the building line is 27.1' from the line, this is allowable per 28.04.188 of the Zoning Ordinance.

The setback interpretation shown on the attached sketch is based on the unusual configuration of the lot and the restrictions placed on its use by the splitting of the lot by the 40' War Industries Utility easement.

If you have any questions, please contact me.

RBF:mmml

Attachments



THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE July 1, 1974



TO Robert B. Feldner, Superintendent of Central Inspection

FROM John J. ~~Edel~~, Building Plans Examiner

SUBJECT Platting, Drainage Dedication and
Yard Considerations at Drainageway
of the Conquistador Addition

To the best of my knowledge, the building line was established on the south line of the building site adjoining the drainage dedication as developed below:

The site plan page of the building plans indicated structures and fences extending onto the drainage dedication. I marked the plan so as to indicate such construction on the drainage dedication was not permissible. Building setback lines were also marked at that time for the structures on land adjoining the drainage dedication.

At some time during the platting process, a particular meeting had been held to discuss, among other considerations, the drainage dedication and adjoining yard requirements. Attending this meeting were: Jack Galbraith, M. S. Mitchell, Dick Linn, Larry Bottenberg, Rodger Brooks, David Haines.

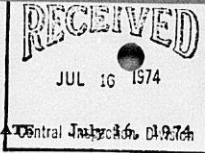
I received information (source now unknown) that consideration had been given to dedication of the drainage area by the owner and then a rededication back to the owner of sufficient area to satisfy yard requirements; but for some reason this approach was objectionable and the city legal department's opinion indicated the adjacent drainage dedication could be used to satisfy the yard requirement. Such was noted on the plans and all setback requirements were removed from the plan in this area.

The plans were released during a period of discussion on application of "R-5" and "R-6" zoning district setback requirements. The planning department suggested that they endeavor to include setback requirements on plats and CUP's. An agreeable policy was established to apply the zoning ordinance requirements only to yards on the perimeter of a site and to apply building code setback requirements to interior yards. A recent ordinance has established a maximum setback requirement of 25' for side yards.

The combination of the above actions has provided workable solutions for "R-5" and "R-6" yard requirements.

JJR:mm1

THE CITY OF WICHITA
OFFICE OF Director of Public Works



TO Ralph Wulz, City Manager
FROM R. W. Bruggeman, Director of Public Works

SUBJECT Building Set Backs - Conquistador Addition

Attached is a sketch showing buildings A, B and C that were constructed in the Conquistador Addition in addition to other buildings.

Building A was approved by the Central Inspection Division for construction 15' from the north property line. A recent survey shows this building was constructed 10' from the north property line.

Building C was to have been constructed a minimum of 25' from the north property line. A recent survey shows Building C was constructed 27' from the north property line.

It is the interpretation of the Central Inspection Division that Building B should have been constructed 19.05' from the north property line which would have been an uniform set back line drawn between Building A and Building C. A recent survey shows Building B was constructed 20' from the north property line.

The area along the south side of the Conquistador Addition was dedicated as a drainage right-of-way. Mr. Dekker has advised that drainage right-of-way can be used for building set back with a proper conveyance. Mr. Wilton has advised that he is in agreement with this interpretation. This interpretation was given by the Department of Law at the time that building plans for the Conquistador Addition were reviewed by the Central Inspection Division.

It is my recommendation that the owners of the Conquistador Addition go before the Board of Zoning Appeals to request waiver for Building A set back from the north property line and that they prepare the proper conveyance to provide for a joint usage of the drainage right-of-way as building set back and drainage easement.

A copy of the original building plans and a copy of the recent survey are available for your information.

RWB
R. W. Bruggeman
Director of Public Works

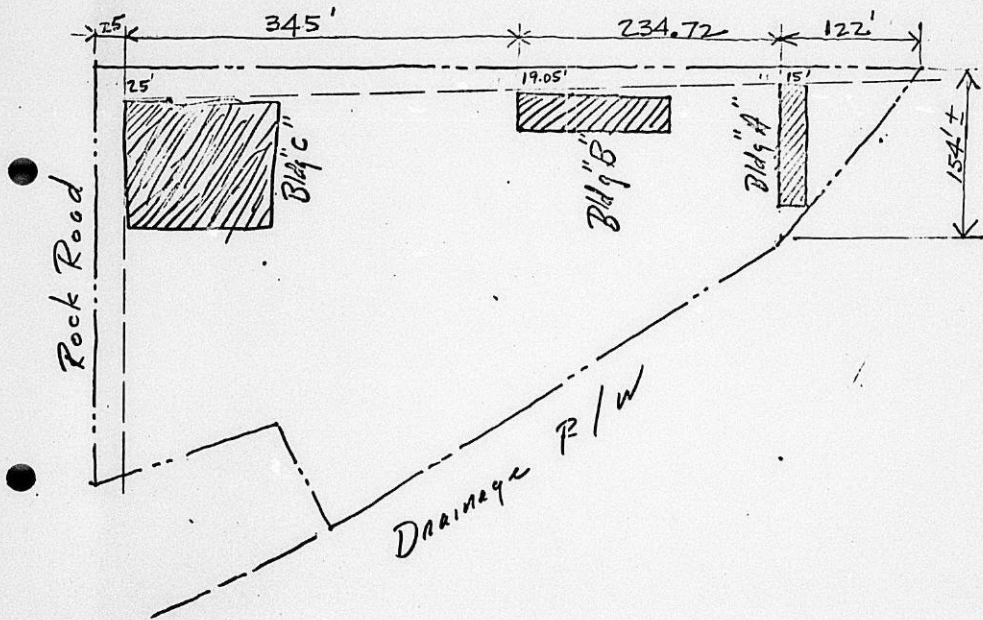
RWB:gr

Attachment

cc: Robert B. Feldner, Supt. of Central Inspection ✓

0172497' per lin'

42-182 100 SHEETS



August 20, 1974

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

Subject: Case No. BZA 23-74
Application for Variance

Dear Mr. Schaefer:

In reviewing the above referenced case we recently made a field check of the Conquistador Apartment complex. From our visual inspection it appeared that the southeast corner patio walls of buildings #4-A and 5 and also part of the concrete and fencing around the swimming pool encroach into the drainage right-of-way adjacent to the south property line. It was also noted that the patio walls of building #4 possibly extend into the utility easement along the north property line.

This drainage right-of-way was dedicated to the City of Wichita at the time of platting. We are informed by the Wichita-Sedgwick County Flood Control Office that a letter was sent to the architect, David Haines, advising him that the proposed location of the patio walls would not leave sufficient room for access for construction and maintenance equipment along the top of the bank and would not be acceptable as shown. Apparently this construction took place anyway.

Mr. James R. Schaefer
August 20, 1974

None of the above mentioned conditions are shown on the plot plan submitted with this application. Therefore, it will be necessary for you to furnish us with a survey of this development, specifically including the location of all the mentioned items, prior to this case being considered by the Board of Zoning Appeals.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

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

David Haines, Architect
3208 East Douglas
Wichita, Kansas 67208

Robert Feldner, Supt. of Central Inspection

M. S. Mitchell, Maintenance/Flood Control

SECRETARY'S REPORT

CASE NO. BZA 23-74

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

AGENT: James R. Schaefer, Suite 800 Brown Building, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line.

GENERAL LOCATION: East side of Rock Road in an area north of the Kansas Turnpike.

ZONING: Subject property is zoned the "R-6" General Residence District. Properties to the north, east and south are the "AA" Single Family Dwelling District. Properties to the west are zoned the "AA" District and the "LC" Light Commercial District.

LAND USE: Subject property is developed with an 111 unit apartment complex. Property to the north contains single family homes, to the west is a fire station and small shopping center, to the south and east is one single family residence, a drainage right of way and the Kansas Turnpike

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.

Secretary's Report
Case No. BZA 23-74
Page Two

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

On May 30, 1972 the Board of City Commissioners approved a zone change on subject property from "AA" Single Family to "R-6" General Residence, subject to platting. The associated plat was subsequently approved and recorded on November 6, 1972 providing for a sizeable drainage right-of-way to be dedicated along the south property line. The necessary building permits were obtained, the apartments were built and are now occupied. The applicant now comes to us and says an insurance company they are dealing with questions whether or not the buildings on subject property conform to the Zoning Ordinance. The "R-6" District requires a side yard of 10% of the lot width, not to be less than six feet nor more than 25 feet. A review of the applicant's plot plan reveals that the property is an irregular pie shaped lot approximately 400 feet wide at its widest point tapering to 0 feet where the two side yards meet. The maximum 25-foot side yard would apply. The ordinance setting forth this maximum side yard provision became effective on May 24, 1974, after completion of this project. Prior to that time the ordinance called for a side yard of 10% of the lot width, but no less than six feet, but made no provision for a maximum limit.

The plot plan shows the following setback violations: Along the north property line the side of one building comes within ten feet of the property line, another comes within 20 feet, and another comes within 24.9 feet. Along the south property line the corner of one building comes to the property line and the corners of two other buildings come within approximately six feet of the property line.

Secretary's Report
Case No. BZA 23-74
Page Three

It is not understood just how this situation was carried this far, or why, only at the questioning of a third party it was determined that there were violations to the setback requirements. By way of possible explanation it should be noted that there may have been confusion concerning the dedicated drainage right-of-way on the south as opposed to a drainage easement. In the case of a drainage easement, title to the land would remain with the landowner and no setback from an easement would have to be observed. No structures may be erected on an easement, but the easement area could be used to meet the setback requirements. However, in the case of a drainage right-of-way, title to the land is dedicated to the public and is no longer a part of the landowners holding. Building setbacks would then have to be maintained from the new property line.

There is no drainage right-of-way associated with the violation along the north property line, but there is a 10-foot utility easement that parallels the north property line. There were also significant sewer and water easements running through the center of the property which undoubtedly caused many problems in the development of this property. It is conceivable that in the effort to not construct on an easement, that the sideyard setbacks were either somehow overlooked or thought to be complied with through the process of designing around the easement problems.

There is one other item that has been called to the attention of the applicant and his attorney. In viewing this area in the field, it was noted that patio walls of buildings 4A and 5 and also concrete and fencing around the swimming pool encroach into the drainage right-of-way adjacent to the south property line. Also, it appears the patio walls on building #4 may extend into the utility easement along the north. The applicant has been requested to furnish a survey of these items, prior to the meeting of the Board.

UNIQUENESS:

It is the opinion of the Secretary that there are several items of uniqueness in this case. The fact that the buildings were constructed and occupied before any violations were noted and then only at the inquiry of a third party is unique. The fact that subject property is irregular shaped with major interior sewer easements is also somewhat unique.

Secretary's Report
Case No. BZA 23-74
Page Four

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance would not adversely affect the adjacent properties inasmuch as the violations along the south property line are adjacent only to the drainage right-of-way; and the violations of the north setback involve the side and rear of two buildings being adjacent to the rear lot line of adjacent properties that are separated or buffered by a row of trees.

HARDSHIP

It is the opinion of the Secretary that an unnecessary hardship would be placed upon the applicant if the variance were not granted inasmuch as he would be required to uproot tenants who now occupy these apartments, relocate them, and tear down and reconstruct the portions of those buildings in violation.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance would not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare inasmuch as the general character of the area would not be appreciably altered.

SPIRIT AND INTENT

It is the opinion of the Secretary that inasmuch as the four previous conditions can be found to exist, that the granting of this variance would not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

RECOMMENDATION

It is the opinion of the Secretary that all five conditions necessary for the granting of the variance can be found to exist and therefore it is recommended that the variance be granted to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line, subject to the following condition:

1. That the variances herein granted shall apply only to those areas of the side yards where buildings are presently in violation, as shown on the applicant's plot plan, and shall not be construed to allow construction or placement of any additional structure thereon.

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

August 7, 1974

CORRECTED NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 23-74

Our notice to you of August 6, 1974 advised you that an application had been filed by Urban Construction and Development, Inc., requesting a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line & from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

This notice was in error in that it advised you the case would be heard by the Board of Zoning Appeals at their regular meeting of September 27, 1974. This notice is to advise you that this meeting will be held on Tuesday, August 27, 1974, at 1:30 p.m. in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas.

JACK H. GALBRAITH
Secretary

THIS NOTICE MAILED ON THIS DATE TO 27 ADJACENT PROPERTY OWNERS AND 10 MAPC members.

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

August 6, 1974

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 23-74

An application has been filed by Urban Construction and Development, Inc., 786 North Ridge Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback from 25 feet to 10 feet adjacent to the north property line and from 25 feet to 0 feet adjacent to the south property line on property zoned the "R-6" General Residence District and legally described as follows:

Lot 1, Conquistador Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Rock Road in an area north of the Kansas Turnpike.

This application has been assigned Case No. BZA 23-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 27, 1974, 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

27 NOTICES TO ADJOINING PROPERTY OWNERS mailed this date.
10 Notices mailed to MAPC members on this date

WICHITA-SEDGWICK COUNTY

DATE

June 18, 1974

METROPOLITAN AREA PLANNING DEPARTMENT

TO Robert A. Lakin, Director of Planning
FROM Jack H. Galbraith, Chief Planner *JHG*
SUBJECT Location of Buildings in Conquistador Addition

Jim Schaefer contacted me yesterday and inquired as how certain apartment structures were permitted to locate within ten feet of the north property line on the above captioned plat. Specifically, he is to certify to the New York Life Insurance Company that the buildings conform to the Zoning Ordinance. The "R-6" District requires a side yard of 10% of the lot width, not to be less than 6 feet. Schaefer was reviewing a survey of the buildings and stated they were ten feet from the north property line and located on the property line on the south and the insurance company was questioning why they were permitted to locate and not conform to the 10% requirement.

Lytle reviewed the building plans with Riddel and did not get a reasonable explanation as to why the buildings did not conform to the setback requirements of the ordinance. The original plans apparently had buildings proposed to extend into the drainage dedication on the south; however, the plans reflect that the architect was advised to redesign the buildings. Both Glen and I remember briefly discussing the plans with Dave Haines, the architect, and advising that a Board of Zoning Appeals variance would be necessary. There are a reported 111 dwelling units on approximately 4.15 acres, which does not violate the density of the "R-6" District.

As this plat was irregular in shape, it would have been somewhat difficult to determine the side yard requirement based on the 10% factor. However, it appears that no attempt was made on the building plans to determine the required side yard set back.

JHG:js

CC - Wally 6/21/74

BOARD OF ZONING APPEALS

CASE NO. 82A 23-74

CITY OF WICHITA, KANSAS

FILED 8-1-74

APPLICATION FOR VARIANCE

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

Mailing Address 786 North Ridge Road ^N Phone 942-1227

Name of Authorized Agent James R. Schaefer ✓

Mailing Address Suite 800 Brown Building Phone 262-4403

Relationship of applicant to property is that of _____
(Owner, Tenant, Lessee, Other) ?

II. The variance requested is reduction of the required side yard setbacks required to 0 feet on the south and 10 to 24.9 feet on the north as shown by the attached survey of the premises
at 920 South Rock Road, Wichita, Kansas

and legally described as: Lot 1, Conquistador Addition

in the City of Wichita; and which is presently zoned R-6.

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

By: James R. Schaefer
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 11:00 (a.m.) - p.m.), August 1 19 74
together with appropriate fee of \$50.00.

T9-402

Larry Dobson
Signed

STATEMENT OF
JUSTIFICATION FOR VARIANCE

1. The total acreage of the lot in question is 4.36 acres or 190,002.38 square feet which would justify the construction of 126+ units on the property. There are in fact 111 units located on the lot. The lot is unique in shape and is generally protected by natural barriers on the south and west. The north property line is protected from the adjacent property owners by a tree row along its entire length. Because of the location of the property adjacent to a major street and flood control right-of-way, the conditions which exist are unique to the property in question and not ordinarily found in the same zone or district. Further, the conditions were not created by any action of the property owner.

2. That the granting of the permit for variance will not adversely affect the rights of the adjacent property owners or residences inasmuch as there are no residences to the west or south, with exception of one house in the southwest corner of the property, and the property owners to the north are protected by a natural planting row.

3. That the strict application of the provisions of Title 28 of the Code of the City of Wichita of which variance is requested will constitute unnecessary hardships upon the property owner represented in the application because of the unique shape and design of the lot.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, for the reasons hereinabove set forth.

5. That granting the variance desired in this case will not be opposed to the general spirit and intent of Title 28 of the Code of the City of Wichita which is primarily, in this zoning classification, designed to provide sufficient clearances between zoning uses, and it is applicant's position that natural barriers form sufficient protection from the lot in question to adjacent owners.

URBAN CONSTRUCTION AND DEVELOPMENT, INC.

By: James R. Salas
Attorney for Applicant

O W N E R S H I P L I S T

Lot	Block	Addition	Property Owner
6	14	Eastridge 12th Addition	✓ Alvin N. Dierking & Wilma J. 7920 East Lincoln 67207
E 15' lot 7	14	Same	Same
W 45' lot 7	14	Same	X Velma M. Craggs Address Unknown
1	A	Broadmoor Addition	X City of Wichita 204 South Main 67202
1		Hall-King Addition	✓ George L. Hall 5901 South Greenwich Road 67210
1		Hall-King 2nd Addition	Same
1		Conquistador Addition	✓ Urban Construction and Development Inc. 786 N. Ridge Road 67212
12	2	Eastridge Park 2nd Addition	✓ John E. Kirkham & Beatrice 8038 Dresden Lane 67207
13	2	Same	✓ John H. Hill and Caroline 8034 Dresden Lane 67207
14 exc W 21	2	Same	✓ Byron Gilbert Johnson and Mary Jane Johnson 8030 Dresden Lane 67207
W 2' lot 14	2	Same	✓ Charles G. Burnett and Dorothy Jean Burnett 8026 Dresden Lane 67207
15 exc W 2'	2	Same	Same
W 2' 15	2	Same	✓ Hazel E. Quick and John D. 8018 Dresden Lane 67207
16	2	Same	Same
17	2	Same	✓ John R. Giltner 8018 Dresden Lane 67207
18	2	Same	✓ Maynard L. Nelsen & Esther 8014 Dresden Lane 67207
E 3' lot 19	2	Same	Same

Lot	Block	Addition	Property Owner
19 exc W 2' & 2 exc E 3'		Eastridge Park 2nd Addition	Leong T. Mar ✓ ✓ 8010 Dresden Lane 67207
W 2' 2 lot 19		Same	Neil H. Nave & Mercedes B. ✓ 8006 Dresden Lane 67207
20 2		Same	Same
21 2		Same	Wilburn J. Ammons and ✓ Ada Naomi Ammons 8002 Dresden Lane 67207
18 4		Eastridge Park Addition	William A. Bell & Sheryll A. ✓ 834 Eastmoor Street 67207
1 exc E 2' 3		Eastridge Park 2nd Addition	Jack B. Herber & Lola D. ✓ 8001 Dresden Lane 67207
E 2' lot 1 3		Same	La Vera M. Childs ✓ 8005 Dresden Lane 67207
2 3		Same	Same
W 1' lot 3 3		Same	Same
3 exc W 1' 3		Same	Walter E. De Lozier and ✓ Domenica A. De Lozier 8009 Dresden Lane 67207
W 1' lot 4 3		Same	Same
4 exc W 1' & 3 exc E 2'		Same	Richard A. Songer & Janice M. ✓ 8013 Dresden Lane 67207
E 2' lot 4 3		Same	Ronald E. Ott & Carol J. Ott ✓ 8017 Dresden Lane 67207
5 exc E 1' 3		Same	Same
E 1' lot 5 3		Same	Patrick J. McDonald & Doris M. ✓ 8021 Dresden Lane 67207
6 3		Same	Same
7 3		Same	Donald G. Blunk & Mildred I. ✓ 8025 Dresden Lane 67207
W 3' lot 8 3		Same	Same

Lot	Block	Addition	Property Owner
8 exc W 3' 3		Eastridge Park 2nd Addition	✓ Dale N. Auten & W. Karen 8029 Dresden Lane 67207
9	3	Same	✓ Woodrow W. Pursselley and Pauline M. Pursselley 8033 Dresden Lane 67207
10	3	Same	✓ Harold E. Harlow & Thurma M. 8037 Dresden Lane 67207
11	3	Same	✓ Gordon A. Smith & Melva L. 8041 Dresden Lane 67207

A part of Reserve in Block 1, in Eastlake Country Estates, Sedgwick County, Kansas, described as: Beginning at a point 40 feet East and 271.69 feet South of the Northwest corner of the Southwest Quarter of Section 29-27-2E, thence NEly at a 71° angle for a distance of 200 feet, thence to right with a deflection angle of 80° for a distance of 257 feet more or less to center of Gypsum Creek, thence SWly to a point 40 feet East of the West line of said Quarter Section, said point being 275.48 feet South of beginning, thence North to beginning.

✓ Floyd W. Langland and
Esther Langland
707 Park Street
Neosho, Missouri 64850

The Security Abstract and Title Company, Inc.,
hereby certifies the foregoing to be a true and correct list of
property owners of:

A 200 foot radius of: Lot 1,
Conquistador Addition, Wichita,
Sedgwick County, Kansas

as shown by the records on file in the Office of the Register of
Deeds Office of Sedgwick County, Kansas, on this 27th day of June,
1974 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

By

Mary Hable

Vice President

Order No. 215029
wh

Form 223-021

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

324 15000

Name

Address

Type 14 407/12 Due Date 1/14

Comments:

Date 1/14 By

*

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

Roll # 1