

82A 32-65 - St. George Orthodox
Church Inc. requests variance of
setback on Walnut between Burton
and Texas

Smead
No. 103½C

HASTINGS, MINN. - LOGAN, OHIO U.S.A.

Saint George Orthodox Church, Inc.
210 South Walnut
Wichita, Kansas

September 14, 1965

Gentlemen:

Re: BZA 32-65 - Request for Variance

We have completed the preparation of the Resolution adopted by the Board of Zoning appeals in connection with the above-numbered case, which was heard by the Board on August 24, 1965, which Resolution has been signed by the Chairman and Secretary.

As indicated in our letter of August 26, 1965, we are enclosing a copy of this Resolution for your information and files. A copy has also been provided the Central Inspection Division, and you may now obtain the appropriate permit with respect to this application from the Central Inspection Division.

If you have any questions concerning this case, please let us know.

Very truly yours,

Jack H. Galbraith
Secretary

JHS:ber

cc: RoetselJochams
P. O. Box 2134

Glen Lytle, Superintendent
of Central Inspection

Robert Finch
City Clerk

September 14, 1965

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City Clerk

R E S O L U T I O N N O . B Z A 3 2 - 6 5

WHEREAS, SAINT GEORGE ORTHODOX CHURCH, INC., 210 South Walnut, Wichita, Kansas, by Roetzel Jochems, Attorney, P. O. Box 2134, Wichita, Kansas, requests a Variance of the 15-foot rear yard setback to 9 feet, pursuant to Section 2.12.590.2, Code of the City of Wichita, so that a portion of the required setback area may be utilized in the expansion of a building, on property zoned "B" Multiple family, and legally described as:

Lots 2, 4, 6, 8, 10 and the vacated alley to the north of said Lot 10, on Walnut Street in West Wichita, in the City of Wichita, Sedgwick County, Kansas, generally located on the east side of Walnut Street between Burton and Texas; and

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

WHEREAS, the Board of Zoning Appeals did, in regular meeting, consider said application on August 24, 1965; and

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

WHEREAS, the Board of Zoning Appeals has found that the variance requested arises from such condition which is unique and not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant, inasmuch as the property bordering the east side of the north-south alley is zoned "C" Commercial and no rear yard setback is required and, further, the applicants have contended that the preliminary development plan was approved by the Central Inspection Division, which preliminary development plan did not show a rear yard setback requirement. Consequently, detailed architectural plans were prepared on this basis and a considerable amount of money was expended in preparing such plans, based upon the preliminary approval of the development plan; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance, as approved, would not adversely affect adjacent property owners or residents inasmuch as no one appeared and voiced opposition to the request of the applicant; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented inasmuch as the applicants have contended that they will be burdened with an unnecessary hardship if the variance is not granted in that the church has expended considerable money in working drawings and architectural fees, based upon the approval of the preliminary development plan by the City; 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; and

WHEREAS, the Board of Zoning Appeals has determined that the variance desired will not be opposed to the general spirit and intent of Title 28, Code of the City of Wichita, inasmuch as it is the intention of the church to eventually acquire the adjacent property to the east and to have the north-south alley vacated, which will enable them to have full utilization of the entire south half of the block, and which would enable them to build up to the edge of the north-south utility easement, which would very likely be to the edge of the area now included in the alley.

WHEREAS, each of the five conditions required by Section 2.12.590.2, 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 the request for a variance of the rear yard setback requirement from 15 feet to 9 feet, on property legally described as follows:

Lots 2, 4, 6, 8, 10 and the vacated alley to the north of said Lot 10. on Walnut Street in West Wichita, in the City of Wichita, Sedgwick County, Kansas, generally located on the east side of Walnut Street between Burton and Texas,

be approved.

DATED AT WICHITA, KANSAS this 24th day of August, 1965.

Harold Bauer
Harold Bauer, Chairman

ATTEST:

Jack H. Galbraith
Jack H. Galbraith, Secretary

August 26, 1965

Saint George Orthodox Church, Inc.
210 South Walnut
Wichita, Kansas

Gentlemen:

Re: BZA 32-65 - Request for
Variance

This is to advise you that at its regular meeting of August 24, 1965, the Board of Zoning Appeals of the City of Wichita, considered your request for a variance of the rear yard setback requirement from 15 feet to 9 feet, on property located generally on the east side of Walnut Street between Texas and Burton.

It was the action of the Board to approve your request.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the District Court of Sedgwick County to determine the reasonableness of any such order or determination.

A resolution effectuating the action of the Board will be mailed to you as soon as prepared, and signed by the Secretary and Chairman of the Board of Zoning Appeals.

If you have any questions about this matter, please let us know.

Very sincerely yours,

Jack H. Galbraith
Secretary

JHG:JWH:ber

cc: Roetsel Jochems
Box 2134

Glen Lytle, Superintendent
of Central Inspection

SECRETARY'S REPORT

CASE NO. BZA 32-65

APPLICANT: Saint George Orthodox Church, Inc., 210 South Walnut

AGENT: Roetzel Jochems, Box 2134

REQUEST: A variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to reduce the rear yard setback of 15 feet to 9 feet.

GENERAL LOCATION: East side of Walnut between Texas and Burton

ZONING: Zoning on subject property and to the south and west is "B". To the north and east is "C"

LAND USE: Existing on subject property - vacant. To the north is the church; to the west is park area, and south and east is residential.

JURISDICTION

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

- a) 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 propertyowner or the applicant;
- b) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- c) 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;
- d) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- e) That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance).

NOTE: The new Kansas legislation relating to the Board of Zoning Appeals provides that all five of the foregoing conditions must be found to exist before a variance may be granted. The major changes were made in items a. and e. above.

GENERAL COMMENT

In this specific instance, the applicants are proposing to construct a new church building at the northeast corner of Walnut and Burton Streets. The existing church facility is located at the southeast corner of Walnut and Texas.

It was stated by the architect for the applicant that at the time the preliminary plans were submitted to the Central Inspection Office, they were approved, showing approximately a 9-foot setback from the center line of the alley, whereas 15 feet is required. However, in checking this matter with the Central Inspection Office, it was determined that when the preliminary plans were submitted, it was the intent of the applicants to vacate the north-south alley (east of the church), and to acquire some additional property to the east of the alley, which would be utilized for off-street parking. If the church had proceeded to do what they had indicated they would do, the preliminary plans would have been in full compliance with the ordinance, providing the property to the east had been acquired. However, the church has not proceeded to vacate the north-south alley, so a 15-foot rear yard setback from the center line of the alley is required.

UNIQUENESS

The applicant contends that this case is somewhat unique inasmuch as the "C" Commercial zoning bordering the east side of the north-south alley does not require a 15-foot setback. (No rear yard setback is required in the "C" Commercial District.) The Secretary is of the opinion that the reason submitted by the applicant is not sufficient justification for uniqueness inasmuch as throughout the City, commercial zones have been encouraged to back into residential zones, rather than front into them.

The applicant must show that the variance requested arises from such condition which is unique to the property and which is not ordinarily found in the same zone or district, and was not created by action of the property owner or applicant. In this case, there appears to be nothing which is physically unique about the property. It would appear that if any uniqueness does exist, it was created by an action on the part of the applicant.

Specifically, the architect for the applicants should have been aware of the rear yard setback requirement in the "B" Multiple Family District at the time the preliminary plans were drawn. The City should not be obligated to provide relief for property owners in cases where the enforcement provisions of the ordinance are misread or, as in this case, the architect was evidently not aware of the rear yard setback requirement. On the other hand, the applicants have contended that the preliminary plans for the proposed addition to the church were approved by the Central Inspection Office showing a 9-foot setback from the center line of the alley. If the contention of the applicant is correct, it could be debated that this situation arose out of an action by the City rather than the property owner.

ADJACENT PROPERTY

It is the opinion of the Secretary that the adjacent property owners to the east will not be adversely affected if the variance is granted.

HARDSHIP

The applicants have contended that they would be burdened with an unnecessary hardship if the variance is not granted, in that the church has expended a considerable sum of money for working drawings and architect fees, based upon the approval of the preliminary development plan by the City.

Again, it should be pointed out that approval of the preliminary plan was given on the basis that the north-south alley would be vacated by the church, and the church would acquire the adjacent property to the east. Consequently, the hardship involved is self-imposed and could best be alleviated by the church carrying through with their original plans to vacate the alley and acquire additional property.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance will in no way adversely affect the public interest.

TITLE 2B - SPIRIT AND INTENT

It is the opinion of the Secretary that the granting of the variance would not be in keeping with the spirit and intent of the Ordinance, inasmuch as the Ordinance, as it relates to variances, was to provide relief for those persons who, if required to comply with the strict application of the enforcement provisions of the Ordinance, would be burdened with an unnecessary hardship. Again, a hardship may exist in this instance, however, the Ordinance clearly states

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Case No. BZA 32-65

that it cannot arise from a situation which was created by the property owner's own action. However, if it can be determined that the variance request was necessitated by an action on the part of the City, (by approval of the preliminary development plan with the rear yard setback violation) then possibly a hardship could be found to exist.

RECOMMENDATION

Based upon the foregoing comments, it is the recommendation of the Secretary that all five conditions necessary to the granting of a variance cannot be found to exist and, therefore, it is recommended that the variance request be denied.

Attachment #1 - Statement of Justification
submitted by the applicant

SECRETARY'S REPORT

CASE NO. BZA 32-65

APPLICANT: Saint George Orthodox Church, Inc., 210 South Walnut

AGENT: Roetzel Jochems, Box 2134

REQUEST: A variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to reduce the rear yard setback of 15 feet to 9 feet.

GENERAL LOCATION: East side of Walnut between Texas and Burton

ZONING: Zoning on subject property and to the south and west is "B".
To the north and east is "C"

LAND USE: Existing on subject property - vacant. To the north is the church; to the west is park area, and south and east is residential.

JURISDICTION

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

- a) 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;
- b) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- c) 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;
- d) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- e) That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance).

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Case No. BZA 32-65

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PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance will in no way adversely affect the public interest.

TITLE 28 - SPIRIT AND INTENT

It is the opinion of the Secretary that the granting of the variance would not be in keeping with the spirit and intent of the Ordinance, inasmuch as the Ordinance, as it relates to variances, was to provide relief for those persons who, if required to comply with the strict application of the enforcement provisions of the Ordinance, would be burdened with an unnecessary hardship. Again, a hardship may exist in this instance, however, the Ordinance clearly states

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RECOMMENDATION

Based upon the foregoing comments, it is the recommendation of the Secretary that all five conditions necessary to the granting of a variance cannot be found to exist and, therefore, it is recommended that the variance request be denied.

Attachment #1 - Statement of Justification
submitted by the applicant

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

August 6, 1965

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 32-65

An application has been filed by Saint George Orthodox Church, Inc., 210 South Walnut, Wichita, Kansas, by Roetzel Jochems, Attorney, Box 2134, Wichita, Kansas, Pursuant TO Section 2.12.590, Code of the City of Wichita, requesting a variance of the rear yard setback requirement of 15 feet to a rear yard setback requirement of 9 feet, on property zoned "B" and legally described as follows:

Lots 2, 4, 6, 8, 10 and the vacated alley to the north of said Lot 10, on Walnut Street in West Wichita, in the City of Wichita, Sedgewick County, Kansas.

Generally located on the east side of Walnut Street between Burton and Texas.

This application has been assigned Case No. BZA 32-65, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, August 24, 1965, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

JHG:ber

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

30

August 6, 1965

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 32-65

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Lots 2, 4, 6, 8, 10 and the vacated alley to the north of said Lot 10, on Walnut Street in West Wichita, in the City of Wichita, Sedgwick County, Kansas.

Generally located on the east side of Walnut Street between Burton and Texas.

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Jack H. Galbraith
Secretary

JHG:ber

7 notices mailed 8-6-65

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

APPLICATION FOR VARIANCE

1. Name of Applicant ✓ Saint George Orthodox Church, Inc.
Mailing Address 210 South Walnut, Wichita Phone AM 7-8122
Name of Authorized Agent ✓ Roetzel Jochems
Mailing Address Box 2134, Wichita, Kansas 67201 Phone AM 2-8444
Relationship of applicant to property is that of owner.
(owner, tenant, lessee, other)

II. The variance requested is a dispensation from the 15' set back from the center of the alley which runs in a north-south direction at the rear (east) end of the proposed building, so as to permit construction with a set back of nine feet two inches (9'2") from the center of the alley.

for property located on Walnut Street between Burton Street at the south and Texas Avenue at the north

and legally described as: Lots 2, 4, 6, 8, 10 and the vacated alley to the north of said Lot 10, on Walnut Street in West Wichita - - - in the City of Wichita; and which is presently zoned B.

(Give metes and bounds description below if appropriate):

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 appeal of the decision of the Board to the City Commission within ten (10) days of that decision;
- d. That all documents are attached hereto as noted in paragraphs 3 and 4 of the instructions.

SAINT GEORGE ORTHODOX
CHURCH, INC.

Applicant

By Roetzel Jochems
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals,
9.00 (a.m.) - p.m.), August 5, 1965, together with
appropriate fee of \$50.00.

T9-402

J. Gallbraith, Senior Planner
Signed

STATEMENT JUSTIFYING VARIANCE REQUESTED

Applicant submits that the variance requested meets all the conditions required by the jurisdiction section of the ordinance in that

- (a) Contiguous zoning does not require the 15' set back;
- (b) No neighborhood rights are being adversely affected;
- (c) Strict application of the set back requirement would work unnecessary hardship upon the applicant because of great expenditures already made in working drawings and architect fees, all with the knowledge and concurrence of the Building Department of the City of Wichita; and
- (d) The variance has no relation to public health, safety, morals, etc.

STATEMENT OF RECORD OWNERSHIP

STATE OF KANSAS)
)
 SEDGWICK COUNTY)

The undersigned duly bonded and qualified abstractor within and for the County and State aforesaid, does hereby certify:

That we have examined the records in the office of the Register of Deeds of Sedgwick County, Kansas, with reference to the ownership of the following property in Sedgwick County, Kansas, viz:

All property within 200 feet of Lots 2, 4, 6, 8, and 10 and the Vacated Alley Adjoining lot 10 on Walnut Street in West Wichita.

F
 Fidelity
 Title
 Company.
 inc.

And from such examination find that the record owners thereof are as set opposite the description of the property below, viz:

Lots	Streets	Addition	Owner
2, 4, 6, 8 10 & Vac Alley	Walnut	West Wichita	St. George Orthodox Church Inc.
1, 3, 5, & S 2 1/2 ft Lot 7	Handley	" "	no address Robert S. Sloan 221 S Handley.
N 22 1/2 ft Lot 7 All Lot 9	" "	" "	St. George Orthodox Church Inc.
Lots 10, 12, 14, Texas 16, 18, 20	" "	" "	City of Wichita
22, 24, 26, 28, 30	" "	" "	St. George Orthodox Church Inc.
32, 34, 36, 38, 40 "	" "	" "	no address Minnie Stevens



Lots	Addition	Owner
2, 4, 6, 8	Stanton's Add	✓ West Side Baptist Church Burton
North 125 feet of Res. B & C	" "	no address ✓ Thomas Merle Dobbin
Lots 17 & 19	Thursey Hunters Add.	✓ F.H. Kellogg 928 W DOUGLAS
Lots 21, 23, & 25	" " "	✓ Fred M. Farmer 301 S HANDEL
Tr in SW $\frac{1}{4}$ 20-27-1E Beg 58 ft W NW cor Lot 25 Thursey Hunters Add, W 50 ft S 125 ft, E 50 ft, N 125 ft to Beg.		✓ John F. Stafford Christina V. Stafford 919 BURTON
Tr in SW $\frac{1}{4}$ 20-27-1E, Be. 185 ft N of SW cor Lot 1 Thursey Hunters Add, N 150 ft, W 55 ft S 150 E 55 ft to Beg.		✓ Opal Owens 912 MAPLE

Dated at Wichita, Kansas this
5th day of August 1965

FIDELITY TITLE COMPANY INC.

BY C.E. Butcher
V.P.

69920

Form 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Has. Mvr.	Has. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Pibg. Cert.
Sanitation	Sewer	Stns	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
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<i>License Application</i>	<i>50.00</i>
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Name *Richard Jackson*

Address *211 2134*

Type *2-712* Due Date

Comments:

Date *8-5-65* By *R. Johnson*