

Case No. BZA 35-77 - Sergio Cristiano requests a variance to permit the reduction of the side yard setback from 6' to 5'3" on property generally located on the east side of Clayton in an area between 11th Street

POSTED
8-23-77
MAD
E.I.
8-23-77

ACTION

BZA 35-77 COMMITTEE Approved DATE 8-23-77

M.A.P.C. _____

B.C.C./B. CO. C. _____

Case No. BZA 35-77 - Sergio Cristofano requests a variance to permit the reduction of the side yard setback from 6' to 5'3" on property generally located on the east side of Clayton in an area between

ap No. 5249
 ec. 12
 wp. 27
 ange 1W

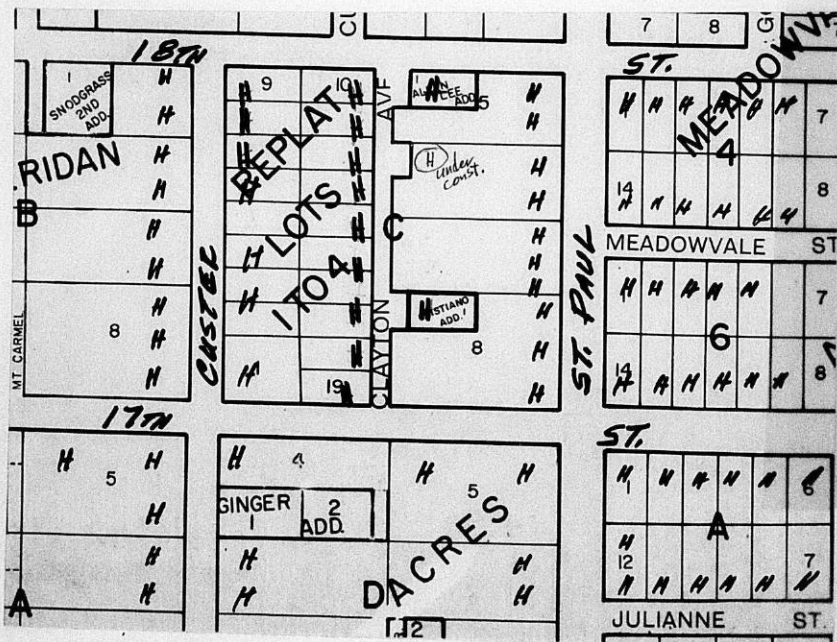
BZA- 35-77
 SCZ- _____
 CU- _____
 Filed _____

REA DATA:

. Acres: 0.19 (70 ft. by 120 ft.)
 . Adjoining Zoning: E _____ S _____ W _____ N _____
 . Land Use: East SINGLE FAM South Vacant
 West Single FAM North Vacant
 . Sketch Plan Land Use is for: _____
 . Present Land Use if for: Single Fam
 . Area (is) (is not) platted.

PHOTO DATA:

taken by _____ Date _____ Time _____



HASTING, MIN. LOS ANGELES
 LOGAN CH. HOUSTON, TX U. S. A.

S
 No. 2-153C

RESOLUTION NO. BZA 35-77

WHEREAS, Sergio Cristiano, 1818 Clayton, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the side yard setback adjacent to the north property line from the required 6 feet to 5 feet 3 inches, on property zoned the "AA" Single Family Dwelling District, and legally described as follows:

Lot 1, Cristiano Addition, Sedgwick County, Kansas. Generally located on the east side of Clayton in an area between 17th and 18th Streets (1818 N. Clayton).

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 23, 1977, 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 lot is irregular in shape in that the lot is a parallelogram, but is not rectangular; 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 property to the north is undeveloped, and a side yard variance of 9 inches should not adversely affect the future development of this adjacent property; 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 the applicant now occupies a completed house and to undo the error would be expensive and inconvenient; and without the granting of the variance or the compliance with the setback requirement, the house would be difficult to market in the future; 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 requested variance is interiorly located; 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 adequate open space would exist to permit the passage of light and air; 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.

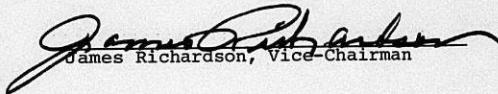
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the side yard setback adjacent to the north property line from the required 6 feet to 5 feet 3 inches, on property zoned the "AA" Single Family Dwelling District, and legally described as follows:

Lot 1, Cristiano Addition, Sedgwick County, Kansas.
Generally located on the east side of Clayton in
an area between 17th and 18th Streets (1818 N. Clay-
ton).

be approved subject to the following conditions:

1. The reduction of the required sideyard setback adjacent to the north property line shall be for only that portion of the side yard in violation.
2. The applicant or his agent shall contact the Office of Central Inspection with respect to obtaining the final inspection on the property.

ADOPTED AT WICHITA, KANSAS, this 23rd day of August, 1977.


James Richardson, Vice-Chairman

ATTEST:


Larry Dobson, Assistant Secretary

XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXX

August 29, 1977

Tenth Floor, City Hall
455 North Main Street

Mr. Sergio Cristiano
1818 Clayton
Wichita, Kansas 67203

Re: Case No. BZA 35-77
Request for Variance

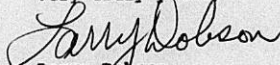
Dear Mr. Cristiano:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on Tuesday, August 23, 1977, in connection with your request for a variance to reduce the required side yard setback adjacent to the north property line from the required 6 feet to 5 feet, 3 inches on property zoned the "AA" Single Family Dwelling District, and generally located on the east side of Clayton in an area between 17th and 18th Street (1818 N. Clayton).

This Resolution reflects the official action of the Board to approve your request, and sets out the conditions of approval. It is forwarded to you for your information and files.

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

Very truly yours,


Larry Dobson
Assistant Secretary

LD:bh

cc: Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Tenth Floor, City Hall
455 N. Main Street

August 23, 1977

Mr. Sergio Cristiano
1818 Clayton
Wichita, Kansas 67203

Re: Case No. BZA 35-77
Request for variance

Dear Mr. Cristiano:

At the regular meeting of the Board of Zoning Appeals on Tuesday, August 23, 1977, your request for a variance to reduce the required side yard setback adjacent to the north property line from the required 6 feet to 5 feet, 3 inches, on property zoned the "AA" Single Family Dwelling District, and generally located on the east side of Clayton in an area between 17th and 18th Street (1818 N. Clayton) was considered.

It was the action of the Board to grant your request subject to the following conditions:

1. The reduction of the required sideyard setback adjacent to the north property line shall be for only that portion of the side yard in violation.
2. The applicant or his agent shall contact the Office of Central Inspection with respect to obtaining the final inspection on the property.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Yours very truly,

LD:bh

cc: Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator

Larry Dobson
Assistant Secretary

SECRETARY'S REPORT
CASE NO. BEA 35-77

APPLICANT: Sergio Cristiano, 1818 Clayton, Wichita, Kansas.

AGENT: William D. Cox, 4171 N. Parkwood, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback adjacent to the north property line, from the required 6 feet to 5 feet, 3 inches.

GENERAL LOCATION: East side of Clayton in an area between 17th and 18th Streets (1818 N. Clayton).

ZONING: Subject property and all surrounding properties are zoned the "AA" Single Family Dwelling District.

LAND USE: Subject property is developed with a single family residence, as are the properties to the east and west. Properties to the north and south are both undeveloped.

JURISDICTION:

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

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to reduce the required setback adjacent to the north property line from 6 feet to 5 feet 3 inches.

Subject property is developed with a new single family home. The statement of justification submitted with this application indicates that the violation of the sideyard setback came about as a result of the false assumption that the building lot in question was a rectangular lot (side lot lines at right angles to front and rear lot lines). As a result the house was built and inspected under this assumption. A survey of the time of loan closing showed that the structure violated the building setback. This survey shows the angle of the north property line in relation to the front lot line to be 88°+, whereas, the house was constructed at a 90° angle to the front lot line. This created a situation where the northwest corner of the house has a side yard setback of approximately 6 feet 10 inches, but then tapers to a clearance of 5 feet 3 inches at the northeast corner.

Central Inspection records show the lot as being rectangular on the plot plan submitted for a building permit. The footing inspection was made on October 26, 1976, with no violation being noted. A final inspection of the house has not yet been requested or made. The house is completed and occupied. The property adjacent to the north is undeveloped.

It should be noted that a five foot utility easement exists along this north property line and although the face of the structure does not encroach into the easement, eaves of the house may be projecting over the easement. Such projections are not permitted to overhang an easement and to remedy such a situation would require the vacation of a portion of the easement.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness is difficult to justify because of error only, but if uniqueness exists, it may be due to the fact that the lot is a parallelogram, but is not rectangular.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance desired should not adversely affect the rights of adjacent property owners inasmuch as the property to the north is undeveloped, and a side yard variance of 9 inches should not adversely affect the future development of this adjacent property.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as the applicant now occupies a completed house and to undo the error would be expensive and inconvenient; and without the granting of the variance or the compliance with the setback requirement, the house would be difficult to market in the future.

SECRETARY'S REPORT

CASE NO. BZA 35-77

Page 3

PUBLIC INTEREST:

It is the opinion of the Secretary that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare inasmuch as the requested variance is interiorly located.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of this variance will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as adequate open space would exist to permit the passage of light and air.

RECOMMENDATION:

If the Board determines that the five conditions necessary to the granting of a variance can be found to exist, it is the recommendation of the Secretary that the following conditions be considered as conditions of approval.

1. The reduction of the required sideyard setback adjacent to the north property line shall be for only that portion of the side yard in violation.
 2. The applicant or his agent shall contact the Office of Central Inspection with respect to obtaining the final inspection on the property.
-

20 notices sent to agent, applicant and adjoining property owners

10 notices sent to MAPC MEMBERS

1 notice sent to CPO

31 total notices sent on BZA 35-77, 8-1-77

BOARD OF ZONING APPEALS
TENTH FLOOR - CITY HALL
455 North Main Street, Wichita, Kansas 67202

August 2, 1977

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 35-77

An application has been filed by Sergio Cristiano, 1818 Clayton, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the side yard setback adjacent to the north property line from the required 6 feet to 5 feet 3 inches, on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 1, Cristiano Addition, Sedgwick County, Kansas. Generally located on the east side of Clayton in an area between 17th and 18th Streets (1818 N. Clayton).

This application has been assigned Case No. BZA 35-77 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, August 23, 1977, at 1:30 p.m., in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear if you so desire, either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

Larry Dobson
Assistant Secretary

BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant Sergio Cristiano

Mailing Address 1818 Clayton Phone _____

Name of Authorized Agent William D. Cox

Mailing Address 4171 W. Parkwood Phone 744-2390

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

II. The variance requested is A side yard set back of
5'-3"

for property located 1818 CLAYTON

Wichita, Kansas

and legally described as: LOT 1 CRISTIANO Add.

in the City of Wichita; and which is presently zoned AA.

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.

X Sergio Cristiano
Applicant

William D. Cox
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 3:30 (a.m. P.M.), 7-25 19 77 together with appropriate fee of \$50.00.

E. side of Clayton in area
between 17th & 18th Streets
T9-402

5249

X Larry Dobson
Signed

JOHN MCKEAN

AIR CAPITOL
LAND SURVEYORS

1525 W. 29th St. North
Wichita, Kansas 67204
Office 943-2411

ARTHUR GRIFFITHS

March 1, 1977

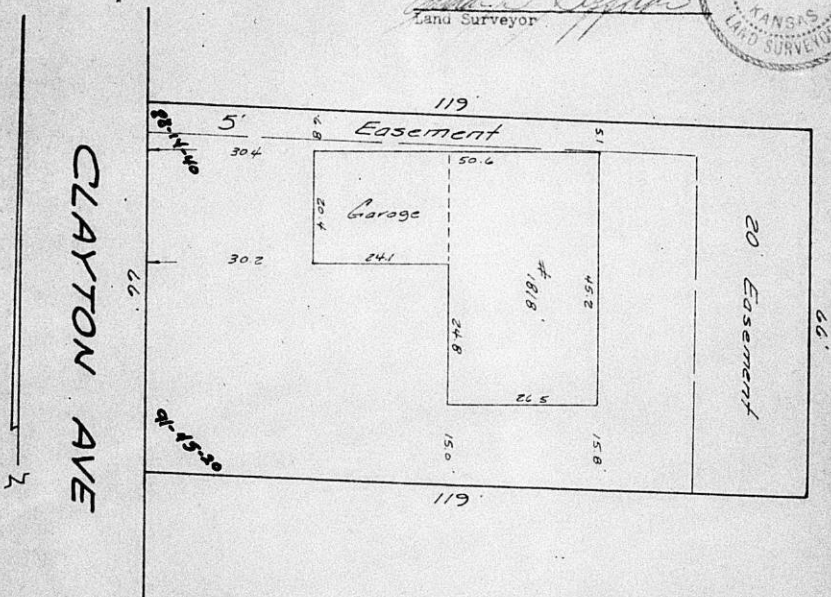
State of Kansas)
County of Sedgwick) SS

We Air Capitol Company, surveyors in the aforesaid county and state, do hereby certify that we did on the 1st day of March 1977 survey the following described tract of land: lot 1, Cristiano Addition, Wichita, Kansas.

On said lot is house No. 1818 with an attached garage which is clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

The accompanying plat is a true and correct exhibit of said survey for mortgage title insurance.

Arthur G. Griffiths
Land Surveyor



July 22, 1977
William D. Cox
4171 No. Parkwood
Wichita, Kansas 67220

Board of Zoning Appeals
Wichita, Kansas

We believe that the variance requested should be granted, as it is going to create a tremendous hardship on the owner in trying to sell the property as it now stands.

This condition came about as a result of the false assumption that the building lot in question was a rectangular lot. As a result the house was built and inspected under this assumption. However a survey at the time of the loan closing showed that the house was situated as shown on the accompanying sketch, which is in violation of the code.

This variance, as requested, will not have any adverse affects on adjacent property as it is contained within the boundry lines of the property in question.

Thank You

William D. Cox

William D. Cox

CERTIFICATE OF OWNERSHIP

GUARANTEE TITLE CO., INC., hereby certified the following to be a true and correct list of the property owners as shown by the last deed of record in the Office of the Register of Deeds of Sedgwick County, Kansas, within a 200 foot radius of and including the following described property, viz:

Lot 1, CRISTIANO ADDITION,
Sedgwick County, Kansas.

(Addresses as given are furnished as a service only and are not certified.)

DESCRIPTION	OWNER/OWNER'S ADDRESS	
<u>CRISTIANO ADDITION</u>		
Lot 1	Dorothy L. States ✓ 1813 N. St. Paul	67203
<u>SHERIDAN ACRES</u>		
<u>Block C</u>		
The N 66' Lot 8, exc W 149'	✓ John David & Jeanne Sue Atherton 4656 La Clede Ave.	67217
Lot 8, exc N 66' & exc S 72'	✓ Charles L. & Norma R. Dennis 1807 N. St. Paul	67203
S 72' Lot 8	✓ Jack N. & Cheryl A. Orchard 1801 N. St. Paul	67203
Lot 7, exc S 66'	✓ Lawrence & Mildred M. Winters 1825 N. St. Paul	67203
S 66' Lot 7, exc E 150', subj to easement on W 30'	✓ Carl E. Jones <i>mail ret'd 8-9-77</i> 358 Clayton	67203
E 150' of S 66' Lot 7	✓ Kenneth M. & Billie L. Neathery 1819 N. St. Paul	67203 ✓ Carl Jones 1929 N. Sedwick
Lot 6, exc N 66', exc E 150' & exc W 30' for street	✓ Bill Bachman & Associates, Inc. 1901 W. 13th	67203
E 150' of S 66' Lot 6	✓ Thelma Irene Durham <i>not in phone book</i> no address found <i>1831 N St Paul 03</i>	
<u>REPLAT OF LOTS 1-4, BLOCK C, SHERIDAN ACRES</u>		
Lot 1	✓ Harvey L. & Lela B. Mills 1802 N. Custer	67203
Lot 2	✓ Harvey L. & Lela B. Mills 1802 N. Custer	67203
Lot 3 & S 10' Lot 4	✓ Frederick A. Schauf 1810 N. Custer	67203
Lot 12, exc N 20' & N 24' Lot 13	✓ Alfred J. Neises, Jr. & Karen Robbin 1843 Clayton	67203

Certificate of Ownership
Page 2

REPLAT OF LOTS 1-4, BLOCK C,
SHERIDAN ACRES (Continued)

Lot 13, exc N 24' & N 24' Lot 14	✓ Geoffrey B. & Cindy L. Payne 1837 Clayton	67203
Lot 14, exc N 24' & N 40' Lot 15	✓ Stanley D. & Joyce L. Bevan 1831 Clayton	67203
Lot 15, exc N 40' & N 44' Lot 16	✓ John Robert, Jr. & Deborah Lynn Ball 1825 Clayton	67203
Lot 16, exc N 44' & N 40' Lot 17	✓ Thomas D. & Sarah I. Denchfield 1815 Clayton	67203
N 56' Lot 17, & Lot 18 exc N 40'	✓ Timothy L. & Jane A. Johnson 1809 Clayton	67203
S 4' Lot 18, & all Lot 19	✓ Steven J. & Christine M. Douthit 1803 Clayton	67203

Dated this 25th day of April, 1977.

GUARANTEE TITLE CO., INC.

Gary G. Newcome
Gary G. Newcome, President

Misc. #2592

BOARD OF ZONING APPEALS
TENTH FLOOR - CITY HALL
455 North Main Street, Wichita, Kansas 67202

August 2, 1977

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It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

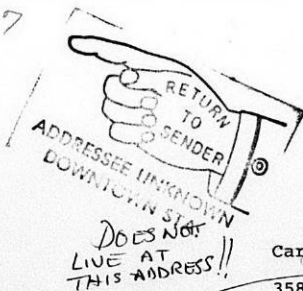
Larry Dobson
Assistant Secretary

35-77

WICHITA - SEDGWICK COUNTY



BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202



Better

X

Carl E. Jones

358 Clayton

Wichita, Kansas 67203



Important!
Notice of Hearing
Enclosed

FORM 223-02

PAYMENT NOTICE

City of Wichita
PAY AT TREASURER'S OFFICE - SECOND 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

BZA Variance \$50.00

Application

Name William D Cox

Address 4171 N. Potomac

Type AA 407103 Due Date

Comments:

Date 7-25 77 By [Signature]