

BZA Case No. 46-73 - Ford M. Duke requests variance to reduce the required front yard setback from 32'8" to 26' on the ES of Washington Av. in an area between Kinkaid Av. & Blak Street.

Scoted
1-9-74
W.M.D.
61
722.74

ACTION

DATE 1.22.74

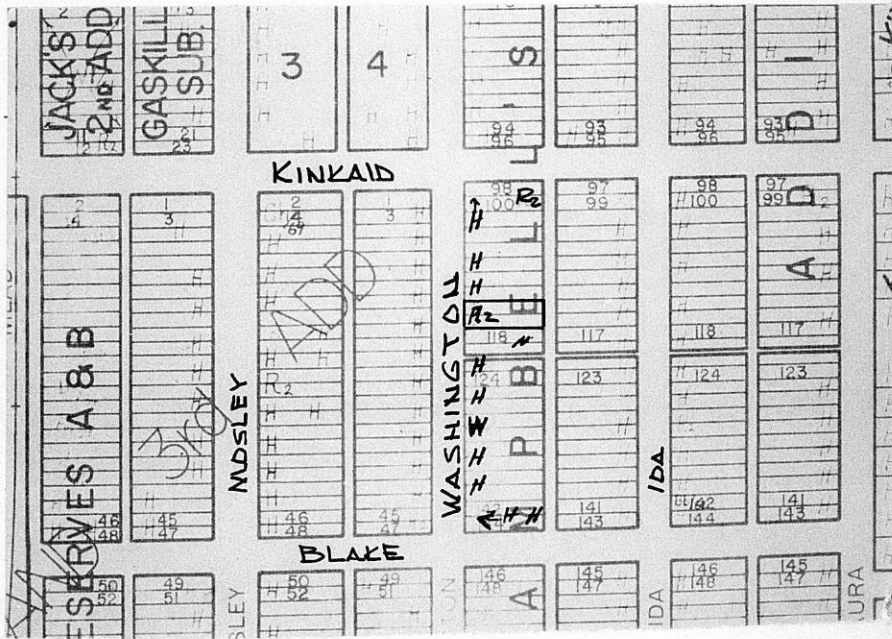
BZA COMMITTEE Approved
M.A.P.C. _____
B.C.C./B. CO. C. _____

Map No. 5545
 Sec. 33
 Twp. 27
 Range 1E

BZA- 46-73
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:
 1. Acres: _____ (50 ft. by 140 ft.)
 2. Adjoining Zoning: E A S A W A N A
 3. Land Use: East SINGLE FAM South SINGLE FAM
 West SINGLE FAM North SINGLE FAM
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use if for: TWO FAM
 6. Area (is) (is not) platted. _____

PHOTO DATA:
 Taken by _____ Date _____ Time _____



March 6, 1974

Mr. Ford M. Duke
1602 West Lynn
Wichita, Kansas 67207

Subject: Case No. BZA 46-73
Request for Variance

Dear Mr. Duke:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on January 22, 1974, in connection with your request for a variance to reduce the required front yard setback from 38'8" to 26 feet on property zoned the "A" Two Family Dwelling District, and generally located on the east side of Washington Avenue in an area between Kinkaid Avenue and Blake Street.

This Resolution reflects the official action of the Board which was to approve the request. It is forwarded to you for your information and files.

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

Sincerely,

Jack H. Galbraith
Secretary

JHG:js
Encl.

cc: Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

R E S O L U T I O N N O . B Z A 4 6 - 7 3

WHEREAS, Ford M. Duke, 1602 West Lynn, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 32'8" to 26 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 114 and 116 on Washington Avenue, in Campbell's Addition to Wichita, Sedgwick County, Kansas. Generally located on the east side of Washington Avenue in an area between Kinkaid Avenue and Blake Street.

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 January 22, 1974, consider the 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 house to the south which has a 62 foot setback and would cause the duplex to observe the 32 foot 8 inch setback is the only structure on the block which observes this unusually large setback; 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 there is a distance of 18 feet between the houses, the duplex observes the same setback at the house to the north, and since the house to the south has a 62 foot setback, sufficient front yard will be maintained to provide a feeling of open space; 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 if the variance were not granted, the basement and duplex would have to be moved back more than 6 feet and the structure would have to observe a greater setback than most homes in the area; 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 inasmuch as the duplex presently observes the same front yard setback as most homes in the block, which is greater than is required for the "A" classification; and

Resolution No. BZA 46-73
Page Two

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 duplex observes a front yard setback which exceeds the minimum requirement for that zoning district, and the house adjacent to the south is primarily located on the back half of the lot; and

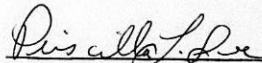
WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist,

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 front yard setback from 32'8" to 26 feet on property zoned the "A" Two Family Dwelling District, and legally described as:

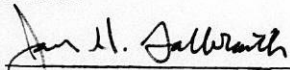
Lots 114 and 116 on Washington Avenue, in Campbell's Addition to Wichita, Sedgwick County, Kansas. Generally located on the east side of Washington Avenue in an area between Kinkaid Avenue and Blake Street.

be approved only for that area presently occupied by the duplex.

ADOPTED AT WICHITA, KANSAS, this 22nd day of January, 1974.


Priscilla L. Lee, Chairman

ATTEST:


Jack H. Galbraith, Secretary

January 23, 1974

Mr. Ford M. Duke
1602 West Lynn
Wichita, Kansas 67207

Subject: Case No. BZA 46-73
Request for Variance

Dear Mr. Duke:

At the regular meeting of the Board of Zoning Appeals on Tuesday, January 22, 1974, your request for a variance to reduce the required front yard setback from 38'8" to 26 feet on property zoned "A" Two Family Dwelling, and generally located on the east side of Washington Avenue in an area between Kinkaid Avenue and Blake Street was considered.

It was the action of the Board to approve as requested.

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.

Very truly yours,

Jack H. Galbraith
Secretary

JHG:rae

cc: Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection
Wilbur Short, Building Inspector

SECRETARY'S REPORT
CASE NO. BZA 46-73

APPLICANT: Ford M. Duke, 1602 West Lynn, Wichita, Kansas,
67207.

AGENT: N/A

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the
City of Wichita, to reduce the required front yard setback from
32'8" to 26 feet.

GENERAL LOCATION: On the East side of Washington Avenue in an
area between Kinkaid Avenue and Blake Street.

ZONING: Subject property is zoned the "A" Two Family Dwelling
District, as are all surrounding properties.

LAND USE: Subject property contains a duplex. All surrounding
properties contain single family homes.

JURISDICTION:

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

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

Secretary's Report
BZA Case No. 46-73
Page 2

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 front yard setback from 32 feet 8 inches to 26 feet. Although the usual front yard setback in the "A" classification is 25 feet, paragraph 1.2 of Section 28.04.050.C, Code of the City of Wichita, provides that "the minimum front yard setback of all lots between two adjacent conforming use buildings which are not more than one hundred feet between buildings shall be the distance between the front of the lot and a straight line projected between the nearest front corner of the building on each side of the lot in question." Paragraph 1.3, Section 28.04.050.C of the Code further stipulates that "the application of these regulations shall not increase the front yard setback to more than thirty-five feet; and provided further, existing buildings located wholly or partly on the front half of lots, having setbacks in excess of thirty-five feet, shall be considered as having setbacks of thirty-five feet, and this figure shall be used in calculating the setbacks of buildings on adjacent lots. Buildings placed entirely on the rear half of the lots shall not be considered."

When a building permit was obtained for subject property, the residence to the south was not considered in determining the required setback since the applicant thought it was located on the back half of the lot. The house to the north observes a 26 foot setback, as does the building placed on subject property. However, the house to the south observes a 62 foot setback on a lot which is 140 feet in depth, which would require the front yard setback on subject property to be considered as 35 feet. Under the terms for calculating the setback previously stated, if the duplex on subject property observes a 10 foot side yard adjacent to the south property line, the required front yard setback should be 32 feet 8 inches.

According to the statement of justification submitted by the applicant, as the foundation walls were to be poured, the building inspector was called to the site to inspect the footings and noticed that the setback appeared to be insufficient in regard to the structure to the south, and served notice on the contractor to stop work. However, the building inspector states

that with the realization that the basement walls would be in violation, he advised that the structure would have to be moved back if a variance were not granted. Even though this problem was pointed out, the contractor proceeded to pour the foundation and the duplex was placed upon it. With the exception of the house adjacent to the south of subject property, the maximum front yard setback observed by the other dwellings on the block is 26 feet and several residences to the south are less than the required setback.

It should be noted that when the property was viewed in the field the basement window openings were not covered and the doors and windows of the duplex were open creating a potential hazard. In response to complaints from the neighborhood and police, the Building Inspection Division attempted to contact the owner to have these openings boarded up pending the outcome of the BZA hearing. At the time of the writing of this report, the owner was still out of town and could not be reached.

Uniqueness:

It is the opinion of the Secretary that uniqueness is somewhat difficult to justify since the contractor and the applicant were aware that the structure would violate the required front yard setback before the basement was poured and the duplex moved in. However, if uniqueness does exist it would be because the house to the south which has a 62 foot setback and would cause the duplex to observe the 32 foot 8 inch setback is the only structure on the block which observes this unusually large setback.

It is the opinion of the Secretary that the granting of the variance would not adversely affect adjacent property inasmuch as there is a distance of 18 feet between the houses, the duplex observes the same setback at the house to the north, and since the house to the south has a 62 foot setback, sufficient front yard will be maintained to provide a feeling of open space.

Hardship:

In the opinion of the Secretary it is somewhat difficult to justify hardship inasmuch as the contractor and the applicant were aware of the violation prior to pouring the basement walls. However, if the variance were not granted, the basement

Secretary's Report
BZA Case No. 46-73
Page 4

and duplex would have to be moved back more than 6 feet and the structure would have to observe a greater setback than most homes in the area.

Public Interest:

It is the opinion of the Secretary that the granting of the variance should in no way affect the public interest since the duplex presently observes the same front yard setback as most homes in the block, which is greater than is required for the "A" classification.

Spirit and Intent:

It is the opinion of the Secretary that the granting of the variance would not be opposed to the general spirit and intent of Title 28 inasmuch as the duplex observes a front yard setback which exceeds the minimum requirement for that zoning district, and the house adjacent to the south is primarily located on the back half of the lot.

RECOMMENDATION:

It is the recommendation of the Secretary that if the Board determines all five of the conditions necessary to the granting of the variance can be found to exist, the variance should be approved only for that area presently occupied by the duplex.

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

January 2, 1974

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 46-73

An application has been filed by Ford M. Duke, 1602 West Lynn, Wichita, Kansas, 67207, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required front yard setback from 32 feet 8 inches to 26 feet on property zoned the "A" Two Family Dwelling District and legally described as follows:

Lots 114 and 116 on Washington Avenue, in Campbell's Addition to Wichita, Sedgwick County, Kansas. Generally located on the East side of Washington Avenue in an area between Kinkaid Avenue and Blake Street.

This application has been assigned Case No. BZA 46-73, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, January 22, 1974, at 1:30 p.m. in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you desire, you may write to the Board of Zoning Appeals at 104 South Main to express your opinion on this matter. You are also welcome to speak or be represented by a spokesman at the Board of Zoning Appeals meeting when this matter will be considered.

If additional information is desired so that you may be fully informed on this matter, please call the Metropolitan Area Planning Department at 262-0611, Extension 205.

Jack H. Galbraith
Secretary

26 notices to Property Owners 1.2.74
10 " " Plng Comm "

B2A
46-13

BOARD OF ZONING APPEALS
ROOM 402
CITY BLDG ANNEX
104 So. MAIN
WICHITA, KANSAS

Re: Request for VARIANCE
2218-2220 S. WASHINGTON

Gentlemen,

WITH YOUR PERMISSION A VARIANCE
IN THE SETBACK DIMENSION OF A DUPLEX
STRUCTURE AT THE ABOVE ADDRESS IS
REQUESTED.

THE OCCASION THAT BRINGS THIS
ABOUT IS DUE TO INTERPRETATION OF
THE SETBACK REQUIREMENTS FOR
THIS PROPERTY. UPON ISSUANCE OF
THE PERMIT THE SETBACK WAS
DESCRIBED AS IN LINE WITH THE
PROPERTY ON THE LOT TO THE NORTH
AND TO DISREGARD THE PROPERTY
ON THE LOT TO THE SOUTH IF IT
WAS LOCATED IN THE BACK $\frac{1}{2}$ OF
THAT LOT. THE FOUNDATION WAS
CONSTRUCTED IN LINE WITH THE
STRUCTURE TO THE NORTH 26' FROM
THE PROPERTY LINE. NORMAL A ZONING
SET BACK AS YOU KNOW IS 25'. THE
VARIANCE WAS NOTED BY THE CITY
BUILDING INSPECTOR WILBUR SHORT
JUST AS THE CONCRETE FOUNDATION
WALLS WERE TO BE POURED. THE
FOUNDATION CONTRACTOR NOTED THAT
HE FELT EVERYTHING WAS IN ORDER
AND IT WAS DECIDED TO GO AHEAD

AND POUR THE CONCRETE WALLS.
THIS CONVERSATION BETWEEN THE
CITY INSPECTOR AND THE FOUNDATION
CONTRACTOR WAS RELAYED TO ME
THE NEXT DAY AFTER THE
CONCRETE WAS POURED. IMMEDIATELY
I CONTACTED THE CITY INSPECTOR
AND WENT TO THE CITY BUILDING
TO HAVE THIS SITUATION EXPLAINED
TO ME.

AS NOTED ON SKETCH A THE
HOUSE ON THE SOUTH LOT IS 62
FEET FROM THE WEST PROPERTY
LINE WHICH PUTS 8 FEET OF IT
OVER INTO THE FRONT $\frac{1}{2}$ OF ITS
LOT CAUSING THE PROBLEM. IT
SHOULD BE NOTED THAT THIS IS
AN OLDER STRUCTURE BUILT QUITE
A FEW YEARS AGO AND IS THE
ONLY HOUSE IN THE BLOCK MORE
THAN 26' EAST OF THE WEST
PROPERTY LINE.

THE PROBLEM LIES IN MY
INTERPRETATION OF THE STRUCTURE
BEING ON THE BACK $\frac{1}{2}$ OF THE
LOT, IT IS MOSTLY ON THE BACK
HALF BUT THE 8 FEET ON THE FRONT
EVIDENTLY RULES THIS OUT AS BEING
ON THE BACK HALF BY THE LETTER
OF THE CODE IN SECTION 28.04.050
OF THE ZONING ORDINANCE OF
THE CITY OF WICHITA.

ONE OTHER CONSIDERATION TO
BE MADE IN THIS REQUEST IS THE
FACT SINCE THE FOUNDATION HAS BEEN

PLACED IT WILL NECESSITATE AN
ADDITIONAL COST TO MOVE THE
FOUNDATION SIX FEET 8 INCHES TO
THE EAST ESPECIALLY SINCE IT IS
A FULL BASEMENT,

IN NO WAY CAN I SEE WHERE
THE LOCATION OF THIS PROPERTY,
ON THE FOUNDATION AS IT SETS
26 FEET BACK FROM THE PROPERTY
LINE, WILL ADVERSELY AFFECT THE
WELL BEING OF ANY RESIDENT IN
THE AREA, OF THE AREA IN
GENERAL AND OF ANY PERSON
WHO WILL OCCUPY THIS DWELLING.

YOUR CONSIDERATION IN ALLOWING
THIS VARIANCE WILL BE HIGHLY
APPRECIATED

YOURS VERY TRULY
Lard M Debe

BOARD OF ZONING APPEALS

CASE NO. 46-73

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant ✓ Ford M. Duke

Mailing Address 1602 West Lynn ⁶⁷²⁰⁷ Phone 942-5014

Name of Authorized Agent NA

Mailing Address _____ Phone _____

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

II. The variance requested is Allow Duplex to set 26' back
from front property line in lieu of 32'8" as
computed by attached sketch 'A'
for property located 2218-20 South Washington

and legally described as: lots 114 & 116 on Washington
Street of Campbells Addition

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

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.

Ford M. Duke
Applicant
Ford M. Duke
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 4:48 (a.m. - (p.m.)), Dec 21 19 73 together with appropriate fee of \$50.00.

T9-402

Rhonda K. Tragner
Signed

CERTIFICATE OF OWNERSHIP

GUARANTEE TITLE CO., INC., hereby certifies 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:

Lots 114 and 116 on Washington Avenue,
in Campbell's Addition to Wichita, Sedgwick
County, Kansas.

DESCRIPTION	OWNER/OWNERS/ADDRESS
<u>CAMPBELL'S ADDITION</u>	
<u>Washington Avenue</u>	
Lots 98-100-102-104 (E 60')	✓ Clayton E. & Dorothy Jane Meyer 1445 High St. 67203
Lots 98-100-102-104 (Exc E 60')	✓ E. A. & Elladean Katibun 2204 S. Washington Ave. 67211
Lots 106-108	✓ Eunice Kessinger 2212 S. Washington 67211
Lots 110 & 112	✓ Jack & Gladys Irene Stine 736 S. Chautauqua 67211
Lots 114 & 116	D Ford M. & Donna S. Duke 1602 Westlynn St. 67212
Lots 118 & 120	✓ Lucille Allen Cahcone 2222 S. Washington 67211
Lots 122 & 124	Jack H. & Betty Jean Walker ✓ c/o Wichita Federal Svgs & Loan 340 S. Edwy 67202
Lots 126 & 128	✓ Larry D. & Patricia A. Bandy 2230 S. Washington 67211
Lots 130 & 132	✓ Clara Allen 2209 Lotus 67213
<u>Ida Avenue</u>	
Lots 97 & 99	✓ James L. Craine 2203 Ida 67211
Lots 101 & 103	✓ Jimmie H. & Clarabelle A. Patton 2207 Ida 67211
Lots 105 & 107	George R. & Harlene Edra Coley ✓ 2211 S. Ida 67211
Lots 109 & 111	✓ Chester E. & Annetta L. Lamb 2215 Ida 67211
Lots 113 & 115	✓ Donald R. & Mary T. King 2221 Ida 67211
Lots 117 & 119	✓ L. R. & Lilith Rushing 624 W. Osie 67211
Lots 121-123 & N 8' of Lot 125	✓ H. E. & Rose E. Pollard 2235 Ida 67211

CAMPBELL'S ADDITION Cont'd

Ida Avenue

S 17' of Lot 125 & all of Lot 127	✓ Robert F. & Helen D. Wilmore 2237 Ida	67211
Lots 129 & 131	✓ Harold V. Tate 2245 Ida	67211

ROCK ISLAND 3RD ADDITION

Washington Avenue

Lots 1 & 3	✓ Albert L. & Gwen N. Kitterman 2201 S. Washington	67211
Lots 5 & 7	✓ Robert A. & Raye Lea Beardslee 2207 S. Washington	67211
Lots 9 & 11	✓ Donald W. & Wilma Jenkins 2211 S. Washington	67211
Lots 13 & 15	Jack & Gladys Irene Stein c/o Mid Kans Fed Svcs & Loan 230 S. Market	67202
Lots 17 & 19	<i>Returned 1.7.74 Sent to</i> Thomas H. & Bessie V. Hall 2219 S. Washington	67211
Lots 21-23-25	6118 Beaver Ln. Malwane Lim Thung & Siu Kuen Lee (Life Est in Bing Mar) 2223 S. Washington	67211
Lots 27 & 29	✓ Larry D. & Irene H. Saunders 1109 Greenfield Ave.	67213
Lot 31	✓ Minerva S. Moore Winegarner 2237 S. Washington	67211

Dated this 17th day of December, 1973 at 7:00 o'clock A. M.

GUARANTEE TITLE CO., INC.

By *Frank R. Jenkins*
Vice-President

No. 50042.

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

Name

Address

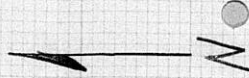
Type

Due Date

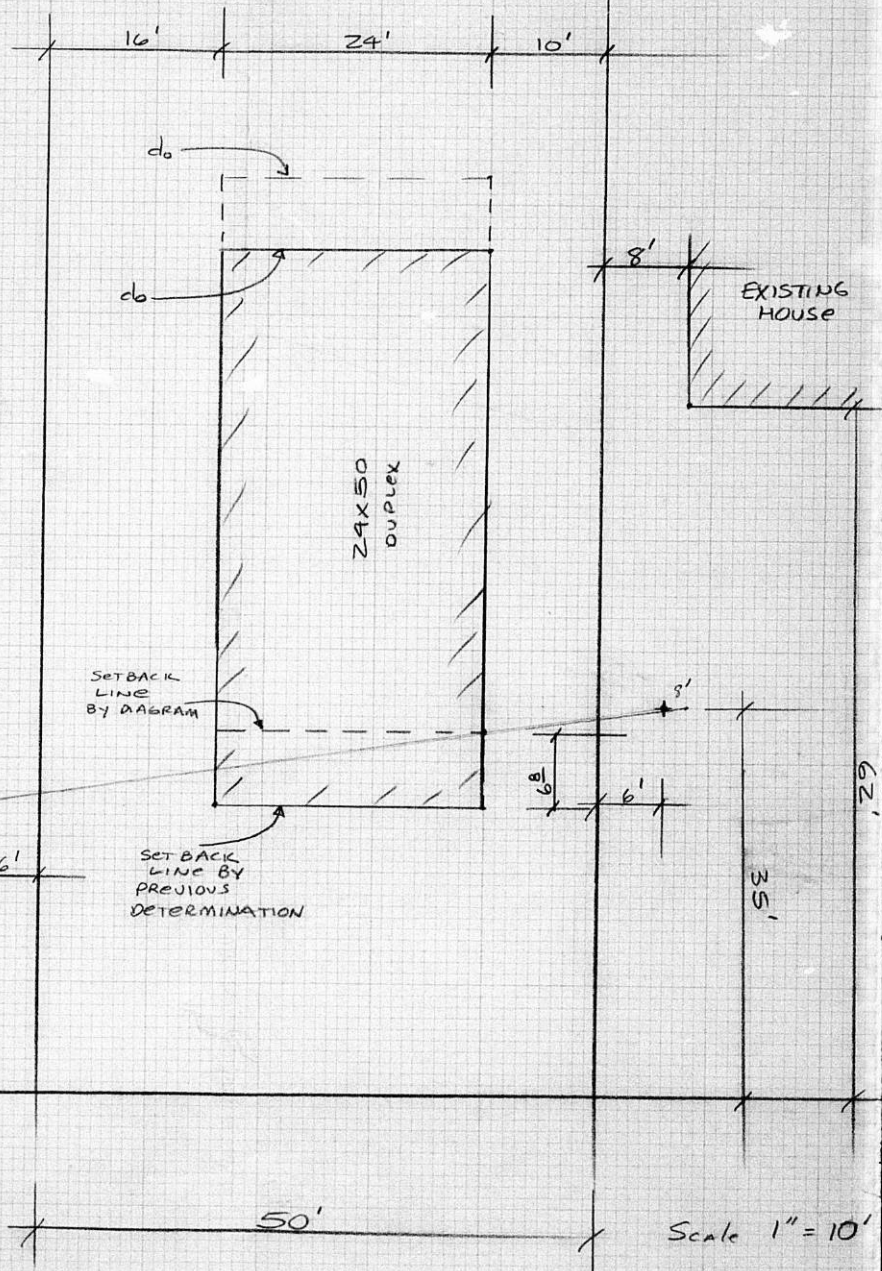
Comments:

Date

By



140' PROPERTY LINE



SETBACK LINE BY DIAGRAM

SETBACK LINE BY PREVIOUS DETERMINATION

EXISTING HOUSE

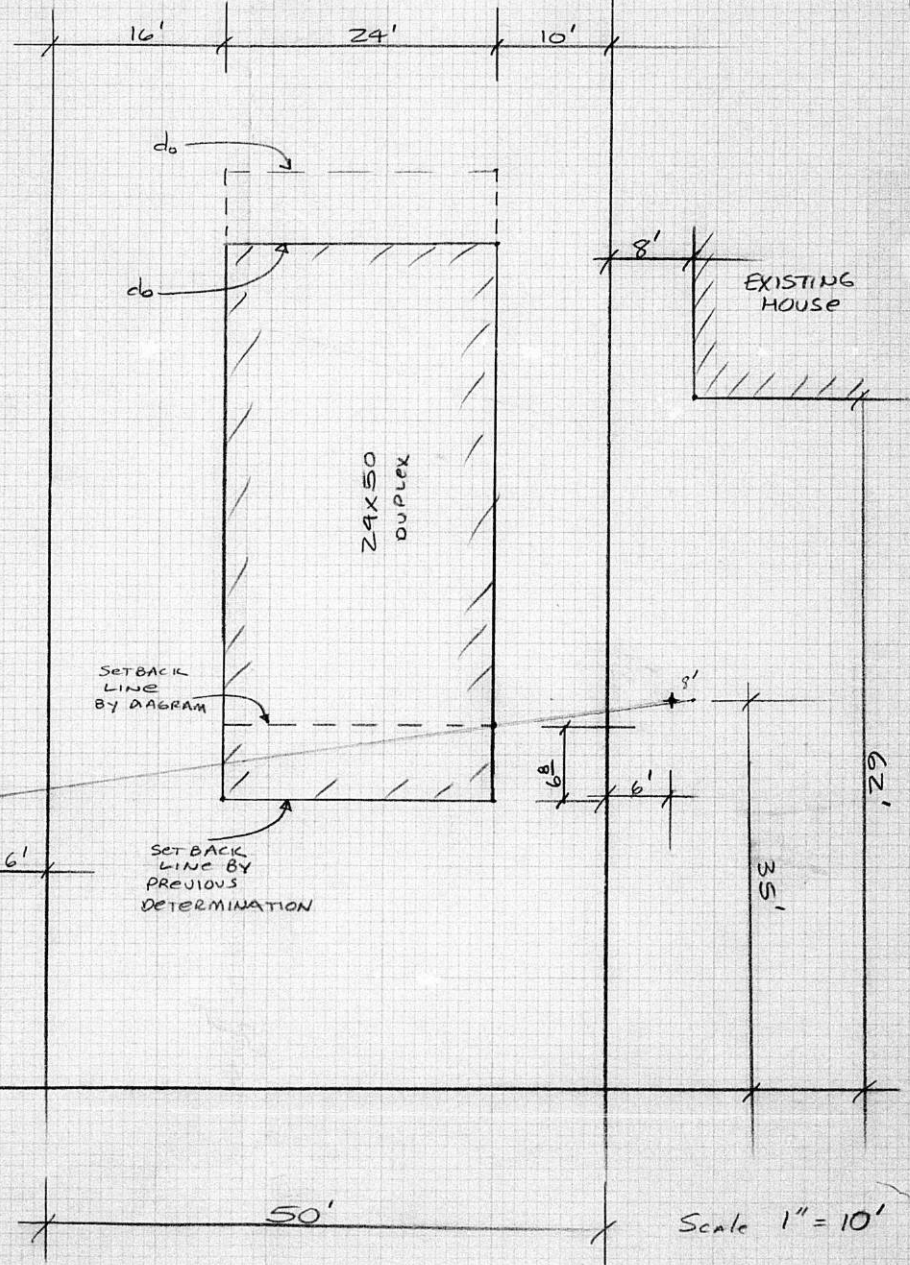
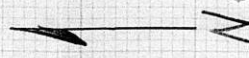
EXISTING HOUSE

24x50 DUPLEX

Scale 1" = 10'

SKETCH "A"

140' TO
PROPERTY LINE



Scale 1" = 10'

SKETCH "A"