

Case No. BZA 51-82 - Topeka Street Properties - requests a variance to eliminate the screening requirement adjacent to the residential zoning district and to eliminate the screening fence required by BZA 25-76 for a park-

*Posted
12-2-82*

ACTION

BZA 51-82 APPROVED 12-28-82
DATE

5548D

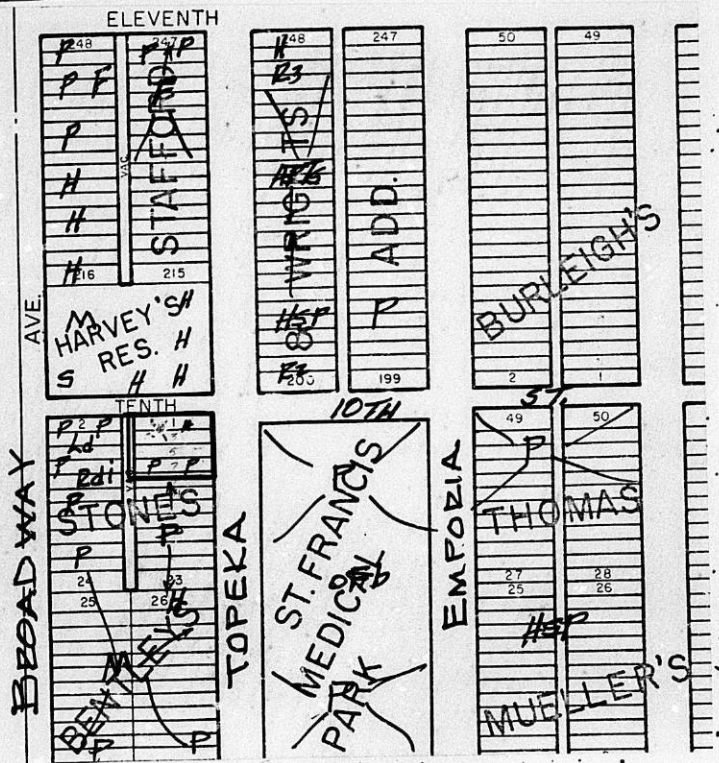
200'4 Sec. 1-4-83
Checked 1-5-83
Shor 1-27-83
Recorded 1-31-83

Map No. 5549
 Sec. _____
 Twp. _____
 Range _____

BZA- 51-82
 SCZ- _____
 CU- _____
 Filed _____

- AREA DATA: 0.29 (115 ft. by 150 ft.)
1. Acres: _____
 2. Adjoining Zoning: E _____ S _____ W _____ N _____
 3. Land Use: East PARKING LOT South PARKING LOT
 West LAWNDEY North SINGLE FAM
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use if for: SINGLE FAM & PARKING
 6. Area (is) (is not) platted.

PHOTO DATA:
 Taken by _____ Date _____ Time _____



LOS ANGELES, CHICAGO, LOUISIANA, OHIO
 MEMPHIS, MILWAUKEE, ST. LOUIS, MO.
 U.S.A.

Standard
 No. 2153C

December 30, 1982

Topeka Street Properties
Hardage Center, Suite 135
100 South Main
Wichita, Ks. 67202

Re: BZA 51-82 - Request for Variance

Gentlemen:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on December 28, 1982.

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

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

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL:sad
Enclosure

cc: Johansen, Inc., % Topeka Street Properties, Hardage Center, Suite 135,
100 South Main, Wichita 67202
Robert Feldner, Superintendent of Central Inspection (2)
Don Gaisiek, City Clerk

RESOLUTION NO. BZA 51-82

WHEREAS, Topeka Street Properties, Suite 135 - Hardage Center, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening fence adjacent to a residential zoning district and the fence required by BZA 25-76 along the north property line on property zoned the "BB" Office District and "B" Multiple-family District and legally described as follows:

All of Lots 1, 3, 5, and 7 and the north 10 feet of Lot 9, together with the east half of the vacated alley adjacent on the west, all on Topeka Avenue, Stone's Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Topeka and 10th 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 December 28, 1982, 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 both properties are developed for uses other than residential; 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 both owners affected by the requirement for screening are in agreement for the elimination of the fence, and the adjacent properties should not be affected by the variance; 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 owners represented in the application inasmuch as the installation and maintenance of a fence not providing the intended protection is an undue expense to the owners; 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 there is no need for a fence between two non-residential properties and the elimination of same should be beneficial; 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 both properties are non-residential and should not require a screening fence to provide protection.

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 eliminate the required screening fence adjacent to a residential zoning district and to eliminate the screening fence required by BZA 25-76 along the north property line on property zoned the "BB" Office District and the "B" Multiple-family District and legally described as:

All of Lots 1, 3, 5, and 7 and the north 10 feet of Lot 9, together with the east half of the vacated alley adjacent on the west, all on Topeka Avenue, Stone's Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Topeka and 10th Street.

be approved subject to the following condition:


1. No screening shall be required between the two properties as long as both are occupied as non-residential uses.

ADOPTED AT WICHITA, KANSAS, this 28th day of December, 1982.



Tom Jacob, Chairman

ATTEST:



Glen E. Lytle, Assistant Secretary

THE CITY OF WICHITA

OFFICE OF CITIZEN PARTICIPATION

DATE December 22, 1982

TO Glen Lytle, Special Assistant for Zoning

FROM Stan Scott, Administrative Aide III

SUBJECT BZA 51-82: Southwest Corner of
Topeka and 10th Street

On Monday, December 20th, CPO Neighborhood Council "L" considered the captioned case, a request for a variance by Topeka Street Properties to eliminate the screening requirement adjacent to the residential zoning district and to eliminate the screening fence required by BZA 26-76 for a parking lot on property zoned "BB" Office District. The Council voted 7-0 to recommend approval of the requested variance subject to staff comments.

Council members were provided the notice to adjoining property owners, a map of the area, and MAPD staff comments. Neither the applicant, the agent, nor area residents were in attendance.

Please provide the Council's recommendation to the Board of Zoning Appeals when BZA 51-82 is considered on Tuesday, December 28th.



Stan Scott
Administrative Aide III

RECEIVED

DEC 22 1982

METROPOLITAN PLANNING
ROUTE _____

SECRETARY'S REPORT
CASE NO. BZA 51-82

APPLICANT: Topeka Street Properties, Suite 135, Hardage Center, Wichita, Kansas & Johansen, Inc., 2802 River Park Drive, Wichita, Ks.

AGENT: None

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening adjacent to a residential zoning district.

GENERAL LOCATION: On the southwest corner of 10th and Topeka.

ZONING: Subject property is zoned the "BB" Office District and the "B" Multiple-family District. Property to the east and west is "LC" Light Commercial. To the north and south is "B" Multiple-family.

LAND USE: Subject property is a large dwelling that is being converted to office space and one property is a parking lot for a restaurant. To the east are medical offices. To the west is commercial development.

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 and the Board may grant the request when all five conditions as required by the State Statutes are found to exist.

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to eliminate the required screening fence adjacent to a residential zoning district and to eliminate the fence requirement between the properties previously set forth in BZA Case 25-76. The present structure is being converted to office space which will require a screening fence adjacent to the parking lot of the restaurant. Since both properties will be for uses other than residential, it is requested mutually by both property owners that the fence not be required. This would not be contrary to the intent of the regulations to provide screening for protection of residential properties from office and commercial development. Once the "BB" Office District is established on the property adjacent to the parking lot, it would also not serve the intended purpose of the previous BZA case.

UNIQUENESS:

It is the opinion of the Secretary that this property is unique inasmuch as both properties in question are required screening along the same property line, yet both properties are developed for uses other than residential.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as both owners affected by the requirement for screening are in agreement for the elimination of the fence, and the properties adjacent to the application area would not be affected by the variance.

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 installation and maintenance of a fence not providing the intended protection is an undue expense to the owners.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as there is no need for a fence between two non-residential properties and the elimination of same should be beneficial.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as both properties are non-residential and should not require a screening fence to provide protection.

RECOMMENDATION:

Should the Board determine that all five conditions necessary to the granting of a variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted subject to the following condition:

1. No screening shall be required between the two properties as long as both are occupied as non-residential uses.

BZA CASE NO. 51-82

2 NOTICES SENT TO APPLICANT/AGENT

10 NOTICES SENT TO MAPC

1 NOTICES SENT TO CPO

11 NOTICES SENT TO ADJOINING PROPERTY OWNERS

24 TOTAL NOTICES SENT 12-8-82

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

December 8, 1982

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 51-82

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by Topeka Street Properties, Suite 135 - Hardage Center, Wichita, Kansas, requesting a variance.

Pursuant to Section 2.12.590.B, of the Code of the City of Wichita, the applicant is requesting a variance to eliminate the screening requirement adjacent to the residential zoning district and to eliminate the screening fence required by BZA 25-76 for a parking lot on property zoned "BB" Office District. A legal description of the applicant's property is as follows:

All of Lots 1, 3, 5, and 7 and the north 10 feet of Lot 9, together with the east half of the vacated alley adjacent on the west, all on Topeka Avenue, Stone's Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Topeka and 10th Street.

This application has been assigned Case No. BZA 51-82. It will be considered by the Board of Zoning Appeals on December 28, 1982 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested variance you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, 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.

If you have any questions about the application, please feel free to call the Wichita-Sedgwick County Metropolitan Area Planning Department at 268-4421.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. 51-82

CITY OF WICHITA, KANSAS

FILED 11-29-82

APPLICATION FOR VARIANCE

- I. Name of Applicant Topeka Street Properties & Mr. Johansen ✓ *Handwritten signature*
 Mailing Address Suite 135, Hardage Center Phone 263-1100/267-0384
 Name of Authorized Agent 100 S. Main
 Mailing Address 67002 Phone _____
 Relationship of applicant to property is that of Owner
 (Owner, Tenant, Lessee, Other)
- II. The variance requested is To eliminate the required screening
adjacent to a residential zoning district and to eliminate
the fence required by BZA 25-76
 for property located on the southwest corner of 10th & Topeka.

see advert.

and legally described as: North Property: All of Lots 1 and 3
and the North 10 Feet of Lot 5, on Topeka Ave., Stone's Addition
to the City of Wichita, Kansas, together with the E 1/2 of
vacated alley adjacent on the west.
South Property: Stone's Addition, Topeka Ave. South 15 Feet,
Lot 6, All Lot 7 and North 10 Feet of Lot 9 and 1/2 vacant alley
adjacent on West.

BZA 25-76
2-2470

- in the City of Wichita; and which is presently zoned B and BB.
- III. The applicant herein, or his authorized agent, acknowledges:
- That he has received an instruction sheet concerning the filing and hearing of this matter;
 - 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. 36-596); and that the appropriate fee is herewith tendered;
 - That he has been advised of his right to bring action in the District Court of Sedgewick County to appeal the decision of the Board.
 - That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Applicant *[Signature]*
 Applicant *[Signature]*
 Authorized Agent _____

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals, 3.00 (a.m.-p.m.), Nov 29, 1982 together with appropriate fee of 150.

Signed *[Signature]*

OWNERSHIP LIST

<u>Lot</u>	<u>Street</u>	<u>Addition</u>	<u>Property Owner</u>
1 & 3, & the North 10 ft. of 5, & the East $\frac{1}{2}$ of vacated alley adj.	Topeka	Stone's Addition ✓	REMCO, Suite 135, 100 S. Main, 67202
South 15 ft. of 5, all of 7, & the North 10 ft. of 9	Topeka	"	Returned Johansen, Inc., 2802 River Park Dr., 67203
South 15 ft. of 9, all of 11 & 13, and the North 22 ft. of 15	Topeka	"	✓ McDonald's Corp., 916 S. Broadway, 67211
15 exc. the North 22 ft.	Topeka	"	✓ City of Wichita, 455 N. Main, 67202
17, 19, 21 & 23	Topeka	"	"
2, 4 & 6, & the West $\frac{1}{2}$ of vacated alley adj.	Broadway	"	✓ Francis L. Jehle (Deceased) & Helen M. Jehle, 8 E. Lynwood Blvd., 67207
8 & the west 10 ft. of vacated alley adj.	Broadway	"	✓ McDonald's Corp., 916 S. Broadway, 67211
Even lots 10 thru 20, & the west 10 ft. of vacated alley adj.	Broadway	"	"
22	Broadway	"	✓ L.J. Thompson, Inc., 611 E. Lincoln, 67211

<u>Lot</u>	<u>Street</u>	<u>Addition</u>	<u>Property Owner</u>
1 in Block A	-	St. Francis Medical Park Addition	✓ St. Francis Hospital and School of Nursing, Inc., 929 N. St. Francis, 67214
200, 202, 204 & 206	Topeka	Stafford & Wright's Addition	✓ Bruce B. Ochsner, 1035 N. Emporia, 67214
208 & 210	Topeka	"	D City of Wichita, 455 N. Main, 67202
The North 73 ft. of the East 150 ft. of the West 165 ft. of Harvey's Reserve	-	"	✓ Marlin L. Shenk & Meri Rose Shenk, 7702 Pagent, 67206
Part of Harvey's Reserve beg. 50 ft. south of the SE corner of Lot 215 on Topeka; then west 150 ft.; then south, 70 ft.; then east 150 ft.; then north, 70 ft. to beg.	-	"	✓ Douglas L. Castleberry & Barbara M. Castleberry, 14 Lakeview Ct., Goddard, 67052 AND ✓ F. Clare Moore, 1209 N. Topeka, 67214
North 50 ft. of the East 150 ft. of Harvey's Reserve	-	"	✓ J.W. Johnson & Mattie Johnson, 1113 N. Topeka, 67214
Part of Harvey's Reserve beg. 15 ft. north & 45 ft. east of the SW corner of the NW ¹ of the SW ¹ of the NW ¹ of 16-27-1E; then east 150 ft.; then north 125 ft.; then west 150 ft.; then south 125 ft. to beg.	-	"	X E.G. Weathers, Etta A. Weathers, C.C. Weathers, & Edra M. Weathers, Addresses <u>Unknown</u>
Part of Harvey's Reserve beg. 120 ft. south of the SE corner of Lot 215 on Topeka; then south 78 ft.; then west 150 ft.; then north 78 ft.; then east 150 ft. to beg.	-	"	X W.W. Nester & Jennie E. Nester (Deceased), Address <u>Unknown</u>

page 3

We hereby certify the foregoing to be a true and correct list of the property owners within a 200 foot radius of

Lots 1 and 3, the North 10 feet of Lot 5,
and the East Half of the vacated alley
adjacent on the West thereof, on Topeka
Avenue, in Stone's Addition to the City
of Wichita, Sedgwick County, Kansas

as shown by the last deed of record on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 5th day of October, 1982 at 7:00 A.M.

THE SECURITY ABSTRACT & TITLE CO. INC.

By

Mary Stalle
Vice President

Order No. 313185
GE



WATSON
BREIDENTHAL
ASSOCIATES

The house at 1065 N. Topeka is being renovated into offices, which required a zoning change from B to BB zoning. Under zoning ordinance section 28.04.080 (12) which refers to 28.04.070 (A)(13) a screen would be required to be installed between the house and McDonalds parking lot, zoned B on the South. There is an existing 6 foot high fence installed as required by ZBA-25.96 by McDonalds when the house property was zoned B. It is the feeling of both the owner of McDonalds parking lot, Mr. Johansen, and the owner of the house at 1065, Topeka Street Properties, that having no screening between the properties is in the best interest of both parties. Since the B zoning lot is used for a off street commerical parking lot and the office really appears to be a residence this is a unique condition to the property in question. Installing a new screen or maintaining the existing one is very determinantal to the view out of the office from either the porch or the interior, it would be much better to look out over the parking. The variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare and granting the variance will not be opposed to the general spirit and intent of title 28.

3700 E. DOUGLAS
WICHITA, KS 67208
(316) 685-3383

ARCHITECTURE,
INTERIOR DESIGN,
PASSIVE AND
ACTIVE SOLAR DESIGN

WICHITA - SEDGWICK COUNTY



BOARD OF ZONING APPEALS

CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

FORWARDING
PERIOD EXPIRED
RETURN TO SENDER



Phillips
51-82

[Handwritten signature]

Johansen, Inc.
2802 River Park Drive
Wichita, Ks. 67203



WICHITA - SEDGWICK COUNTY



BOARD OF ZONING APPEALS

CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

FORWARDING
PERIOD EXPIRED
RETURN TO SENDER



Phillips

BZA
51-82

[Handwritten signature]

Johansen, Inc.
2802 River Park Drive
Wichita, Ks. 67203



MICROFILMED
FROM THE BEST
AVAILABLE COPY

FORM 2 21

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION	AMOUNT

NAME

ADDRESS

FUND DUE DATE

COMMENTS

DATE BY

*

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

Roll # 2