CITY OF
WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

October 22, 2010

Norman and Leatha Hein
8118 W 73rd Street North
Valley Center, KS 67205

Patrick B. Hughes
Adams Jones Law Firm, PA
1635 North Waterfront Parkway, Suite 200
Wichita, KS 67206

RE: BZA2010-00023 – County Variances to allow continuation of Rural Home Occupation (Co-BZA16-90) with additional employees, not to exceed 20 total on site or any 15 on site in excess of one hour per day, AND per Site Plan attached to application, using multiple existing accessory structures with a gross floor in excess of 3,000 square feet AND outdoor storage that is located closer to the street than the front of the building(s) within which the home occupation is conducted and closer than 200 feet from property lines or right-of-way lines, on property zoned RR Rural Residential ("RR"), as a continuation of Rural Home Occupation (CoBZA15-90 and CoBZA16-90), generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on **October 12, 2010.** This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,

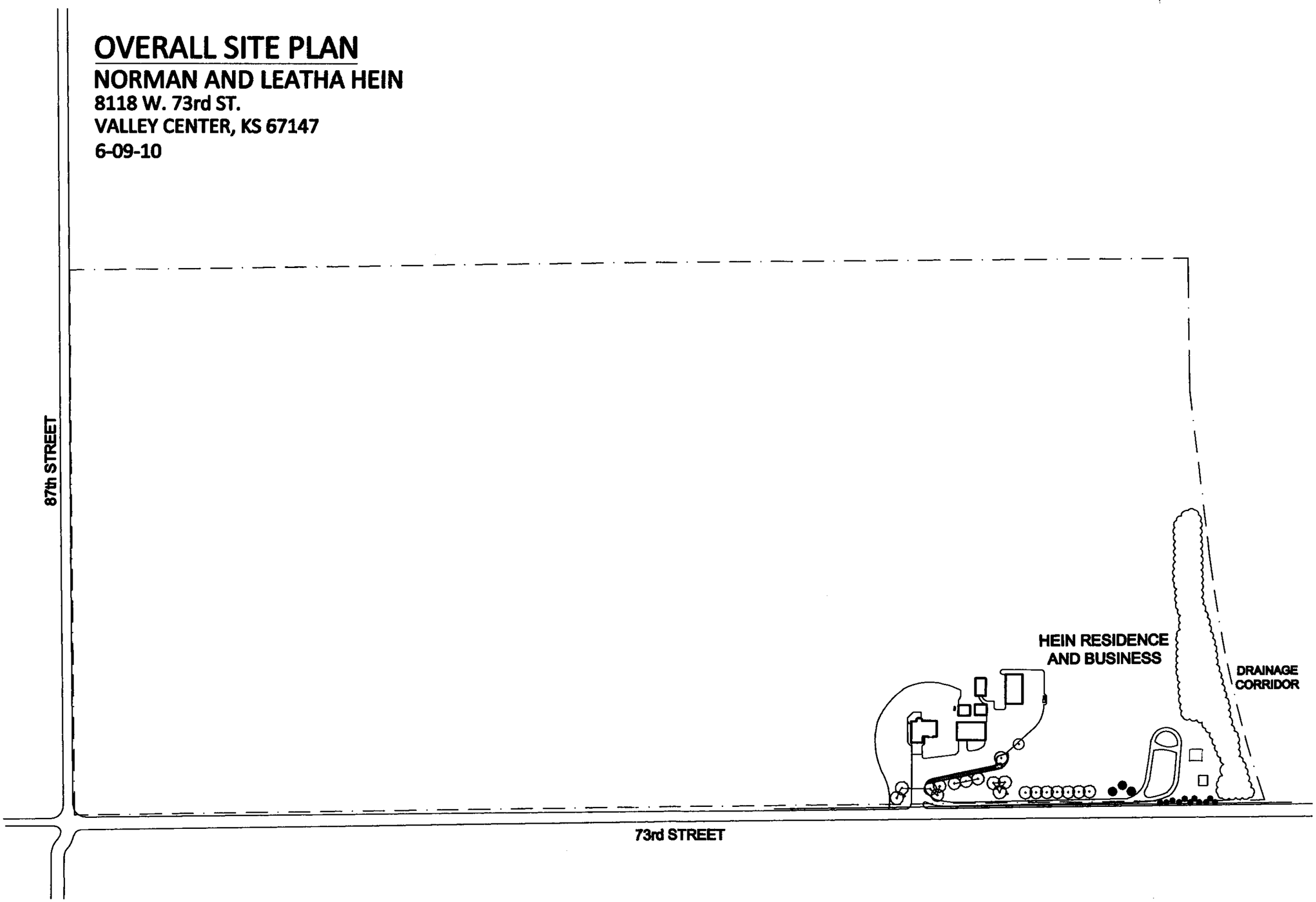
Donna Goltry, County BZA Secretary
Current Plans Division

DG/le

cc: Paula D. Langworthy, Triplett, Woolf & Garretson, LLC, 2959 N. Rock Road, Suite 300, Wichita, KS 67226
Kelly Parks, County Commissioner
Bob Parnacott, County Counselor
Bill Raymond, County Counselor
Glen Wiltse, Sedgwick County Code Enforcement
Jim Weber, Sedgwick County Public Works
Bud Gates, 638 Preston Trail, Wichita KS 67230
Larry Hacker, P. O. Box 4204, Wichita KS 67204
Richard Groniger, 9264 N Hoover, Valley Center KS 67147
Terry Hacker, P.O. Box 4204, Wichita KS 67204
Doug Ulbrich, 7425 N. Tyler, Valley Center KS 67147
Robert Ulbrich & Valerie Ulbrch, 7401 N. Tyler, Valley Center KS 67147
CoBZA members

OVERALL SITE PLAN

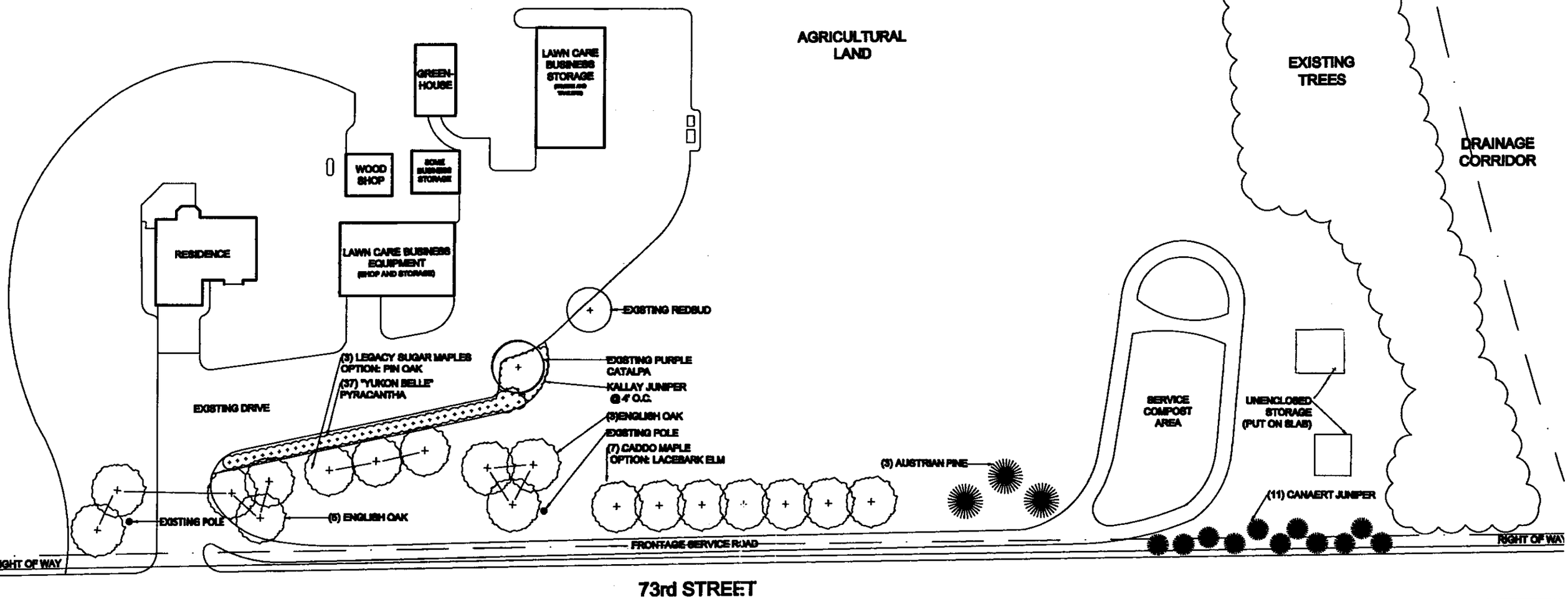
NORMAN AND LEATHA HEIN
8118 W. 73rd ST.
VALLEY CENTER, KS 67147
6-09-10



SITE PLAN

NORMAN AND LEATHA HEIN

8118 W. 73rd ST.
VALLEY CENTER, KS 67147
SCALE: 1"=60'
6-09-10



BZA RESOLUTION NO. 2010-00023

WHEREAS, Norman and Leatha Hein (Owner/Applicant); pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, requests variances to the Unified Zoning Code to allow continuation of Rural Home Occupation (Co-BZA16-90) with additional employees, not to exceed 20 total on site or any 15 on site in excess of one hour per day, AND per Site Plan attached to application, using multiple existing accessory structures with a gross floor in excess of 3,000 square feet AND outdoor storage that is located closer to the street than the front of the building(s) within which the home occupation is conducted and closer than 200 feet from property lines or right-of-way lines, on property zoned RR Rural Residential ("RR"), as a continuation of Rural Home Occupation (CoBZA15-90 and CoBZA16-90) on the following property:

That part of the SW/4 of the NE/4 lying W of the fldy CC A-34049 & the S/2 of the NW/4 except the S 25' for road Section 4 Township 26 South, Range 1West, Sedgwick County Kansas. Generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

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

WHEREAS, the Sedgwick County Board of Zoning Appeals did, at the meeting of October 12, 2010, consider said application; and

WHEREAS, the Sedgwick County Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759 *et. seq.*; and

VARIANCE 1: To allow up to 20 employees with not more than 15 on site in excess of one hour in a day, as a continuation of a Rural Home Occupation (CoBZA 16-90).

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that this property is unique.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that this variance for increased employment allowed onsite will not adversely affects the rights of adjacent property owners.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the variance does not adversely affect the public health, safety and general welfare.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the variance conforms to the general spirit and intent of the UZC.

WHEREAS, each of the five conditions required by Kansas Statues Annotated 12-759 *et. seq.*, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Sedgwick County Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, a variance to the Unified Zoning Code to allow up to 20

employees with not more than 15 on site in excess of one hour in a day, as a continuation of a Rural Home Occupation (CoBZA 16-90).

That part of the SW/4 of the NE/4 lying W of the fldy CC A-34049 & the S/2 of the NW/4 except the S 25' for road Section 4 Township 26 South, Range 1West, Sedgwick County Kansas. Generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

The variance is hereby GRANTED.

VARAINCE 2: To allow, per Site Plan attached to the application, using multiple existing accessory structures with a gross floor area in excess of 3,000 square feet in association with the Rural Home Occupation.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that this property itself is not unique, but the use is unique, as it has operated as a landscape contractors business for 30 years, initially on the small triangular tract prior to the establishment of County zoning and expanded to the larger acreage around 1990. Standards in the UZC allow 3,000 square feet in accessory structure(s) by-right, with the ability to increase this level if deemed appropriate by Conditional Use, but this maximum also can be varied as a deviation to the specific regulations through a variance, so long as it meets the variance criteria. The site plan for the original variance indicated two accessory structures for a total of 1,416 square feet devoted to the rural home occupation (all of the storage building on the site plan and part of the garage but none of the wood shop). Since then, two additional buildings have been constructed and the operation of the home occupation has expanded to portions or all of the accessory structures. From a Code Enforcement standpoint, it is difficult to separate the portions of particular buildings used personally from those used for home occupation.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that granting the requested variance for additional storage space, as shown on the attached site plan, would not adversely affects the rights of adjacent property owners, inasmuch as the buildings are similar in type and number to outbuildings found on agricultural operations on property zoned RR used strictly for agricultural purposes. The surrounding property includes a residence located within 220 feet of the operation of the rural home occupation and an agricultural field with a sand pit operation (CON2003-00032 and CON2009-00036), set to expire in 2012. Otherwise, the land in the surrounding area is used as agricultural fields and farmsteads that typically have several outbuildings. Some smaller residential tracts are located about one-fourth mile to the east, but the visibility of this operation is blocked by the levee and tree row. The storage buildings are in character with the rural landscape of the vicinity.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as it only would be preventing the storage of the materials and equipment for the rural home occupation that could otherwise be occupied by farm equipment and supplies, which are quite similar to the lawn maintenance equipment and supplies.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the requested variance to increase the amount of indoor storage does not adversely affect the public health, safety and general welfare, inasmuch as the scale of the outbuildings is within the normal range of farm use and could be developed on agricultural properties. The only negative public impact would be if large numbers of employees were making frequent trips on the road to take the vehicles and supplies from the home occupation to the worksites. By restricting the number of onsite employees, this effect should be minimized.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the granting of the variance conforms to the general spirit and intent of the UZC, inasmuch as the outbuildings do not change the character and appearance from that of a typical farmstead.

WHEREAS, each of the five conditions required by Kansas Statues Annotated 12-759 *et. seq.*, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Sedgwick County Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, a variance to the Unified Zoning Code to allow, per Site Plan attached to the application, using multiple existing accessory structures with a gross floor area in excess of 3,000 square feet in association with the Rural Home Occupation.

That part of the SW/4 of the NE/4 lying W of the fldy CC A-34049 & the S/2 of the NW/4 except the S 25' for road Section 4 Township 26 South, Range 1West, Sedgwick County Kansas. Generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The use of accessory structures for the Rural Home Occupation shall be limited to those structures shown on the approved site plan.
3. The resolution authorizing this Variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

VARIANCE 3: To allow outdoor storage that is located closer to the street than the front of the building(s) within which the Rural Home Occupation is conducted and closer than 200 feet from property lines or right-of-way lines in association with the Rural Home Occupation.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that this property itself is not unique, but the use is unique, as it has operated as a landscape contractors business for 30 years, initially on the small triangular tract prior to the establishment of County zoning and expanded to the larger acreage around 1990. The outdoor storage was placed on the narrow triangular strip because it afforded the best natural screening for the outdoor storage.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the requested variance for the location of the outdoor storage would not adversely affect the rights of adjacent property owners due to the natural screening by the tree row on the east, and the proposed additional landscape screening to buffer the storage area from the visibility of the nearby residence and those traveling on 73rd Street North.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant inasmuch as it would require creating a separate area for outdoor storage isolated from the area used for wood composting, with the wood composting being the most visible part of the outdoor storage activities along 73rd Street North and being considered an ancillary agricultural use permitted by right; the composting could continue in its present location regardless of the disposition of this variance request. Allowing the Rural Home Occupation outdoor storage to be placed in the same vicinity, with appropriate screening and buffering, affords easier operation of the lawn maintenance home occupation and the use of private drives to serve both areas, thus minimizing private drives on the agricultural land, plus consolidating the composting/outdoor storage into one place.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the requested variance for the location of the outdoor storage does not adversely affects the public health, safety and general welfare, inasmuch as it does not encroach onto the public right-of-way or obstruct road visibility.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the granting of the variance conforms to the general spirit and intent of the UZC, inasmuch as the location of the outdoor storage area is sandwiched between the wood composting operation and the tree row and will be well-buffered from the road.

WHEREAS, each of the five conditions required by Kansas Statues Annotated 12-759 *et. seq.*, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Sedgwick County Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, a variance to the Unified Zoning Code to allow outdoor storage that is located closer to the street than the front of the building(s) within which the Rural Home Occupation is conducted and closer than 200 feet from property lines or right-of-way lines in association with the Rural Home Occupation.

That part of the SW/4 of the NE/4 lying W of the fldy CC A-34049 & the S/2 of the NW/4 except the S 25' for road Section 4 Township 26 South, Range 1West, Sedgwick County Kansas. Generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The outdoor storage shall be screened and buffered as shown on the approved site plan.
3. The resolution authorizing the Variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 12th DAY of October, 2010.

Grant Tideman, COBZA Chairman

ATTEST:

Donna Goltry, BZA Secretary