



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

March 25, 2005

Joe Hoover
Wichita Public Schools
3850 N. Hydraulic
Wichita, KS 67219

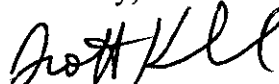
RE: BZA2005-00003 – Variance to reduce the building setback on the south from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary School. Generally located at the southeast corner of 29th Street South and Osage. (3030 S. Osage) (District IV)

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **March 22, 2005**. 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,


Scott Knebel
Senior Planner

SK/rms

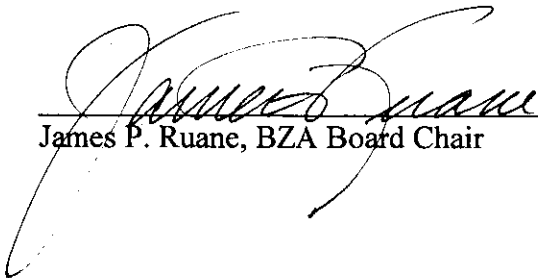
Cc: Board of Education, USD 259, 201 N. Water, Wichita, KS 67202
Russ Ewy, Baughman Company, 315 Ellis, Wichita, KS 67211
Kit D. and Floyd Corby, 728 W. 30th Street South, Wichita, KS 67217
Linda S. and Chris Roberts, 716 W. 30th Street South, Wichita, KS 67217
Paul Gray, WCC, District IV, Mail Stop 1-13
Sharon Dickgrafe, Law Department, Mail Stop 1-132
Herb Shaner, OCI, 1-72

City Hall • 10th Floor • 455 North Main • Wichita, Kansas 67202-1688

T 316.268.4421 F 316.268.4390

www.wichita.gov

ADOPTED AT WICHITA, KANSAS, this 22nd DAY of MARCH 2005.



James P. Ruane, BZA Board Chair

ATTEST:



Scott Knebel, BZA Secretary

BZA RESOLUTION NO. 2005-00003

WHEREAS, Wichita Public Schools (Owner/Applicant); c/o Joe Hoover (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variance to reduce the building setback on the south property line from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary School on property zoned "SF-5" Single-family Residential legally described as follows:

Beginning 80 rods East of the Northwest corner of the South Half of the Southwest Quarter of Section 5, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence South 375 feet; thence East 700 feet; thence North 375 feet; thence West 700 feet to the point of beginning except the West 35.9 feet and the South 30 feet for roads TOGETHER WITH Lots 1, 2, 3, 4, 9, 10, 11 and 12, Block 1, Gibbs First Addition, Sedgwick County, Kansas. Generally located at the southeast corner of 29th Street South and Osage. (3030 S. Osage)

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 March 22, 2005, 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. It is the opinion of the Board that this property is unique inasmuch as the property is adjacent to a half-street right-of-way that has not been developed with a street but instead is used as part of the school property and therefore functions as a 30-foot setback area for the proposed chiller from the adjacent residential properties to the south.

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. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the chiller would be setback 125 feet or more from the nearest residential structures. Additionally, the chiller is of a much smaller scale than the existing building on the site and would be screened from adjacent properties by a fence.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Unified Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the only logical location of the chiller is at the southeast corner of the existing building because existing mechanical infrastructure is located within the building adjacent to the proposed location for the chiller. Requiring the chiller to be located east of the building in compliance with the setback would disrupt classroom activities at the school.

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. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the building setback and therefore there will be no effect on the general public.

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 the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the setback being reduced is a street side setback; however, the street right-of-way is not developed with a street.

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, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to reduce the building setback on the south property line from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary School on property zoned “SF-5” Single-family Residential legally described as follows:

Beginning 80 rods East of the Northwest corner of the South Half of the Southwest Quarter of Section 5, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence South 375 feet; thence East 700 feet; thence North 375 feet; thence West 700 feet to the point of beginning except the West 35.9 feet and the South 30 feet for roads TOGETHER WITH Lots 1, 2, 3, 4, 9, 10, 11 and 12, Block 1, Gibbs First Addition, Sedgwick County, Kansas. Generally located at the southeast corner of 29th Street South and Osage. (3030 S. Osage)

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

1. The site shall be developed and required to comply with all building, zoning, screening, and landscape code requirements, except that the building setback shall be reduced from 15 feet to 0 feet along the south property line for the “New Chiller” as illustrated on the approved site plan. The setback reduction shall apply only to the improvements shown on the site plan. All other improvements on the subject property shall comply with the setback requirements of the Unified Zoning Code unless a separate variance is granted.
2. Solid screening shall be provided at the chiller unit and a “sound blanket” shall be installed for the chiller unit.
3. A sidewalk shall be constructed around the chiller to connect with the existing sidewalk located east and west of the proposed chiller.
4. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
5. 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.

**Justification for Request for Variance
For Building Within the Setback
at Lewis Open Magnet Elementary School**

The Wichita Public Schools requests a variance to allow building within the setback up to the property line at the southeast wing of the building. This construction is part of a proposed bond project that includes adding air conditioning and upgrading infrastructure. Due to the configuration of the existing building, locating the chiller south of a solid wall at the south end of the building will keep classrooms quieter and present fewer distractions for the teachers and students.

Allowing the chiller to be located as shown should not cause local concern due to the distance to homes to the south. The lots are separated from the school property by a 30-foot street right-of-way. The district would consider building a solid fence if requested to help block the sound of the chiller from adjacent homeowners if this is a concern. Therefore, the rights of adjacent property owners should not be affected by allowing chiller to be located next to the property line.

Strict application of the Zoning Code would necessitate locating the chiller to the east of the building where the classroom windows are located. Having the chiller this close to the classrooms would create a distraction to learning for the students.

The chiller location would be a sufficient distance from neighbors so that adjacent owners' use or enjoyment of their property would not be hindered and there will not be any health hazard or loss of convenience for the owners.

The granting of this variance will fulfill the intent of the Zoning Code in that the neighboring properties will not receive any negative impact and the school's use of the property will be greatly enhanced for the benefit of the students and patrons. Granting this variance will allow the building to be improved and upgraded without adding distractions to student learning.

SECRETARY'S REPORT

CASE NUMBER: BZA2005-00003

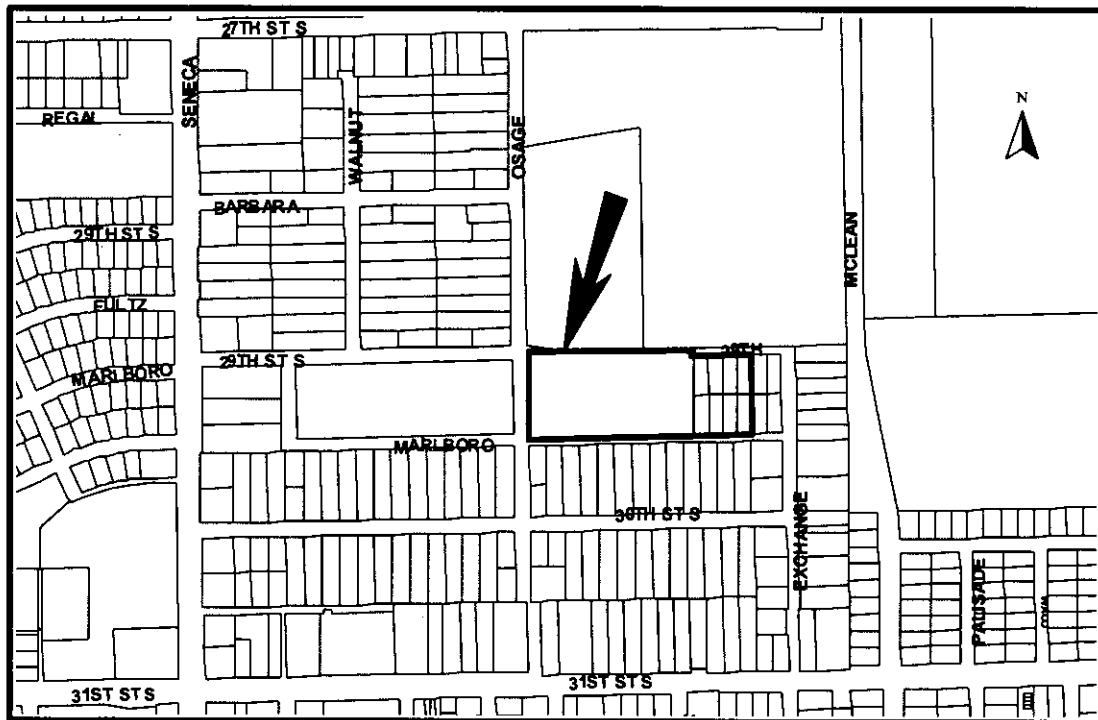
OWNER/APPLICANT: Wichita Public Schools c/o Joe Hoover

AGENT: n/a

REQUEST: Variance to reduce the building setback on the south from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary School

CURRENT ZONING: "SF-5" Single Family

LOCATION: Southeast corner of 29th Street South and Osage (3030 S. Osage)



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 conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to reduce the building setback along the south property line from 15 feet to 0 feet to allow for the placement of a chiller at Lewis Elementary. The subject property is located at the southeast corner of 29th Street South and Osage (see attached aerial) and is zoned "SF-5" Single-Family Residential. The zoning regulations require a 15-foot building setback along the south property line, where the subject property abuts the right-of-way for Marlboro. At this location, Marlboro is only a half-street right-of-way with no street constructed. The street right-of-way is used by the school as part of the school property; therefore, the street serves as a 30-foot setback area for the proposed chiller from the adjacent residential properties to the south. The rear of the properties to the south abut Marlboro with the front of the properties abutting 30th Street South. Some properties to the south use Marlboro for access to rear of their lot, so the street cannot be vacated. Also, the street right-of-way was dedicated by the properties to the south and would revert to those properties; therefore, the setback variance would still be needed.

The applicant proposes to construct an air conditioning chiller with no setback along the south property line (see attached site plan). The only method to allow construction of the chiller with no setback is through the approval of the requested variance. The applicant indicates that the chiller needs to be constructed in the proposed location in order to avoid disruption of adjacent classrooms (see attached justification). Were the chiller to be constructed east of the school building in compliance with the setback requirements, the noise would interrupt school activities; whereas, by constructing the chiller south of the school building, it will be located 30 feet from residential property lines to south and approximately 125 feet from the nearest house. The applicant has indicated a willingness to construct a solid screening fence along the neighbor's north property line to assist in reducing the noise from the chiller from negatively impacting adjacent properties. Such a fence is not required by the zoning regulations since the properties are separated by a street right-of-way.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-5"	Apartment complex
SOUTH	"SF-5"	Single-family residences
EAST	"SF-5"	Single-family residences
WEST	"B"	Apartment complex

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is adjacent to a half-street right-of-way that has not been developed with a street but instead is used as part of the school property and therefore functions as a 30-foot setback area for the proposed chiller from the adjacent residential properties to the south.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the chiller would be setback 125 feet or more from the nearest residential structures.

Additionally, the chiller is of a much smaller scale than the existing building on the site and would be screened from adjacent properties by a fence.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the only logical location of the chiller is at the southeast corner of the existing building because existing mechanical infrastructure is located within the building adjacent to the proposed location for the chiller. Requiring the chiller to be located east of the building in compliance with the setback would disrupt classroom activities at the school.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the building setback and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the setback being reduced is a street side setback; however, the street right-of-way is not developed with a street.

RECOMMENDATION: Should the Board determine that conditions necessary to grant the variance exist, then it is the recommendation of the Secretary that the variance to reduce the building setback along the south property line from 15 feet to 0 feet be GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, screening, and landscape code requirements, except that the building setback shall be reduced from 15 feet to 0 feet along the south property line for the "New Chiller" as illustrated on the approved site plan. The setback reduction shall apply only to the improvements shown on the site plan. All other improvements on the subject property shall comply with the setback requirements of the Unified Zoning Code unless a separate variance is granted.
2. The applicant shall provide a solid screening fence in conformance with the specifications of Section IV-B.3.e. of the Unified Zoning Code along the north property line of Lots 19-23, Robson Heights 2nd Addition, unless the owners of such lots decline said fence.
3. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
4. 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.



