FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

March 25, 2005

Donald R. Govan
Applicant
2101 N. Madison
Wichita, KS 67214-1952

RE: BZA2005-00007 – Variance to reduce the interior side setback on the north from six feet to zero feet. Generally located south of 20th Street North and west of Madison. (2101 N. Madison) (District I)

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: Carl Brewer, WCC, District I, Mail Stop 1-13
Sharon Dickgrafe, Law Department, Mail Stop 1-132
Herb Shaner, OCI, 1-72

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

James P. Ruane, BZA Board Chair

ATTEST:

Scott Knebel, BZA Secretary

BZA RESOLUTION NO. 2005-00007

WHEREAS, Don Govan (Owner/Applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variance to reduce the interior side setback on the north from six feet to zero feet on property zoned "SF-5" Single-family Residential legally described as follows:

> Lot 10, Block B, J. Walter Ross 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located south of 20th Street North and west of Madison. (2101 N. Madison)

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 applicant purchased the property with a non-conforming structure that is located within the interior side setback and has existed on the property for more than 25 years.

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 variances requested will not adversely affect the rights of adjacent property owners, inasmuch as there have been no complaints from adjacent property owners regarding the structure in the over 25 years that it has existed within the setback and no adjacent property owners have appeared before the Board to object to the variance.

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 zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to remove the addition or modify it in such a way that complies with setback requirements will be a financial hardship and will prevent full utilization of the addition, which has been utilized as constructed for over 25 years.

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 variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting continued viable residential use of the property in an area where neglected properties have led to circumstances of blight.

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 variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as sufficient separation between structures will be provided to maintain safety and to provide for the circulation of light and air.

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, a variance be granted to reduce the interior side setback on the north from six feet to zero feet on property zoned "SF-5" Single-family Residential legally described as follows:

> Lot 10, Block B, J. Walter Ross 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located south of 20th Street North and west of Madison. (2101 N. Madison)

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 setback reduction shall apply only to the "Existing Structure" as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. Within 60 days of approval of the variance, the applicant shall obtain a building permit for the addition that encroaches into the setback. Said building permit shall require the applicant to furnish certification from a licensed professional in a form suitable to the zoning administrator that the construction conforms to existing building codes, which the applicant shall permit to be field verified by the Office of Central Inspection. If the construction does not conform to existing building codes, the applicant shall make improvements to bring the construction into compliance with existing building codes within one year from the date of approval of the variance.
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.

Zoning Variance Request (2101 N Madison St Wichita, KS 67214-1952)

A.) The structure existed when the property was purchased in 1978 and is a well built, sturdy structure that does meet building codes. There have been no problems with the structure since purchase. The structure has been in continuous use from first ownership to present.

B.) No neighboring owners or occupants have ever had any objections or concerns with the structure. In fact the neighbors have complimented the fact that the property has been well maintained and improved over time. Similar structures exist within the same neighborhood.

C.) The strict application of the code would be a financial and physical hardship. The structure has existed since purchase in 1978 and has been in its current state for more than 10 years. Changes at this point are unnecessary and would adversely affect the property value.

D.) The variance desired will positively affect the community. The structure existed when property was purchased and has only been improved since that time.

E.) The granting of this variance will only record the existence of a structure which has been present since 1978. All improvements to the structure were made on the footprint that existed when property was purchased therefore it was the understanding that no variance was necessary.

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. 3
March 22, 2005

SECRETARY'S REPORT

CASE NUMBER: BZA2005-00007

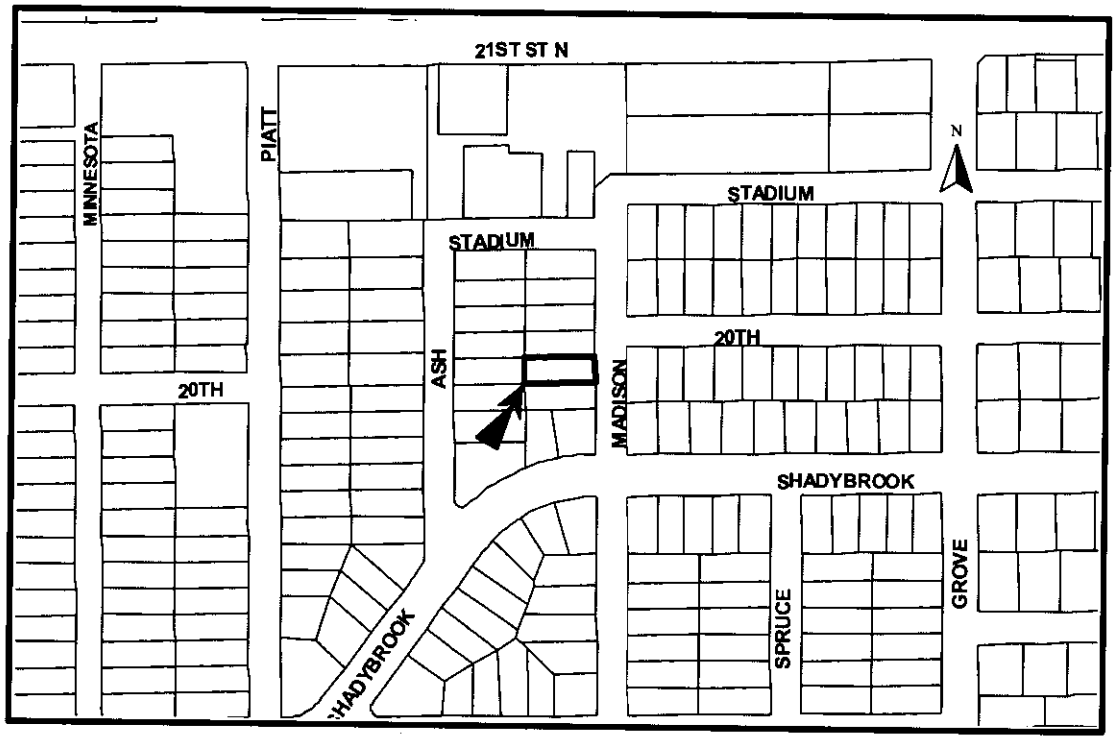
APPLICANT/AGENT: Don Govan (Owner/Applicant)

REQUEST: Variance to reduce the interior side setback on the north from six feet to zero feet

CURRENT ZONING: "SF-5" Single Family

SITE SIZE: 0.15 acres

LOCATION: South of 20th Street North and west of Madison (2101 N. Madison)



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 owns a single-family residence on the subject property (see attached site plan). According to the applicant (see attached written justification), when he purchased the house in 1978 it was constructed with an addition on the north side that is located on the property line. Since the "SF-5" Single Family zoning district requires a six-foot setback along the north property line, the applicant has requested a variance to reduce the interior side setback along the north property line from six feet to zero feet. A variance is required to reduce building setbacks by more than 20 percent.

The addition was constructed without a building permit; therefore, there was no review of building plans by the Office of Central Inspection for compliance with setback requirements or compliance with building codes. In 2001, the Office of Central Inspection noticed the applicant replacing the siding on the addition and issued him a notice of violation for the addition encroaching into the setback and being constructed without a permit. Subsequent to receiving the notice of violation, the applicant requested a variance to reduce the side setback from six feet to three feet. At the hearing, the applicant indicated that he intended to remove three feet from the existing structure, and a variance was granted to reduce the interior side setback on the north to three feet upon the condition that the improvements be completed within two years of approval. The applicant never completed the improvements, and the Board sent the applicant a written notice that it would hold a hearing to consider declaring the variance null and void for failure to complete the improvements. The applicant did not appear at the hearing, and the Board declared the variance null and void. Subsequently, the applicant was issued another notice of violation and has applied for the requested variance to reduce the interior side setback to zero feet.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-5"	Single-family residence
SOUTH	"SF-5"	Single-family residence
EAST	"SF-5"	Single-family residence
WEST	"SF-5"	Single-family residence

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the applicant purchased the property with a non-conforming structure that is located within the interior side setback and has existed on the property for more than 25 years.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as there have been no complaints from adjacent property owners regarding the structure in the over 25 years that it has existed within the setback

and no adjacent property owners have appeared before the Board to object to the variance.

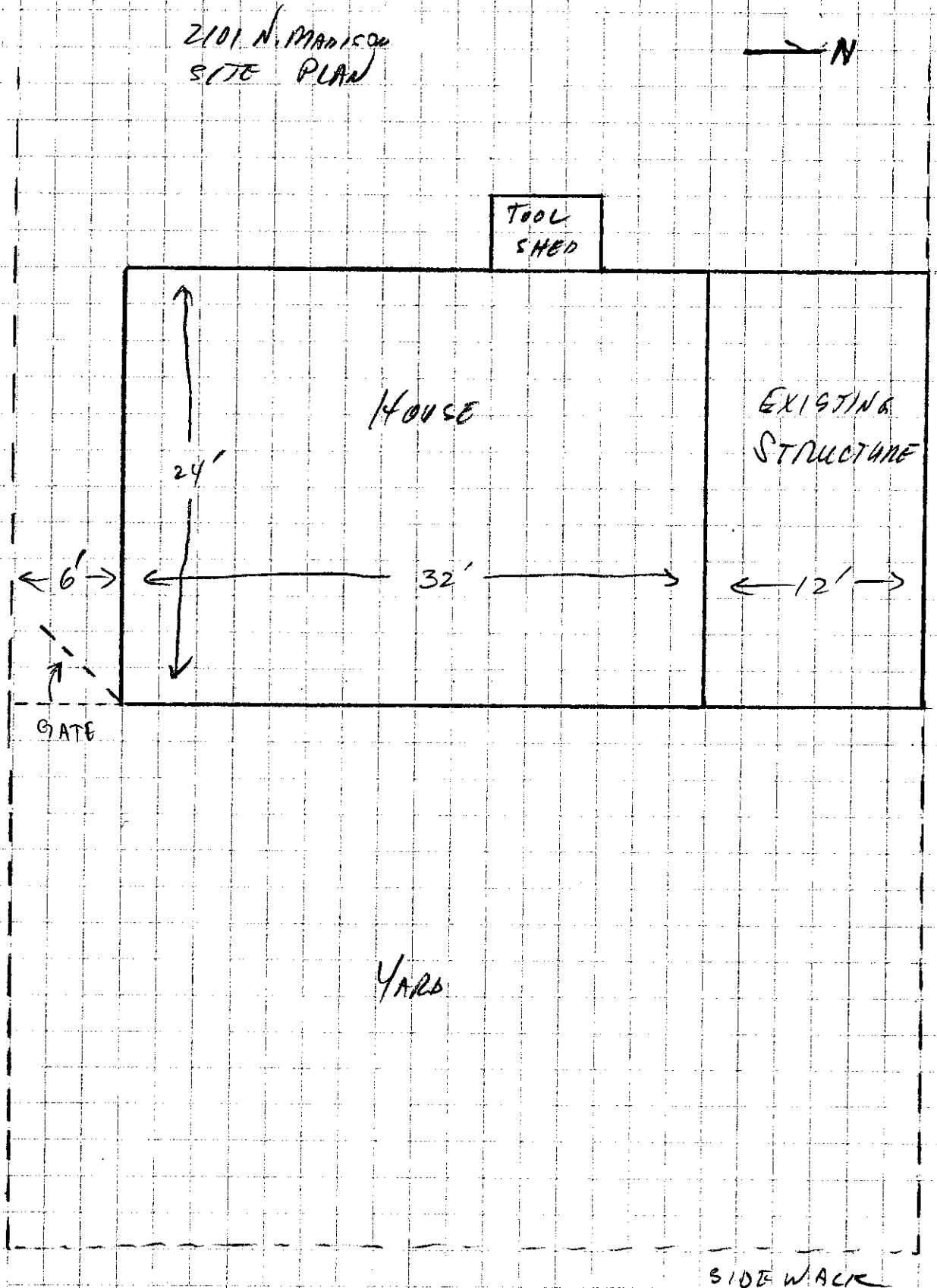
HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to remove the addition or modify it in such a way that complies with setback requirements will be a financial hardship and will prevent full utilization of the addition, which has been utilized as constructed for over 25 years.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting continued viable residential use of the property in an area where neglected properties have led to circumstances of blight.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as sufficient separation between structures will be provided to maintain safety and to provide for the circulation of light and air.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the interior side setback on the north from six feet to zero feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The setback reduction shall apply only to the "Existing Structure" as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. Within 60 days of approval of the variance, the applicant shall obtain a building permit for the addition that encroaches into the setback. Said building permit shall require the applicant to furnish certification from a licensed professional in a form suitable to the zoning administrator that the construction conforms to existing building codes, which the applicant shall permit to be field verified by the Office of Central Inspection. If the construction does not conform to existing building codes, the applicant shall make improvements to bring the construction into compliance with existing building codes within one year from the date of approval of the variance.
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.


2101 N. MADISON
SITE PLAN
N
TOOL SHED
HOUSE
EXISTING STRUCTURE
24'
6'
32'
12'
GATE
YARD
SIDEWALK