CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

9/27/2007

John and Linda Bolster
PO Box 674
Derby KS 67037

RE: BZA2006-00040 – City Variance request for encroachment into the street side yard setback for garage generally located south of Kellogg Avenue, east of Meridian Avenue, on the northeast corner of Hiram and Munnell Avenues

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on **September 25, 2007.** 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,

Jess McNeely, Senior Planner
Current Plans Division

JMC/yja

Cc: Kurt Schroeder, Office of Central Inspections
Paul Hays, Office of Central Inspections
Randy Sparkman, Office of Central Inspection

BZA RESOLUTION NO. 2007-00040

WHEREAS, John and Linda Bolster (Owner); Variance request for encroachment into the street side yard setback for garage

The south half of Lot 7, Hiram Avenue, Lawnfield Addition, Wichita, Sedgwick County, Kansas.

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 September 25, 2007, 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 conditions which are unique, inasmuch as the property was platted in 1886 (Lot 7, Hiram Avenue, Lawnfield Addition), the single-family residence on the lot and many of the existing single-family residences and accessory structures around the site were constructed prior to 1926 and that the Munnell Avenue right-of-way was platted as and remains a 80-foot residential street in contrast to the 60-foot standard of today; however, the zoning regulations that established the 20-foot side yard setback requirements were not established until 1996, long after the property had already been developed.

WHEREAS, the Board of Zoning Appeals has found that the granting the requested variance for encroachment into the street side yard set back will not adversely affect the rights of adjacent property owners, inasmuch as many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which the variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that inasmuch as requiring the applicant to comply with the street side yard setback requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

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 the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance for the described encroachment into the street side yard setback would not oppose the general spirit and intent of the zoning ordinance, inasmuch as the primary intent of the street side yard setback requirements is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent. Munnell Avenue is a short residential street (6 blocks) that, basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area. Munnell is also platted with 80-feet of ROW, which is 20-feet wider than the current standards for residential streets. The applicant proposes to have the garage going out to Hiram Avenue and not on Munnell. With these considerations the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Munnell Avenue.

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, variance be granted to reduce the street side setback from 20-feet to 3-feet on property zoned "MF-29" Multi-family Residential, legally described as follows:

> The south half of Lot 7, Hiram Avenue, Lawnfield Addition, Wichita, Sedgwick County, Kansas. Generally located south of Kellogg Avenue, east of Meridian Avenue, on the northeast corner of Hiram and Munnell Avenues

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

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings, with access onto Hiram Avenue and no access onto Munnell Avenue.
2. The setback reduction shall apply only to the "detached garage" 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. The applicant must verify that the proposed garage does not encroach into any easements dedicated by separate instrument. The applicant shall dedicate by separate instrument the additional easement needed to have 10-foot of easement over a sewer line is located in the rear yard. This may require the applicant to move the proposed garage further away from the rear property line.
4. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

ADOPTED AT WICHITA, KANSAS, this 25th day, September 2007.

C. Bickley Foster

BZA Board Chair, Bickley Foster

ATTEST:

For Jess McNeely, BZA Secretary and/or
Dale Miller, Current Plans Manager

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. _____
SEPTEMBER 25, 2007

SECRETARY'S REPORT

CASE NUMBER: BZA2007-00040

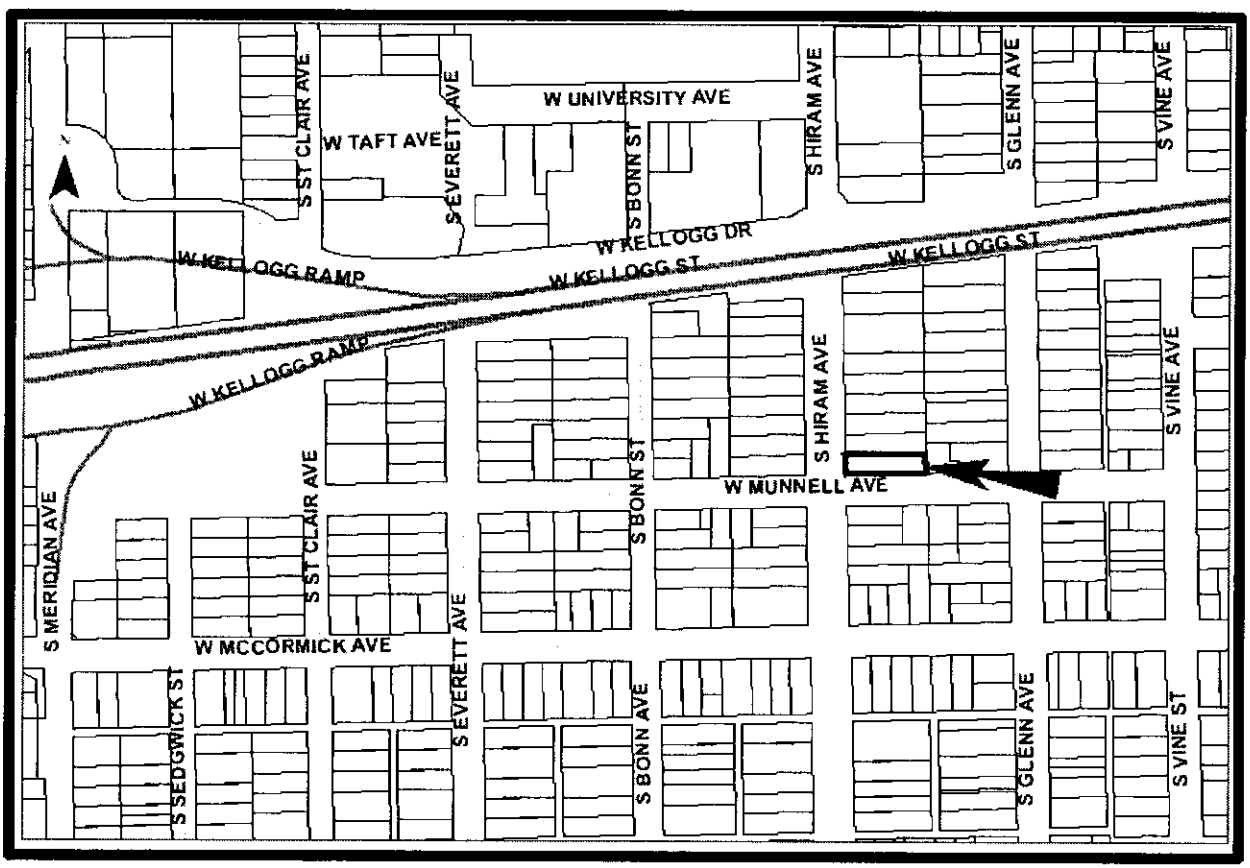
APPLICANT/OWNER: John & Linda Bolster

REQUEST: Variance to reduce the street side yard setback from 20- feet to 3-feet

CURRENT ZONING: "MF-29" Multi-family Residential

SITE SIZE: 9,562-square feet (50-ft [x] 191.25-ft)

LOCATION: Northeast corner of Hiram & Munnell Avenues (756 S. Hiram Avenue)



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Kansas Statutes Annotated 12-759 *et. seq.* The Board may grant the request when all five conditions, as required by the statutes, are found to exist.

BACKGROUND: The applicant proposes to place a 40-foot (x) 50-foot detached garage on the "MF-29" Multi-family zoned subject corner lot; the south half of Lot 7, Hiram Avenue, Lawn Field Addition. Per the Unified Zoning Code (UZC), the "MF-29" zoning district requires a 20-foot street side yard setback along the subject corner lot's Munnell Avenue frontage (south side); See UZC, Art.II, Sec.II-B-7g, corner lot, and Art.III, Sec.III-E.6, setbacks on corner lots. The applicant has requested a variance to reduce the current UZC's 20-foot street side yard setback to 3-feet in order to place the proposed garage. A variance is required to reduce building setbacks by more than 20 percent.

An existing drive runs from the site's Hiram Avenue (west side, the front yard) frontage, between a portion of the subject site's single-family residence and Munnell Avenue. The applicants have stated that the drive had connected to a detached garage, which was demolished when an addition was added to the rear of the house. No date is given for demolishing of the garage and the applicants propose to extend this existing drive to the proposed garage, providing access onto Hiram. It would appear that the applicant would have to pour additional width on to the existing drive to allow enough room for a car or a light truck to get back to the proposed garage, which is permitted by the UZC; Art III, Sec III-E-2e-(1c).

The applicant's corner site, the abutting and adjacent properties (originally 93 lots), are all in the Lawnfield Addition, which was recorded with the Register Deeds October 15, 1886. Many of the original lots that were 100-ft [x] 191.25-ft have been subdivided by selling off half or more of these lots for single-family residences. GIS shows the applicants' residence to have constructed in 1925, while a search of the building dates of 23 single-family residences abutting and adjacent to the applicants' residence, reveal building dates from 1910-1950, with most (15) being built between 1919-1926. A visual and aerial survey of the area shows a repeated pattern of encroachment into the Munnell Avenue street side yard setback by either single-family residences or accessory structures, most commonly garages. BZA2003-65 permitted a variance on the Munnell Avenue 20-foot street setback to 7-foot, allowing the West Side Church of God's proposed multipurpose building to line up with its existing church and the other houses along the south side of Munnell. BZA2003-65 appears to be the largest requested encroachment into the Munnell street side yard setback in the area. The West Side Church of God is located south, on the southeast corner of Glen & Munnell, from the subject site.

Prior to 1996, a corner lot with two front yards (one now being referred to as a street side yard setback), if not platted, for 'general residential' ("R-6" now "MF-29") zoning were not less than 15-feet. The 1928 zoning map shows the property to be zoned "D" Light Industrial. If there were residences built on a "D" zoned lot, it is was to comply with the "C" Commercial zoning district, which had a setback of no less than 5-feet. If

the lot was recorded before October 1, 1928, not less than 3-feet. The 2030 Transportation Plan classifies Munnell as a residential street, which typical has 60-feet of right-of-way (ROW). Munnell has 80-feet of ROW, does not function as a collector or a through street to a collector or arterial, ending 3-blocks west of the site at its intersection Saint Claire & the Kellogg Streets ROW and ends 2-blocks east of the site at its intersection with Glen Avenue. It is also notable that Hiram at this location is a 100-foot ROW.

ADJACENT ZONING AND LAND USE:

NORTH	"MF-29"	Single-family residences
SOUTH	"MF-29"	Single-family residences
EAST	"MF-29"	Single-family residences, church
WEST	"MF-29""	Single-family residences

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property was platted in 1886 (Lot 7, Hiram Avenue, Lawn Field Addition), the single-family residence on the lot and many of the existing single-family residences and accessory structures around the site were constructed prior to 1926 and that the Munnell Avenue ROW was platted as and remains a 80-foot residential street in contrast to the 60-foot standard of today; however, the zoning regulations that established the 20-foot side yard setback requirements were not established until 1996, long after the property had already been developed.

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 many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments.

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 comply with the street side yard setback requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

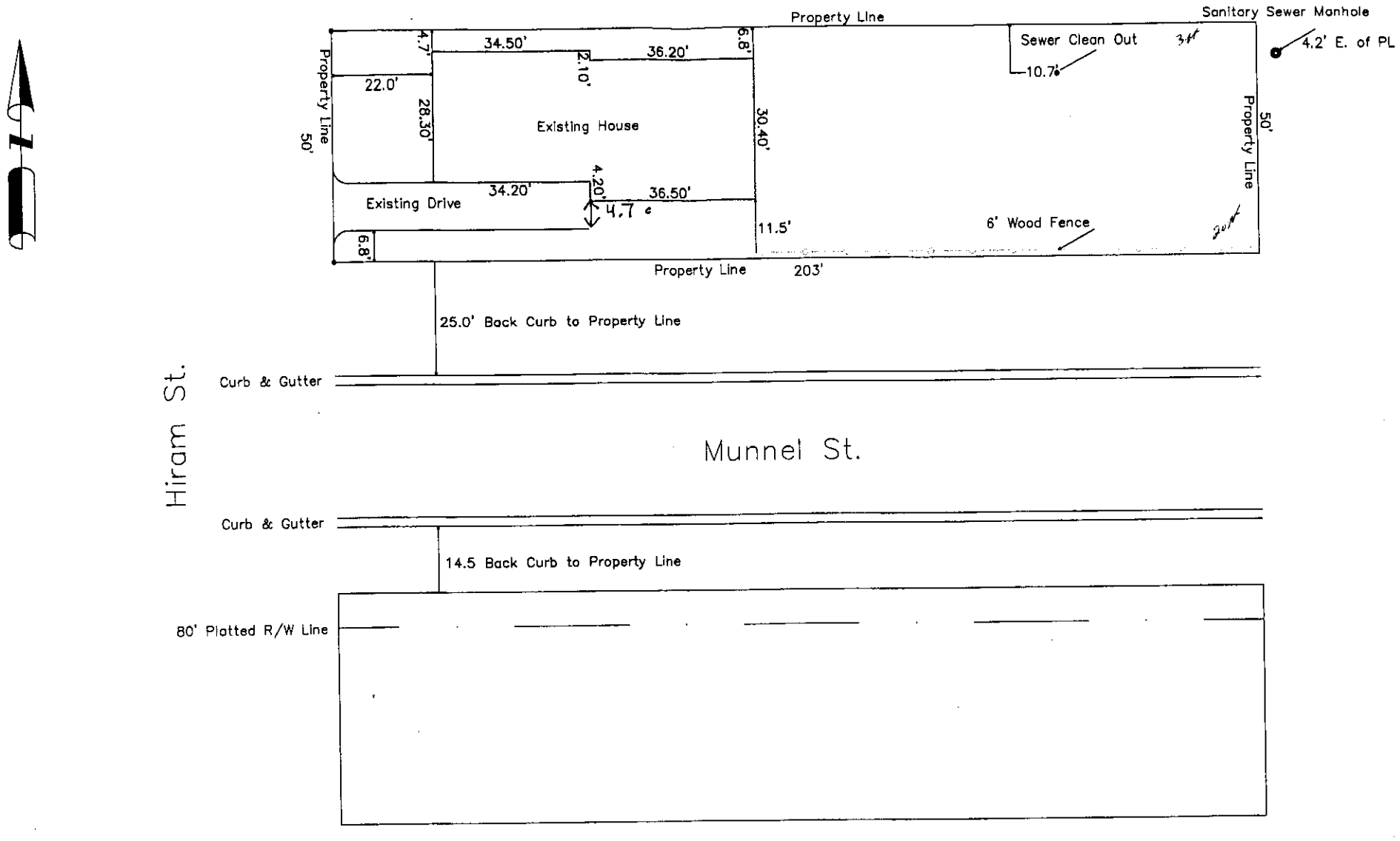
PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common.

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 primary intent of the street side yard setback requirements

is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent. Munnell Avenue is a short residential street (6 blocks) that, basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area. Munnell is also platted with 80-feet of ROW, which is 20-feet wider than the current standards for residential streets. The applicant proposes to have the garage going out to Hiram Avenue. With these considerations the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Munnell Avenue.

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 street side setback from 20-feet to 3-feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the "detached garage" 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. The applicant must verify that the proposed garage does not encroach into any easements dedicated by separate instrument. The applicant shall dedicate by separate instrument the additional easement needed to have 10-foot of easement over a sewer line is located in the rear yard. This may require the applicant to move the proposed garage further away from the rear property line.
4. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
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.



JOB NAME: John A. Bolster Property
LOCATION: S1/2 Lot 7
Lawnfield Addition

DRAWN BY: M. Parsons
SCALE: 1:20
DATE: 6-23-2007