



Wichita-Sedgwick County Metropolitan Area Planning Department

10/29/2008

Paul Silva
1709 N Kessler
Wichita, KS 67203

RE: BZA2008-51 City variance request to reduce the sideyard setback requirement in SF-5 zoning from 3 to 1.5 feet for an accessory structure, subject to conditions. Generally located at 1709 N Kessler.

Dear Applicants:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **October 28, 2008**. 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, AICP
BZA Secretary
Current Plans Division

JM/ya

Cc Sharon Dickgraft, Law Dept, 1-132
Herb Shaner, OCI, 1-72
Sharon Fearey, WCC District VI, 1-13
Kurt Schroeder, OCI, 1-72
Mike Gable, OCI, 1-72

BZA RESOLUTION NO. 2008-51

WHEREAS, Paul Silva (Owner/Applicant); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to the Unified Zoning Code to reduce the sideyard setback from 3 to 1.5 feet in SF-5 Single-family Residential zoning, generally located west of Kessler and north of 16th Street North (1709 N Kessler).

Lot 6, and the south 5 feet of Lot 7, Floyd Moore 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 October 28, 2008, 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 that are unique, as a detached shed existed 1.5 feet from the property line for over thirty years with no apparent negative effect.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance would not adversely affect the rights of adjacent property owners, provided that the property owner north of the site does not desire to build at the normally required 3-foot building setback. The property to the north is developed with a pool adjacent to the shed in question, reducing the possibility of a future building adjacent to the shed.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the code would constitute a hardship upon the applicant as the site had a shed 1.5 feet from the property line for over thirty years. To now apply the 3-foot building setback would constitute a hardship on the applicant by changing how the property has been used for thirty years, and by requiring the applicant to demolish some portion of the existing building in order to conform to the 3-foot setback requirement.

WHEREAS, the Board of Zoning Appeals has found that the requested variance would not adversely affect the public interest at this location, as no public right-of-way is affected by the proposed setback reduction, and provided that building and fire codes are followed. It is in the public interest to permit upgrades and improvements to properties.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations provided that the required 6-foot separation between buildings is still maintained through a joint building setback agreement.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, are found to be present for a variance to be granted.

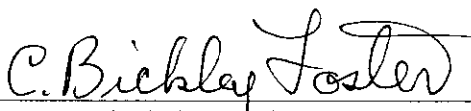
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, a variance to the Unified Zoning Code to reduce the side setback from 3 to 1.5 feet in SF-5 Single-family Residential zoning, generally located east of Kessler and north of 16th Street North (1709 N Kessler).

Lot 6, and the south 5 feet of Lot 7, Floyd Moore Addition, Wichita, Sedgwick County, Kansas.

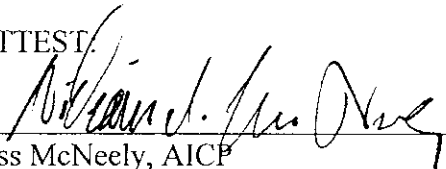
The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The setback reduction shall apply only to the "13x26.6" 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. 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.
4. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots, prior to receiving a building permit or certificate of occupancy for the proposed structure.
5. The accessory structure on the site shall conform to all other codes, to include but not limited to building and fire codes.
6. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

ADOPTED AT WICHITA, KANSAS, this 28th Day of October 2008.


BZA Board Chair, C. Bickley Foster

ATTEST.


Jess McNeely, AICP
BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2008-51

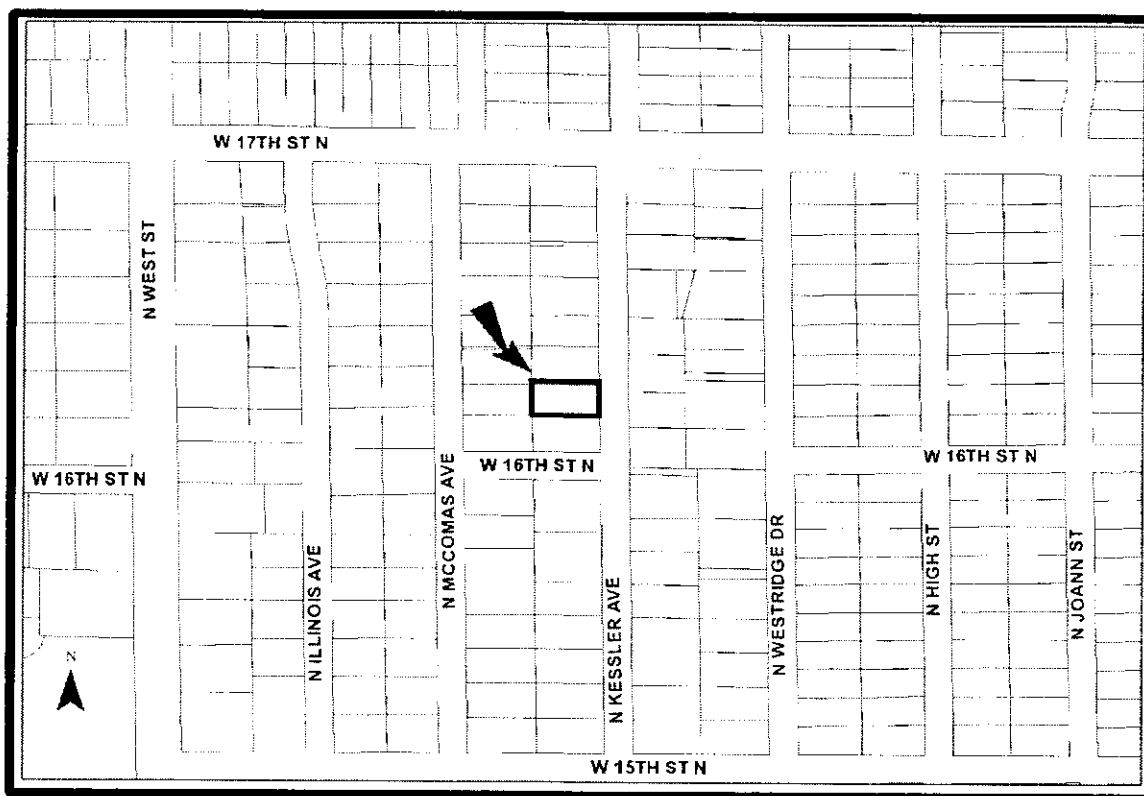
APPLICANT/AGENT: Paul and Gladys Silva (owners)

REQUEST: Variance of the Zoning Code to reduce the side building setback from 3 feet to 1.5 feet for an existing accessory structure.

CURRENT ZONING: SF-5 Single-family Residential

SITE SIZE: .21 acres

LOCATION: Generally located east of Kessler and north of 16th Street North (1709 N Kessler).



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 requests a variance to reduce the Zoning Code required side building setback from 3 feet to 1.5 feet for an existing accessory structure. The zoning code requires a 3-foot building setback for structures on the rear half of a lot in SF-5 Single-family Residential ("SF-5") zoning. The application area is developed with a home and a detached accessory storage building, which is in question. According to the applicant, the site had a metal building on a concrete slab built in 1974 at 1.5 feet from the north property line. The applicant removed the damaged metal building, and rebuilt a wood shed on the same concrete slab at 1.5 feet from the north property line (see the attached applicant's site plan). The applicant now requests a variance of the 3-foot setback requirement in order to maintain the shed in the current location. Building and fire code require a minimum 6-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the property owner to the north, ensuring that any future improvements on either property would maintain a minimum of 6 feet between buildings. The property north of the application area has a swimming pool immediately adjacent to the accessory structure, reducing the probability of a structure less than 6 feet from the shed in question.

All surrounding properties are also zoned SF-5 and developed with single-family residences. Analysis of aerial photographs would demonstrate that other detached accessory structures in the surrounding area may also violate the 3-foot setback requirement.

ADJACENT ZONING AND LAND USE:

NORTH	SF-5	Single-family residences
SOUTH	SF-5	Single-family residences
EAST	SF-5	Single-family residences
WEST	SF-5	Single-family residences

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is staff's opinion that this property is unique, as a detached shed existed 1.5 feet from the property line for over thirty years with no apparent negative effect.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for a side setback reduction from 3 to 1.5 feet may not adversely affect the rights of adjacent property owners, provided that the property owner north of the site does not desire to build at the normally required 3-foot building setback. The property to the north is developed with a pool adjacent to the shed in question, reducing the possibility of a future building adjacent to the shed.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the site had a shed 1.5 feet from the property line for over thirty years. To now apply the 3-foot building setback would constitute a hardship on the applicant by changing how the property has been used for thirty years, and by requiring the applicant to demolish some portion of the existing building in order to conform to the 3-foot setback requirement.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a side setback reduction from 3 to 1.5 feet will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reduction, and provided that building and fire codes are followed. It is in the public interest to permit upgrades and improvements to properties.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a side setback reduction from 3 to 1.5 feet does not oppose the general spirit and intent of the Zoning Code, provided that the required 6-foot separation between buildings is still maintained through a joint building setback agreement.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist, then the Secretary recommends that the variance to reduce the 3 foot side setback to 1.5 feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The setback reduction shall apply only to the "13x26.6" 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. 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.
4. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots, prior to receiving a building permit or certificate of occupancy for the proposed structure.
5. The accessory structure on the site shall conform to all other codes, to include but not limited to building and fire codes.
6. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

APPLICANT'S
SITE PLAN

