



**Wichita-Sedgwick County Metropolitan Area Planning Department**

09/30/2008

Christopher Martsolf  
PO Box 822  
Andover, KS 67002

**RE: BZA2008-41** City variance to the minimum lot size for the SF-5 zoning district, reducing the required lot size from 5000 to 2000 square feet. Generally located south of Burton and east of Martinson (1323 W Burton).

Dear Applicants:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on September 30, 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,

A handwritten signature in black ink, appearing to read 'Jess McNeely'.

Jess McNeely, AICP  
BZA Secretary  
Current Plans Division

JM/ya

Cc Sharon Dickgrafe, Law Dept, 1-132  
Herb Shaner, OCI, 1-72  
Paul Gray, WCC District IV, 1-13  
Kurt Schroeder, OCI, 1-72

**BZA RESOLUTION NO. 2008-41**

**WHEREAS**, Christopher Martsolf (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 minimum required lot size from 5000 to 2000 square feet in SF-5 Single-family Residential zoning, generally located south of Burton and east of Martinson (1323 W Burton).

The East 40 feet of Lots 34 and 36, Martinson Avenue, Lawrence's 4th Addition to the City of 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 30, 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 the property was developed with a house and split off from the original property in 1942.

**WHEREAS**, the Board of Zoning Appeals has found that granting the requested variance would not adversely affect the rights of adjacent property owners. The property has existed in this manner since 1942 without any apparent negative effect on surrounding properties. The application area is well maintained, and does not detract from the immediate neighborhood. Likewise, the application area's lot size is not entirely uncommon; similarly sized lots exist within the neighborhood.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the code would constitute a hardship upon the applicant. Without a variance, this 2000 square-foot lot becomes unusable, and previous investments into the site could be lost. It would be difficult if not impossible for this property to be financed without a variance making the lot legal.

**WHEREAS**, the Board of Zoning Appeals has found that the requested variance would not adversely affect the public interest at this location, as building and fire codes are followed, and no public right-of-way is affected by the proposed lot size reduction. The Wichita City Council has expressed through the adopted Comprehensive Plan that increasing residential density in the core areas of the City is in the public interest. Increased residential density can be achieved with smaller lot sizes.

**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. The neighborhood has a mixture of zoning categories, some of which would allow a lot size near the size of the requested reduction. The Zoning Code objective of maintaining neighborhood character is met, as existing lots of this size are within the neighborhood.

**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.

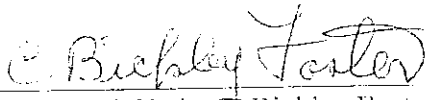
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, a variance to the Unified Zoning Code to reduce the minimum required lot size from 5000 to 2000 square feet in SF-5 Single-family Residential zoning, generally located south of Burton and east of Martinson (1323 W Burton).

The East 40 feet of Lots 34 and 36, Martinson Avenue, Lawrence's 4th Addition to the City of Wichita, Sedgwick County, Kansas.

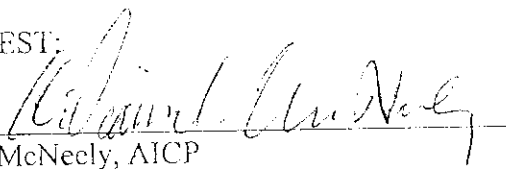
The variance is hereby **GRANTED**, subject to the following conditions:

1. The site shall be developed in conformance with all applicable codes, to include but not limited to zoning, building, fire, housing, and health codes.
2. The site shall be developed in conformance with the approved site plan.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

**ADOPTED AT WICHITA, KANSAS, this 30<sup>th</sup> Day of September 2008.**

  
BZA Board Chair, C. Bickley Foster

ATTEST:

  
Jess McNeely, AICP  
BZA Secretary

EARTON STREET

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**APPROVED**

BZA 2008-41 SITE PLAN

William J. McNair

Date: 9-30-08

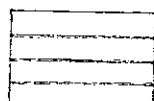
NEIGHBORS DRIVE

20'

5

SIDEWALK

40-Feet



HOUSE

35'

ALLEY

50-Feet

17'

8'

17'4"

FENCE

**SECRETARY’S REPORT**

CASE NUMBER: BZA2008-41

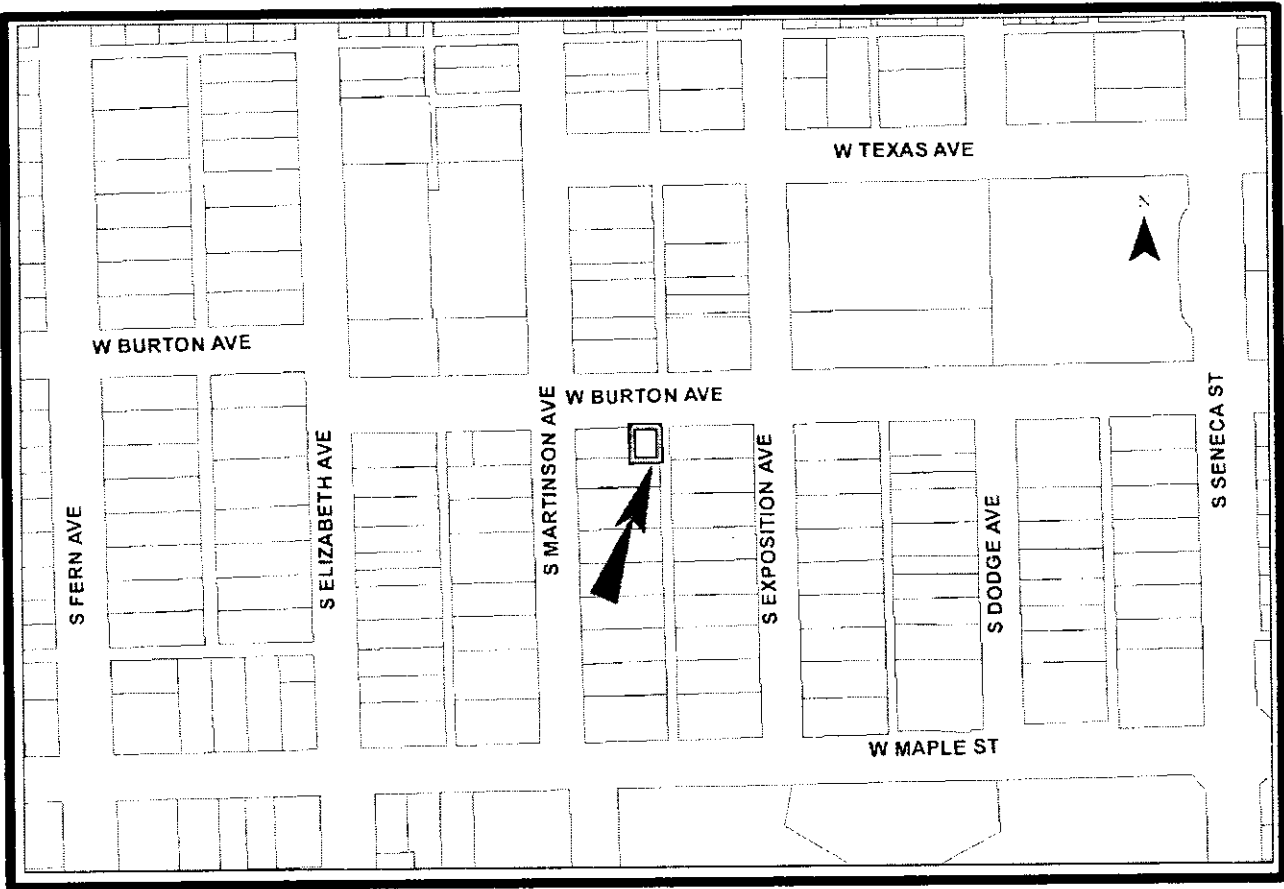
APPLICANT/AGENT: Christopher Martsof (owner)

REQUEST: Variance to reduce the Zoning Code minimum required lot size from 5000 to 2000 square feet.

CURRENT ZONING: SF-5 Single-family Residential

SITE SIZE: .05 acres

LOCATION: Generally located south of Burton and east if Martinson (1323 W Burton)



**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 minimum required lot size from 5000 to 2000 square feet in SF-5 Single-family Residential (“SF-5”) zoning for a 2000 square-foot lot. The site is developed with a single-family house built in 1942. The applicant sought to register the property as “legal non-conforming” (commonly called “grandfathered”) but was unable as the Zoning Code minimum lot size was 2500 square feet when the residence was built, therefore the lot never conformed to the Zoning Code. The application area is the eastern 40 feet of a lot which was originally 130 feet deep; this property was originally developed with a house in 1920. The subject property was split off from the original lot at some point in time, creating a non-conforming, or illegal, lot. This non-conforming lot has been bought and sold numerous times, and has now been identified as non-conforming by a lender. Therefore, the applicant seeks a variance to reduce the minimum required lot size from 5000 to 2000 square feet in order to complete a sale of the property.

The code now prevents accessory dwellings from being split off on a separate lot by requiring that the primary and accessory dwelling be on the same water, sewer, and power utilities. While the SF-5 zoning district requires 5000 square foot lots, muliti-family zoning, as well as commercial and office zoning would permit 2500 square-foot single-family lots.

The immediate neighborhood is a mixture of single-family, two-family, and multi-family residential zoning. North of the site is an SF-5 zoned single-family residence. Northeast and northwest of the site are two schools, a middle school and an elementary school. South and west of the site are SF-5 zoned single-family residences. East of the site is a TF-3 Two-family Residential (“TF-3”) zoned duplex. One block west of this site, on the other side of Martinson Street, is an MF-18 Multi-family Residential (“MF-18”) zoned triplex, with an SF-5 zoned single-family residence on the rear 40 feet of the lot. Therefore, similar situations of smaller lots exist within the immediate neighborhood.

**ADJACENT ZONING AND LAND USE:**

|       |             |                                   |
|-------|-------------|-----------------------------------|
| NORTH | SF-5        | Single-family residence, schools  |
| SOUTH | SF-5        | Single-family residence           |
| EAST  | TF-3        | Two-family residence              |
| WEST  | SF-5, MF-18 | Single-family residence, tri-plex |

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

**UNIQUENESS:** It is staff’s opinion that this property is unique, as it was developed with a house and split off from the original property in 1942.

**ADJACENT PROPERTY:** It is staff’s opinion that granting the requested variance for reduction in lot size from 5000 to 2000 square feet would not adversely affect the rights of adjacent property owners, as the property has existed in this manner since 1942 without any apparent negative effect on surrounding properties. The application area is well maintained, and does not detract from the immediate neighborhood. Likewise, the application area’s lot size is not entirely uncommon, similarly sized lots exist within the neighborhood.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant. Without a variance, this 2000 square-foot lot becomes unusable, and previous investments into the site could be lost. It would be difficult if not impossible for this property to be financed without a variance making the lot legal.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a reduction in lot size from 5000 to 2000 square feet will not adversely affect the public interest, as building and fire codes are followed, and no public right-of-way is affected by the proposed lot size reduction. The Wichita City Council has expressed through the adopted Comprehensive Plan that increasing residential density in the core areas of the City is in the public interest. Increased residential density can be achieved with smaller lot sizes.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance for a reduction in lot size from 5000 to 2000 square feet does not oppose the general spirit and intent of the Zoning Code, as the neighborhood has a mixture of zoning categories, some of which would allow a lot size near the size of the requested reduction. The Zoning Code objective of maintaining neighborhood character is met, as existing lots of this size are within the neighborhood.

**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 for reduction in lot size from 5000 to 2000 square feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with all applicable codes, to include but not limited to zoning, building, fire, housing, and health codes.
2. The site shall be developed in conformance with the approved site plan.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.