

Earl Henderson, Chairman

ATTEST:

Glen E. Lytle, Assistant Secretary

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16. Case No. BZA 58-79 - George Middleton, Lindy Andeel and Pizza Inn of Delaware, Inc., 5900 East Central, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to vary the location of the required screening fence and to locate the fence on adjacent property, on property zoned "LC" Light Commercial District, and legally described as follows:

Lots 1, 2, 3, and 4 of Triple J Addition to Wichita, Kansas. Generally located on the east side of Rock Road in an area north of Harry Street.

LYTLE showed slides of the application area and reviewed the following comments from the Secretary's Report.

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 of the following conditions are found to exist:

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

COMMENTS BY THE SECRETARY:

The applicant has requested that the screening fence required between commercial development and any residential zoning district be permitted to be located on the residential property to the east. The applicant has entered into an agreement with the property owner to the east to erect and maintain a screening fence on the east side of the drainage channel.

It should be pointed out that there is an 80 foot drainage dedication immediately east of the Triple "J" Addition, the application area. In addition, a 15 foot maintenance access easement has been dedicated along the east portion of Triple "J" Addition. This effectively prevents the use of the 15 foot easement for development as the Superintendent of Flood Control has indicated that the fence should be located at the easement line and not the property line.

The granting of the variance will alleviate the problem created by the erection of the required screening fence on the applicant's property. At the present time an application for a self service car wash is being considered on lot 4, which will require the screening, and a permit for a commercial structure on lots 2 and 3 has been issued with a notation on the plans that the screening is required at the east property line.

It is the opinion of the Secretary that the location of the screening fence in close proximity to the apartments will provide less protection to the residential property than if the screening were located at the commercial property line. However, due to the unique situation of the properties, being separated by an 80 foot drainage channel, the distance separation will provide a certain amount of protection.

UNIQUENESS:

It is the opinion of the Secretary that this may be a unique situation inasmuch as the drainage channel creates a separation not ordinarily found in the same zoning district.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the variance requested may not adversely affect the rights of adjacent property owners or residents inasmuch as the location of the screening fence on the adjacent property is with the concurrence of the property owner to the east.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the zoning ordinance will constitute an unnecessary hardship upon the applicant inasmuch as it would deprive the owner of the use of 15 feet of the commercial property.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance will not adversely affect the public interest inasmuch as the screening will still be provided between the commercial development and the residential development.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the variance is only for location of the required screening.

RECOMMENDATION:

If the Board determines that the above five conditions can be found to exist it is the Secretary's recommendation that the requested variance be granted, subject to the following conditions:

1. The variance shall be granted to permit the required screening fence to be erected on Lots 1 thru 9 of Block 4, Lynncrest Heights Addition in lieu of Lots 1,2,3 and 4 of Triple "J" Addition to Wichita, Kansas.
 2. The maintenance of the fence shall be subject to the same requirement as if the fence were located on the applicant's property.
 3. If at anytime the existing fence located on Lots 10, 11, 15 and 16 of Block 4, Lynncrest Heights Addition is in need of maintenance and repair, the Superintendent of Central Inspection shall notify the owner of Lot 4, Triple "J" Addition who shall be responsible for the maintenance of said fence. Should the maintenance of the fence not be made within 30 days, the variance of the location of the fence for Lot 4, Triple "J" Addition shall become null and void and the fence shall be erected along the west line of the drainage maintenance access easement of said Lot 4.
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GALBRAITH left and returned while LYTLE showed slides.

LYTLE stated the CPO Council recommended 6-0 in favor of the variance. JACOB stated conflict of interest and substained from discussion and voting.

Everett Fettis, agent of applicant, appeared before the Board and expressed the reason for the request was to eliminate the problem of the fence location in conjunction with the drainage access easement.

Dixie Swanson, 8022 Grail, appeared in opposition, stated that the screening fence on the east would not be as adequate for them as it would be if the fence was on the west side. They also feel the property owners would be adversely affected on Grail if variance was granted. There is an 8-bay car wash going in on the property, and the drainage canal is quite a problem now because of trash.

FETTIS stated access for maintenance from the west would be better if the fence is erected on the east side.

Max Swanson appeared before the Board in opposition stating that since 1969 canal has been nothing more than a city dump. In 1971 they asked help from the Health Department to control the area because of the amount of litter. Between 1971 - 76, City surveyed canal from Harry to Rock Road; cleaned out area and widened canal. In 1976 they asked Grievance Officer for help with motorcycles racing. Signs have been posted since that time. Mr. Burger asked for variance to move fence to allow him to have 110' without fence and was permitted to plant trees with the fence being on east side, the condition of canal will become problem of trash. They are afraid the canal will become less attractive if fence is not continued on the west adjacent to commercial.

MOTION: GOEBEL moved, HENDERSON seconded that the five conditions necessary for the granting of a variance had been found to exist and that the variance be granted subject to the conditions as set out in the Secretary's Report. Motion carried 3-1. (JACOB abstained from the discussion.)

The official action of the Board is reflected in the adoption of the following Resolution:

RESOLUTION NO. BZA 58-79

WHEREAS, George Middleton, Lindy Andeel and Pizza Inn of Delaware, Inc., 5900 East Central, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to vary the location of the required screening fence on property zoned the "LC" Light Commercial District and legally described as follows:

Lots 1, 2, 3 and 4 of Triple J Addition to Wichita, Kansas. Generally located on the east side of Rock Road in an area north of Harry Street.

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 23, 1979, 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 to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as the drainage channel creates a separation not ordinarily found in the same zoning district.

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 inasmuch as the location of the screening fence on the adjacent property is with the concurrence of the property owner to the east; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as it would deprive the owner of the use of 15 feet of the commercial property; and

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 due to the fact that the screening will still be provided between the commercial development and the residential development; and

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 Title 28 (Zoning Ordinance) inasmuch as the variance is only for location of the required screening; and

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 of the City of Wichita that this request for a variance to permit the location of the required screening to be located on adjacent property on property zoned the "LC" Light Commercial District and legally described as:

Lots 1, 2, 3 and 4 of Triple J Addition to
Wichita, Kansas. Generally located on the
east side of Rock Road in an area north of
Harry Street.

be approved subject to the following conditions:

1. The variance shall be granted to permit the required screening fence to be erected on Lots 1 thru 9 of Block 4, Lynncrest Heights Addition in lieu of Lots 2,3, and 4 of Triple "J" Addition to Wichita, Kansas.
2. The maintenance of the fence shall be subject to the same requirement as if the fence were located on the applicant's property.
3. If at anytime the existing fence located on Lots 10, 11, 15 and 16 of Block 4, Lynncrest Heights Addition is in need of maintenance and repair, the Superintendent of Central Inspection shall notify the owner of Lot 4, Triple "J" Addition who shall be responsible for the maintenance of said fence. Should the maintenance of the fence not be made within 30 days, the variance of the location of the fence for Lot 4, Triple "J" Addition shall become null and void and the fence shall be erected along the west line of the drainage maintenance access easement of said Lot 4.

ADOPTED AT WICHITA, KANSAS, this 23rd day of October, 1979 .

Earl Henderson, Chairman

ATTEST:

Glen E. Lytle, Assistant Secretary

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17. Case No. BZA 59-79 - B-R-D, Partnership, 460 N. Terrace, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita requests an exception to permit the establishment of an off-street parking lot, on property zoned "A" Two-family Dwelling District, and legally described as follows: