

22-9-63 - Kenneth B. & Helot L.
Culkin request variance from setback
requirements on Bluff Ct. bet. Clark
Kinkaid

ACTION

DATE 5-28-63

COMMITTEE App.

Sya

M.A.P.C. _____

B.C.C./B. CO. C. _____

RESOLUTION N.O. BZA 9-63

WHEREAS, Kenneth B. and Helen L. Culkin, 2115 Bluff Court, Wichita, Kansas, by John Callahan, attorney, 512 North Market, Wichita, Kansas, have filed an application for variance of the minimum front yard setback of 25 feet, as required in the Zoning Ordinance, to 4.5 feet, for property located at 2115 Bluff Court, and being legally described as

Lot Six (6) and the south five (5) feet of Lot five (5), Block "B", Miles Green Valley Addition, in the City of Wichita, Sedgwick County, Kansas; and

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, in regular meeting, consider said application on May 28, 1963; and

WHEREAS, the Board of Zoning Appeals has determined that it has jurisdiction to consider said request for a variance under the provisions of Section 2.12.590 (2), Code of the City of Wichita; and

WHEREAS, the property is zoned "AA" and requires a front yard setback of 25 feet; and

WHEREAS, the Board has found that the dwelling house now located on the above property was constructed in violation of the front yard setback requirement of 25 feet; and

WHEREAS, the Board of Zoning Appeals has found that the request for variance arises from a condition which is unique and not ordinarily found in the same zoning district in that cul-de-sacs in Wichita are not commonly found and such lots created by the use of cul-de-sacs create odd shape lots having a different relation of building lines to property lines and street lines, as compared to "gridiron" type subdivisions; and also is unique in that the Building Inspection Division (now Central Inspection), failed to cite the violation when in progress of construction and after completion; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance requested would not adversely affect the rights of adjacent property owners inasmuch as the actual violation of the front yard setback requirement has existed since 1961 in this fully developed addition without complaint from adjoining property owners, and none of said adjoining property owners appeared in protest at this meeting; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the Zoning Ordinance will constitute unnecessary hardship upon the applicant inasmuch as it would necessitate the removal of a front portion of their house, which would lessen substantially the value and appearance of the property; and

WHEREAS, the Board of Zoning Appeals has found that this variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

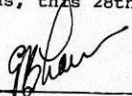
WHEREAS, as shown above, each of the four conditions required by Section 2.12.590.2 of the City Code of Wichita to be present before a variance can be granted, has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, Kansas, that the request for a variance from the strict enforcement provisions of the Zoning Ordinance to require less front yard setback than is normally required by the Zoning Ordinance on property legally described as

Lot Six (6) and the south five (5) feet of
Lot five (5), Block "B", Miles Green Valley
Addition, in the City of Wichita, Sedgwick
County, Kansas,

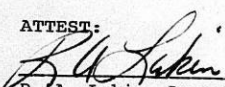
and generally located on Bluff Court between Clark and Kinkaid Street, be and the same is hereby approved, and the Superintendent of Central Inspection is hereby authorized to issue the appropriate permit.

ADOPTED at Wichita, Kansas, this 28th day of May, 1963.



E. B. Law, Chairman

ATTEST:



R. A. Lakin, Secretary

June 11, 1963

Mr. and Mrs. Kenneth B. Culkin
2115 Bluff Court
Wichita, Kansas

Dear Mr. and Mrs. Culkin:

Re: BZA 9-63

On June 3, 1963, we advised you that the Board of Zoning Appeals had approved subject application for a variance to the Zoning Ordinance to legalize the location of an existing house on property legally described as Lot 6 and the south 5 feet of Lot 5, Block B, Miles Green Valley Addition, which is generally located on Bluff Court between Clark and Kinkaid Street.

We also advised that the Board's decision might be appealed to the City Commission, provided that such appeal was filed on or before June 7, 1963.

The City Clerk has advised that no appeal was filed on or before the date indicated, and the decision of the Board of Zoning Appeals is, therefore, final.

A copy of the resolution setting forth action of the Board is attached for your information and files.

Very truly yours,

Robert A. Lakin
Secretary

RAL:JWE:ber

cc: Glen Lytle, Superintendent of Central Inspection
John Callahan, attorney, 512 North Market

Board of Zoning Appeals

June 4, 1963

C. H. Funk, City Clerk

Robert A. Lakin, Secretary

Case BZA 9-63

Attached is a copy of BZA Resolution 9-63, covering action taken by the Board of Zoning Appeals on the above case.

This case was heard on May 28, 1963, and an appeal may be filed in your office on or before June 7, 1963.

If an appeal is filed, please advise.

Robert A. Lakin
Secretary

RAL:ber

Attachment

June 3, 1963

Mr. and Mrs. Kenneth B. Culkin
2115 Bluff Court
Wichita, Kansas

BJA 9-63

Dear Mr. and Mrs. Culkin:

This is to advise you that at its regular meeting of May 26, 1963, the Board of Zoning Appeals of the City of Wichita, considered your request for a variance to the Zoning Ordinance to legalize the location of an existing house on property legally described as:

Lot 6 and the south 5 feet of Lot 5, Block B, Miles
Green Valley Addition, which is generally located on
Bluff Court between Clark and Kinkaid Street,

which dwelling was constructed within 4.5 feet of the front property line, rather than using the required 25 foot setback. After discussion, it was the action of the Board of Zoning Appeals to approve your request.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the Board of City Commissioners within ten days of the date of the Board's action. Accordingly, an appeal could be filed in this case on or before June 7, 1963.

Subsequent to the expiration of the appeal period, you will be advised whether or not an appeal has been filed. If no appeal has been filed on or before June 7, 1963, the decision of the Board will be final.

Very truly yours,

R. A. Lakin
Robert A. Lakin
Secretary

RAL:ber

cc: C. H. Funk, City Clerk
Glen Lytle, Superintendent of Central Inspection
John Callahan, 512 North Market

SECRETARY'S REPORT

CASE NO. BZA 9-63

GENERAL DESCRIPTION

This case involves a tract of land generally located on Bluff Court between Clark and Kinkaid Street. The property in question and all of the property in the surrounding area is zoned "AA" Single Family.

All the property in the immediate area has been developed into single family housing.

REQUEST

The request is for a variance to allow an existing house to be within 4.5 feet of the required front yard setback rather than 25 feet which is the normal requirement in an "AA" district. (See Attachment #2 - Plot plan).

The variance is within the jurisdiction of the Board of Zoning Appeals to grant providing the four conditions set forth below are found to exist:

1. That the variance desired arises from some condition which is not ordinarily found in the same zoning district;
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 enforcement provisions of this zoning ordinance would constitute unnecessary hardship upon the property owner represented in the appeal.
4. That the variance desired is not against the public interest.

The applicants have submitted their justification for the above items and it is included as Attachment #1 of this report.

COMMENTS BY THE SECRETARY

This variance has been requested because the applicants' residence has been constructed within approximately 4 feet of the curb line of the cul-de-sac on Bluff Court. The required front yard setback on this lot is 25 feet. The applicants also point out that cul-de-sacs are relatively new and not specifically mentioned in the city code and because of the deviation from the gridiron type of platting, setbacks on cul-de-sacs are easy to overlook and violate.

The applicants also contend that if a straight line is drawn from the front edge of adjoining properties which are set back 25 feet from the cul-de-sac, there would be no violation.

The applicants have attempted to sell the property and the title was turned down by a local attorney for the prospective purchaser on the grounds that their title was not merchantable by reason of the setback violation.

In checking with the Division of Central Inspection, it was found that the developer, in February 1961, applied for a building permit to construct this particular house and at the time this permit was taken out the developer signed a statement stipulating that he would comply with all setback requirements relative to construction of the house. Evidently the developer was not cognizant of the setback requirements on cul-de-sacs at the time this house was constructed.

The front yard setback requirements are determined in the same manner on cul-de-sacs as they are on the gridiron type of block system. In other words, the front yard setback would be the minimum horizontal distance between the front property line and the front building line which in this case would be a curved line 25 feet from the property line abutting the cul-de-sac.

UNIQUENESS

The applicants are of the opinion that this situation is unique and not ordinarily found in the same zoning district because of the presence of said cul-de-sac and inexperience of local builders with the same.

The Secretary is of the opinion that cul-de-sacs in Wichita are somewhat unique and not found in the "AA" district except where drainage problems exist or where there are unusual sized and shaped tracts of land. The builder, in this instance, evidently was not as cautious as he should have been in that the house was constructed on a line extended from and between the front edge of the two adjoining houses. Since the house was constructed and inspected under the jurisdiction of the Building Inspection Division, or its successor, and not cited as a violation, additional proof is found that construction on cul-de-sacs is different and unique. It is the recommendation of the Secretary that this condition be found to exist.

ADJOINING PROPERTY

The Secretary concurs with the applicant in that the granting of this variance should in no way affect the rights of adjacent property owners inasmuch as the actual violation of the front yard setback requirement has existed since 1961 in this fully developed addition without complaint from adjacent property owners.

HARDSHIP

The applicants have suggested that the strict application of the enforcement provisions of the zoning ordinance will constitute an unnecessary hardship on them for the reason that it would cost several thousand dollars to remove the front portion of the house in order to alleviate the existing violation. They have also suggested that if the front portion of their house were removed, the value and appearance of the house would be substantially lessened.

The Secretary has suggested on numerous occasions that one test of hardship exists if the property cannot be used for the purpose for which zoned and which would be a right of use not accessible to the applicants but which is a right or use that is enjoyed by other property owners in the same district under similar circumstances. However, monetary loss is not to be completely abandoned as a valid reason.

In this instance, it appears that the applicants have owned this particular property for several years without being aware

that they were in violation. According to their statement of justification, the applicants did not become aware of this violation until they tried to sell their property. Neither was the city aware of the violation.

The Secretary is of the opinion that hardship can be found to exist and that because of the violation (not occasioned by them), they are unable (as are property owners in the surrounding area), to obtain the full enjoyment of value from their property.

PUBLIC INTEREST

It appears that the desired variance will in no way affect the public interest.

It is the opinion of the Secretary that all four conditions necessary to granting a variance have been found to exist. Therefore, it is recommended that the desired variance be granted.

REASONS FOR FRONT YARD VARIANCE AT 2115 BLUFF COURT,
WICHITA, KANSAS.

The need for the variance request arises by virtue of applicant's residence being constructed within approximately four feet of the curb line of the culdesac in Bluff Court, which is in violation of Section 28.04.040 paragraph C 1.2 of the Code of the City of Wichita, which requires a minimum front yard set back of 25 feet. Culdesacs are relatively new and are not specifically mentioned in the City Code and because of their deviation from the grid iron type of platting are easy to overlook and violate.

The principal purpose of set back requirements is for beautification of a development, in other words for visual purposes. The variance as shown by the attached survey drawing of applicant's residence if a straight line were to be drawn continuing the 25 foot set back, disregarding the culdesac, there would be no violation. In any event, the resulting violation was not occasioned by the applicants. Applicants have attempted to sell their residence and their title has been turned down by a local attorney for the prospective purchaser on the grounds that their title is not merchantable by reason of this set back violation. Applicants would sustain a great monetary loss if they are required at this date to comply with the 25 foot set back requirement. Applicants submit that they have satisfied the four conditions necessary for this Board to have jurisdiction to allow their variance request:

1. The variance desired arises from a condition which is not ordinarily found in the same zoning district because of the presence of said culdesac and the inexperience of local builders with the same.

2. The granting of the requested variance will not affect the rights of adjacent property owners because the actual variance has existed for several years in this fully developed addition without complaint of adjacent owners, and in fact the location of applicants' house where it is enhances the beauty of the development.

3. The strict application of the enforcement of the provisions of the said zoning ordinance would constitute an unnecessary hardship upon applicant owners for the reason that it would cost several thousand dollars to remove the front portion of their house and by so doing the appearance the value of their house would be substantially lessened.

4. The variance desired is not against the public interest for the reasons heretofore mentioned.

March 29, 1963

State of Kansas)
County of Sedgwick) ss

RE: 2115 Bluff Ct.

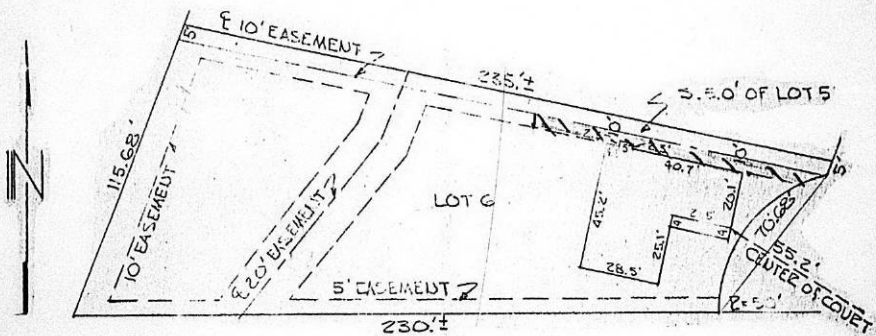
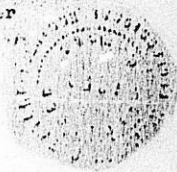
I, K. O. Taylor, a licensed professional engineer in the State of Kansas and a competent surveyor, do hereby certify that I did on the 29th day of March, 1963, survey the following:

Lot 6 and the South 5 feet of Lot 5, Block B, Miles Green Valley Addition, an addition in Wichita, Kansas.

On said lots is a house with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lots by buildings on adjacent lots.

The accompanying plat is a true and correct exhibit of said survey.

K. O. Taylor
K. O. TAYLOR,
Consulting Engineer



BZA 9-63
Attachment #2

file

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

May 8, 1963

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 9-63

An application has been filed by Kenneth D. and Helen L. Culin, 2115 Bluff Court, Wichita, Kansas, by John Callahan, attorney, as provided in Section 2.12.590.2 of the Code of the City of Wichita, Kansas. The applicants request a variance of 19.5 feet to the minimum front yard setback of 25 feet, on property

legally described as a portion of the property that has four conditions:
Lot 6 and the south 5 feet of Lot 5, Block B, Mules Green Valley Addition,
generally located on Bluff Court between Clark and Kinkaid.

This application has been assigned Case No. BZA 9-63. A hearing will be held by the Board of Zoning Appeals on Tuesday, May 28, 1963, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Robert A. Lakin
Secretary

BZA 9-63 NOTICES MAILED MAY 9, 1963

Kenneth B. and Helen L. Culkin
2115 Bluff Court

John Callahan
512 North Market

Richard Gordon Smith
2127 Bluff Court

Jerry Pinson and Billie
2123 Bluff Court

Lee A. and Wanda Smith
2121 Bluff Court

James W. and Virginia L. Morgan
2119 Bluff Court

Gene and Florine Miller
2117 Bluff Court

Katherine Pennington
2113 Bluff Court

Ray H. and Opal Mitchell
2111 Bluff Court

Ernest C. and Margaret Jones
2109 Bluff Court

Vernon G. and Berneice Nance
2107 Bluff Court

Charles E. and Diane Jean Miller
960 Prairie Park Road

Otis and Wanda Gilliland
3715 Clark Court

Richard D. and Delma J. Bethel
3713 Clark Court

Gene and Marie Miles
1313 South Maize Road

Elmer W. and Lauretta M. Weber
3725 Clark Court

William J. and Martha E. Ogden
3721 Clark Court

Buford L. and Selma M. Moore
3717 Clark Court

Donald L. and Florence E. Mellor
3705 Clark Court

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

APPLICATION FOR VARIANCE

- I. NAME OF APPLICANT Kenneth B. Culkin and Helen L. Culkin
MAILING ADDRESS 2115 Bluff Court, Wichita, Kansas PHONE _____
NAME OF AUTHORIZED AGENT John Callahan, Attorney
MAILING ADDRESS 512 North Market, Wichita, Kansas PHONE AM 4-7191
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owner
(OWNER, TENANT, LESSEE, OTHER) various
- II THE VARIANCE REQUESTED IS an exception to the minimum front yard
set back of 25 feet.

FOR PROPERTY LOCATED AT 2115 Bluff Court
AND LEGALLY DESCRIBED AS: Lot Six (6) and the South Five (S.5) Feet of
Lot Five (5), Block "B", Miles Green Valley Addition
IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED AA.
(GIVE METES AND BOUNDS DESCRIPTION BELOW IF APPROPRIATE):

- III. THE APPLICANT HEREIN, OR HIS AUTHORIZED AGENT, ACKNOWLEDGES:
- A. THAT HE HAS RECEIVED AN INSTRUCTION SHEET CONCERNING THE FILING AND HEARING OF THIS MATTER;
 - B. THAT HE HAS BEEN ADVISED OF THE FEE REQUIREMENTS ESTABLISHED BY SECTION 2.12.580 OF THE CODE OF THE CITY OF WICHITA (ORDINANCE No. 24-606); AND THAT THE APPROPRIATE FEE IS HEREWITH TENDERED;
 - C. THAT HE HAS BEEN ADVISED OF HIS RIGHT TO APPEAL OF THE DECISION OF THE BOARD TO THE CITY COMMISSION WITHIN TEN (10) DAYS OF THAT DECISION;
 - D. THAT ALL DOCUMENTS ARE ATTACHED HERETO AS NOTED IN PARAGRAPHS 3 AND 4 OF THE INSTRUCTIONS.
Kenneth B. Culkin and
Helen L. Culkin

APPLICANT
By John Callahan
AUTHORIZED AGENT

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING
APPEALS, _____ (A.M. - P.M.), _____, 19____,
TOGETHER WITH APPROPRIATE FEE OF \$50.00.

SIGNED

March 29, 1963

State of Kansas)
County of Sedgwick) ss

RE: 2115 Bluff Ct.

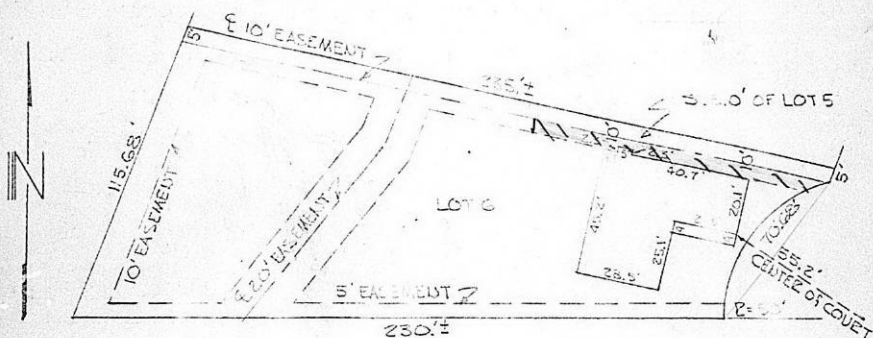
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On said lots is a house with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lots by buildings on adjacent lots.

The accompanying plat is a true and correct exhibit of said survey.

K. O. Taylor
K. O. TAYLOR
Consulting Engineer



BZA 9-63
Attachment #2

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WICHITA, KANSAS.

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The principal purpose of set back requirements is for beautification of a development, in other words for visual purposes. The variance as shown by the attached survey drawing of applicant's residence if a straight line were to be drawn continuing the 25 foot set back, disregarding the culdesac, there would be no violation. In any event, the resulting violation was not occasioned by the applicants. Applicants have attempted to sell their residence and their title has been turned down by a local attorney for the prospective purchaser on the grounds that their title is not merchantable by reason of this set back violation. Applicants would sustain a great monetary loss if they are required at this date to comply with the 25 foot set back requirement. Applicants submit that they have satisfied the four conditions necessary for this Board to have jurisdiction to allow their variance request:

1. The variance desired arises from a condition which is not ordinarily found in the same zoning district because of the presence of said culdesac and the inexperience of local builders with the same.

2. The granting of the requested variance will not affect the rights of adjacent property owners because the actual variance has existed for several years in this fully developed addition without complaint of adjacent owners, and in fact the location of applicants' house where it is enhances the beauty of the development.

3. The strict application of the enforcement of the provisions of the said zoning ordinance would constitute an unnecessary hardship upon applicant owners for the reason that it would cost several thousand dollars to remove the front portion of their house and by so doing the appearance value of their house would be substantially lessened.

4. The variance desired is not against the public interest for the reasons heretofore mentioned.

CERTIFICATE OF OWNERSHIP
- - - - -

GUARANTEE ABSTRACT COMPANY, Inc., hereby certifies the following to be a true and correct list of the property owners as shown by the records in the office of the Register of Deeds of Sedgwick County, Kansas, of all lots in Miles Green Valley Addition and Miles 3rd and a Replat of a portion of Lot 3, Block A. Miles Green Valley Addition, and of the Real Estate within a radius of 200 Feet of:

Lot 6 and the South 5 Feet of Lot 5, Block B, in
Miles Green Valley Addition

G U A R A N T E E A B S T R A C T C O M P A N Y	Description	Owner/Owners	Address
	<u>Miles Green Valley</u>		
	Block A		
	Lots 1-2	Donald L. Mellor and Florence E.	3705 Clark Court
	Lot 4	Buford L. Moore and Selma M.	3717 Clark Court
	Lot 5	William J. Ogden & Martha E.	3721 Clark Court
	Lot 6	Elmer W. Weber and Laurette M.	3725 Clark Court
	Lot 7	Gene Miles and Marie	1313 So. Maize Road
	Lot 3, except portion platted as part of Miles 3 rd Addition	Richard D. Bethel and Delma J.	3713 Clark Court
	<u>Miles 3rd and a Replat of a portion of Lot 3, Block A, Miles Green Valley Addition.</u>		
	Block 1	Otis Gilliland and Wanda	3715 Clark Court
	<u>Miles Green Valley</u>		
	Block B		
	Lot 1	Charles E. Miller & Diane Jean	(960 Prairie Park 2101 Bluff Court
	Lot 2	Vernon G. Nance & D. Berneice	2107 Bluff Court
	Lot 3	Ernest C. Jones and Margaret	2109 Bluff Court
	Lot 4	Ray H. Mitchell & Opal	2111 Bluff Court
	Lot 5 exc. S 5'	Katherine Pennington	2113 Bluff Court
	S 5' of Lot 5, all of Lot 6	Kenneth B. Culkin & Helen L.	2115 Bluff Court
	Lot 7 and part of Lot 8-Triangular tract: Beg. at pt. NEerly of Lot line dividing Lots 7 and 8, which is also the NWeerly cor of said Lot 8, for beg., SW along sd Lot line dividing 7 and 8 to S/1 of said lots, E along said Lot line 17.6', NEerly on said line to beg.	Gene Miller and Florine	2117 Bluff Court

G Part of Lot 8: which is all of Lot 8,
 except tract sold to Miller.
 U James W. Morgan and Virginia L. 2119 Bluff Court
 A Lot 9 Lee A. Smith and Wanda 2121 Bluff Court
 R Lot 10, except Beg. at NW/cor Lot 10,
 S 34.03' to BE/cor Lot 10 106.09',
 NW 121' m/1 to beg.
 A Jerry Pinson and Billie 2123 Bluff Court
 N Part of Lot 10,
 which is the
 T exception above,
 and all of Lot 11 Richard Gordon Smith 2127 Bluff Court
 E Lots 12 and 13 Gene and Marie Miles 1313 So. Maize Road
 E

WITNESS our Hand and Seal this the 24th day of

A April, 1963.

GUARANTEE ABSTRACT COMPANY, INC.,

By *Quinn M. Pustinger*
 Vice-President.

Order No. 54735

C
 O.,
 I
 N
 C.

PAYMENT NOTICE
City of Wichita

PAY AT TREASURER'S OFFICE -- FIRST FLOOR

Bld'g & Elev. _____ Elec. _____ Elev. Insp. _____
Exam Fees _____ Hse. Mvr. _____ Hse. Moving _____
Licse. _____ Mech. _____ Oil Well _____ Pav. Cuts _____
Plan. _____ Plb'g. _____ Plb'g. Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

DESCRIPTION	AMOUNT

Name _____

Address _____

Type _____ Due Date _____

Comments: _____

Date _____ By _____

State of Kansas
County of [unclear]

I, K. C. [unclear]
of Kansas
on the 29th

Id. [unclear]
M. [unclear]
W. [unclear]

On said [unclear]
in the clear
on said lot

The acc [unclear]
survey.

