

BZA 9-74 - Contracting Unlmtd.
requests variance of rear yard &
side yard setback for east side
of Belmont in an area south of
Gilbert.

M.A.P.C.
B.C.C./B. CO. C.

POSTED
4-4-74

ACTION

DATE

BZA COMMITTEE *denied* *4-23-74*

M.A.P.C. _____

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

BZA 9-74 - Contracting Unltd.,
requests variance of rear yard &
side yard setback for east side
of Belmont in an area south of
Gilbert.

Map No. 5746
 Sec. 26
 Twp. 27
 Range 1E

BZA- 9-74
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: 0.15 (50 ft. by 135 ft.)
2. Adjoining Zoning: E A S A W A N A
3. Land Use: East SINGLE FAM South SINGLE FAM
 West TWO FAM North SINGLE FAM
4. Sketch Plan Land Use is for: _____
5. Present Land Use if for: SINGLE FAM.
6. Area (is) (is not) platted. .

PHOTO DATA:

Taken by _____ Date _____ Time _____

GENEVIEVE WILLIAMS
 SALES COUNSELOR
 682-2723

The Gallery®
 OF HOMES

DON DINNING, REALTORS
 3900 E. HARRY, WICHITA, KANSAS 67218
 OFF. 316-684-0526

MORRIS
 444, 395, 262, 213, 98, 49

BROADVIEW

BELMONT

CRESTWAY

BROWNS

TERRELL'S

OF BLY C

Note April 24 - Steve Townsend
 wants a copy of the minutes sent to
 him as soon as they are ready!

Martha - When she terminated

4-2-74



IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

CONTRACTING UNLIMITED, INC.

Plaintiff

C. No. 30618

vs.

THE BOARD OF ZONING APPEALS OF THE CITY

OF WICHITA, KANSAS

Defendant

C/o Jack Galbraith, Secretary
Board of Zoning Appeals
City Annex Building - 103 S. Main
Wichita, Kansas 67202
To the above-named Defendant.

SUMMONS

RECEIVED
SHERIFF'S DEPARTMENT
MAY 23 4 36 PM '74

You are hereby summoned to defend an action brought in the District Court of SEDGWICK County, and required to serve upon Charles E. Cline, WENDELKEN, CLINE & CROCKETT, plaintiff's attorney, whose address is 405 Brown Building, Wichita, Kansas, 67202, a pleading to the petition which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition. Your pleading

also must be filed with the District Court of Sedgwick County. As provided in section 60-213 (a), your answer must state as a counterclaim any related claim which you may have against the plaintiff, or you will thereafter be barred from making such claim in any other action.

(Seal of the Court)

DOROTHY I. VAN ARSDALE
Clerk of said District Court

Dated

By

Dorothy Harnden

Deputy Clerk



RETURN ON SERVICE OF SUMMONS

I hereby certify that I received the foregoing summons at _____ o'clock _____ M. on the _____ day of _____, 19____, and I served the same in the following manner:

(1) By delivering on the _____ day of _____, 19____, a copy of the summons, copy of the petition, and copy of _____ to each of the within-named defendants _____

(2) By leaving on the _____ day of _____, 19____, for each of the within-named defendants _____

A copy of the summons, a copy of the petition, and _____ at the respective dwelling place or usual place of abode of said defendants with some person of his or her family of suitable age and discretion.

(3) Corporate or Partnership Return: On the _____ day of _____, 19____, by _____

(4) After diligent search and inquiry was unable to find the within-named defendant _____

on the _____ day of _____, 19____.

All done in _____ County, Kansas.

Sheriff's fees:

Summons _____

Sheriff of _____ County, Kansas

Not Found _____

Mileage _____

Total _____

By _____ Deputy.

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

CONTRACTING UNLIMITED, INC.,)
)
Plaintiff,)
)
v.)
)
THE BOARD OF ZONING APPEALS)
OF THE CITY OF WICHITA, KANSAS,)
)
Defendant.)
)

C 30618

Case No. _____

RECEIVED
SHERIFF'S DEPARTMENT
SEDGWICK COUNTY, KANSAS
MAY 23 4 36 PM '74

P E T I T I O N

The Plaintiff, Contracting Unlimited, Inc., for its cause of action against the Defendant, states:

1. The Plaintiff is a corporation organized under the laws of the State of Kansas and is authorized to do business in the State of Kansas, and its principal office is at 658 South Mission, Wichita, Kansas.

2. The Board of Zoning Appeals of the City of Wichita was created by Statute K. S. A. 1973 Supp. 12-714, and by the ordinances of the City of Wichita, Section 2-12-600 to 610, and has the legal capacity to sue and be sued.

3. That the facts in said action involve a refusal of the Board of Zoning Appeals to grant a variance on the property owned by the Plaintiff and described as:

Lots 113 and 114, Fairfax Addition to Wichita, Sedgwick County, Kansas, more commonly known as 722 South Belmont, Wichita, Kansas.

The variance requested relates to the structure which is the rear building next to the alley. When the Plaintiff purchased the property in question the rear building had already been constructed. At the time of acquisition, Plaintiff intended to utilize the rear building for residential purposes and this was one of the prime considerations motivating the purchase. The building had already been

WENDELKEN,
CLINE &
CROCKETT
ATTORNEYS AT LAW
SUITE 408 BROWN BLDG.
WICHITA, KANSAS 67202
(316) 263-7596

equipped for residential use in that it contained the necessary heating, air conditioning, plumbing and electrical wiring. Shortly after the Plaintiff took possession of the property in July of 1973, it obtained a permit from the city to remodel the interior of the premises to make the structure even more desirable for residential purposes. Several weeks after said improvements to the property had commenced, a representative of the Central Inspection Division from the City of Wichita informed the Plaintiff that the side and rear setback requirements had not been satisfied and that a variance would have to be obtained. The Plaintiff, through its agent, Steven Townsend, conferred with Martha McMurry, Assistant Secretary of the Board of Zoning Appeals and a member of the city planning staff.

Martha McMurry advised Mr. Townsend of the procedures that could be followed to most effectively present the Plaintiff's request for a variance. The Plaintiff relied on the recommendations of McMurry and presented its case accordingly. McMurray then indicated that the recommendation of the staff to the Board of Zoning Appeals would be favorable, however, before the recommendation of the staff was published McMurry left the employment of the City. The recommendation of the staff was to deny the request for the variance and the Board of Zoning Appeals adopted the staff's recommendation. The Plaintiff then conferred with the planning staff and was informed that the Plaintiff could have presented additional evidence in support of its request and this evidence, including neighborhood endorsement, might have resulted in favorable consideration of Plaintiff's request. Plaintiff's agent, Steve Townsend, submitted a letter of justification, which is attached hereto as part of Exhibit "D"

4. It is the position of the Plaintiff herein that the variance should be granted by reason of the fact that:

- a. It arises from a condition unique to the property in question which is not ordinarily found in the same district.

b. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.

c. That strict compliance with the provisions of the Code of the City of Wichita will constitute unnecessary hardship upon all parties involved.

d. That the variance will not adversely affect public health, safety, morals, order, convenience, prosperity, or general welfare, but will, in fact enhance the general welfare.

e. The granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinances. That attached hereto and marked Exhibit "A" and made a part hereof, is a Notice of Appeal, a copy of which was served upon John Decker, City Attorney and on Jack Galbraith, Secretary of the Board of Zoning Appeals, and on the Chairman and members of the Board of Zoning Appeals; and that Exhibit "B", attached hereto and made a part hereof, is a true and correct copy of all pertinent proceedings before such Board, all as required in K. S. A. 60-2101.

5. Plaintiff herein further alleges that a refusal to grant the variance will cause them irreparable damage.

WHEREFORE, Plaintiff prays that the District Court of Sedgwick County, Kansas, hear said matter and that it grant the variance requested by the Plaintiff and enjoin the Board of Zoning Appeals from enforcing the side and rear yard setbacks against the Plaintiff and make such further orders as may be necessary to terminate all issues between the Plaintiff and the Board of Zoning Appeals of the City of Wichita to the end that the premises owned by the Plaintiff be considered

as legally located on said lot for residential purposes.

WENDELKEN, CLINE & CROCKETT

By

Charles M. Cline

Charles M. Cline

Certificate of Clerk of the District Court. The above
is a true and correct copy of the original instrument
which is on file or of record in this court.

Done this 23 day of May 1944
DOROTHY I. VAN ARSDALE, Clerk

By D. Starnes Deputy



BEFORE THE BOARD OF ZONING APPEALS

IN THE MATTER)
)
 OF)
)
BZA 9-74)
_____)

NOTICE OF APPEAL TO THE DISTRICT COURT

TO: JACK GALBRAITH, Secretary of the Board of
 Zoning Appeals, and JOHN DEKKER, City Attorney.

TAKE NOTICE that Contracting Unlimited, Inc., does and has
appealed to the District Court of Sedgwick County, Kansas from the
decision rendered and made in the above entitled action of the Board of
Zoning Appeals on April 23, 1974, wherein their application for a
variance was denied, and from all other rulings and findings of said
Board adverse to Contracting Unlimited, Inc.

DATED: May 22, 1974

WENDELKEN, CLINE & CROCKETT
Attorneys for Contracting Unlimited, Inc.

By Charles M. Cline
Charles M. Cline

ACKNOWLEDGEMENT OF SERVICE

The undersigned, Jack Galbraith, Secretary of the Board of
Zoning Appeals and John Dekker, City Attorney, acknowledge service of the
foregoing Notice of Appeal to the Sedgwick County District Court by Con-
tracting Unlimited, Inc. on this 22nd day of May, 1974.

Jack Galbraith
Jack Galbraith

John Dekker
John Dekker

WENDELKEN,
CLINE &
CROCKETT
ATTORNEYS AT LAW
SUITE 408 BROWN BLDG.,
WICHITA, KANSAS 67202
(316) 263-7598

EXHIBIT A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served on the Chariman and Members of the Board of Zoning Appeals of the City of Wichita, Kansas, identified below, on May 22, 1974 by depositing a copy of said Appeal in the United States Mail postage prepaid, certified with return receipt requested.

Chairman
James Richardson
1857 N. Poplar
Wichita, Kansas 67214

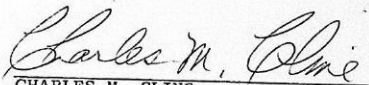
Members:

Rosemarie Murphy
3740 N. Topeka
Wichita, Kansas 67214

Mr. Harlan Clonts
4217 E. Douglas
Wichita, Kansas 67209

Mr. Ronald E. Lee
1626 N. Hillside
Wichita, Kansas 67214

Marjorie L. Taylor
1000 S. Woodlawn Apt. 502
Wichita, Kansas 67218


CHARLES M. CLINE

APPLICATION FOR VARIANCE

I. Name of Applicant Contracting UnlimitedMailing Address 658 S. Mission 67207 Phone 686-1031Name of Authorized Agent Steve TownsendMailing Address 658 S. Mission Phone 686-1031Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other)II. The variance requested is for rear Dwelling Unit,
rear yard 2.8 feet and side yard 2.5 Feetfor property located 722 South Belmont
Wichita, Kansand legally described as: Lots 113 & 114, Fairfax
addition to Wichita, Kansasin the City of Wichita; and which is presently zoned A

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 bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Contracting Unlimited Inc.
ApplicantSteve Townsend
Authorized AgentOFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 3:15 PM (a.m. - p.m.), March 22 19 74
together with appropriate fee of \$50.00.Charles L. Newley
Signed

Steve Townsend
658 S. Mission
Wichita, Kansas 67207

March 20, 1974

Gentlemen:

I submit that the rear building at 722 S. Belmont, legally known as, Lots 113 and 114, Fairfax Addition to Wichita, Kansas, lacks 2.8 feet to meet rear yard requirements and also lacks .5 feet on one side for side yard requirements for a residence. The requirements stated in the city ordinances for this location and zoning are: there must be 20 feet from the rear of the building to the center line of the alley, and that there must be 6 feet between the building and property line in a side yard.

In the future I would like to use the rear building as a residence. The rear building was built and placed on the lot for reasons that we feel are unique to this property. First, the lot is substandard in that it is smaller than the typical lot of today which compounds the problems of space and thus the placement of buildings. The front house was built in the typical location as are the neighboring homes. This happened to place it on a natural spring, which is on the front part of the lot. This natural spring saturates the local ground year round, continually flooding the foundation of the front house. I have put in a sump system under the house which is not usually done in homes that do not have basements. Generally, I have spent a lot of time and money trying to care for this problem without success. We feel that this is rather unusual and unique. Because of the spring the rear building was built at the rear of the lot so it would be removed from the problem area. If this had not been done it too would have been a building with a bad record of serious settling and maintenance problems. For the owner this would have been disastrous. The rear building was also placed off center to a small degree so that one of the neighborhoods natural assets and something that lends beauty and value to the property would not be cut down, a big Maple tree. Trees are expensive to cut down and remove.

We feel that granting the permit for variance will not infringe upon the rights of adjacent or surrounding property owners. The majority of the easements are still there in the full amount or just a small amount less than full.

If the variance is not granted it will constitute a hardship upon me because I bought the property with the intention of converting the rear building into a residence. This can be done by the granting of a variance and fulfilling the needs of central inspection for a duplex. If it does not happen this way I will have bought a building that will have no real and positive use that could benefit my property or the neighborhood. In the past this rear building has been an extreme problem to the neighborhood because of the

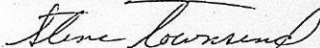
improper way the past owner has used it. He not only had many complaints but he violated several city ordinances by the way he used it. I am saying that with the proper conversion to a residence, it will be a good looking asset to the neighborhood, and to my property. It will also eliminate possible improper and illegal use of the building. It is not financially feasible to alter the basic structure to meet ordinances required on the rear and side yards. If this hardship is not relieved I will have bought and payed for something that is not usable to me and not an asset to the neighborhood, the building will just sit there and deteriorate and could possibly be misused by any future owner.

The granting of variance cannot possibly adversely affect public health, safety, morals, prosperity, order or general welfare. The alley's functional use will not be adversely affected as there is still plenty of rear yard and parking area between buildings and alley. Trash collection will not be hindered.

General spirit and intent of Title 28 will be fulfilled by the granting of variance. The surrounding neighbors are pleased with the idea that this neighborhood problem can be changed into a neighborhood asset by making the rear building into a residence. Granting the variance will not adversely affect property value and will relieve me of some serious financial problems that I might otherwise have with the property. I have pointed out that granting the variance will not affect the rights of adjacent property owners or public welfare. And due to the uniqueness of the lot there was no other choice to the placement of the building.

I would appreciate your approval on this matter.

Sincerely,



Steve Townsend

W. L. KORBER R. G. WAYMIRE
BAUGHMAN CO.
 S U R V E Y O R S

PHONE 316/262-7271

330 LAURA

WICHITA, KANSAS 67211

State of Kansas)
) SS
 County of Sedgwick)

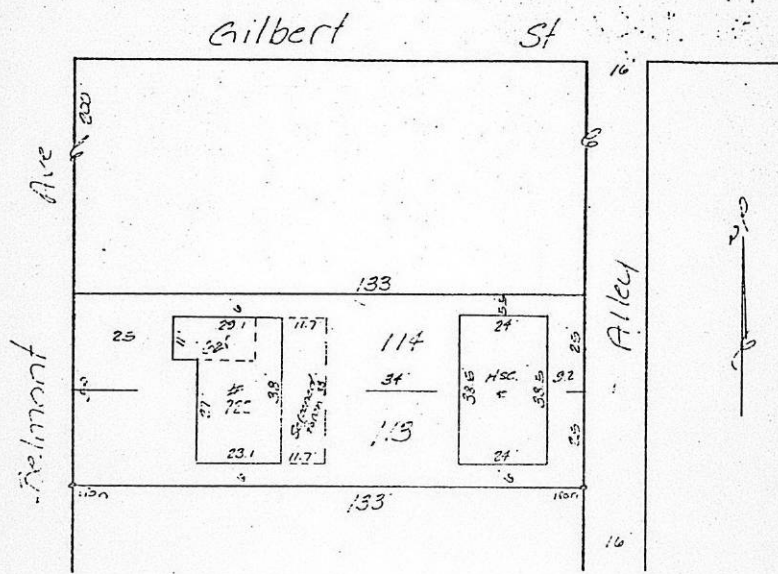
February 22, 1974

We, Baughman Company, Surveyors in aforesaid County and state do hereby certify that we did on this 22nd day of February, 1974 survey Lots 113 and 114, Fairfax Addition to Wichita, Kansas.

On said lot is house No. 777 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

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

William L. Korber
 Surveyor



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April 23, 1974

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.

S/S James Richardson
James Richardson, Chairman

ATTEST:

S/S Jack H. Galbraith
Jack H. Galbraith, Secretary

-
3. Case No. BZA 9-74 - Contracting Unlimited, 658 South Mission, Wichita, Kansas, 67207, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet, on property zoned the "A" Two Family Dwelling District and legally described as Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

MEEK pointed out the area on the map and reviewed the following report of the Secretary:

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 is requesting a variance of the rear yard and one side yard setback in order to permit the use of an accessory storage structure for residential purposes. The applicant desires to attach the accessory structure to the main structure in order to create a duplex, which is permitted in the "A" Two Family Dwelling District; however, such duplex would violate the rear yard setback and the north side yard setback required in the "A" Two Family Dwelling District and a variance of the setback requirements has been requested.

Some history of the property in question is warranted in order to gain a complete understanding of this case. Subject property contains a single family residence with attached garage which was constructed in 1949. On December 11, 1967, the previous owner of subject property, N. H. Cline, applied for a building permit to erect a 38' x 22' detached garage on the property and construction was completed on May 27, 1968. In February, 1969, the Department of Central Inspection received several complaints that Mr. Cline was utilizing the accessory structure, not as a garage, but for commercial and manufacturing uses in violation of the zoning ordinance. On June 6, 1973, Central Inspection reported that the violations had ceased. Shortly thereafter, Mr. Cline sold the property to the present applicant, Contracting Unlimited, Inc. On July 7, 1973, Mr. Steven Townsend, the agent of Contracting Unlimited, applied for a building permit to repair the accessory structure and to install windows. At that time, Mr. Townsend was informed that the structure could not be utilized for commercial or

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April 23, 1974

residential purposes and the application for a permit filled out by Mr. Townsend states that the structure would not be utilized for commercial or residential purposes. Several weeks ago, Mr. Townsend approached Central Inspection for a certificate of occupancy to use the structure for residential purposes and was informed that such a use would be in violation of the zoning ordinance.

In viewing subject property in the field it was noted that the structure, for all intent and purposes, has already been converted to a residential structure with plumbing facilities and a separate mailbox with separate mailing address although no building permit had ever been issued to allow such a conversion. It was also noted that access to the structure would almost certainly be from the alley as the main residential structure only has enough parking space to provide for the main structure and additional parking would occur adjacent to the alley in the rear yard setback. In regards to the violation of the north side yard setback, it was observed that although the distance from the accessory structure to the property line is only 5.5', the actual distance to the fence line of the property to the north is 8 feet, there are three rather large trees growing on the property line itself and apparently the property owner to the north decided to construct his fence some two or three feet inside his own property rather than eliminate the trees.

UNIQUENESS

The applicant states in his letter of justification that the existence of an underground natural spring necessitated the location of the accessory structure causing unique circumstances. However, it is the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by the actions of the applicant (owner) in that he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance will have an adverse effect on the adjacent property owners as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an

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unpaved alley. The development of subject property for a duplex will not be compatible with adjacent single family homes to the north and south.

HARDSHIP

The applicant has attempted to justify hardship by referring to the fact that he purchased the property with the intention of converting the rear building into a residence and if the application for a variance is not granted he will have purchased an asset which has no use. It should be recognized that unnecessary hardship must arise from the strict application of the zoning regulations to the specific piece of property. In other words, the hardship must be created by the provisions of the ordinance. It is the opinion of the Secretary that the hardship in this case was not created by the provisions of the ordinance, but rather by the actions of the applicant. The main structure may be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

PUBLIC INTEREST

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety or general welfare; however, the requested variance does involve setbacks which are interiorly located within the block.

SPIRIT AND INTENT

In the opinion of the Secretary, the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

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STEVE TOWNSEND, agent for the applicant, spoke to the Board in rebuttal to the Secretary's Report. He said the entire matter was because of a communication problem with Central Inspection. He said that most of the improvements were already there when he purchased the property and they did not add much. He felt they had offered legitimate reasons for requesting the variance. The Secretary viewed the property and said the conversion of the property was due to their actions, but the structure could be reconverted into what it was before, although that still would not eliminate the problem. He pointed out that the neighborhood agreed this was the best possible use for the particular structure and that if this use was not allowed, the property would be sold and the problem passed down to the next owner.

He said, in the past, the building has been a problem to the Office of Central Inspection. The previous owner had used it for a commercial use and there had been fires there as a result. The problem of what to do with such a structure, which was large enough to be a house, would not disappear. The only way to eliminate any future problem with the building is to grant the variances so it could be used as a residence.

TOWNSEND continued that using the structure as a residence will not impede traffic in the alley as there is a sidewalk to the front of the lot and that cars will be parked in front of the main structure.

RICHARDSON asked what was the space between the single family home and the structure in question. TOWNSEND replied it was 34 feet and he planned to build a breezeway to connect the buildings so that they would be considered a duplex. He said Central Inspection had agreed to give them the permit to do the work necessary to convert the house to a duplex if the Board would grant the variances required.

TAYLOR asked if the applicant had completed the purchase of the house at the time he contacted Central Inspection for a permit to repair the building and install windows. When TOWNSEND replied that he had already bought the property, she asked why did he then sign a statement agreeing the structure would not be used for residential purposes. TOWNSEND said this was all a misunderstanding with Central Inspection and that he had planned to do things differently at a later date.

CLONTS asked if there would be parking behind the structure from the alley, and TAYLOR asked if he had checked with Traffic Engineering about parking, and TOWNSEND replied Central Inspection had told him there was sufficient space for parking and the area was already paved.

MEEK pointed out the staff had received a letter from Wanda Reed, an adjacent property owner, protesting the variance as she felt alley access residences were not good for the neighborhood.

MURPHY asked if there would be parking in the alley and Townsend replied there would not be as it was illegal.

TAYLOR said she failed to understand why he felt that now the structure should be used as a residence when he had, prior to making repairs, signed a statement that it would not be used for that purpose. She felt it was a series of actions contrary to the Zoning Ordinance.

No one spoke in opposition to the request.

MOTION: TAYLOR moved, CLONTS seconded, to concur with the Secretary's report that all five conditions necessary to the granting of the variance could not be found to exist and that the request be denied. Motion carried unanimously as shown by the adoption of the following resolution.

RESOLUTION NO. BZA 9-74

WHEREAS, Contracting Unlimited, Inc., 658 S. Mission, Wichita, Kansas, 67207, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

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WHEREAS, the Board of Zoning Appeals, did at the meeting of April 23, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested does not arise 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 in fact created by the actions of the applicant (owner) inasmuch as he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 of which variance is requested will not constitute unnecessary hardship upon the property owner represented in the application since the main structure may still be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

WHEREAS, the Board of Zoning Appeals has found that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare.

WHEREAS, the Board of Zoning Appeals has found that the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

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 not 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 reduce the required side yard setback adjacent to the north

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April 23, 1974

property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.

S/S James Richardson
James Richardson, Chairman

ATTEST:

S/S Jack H. Galbraith
Jack H. Galbraith, Secretary

4. Case No. BZA 10-74 - Leisure Living, Inc., 5920 East Central, Wichita, Kansas, 67208, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the minimum lot area from 6,000 square feet to 4,500 square feet; to reduce the minimum front yard setback from 25 feet to 10 feet; to reduce the minimum side yard setback from 6 feet to 5 feet; and to reduce the minimum rear yard setback for property being platted as Lots 55 through 58 and 102 through 105 from 20 feet to 15 feet, on property zoned the "AA" Single Family District (but has been approved for the "R-5" General Residence District), and legally described as follows:

Lot 2, in Coleman School Addition, Wichita, Sedgwick County, Kansas, currently being platted as Leisure Living Ventures First Addition. Generally located on the north side of 13th Street North in an area west of Rock Road.

SECRETARY'S REPORT
CASE NO. BZA 9-74

APPLICANT: Contracting Unlimited, 658 S. Mission, Wichita, Kansas
67207

AGENT: Steve Townsend, 658 S. Mission, Wichita, Kansas 67207

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet.

GENERAL LOCATION: On the east side of Belmont in an area between Gilbert and Morris.

ZONING: Subject property is zoned the "A" Two Family Dwelling District, as are those properties to the north, south, east, and west.

LAND USE: Subject property contains a single family dwelling as do those properties to the north, south, and west. The property to the east contains a duplex. Subject property also contains a detached accessory structure next to the alley that is the purpose of this request.

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.

Secretary's Report
BZA No. 9-74
Page Two

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 is requesting a variance of the rear yard and one side yard setback in order to permit the use of an accessory storage structure for residential purposes. The applicant desires to attach the accessory structure to the main structure in order to create a duplex, which is permitted in the "A" Two Family Dwelling District; however, such duplex would violate the rear yard setback and the north side yard setback required in the "A" Two Family Dwelling District and a variance of the setback requirements has been requested.

Some history of the property in question is warranted in order to gain a complete understanding of this case. Subject property contains a single family residence with attached garage which was constructed in 1949. On December 11, 1967, the previous owner of subject property, N. H. Cline, applied for a building permit to erect a 38' x 22' detached garage on the property and construction was completed on May 27, 1968. In February, 1969, the Department of Central Inspection received several complaints that Mr. Cline was utilizing the accessory structure, not as a garage, but for commercial and manufacturing uses in violation of the zoning ordinance. On June 6, 1973, Central Inspection reported that the violations had ceased. Shortly thereafter, Mr. Cline sold the property to the present applicant, Contracting Unlimited, Inc. On July 7, 1973, Mr. Steven Townsend, the agent of Contracting Unlimited, applied for a building permit to repair the accessory structure and to install windows. At that time, Mr. Townsend was informed that the structure could not be utilized for commercial or residential purposes and the application for a permit filled out by Mr. Townsend states that the structure would not be utilized for commercial or residential purposes. Several weeks ago, Mr. Townsend approached Central Inspection for a certificate of occupancy to use the structure for residential purposes and was informed that such a use would be in violation of the zoning ordinance.

Secretary's Report
BZA 9-74
Page Three

In viewing subject property in the field it was noted that the structure, for all intent and purposes, has already been converted to a residential structure with plumbing facilities and a separate mailbox with separate mailing address although no building permit had ever been issued to allow such a conversion. It was also noted that access to the structure would almost certainly be from the alley as the main residential structure only has enough parking space to provide for the main structure and additional parking would occur adjacent to the alley in the rear yard setback. In regards to the violation of the north side yard setback, it was observed that although the distance from the accessory structure to the property line is only 5.5', the actual distance to the fence line of the property to the north is 8 feet, there are three rather large trees growing on the property line itself and apparently the property owner to the north decided to construct his fence some two or three feet inside his own property rather than eliminate the trees.

UNIQUENESS

The applicant states in his letter of justification that the existence of an underground natural spring necessitated the location of the accessory structure causing unique circumstances. However, it is the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by the actions of the applicant (owner) in that he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance will have an adverse effect on the adjacent property owners as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley. The development of subject property for a duplex will not be compatible with adjacent single family homes to the north and south.

Secretary's Report
BZA 9-74
Page Four

HARDSHIP

The applicant has attempted to justify hardship by referring to the fact that he purchased the property with the intention of converting the rear building into a residence and if the application for a variance is not granted he will have purchased an asset which has no use. It should be recognized that unnecessary hardship must arise from the strict application of the zoning regulations to the specific piece of property. In other words, the hardship must be created by the provisions of the ordinance. It is the opinion of the Secretary that the hardship in this case was not created by the provisions of the ordinance, but rather by the actions of the applicant. The main structure may be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

PUBLIC INTEREST

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety or general welfare; however, the requested variance does involve setbacks which are interiorly located within the block.

SPIRIT AND INTENT

In the opinion of the Secretary, the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

April 2, 1974

NOTICE TO ADJOINING PROPERTY OWNERS:

An application has been filed by Contracting Unlimited, 658 South Mission, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to
Wichita, Sedgwick County, Kansas. Generally
located east of Belmont in an area south of
Gilbert.

This application has been assigned Case No. BZA 9-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 23, 1974, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you desire, you may write to the Board of Zoning Appeals at 104 South Main to express your opinion on this matter. You are also welcome to speak or be represented by a spokesman at the Board of Zoning Appeals meeting when this matter will be considered.

If additional information is desired so that you may be fully informed on this matter, please call the Metropolitan Area Planning Department at 262-0611, Extension 205.

Jack H. Galbraith
Secretary

*27 Notices mailed to
adjoining property owners
4-2-74*

*10 Notices mailed
to MAPC members
4-2-74*

April 24, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case No. BLA 9-74 -
Request for Variance

At the regular meeting of the Board of Zoning Appeals on April 23, 1974, your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet, on property zoned the "A" Two Family Dwelling District, and generally located on the east side of Belmont in an area between Gilbert and Morris, was considered.

It was the action of the Board to deny this request. A Resolution is being prepared which sets forth the official action of the Board and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Contracting Unlimited, 659 S. Mission, 67207
Ms. Wanda Reed, 721 S. Crestway, 67218
Robert Feldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

May 1, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case No. BEA 9-74 -
Request for Variance

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on April 23, 1974, in connection with your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and generally located east of Belmont in an area south of Gilbert.

This Resolution reflects the official action of the Board to deny your request. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js
Encl.

cc: Contracting Unlimited, 658 S. Mission, 67207
Robert Feldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

RESOLUTION NO. BZA 9-74

WHEREAS, Contracting Unlimited, Inc., 658 S. Mission, Wichita, Kansas, 67207, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

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 April 23, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested does not arise 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 in fact created by the actions of the applicant (owner) inasmuch as he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 of which variance is requested will not constitute unnecessary hardship upon the property owner represented in the application since the main structure may still be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

WHEREAS, the Board of Zoning Appeals has found that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare.

WHEREAS, the Board of Zoning Appeals has found that the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

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 not been found to exist.

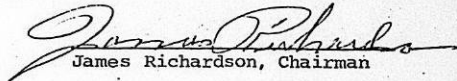
Resolution No. BZA 9-74
Page Two

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:


Lots 113 and 114 in Fairfax Addition to Wichita,
Sedgwick County, Kansas. Generally located
east of Belmont in an area south of Gilbert.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.


James Richardson, Chairman

ATTEST:


Jack H. Galbraith, Secretary

from:

JLD date:

adm.

adv. plans

com. dev.

social

graphics

- ~~john~~
- bronham
- rainko
- ebanks
- noison, v
- ~~zamillo~~
- ~~trisco~~
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File

- stockwell
- looney
- young, don
- shon
- coleman
- lindohak
- darrow
- geschwind
- curfman
- mathews
- klog
- ringwald
- hund
- butler
- noison, p
- olro
- holnicko

- gabrath
- tylin
- young, ken
- ~~shook~~
- shirkay
- humby
- pichler
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- mitchell
- cole
- kallhor
- gibson
- butson
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- pierce
- barber
- garland
- pale
- brown
- crook
- livesay
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- | | |
|-------------------------------------|-----------------------------------|
| <input type="radio"/> all staff | <input type="radio"/> information |
| <input type="radio"/> comment | <input type="radio"/> files |
| <input type="radio"/> note & return | <input type="radio"/> signature |
| <input type="radio"/> handle | <input type="radio"/> library |

remarks: *Another Summary -
 Note 3rd page concerning
 estimate on Gene Muddy.
 Have forwarded to Decker.*

Do not remove
from file.

JHS

5/22/74

#1

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.

S/S James Richardson
James Richardson, Chairman

ATTEST:

S/S Jack H. Galbraith
Jack H. Galbraith, Secretary

-
3. Case No. BZA 9-74 - Contracting Unlimited, 658 South Mission, Wichita, Kansas, 67207, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet, on property zoned the "A" Two Family Dwelling District and legally described as Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

MEEK pointed out the area on the map and reviewed the following report of the Secretary:

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 is requesting a variance of the rear yard and one side yard setback in order to permit the use of an accessory storage structure for residential purposes. The applicant desires to attach the accessory structure to the main structure in order to create a duplex, which is permitted in the "A" Two Family Dwelling District; however, such duplex would violate the rear yard setback and the north side yard setback required in the "A" Two Family Dwelling District and a variance of the setback requirements has been requested.

Some history of the property in question is warranted in order to gain a complete understanding of this case. Subject property contains a single family residence with attached garage which was constructed in 1949. On December 11, 1967, the previous owner of subject property, N. H. Cline, applied for a building permit to erect a 38' x 22' detached garage on the property and construction was completed on May 27, 1968. In February, 1969, the Department of Central Inspection received several complaints that Mr. Cline was utilizing the accessory structure, not as a garage, but for commercial and manufacturing uses in violation of the zoning ordinance. On June 6, 1973, Central Inspection reported that the violations had ceased. Shortly thereafter, Mr. Cline sold the property to the present applicant, Contracting Unlimited, Inc. On July 7, 1973, Mr. Steven Townsend, the agent of Contracting Unlimited, applied for a building permit to repair the accessory structure and to install windows. At that time, Mr. Townsend was informed that the structure could not be utilized for commercial or

residential purposes and the application for a permit filled out by Mr. Townsend states that the structure would not be utilized for commercial or residential purposes. Several weeks ago, Mr. Townsend approached Central Inspection for a certificate of occupancy to use the structure for residential purposes and was informed that such a use would be in violation of the zoning ordinance.

In viewing subject property in the field it was noted that the structure, for all intent and purposes, has already been converted to a residential structure with plumbing facilities and a separate mailbox with separate mailing address although no building permit had ever been issued to allow such a conversion. It was also noted that access to the structure would almost certainly be from the alley as the main residential structure only has enough parking space to provide for the main structure and additional parking would occur adjacent to the alley in the rear yard setback. In regards to the violation of the north side yard setback, it was observed that although the distance from the accessory structure to the property line is only 5.5', the actual distance to the fence line of the property to the north is 8 feet, there are three rather large trees growing on the property line itself and apparently the property owner to the north decided to construct his fence some two or three feet inside his own property rather than eliminate the trees.

UNIQUENESS

The applicant states in his letter of justification that the existence of an underground natural spring necessitated the location of the accessory structure causing unique circumstances. However, it is the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by the actions of the applicant (owner) in that he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance will have an adverse effect on the adjacent property owners as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an

unpaved alley. The development of subject property for a duplex will not be compatible with adjacent single family homes to the north and south.

HARDSHIP

The applicant has attempted to justify hardship by referring to the fact that he purchased the property with the intention of converting the rear building into a residence and if the application for a variance is not granted he will have purchased an asset which has no use. It should be recognized that unnecessary hardship must arise from the strict application of the zoning regulations to the specific piece of property. In other words, the hardship must be created by the provisions of the ordinance. It is the opinion of the Secretary that the hardship in this case was not created by the provisions of the ordinance, but rather by the actions of the applicant. The main structure may be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

PUBLIC INTEREST

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety or general welfare; however, the requested variance does involve setbacks which are interiorly located within the block.

SPIRIT AND INTENT

In the opinion of the Secretary, the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

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April 23, 1974

STEVE TOWNSEND, agent for the applicant, spoke to the Board in rebuttal to the Secretary's Report. He said the entire matter was because of a communication problem with Central Inspection. He said that most of the improvements were already there when he purchased the property and they did not add much. He felt they had offered legitimate reasons for requesting the variance. The Secretary viewed the property and said the conversion of the property was due to their actions, but the structure could be reconverted into what it was before, although that still would not eliminate the problem. He pointed out that the neighborhood agreed this was the best possible use for the particular structure and that if this use was not allowed, the property would be sold and the problem passed down to the next owner.

He said, in the past, the building has been a problem to the Office of Central Inspection. The previous owner had used it for a commercial use and there had been fires there as a result. The problem of what to do with such a structure, which was large enough to be a house, would not disappear. The only way to eliminate any future problem with the building is to grant the variances so it could be used as a residence.

TOWNSEND continued that using the structure as a residence will not impede traffic in the alley as there is a sidewalk to the front of the lot and that cars will be parked in front of the main structure.

RICHARDSON asked what was the space between the single family home and the structure in question. TOWNSEND replied it was 34 feet and he planned to build a breezeway to connect the buildings so that they would be considered a duplex. He said Central Inspection had agreed to give them the permit to do the work necessary to convert the house to a duplex if the Board would grant the variances required.

TAYLOR asked if the applicant had completed the purchase of the house at the time he contacted Central Inspection for a permit to repair the building and install windows. When TOWNSEND replied that he had already bought the property, she asked why did he then sign a statement agreeing the structure would not be used for residential purposes. TOWNSEND said this was all a misunderstanding with Central Inspection and that he had planned to do things differently at a later date.

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April 23, 1974

CLONTS asked if there would be parking behind the structure from the alley, and TAYLOR asked if he had checked with Traffic Engineering about parking, and TOWNSEND replied Central Inspection had told him there was sufficient space for parking and the area was already paved.

MEEK pointed out the staff had received a letter from Wanda Reed, an adjacent property owner, protesting the variance as she felt alley access residences were not good for the neighborhood.

MURPHY asked if there would be parking in the alley and Townsend replied there would not be as it was illegal.

TAYLOR said she failed to understand why he felt that now the structure should be used as a residence when he had, prior to making repairs, signed a statement that it would not be used for that purpose. She felt it was a series of actions contrary to the Zoning Ordinance.

No one spoke in opposition to the request.

MOTION: TAYLOR moved, CLONTS seconded, to concur with the Secretary's report that all five conditions necessary to the granting of the variance could not be found to exist and that the request be denied. Motion carried unanimously as shown by the adoption of the following resolution.

RESOLUTION NO. BZA 9-74

WHEREAS, Contracting Unlimited, Inc., 658 S. Mission, Wichita, Kansas, 67207, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

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April 23, 1974

WHEREAS, the Board of Zoning Appeals, did at the meeting of April 23, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested does not arise 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 in fact created by the actions of the applicant (owner) inasmuch as he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 of which variance is requested will not constitute unnecessary hardship upon the property owner represented in the application since the main structure may still be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

WHEREAS, the Board of Zoning Appeals has found that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare.

WHEREAS, the Board of Zoning Appeals has found that the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

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 not 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 reduce the required side yard setback adjacent to the north

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April 23, 1974

property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.

S/S James Richardson
James Richardson, Chairman

ATTEST:

S/S Jack H. Galbraith
Jack H. Galbraith, Secretary

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4. Case No. BZA 10-74 - Leisure Living, Inc., 5920 East Central, Wichita, Kansas, 67208, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the minimum lot area from 6,000 square feet to 4,500 square feet; to reduce the minimum front yard setback from 25 feet to 10 feet; to reduce the minimum side yard setback from 6 feet to 5 feet; and to reduce the minimum rear yard setback for property being platted as Lots 55 through 58 and 102 through 105 from 20 feet to 15 feet, on property zoned the "AA" Single Family District (but has been approved for the "R-5" General Residence District), and legally described as follows:

Lot 2, in Coleman School Addition, Wichita, Sedgwick County, Kansas, currently being platted as Leisure Living Ventures First Addition. Generally located on the north side of 13th Street North in an area west of Rock Road.

#2

May 1, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case No. BZA 9-74 -
Request for Variance

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on April 23, 1974, in connection with your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and generally located east of Belmont in an area south of Gilbert.

This Resolution reflects the official action of the Board to deny your request. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js
Encl.

cc: Contracting Unlimited, 658 S. Mission, 67207
Robert Feldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

#3

RESOLUTION NO. BZA 9-74

WHEREAS, Contracting Unlimited, Inc., 658 S. Mission, Wichita, Kansas, 67207, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

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 April 23, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested does not arise 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 in fact created by the actions of the applicant (owner) inasmuch as he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 of which variance is requested will not constitute unnecessary hardship upon the property owner represented in the application since the main structure may still be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

WHEREAS, the Board of Zoning Appeals has found that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare.

WHEREAS, the Board of Zoning Appeals has found that the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

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 not been found to exist.


Resolution No. BZA 9-74
Page Two

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:


Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.


James Richardson, Chairman

ATTEST:


Jack H. Galbraith, Secretary

4

April 24, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case No. BLA 9-74 -
Request for Variance

At the regular meeting of the Board of Zoning Appeals on April 23, 1974, your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet, on property zoned the "A" Two Family Dwelling District, and generally located on the east side of Belmont in an area between Gilbert and Morris, was considered.

It was the action of the Board to deny this request. A Resolution is being prepared which sets forth the official action of the Board and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Contracting Unlimited, 658 S. Mission, 67207
Ms. Wanda Reed, 721 S. Crestway, 67218
Robert Foldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

#5

SECRETARY'S REPORT
CASE NO. BZA 9-74

APPLICANT: Contracting Unlimited, 658 S. Mission, Wichita, Kansas 67207

AGENT: Steve Townsend, 658 S. Mission, Wichita, Kansas 67207

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet.

GENERAL LOCATION: On the east side of Belmont in an area between Gilbert and Morris.

ZONING: Subject property is zoned the "A" Two Family Dwelling District, as are those properties to the north, south, east, and west.

LAND USE: Subject property contains a single family dwelling as do those properties to the north, south, and west. The property to the east contains a duplex. Subject property also contains a detached accessory structure next to the alley that is the purpose of this request.

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.

Secretary's Report
BZA No. 9-74
Page Two

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 is requesting a variance of the rear yard and one side yard setback in order to permit the use of an accessory storage structure for residential purposes. The applicant desires to attach the accessory structure to the main structure in order to create a duplex, which is permitted in the "A" Two Family Dwelling District; however, such duplex would violate the rear yard setback and the north side yard setback required in the "A" Two Family Dwelling District and a variance of the setback requirements has been requested.

Some history of the property in question is warranted in order to gain a complete understanding of this case. Subject property contains a single family residence with attached garage which was constructed in 1949. On December 11, 1967, the previous owner of subject property, N. H. Cline, applied for a building permit to erect a 38' x 22' detached garage on the property and construction was completed on May 27, 1968. In February, 1969, the Department of Central Inspection received several complaints that Mr. Cline was utilizing the accessory structure, not as a garage, but for commercial and manufacturing uses in violation of the zoning ordinance. On June 6, 1973, Central Inspection reported that the violations had ceased. Shortly thereafter, Mr. Cline sold the property to the present applicant, Contracting Unlimited, Inc. On July 7, 1973, Mr. Steven Townsend, the agent of Contracting Unlimited, applied for a building permit to repair the accessory structure and to install windows. At that time, Mr. Townsend was informed that the structure could not be utilized for commercial or residential purposes and the application for a permit filled out by Mr. Townsend states that the structure would not be utilized for commercial or residential purposes. Several weeks ago, Mr. Townsend approached Central Inspection for a certificate of occupancy to use the structure for residential purposes and was informed that such a use would be in violation of the zoning ordinance.

Secretary's Report
BZA 9-74
Page Three

In viewing subject property in the field it was noted that the structure, for all intent and purposes, has already been converted to a residential structure with plumbing facilities and a separate mailbox with separate mailing address although no building permit had ever been issued to allow such a conversion. It was also noted that access to the structure would almost certainly be from the alley as the main residential structure only has enough parking space to provide for the main structure and additional parking would occur adjacent to the alley in the rear yard setback. In regards to the violation of the north side yard setback, it was observed that although the distance from the accessory structure to the property line is only 5.5', the actual distance to the fence line of the property to the north is 8 feet, there are three rather large trees growing on the property line itself and apparently the property owner to the north decided to construct his fence some two or three feet inside his own property rather than eliminate the trees.

UNIQUENESS

The applicant states in his letter of justification that the existence of an underground natural spring necessitated the location of the accessory structure causing unique circumstances. However, it is the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by the actions of the applicant (owner) in that he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance will have an adverse effect on the adjacent property owners as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley. The development of subject property for a duplex will not be compatible with adjacent single family homes to the north and south.

Secretary's Report
BZA 9-74
Page Four

HARDSHIP

The applicant has attempted to justify hardship by referring to the fact that he purchased the property with the intention of converting the rear building into a residence and if the application for a variance is not granted he will have purchased an asset which has no use. It should be recognized that unnecessary hardship must arise from the strict application of the zoning regulations to the specific piece of property. In other words, the hardship must be created by the provisions of the ordinance. It is the opinion of the Secretary that the hardship in this case was not created by the provisions of the ordinance, but rather by the actions of the applicant. The main structure may be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

PUBLIC INTEREST

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety or general welfare; however, the requested variance does involve setbacks which are interiorly located within the block.

SPIRIT AND INTENT

In the opinion of the Secretary, the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

#6

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

April 2, 1974

NOTICE TO ADJOINING PROPERTY OWNERS:

An application has been filed by Contracting Unlimited, 658 South Mission, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

This application has been assigned Case No. BZA 9-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 23, 1974, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you desire, you may write to the Board of Zoning Appeals at 104 South Main to express your opinion on this matter. You are also welcome to speak or be represented by a spokesman at the Board of Zoning Appeals meeting when this matter will be considered.

If additional information is desired so that you may be fully informed on this matter, please call the Metropolitan Area Planning Department at 262-0611, Extension 205.

Jack H. Galbraith
Secretary

*27 Notices mailed to
adjoining property owners
4-2-74*

*10 Notices mailed
to MAPC members
4-2-74*

#7

Steve Townsend
658 S. Mission
Wichita, Kansas 67207

March 20, 1974

Gentlemen:

I submit that the rear building at 722 S. Belmont, legally known as, Lots 113 and 111, Fairfax Addition to Wichita, Kansas, lacks 2.8 feet to meet rear yard requirements and also lacks .5 feet on one side for side yard requirements for a residence. The requirements stated in the city ordinances for this location and zoning are: there must be 20 feet from the rear of the building to the center line of the alley, and that there must be 6 feet between the building and property line in a side yard.

In the future I would like to use the rear building as a residence. The rear building was built and placed on the lot for reasons that we feel are unique to this property. First, the lot is substandard in that it is smaller than the typical lot of today which compounds the problems of space and thus the placement of buildings. The front house was built in the typical location as are the neighboring homes. This happened to place it on a natural spring, which is on the front part of the lot. This natural spring saturates the local ground year round, continually flooding the foundation of the front house. I have put in a sump system under the house which is not usually done in homes that do not have basements. Generally, I have spent a lot of time and money trying to care for this problem without success. We feel that this is rather unusual and unique. Because of the spring the rear building was built at the rear of the lot so it would be removed from the problem area. If this had not been done it too would have been a building with a bad record of serious settling and maintenance problems. For the owner this would have been disastrous. The rear building was also placed off center to a small degree so that one of the neighborhoods natural assets and something that lends beauty and value to the property would not be cut down, a big Maple tree. Trees are expensive to cut down and remove.

We feel that granting the permit for variance will not infringe upon the rights of adjacent or surrounding property owners. The majority of the easements are still there in the full amount or just a small amount less than full.

If the variance is not granted it will constitute a hardship upon me because I bought the property with the intention of converting the rear building into a residence. This can be done by the granting of a variance and fulfilling the needs of central inspection for a duplex. If it does not happen this way I will have bought a building that will have no real and positive use that could benefit my property or the neighborhood. In the past this rear building has been an extreme problem to the neighborhood because of the

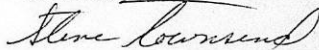
improper way the past owner has used it. He not only had many complaints but he violated several city ordinances by the way he used it. I am saying that with the proper conversion to a residence, it will be a good looking asset to the neighborhood, and to my property. It will also eliminate possible improper and illegal use of the building. It is not financially feasible to alter the basic structure to meet ordinances required on the rear and side yards. If this hardship is not relieved I will have bought and paid for something that is not usable to me and not an asset to the neighborhood, the building will just sit there and deteriorate and could possibly be misused by any future owner.

The granting of variance cannot possibly adversely affect public health, safety, morals, prosperity, order or general welfare. The alley's functional use will not be adversely affected as there is still plenty of rear yard and parking area between buildings and alley. Trash collection will not be hindered.

General spirit and intent of Title 28 will be fulfilled by the granting of variance. The surrounding neighbors are pleased with the idea that this neighborhood problem can be changed into a neighborhood asset by making the rear building into a residence. Granting the variance will not adversely affect property value and will relieve me of some serious financial problems that I might otherwise have with the property. I have pointed out that granting the variance will not affect the rights of adjacent property owners or public welfare. And due to the uniqueness of the lot there was no other choice to the placement of the building.

I would appreciate your approval on this matter.

Sincerely,



Steve Townsend

W. L. KORBER R. G. WAYMIRE
BAUGHMAN CO.
 S U R V E Y O R S

PHONE 316/262-7271

330 LAURA

WICHITA, KANSAS 67211

State of Kansas)
) SS
 County of Sedgwick)

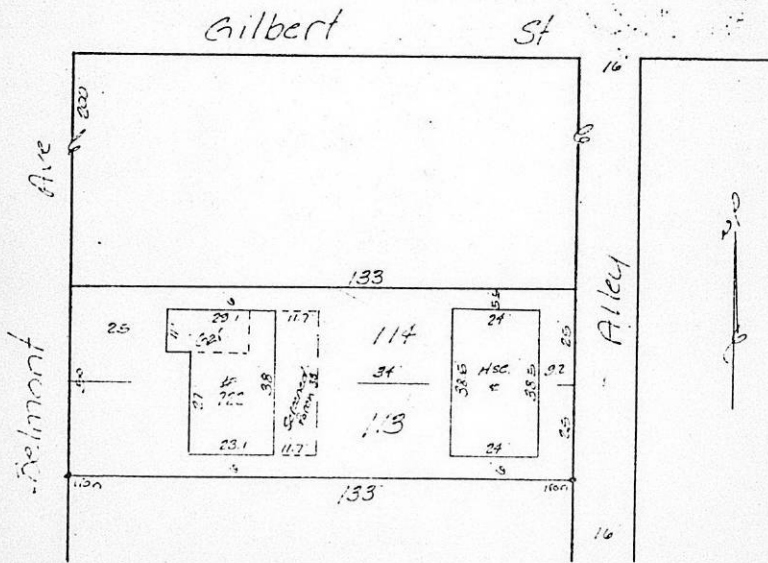
February 22, 1974

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 22nd day of February, 1974 survey Lots 113 and 114, Fairfax Addition to Wichita, Kansas.

On said lot is house No. 722 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

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

William G. Fisher
 Surveyor



BOARD OF ZONING APPEAL

CASE NO. 9-74 #5

CITY OF WICHITA, KANSAS

FILED 3-22-74

APPLICATION FOR VARIANCE

I. Name of Applicant Contracting Unlimited

Mailing Address 658 S Mission 67207 Phone 686-1031

Name of Authorized Agent Steve Townsend

Mailing Address 658 S Mission Phone 686-1031

Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other)

II. The variance requested is for rear Dwelling Unit,
rear yard 2.8 feet and side yard 2.5 Feet

for property located 722 South Belmont
Wichita, Kans

and legally described as: Lots 113 & 114, Fairfax
addition to Wichita, Kansas

in the City of Wichita; and which is presently zoned A.

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 bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Contracting Unlimited Inc.
Applicant

Steve Townsend Inc.
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 3:15 PM (a.m. - p.m.), March 22 19 74 together with appropriate fee of \$50.00.

T9-402

Charles L. Newby
Signed

WICHITA-SEDGWICK COUNTY

DATE

April 26, 1976

METROPOLITAN AREA PLANNING DEPARTMENT

TO File

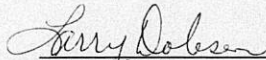
FROM Larry Dobson, Assistant Secretary

SUBJECT Case No. BZA 9-74 - Request for Variance

The above captioned case was denied by the Board of Zoning Appeals and subsequently appealed to the District Court. The Court remanded the matter back to the Board of Zoning Appeals for a rehearing and instructed that there be no time limit for the filing of an application for rehearing. No application has been filed in the 1 1/2 years since then.

In recently observing the site in the field it was noted that the rear structure had been structurally altered on the north and east sides to be in compliance with the required setbacks. It was also noted that a connecting roof had been constructed between the two structures to classify as a duplex, and that both structures were occupied.

Inasmuch as the setback violations no longer exist, this file is now considered denied and closed.


Larry Dobson
Assistant Secretary

LD:bh

February 20, 1976

Mr. Charles M. Cline
405 Brown Building
Wichita, Kansas 67202


Re: Contracting Unlimited, Inc. vs.
The Board of Zoning Appeals
Case No. C-30618; BZA 9-74

Dear Mr. Cline:

The above captioned district court case was heard on October 15, 1974, in Division 8. The journal entry from those proceedings remanded the matter back to the Board of Zoning Appeals for a rehearing of the entire matter. There was also to be no time limit for the filing of an application for rehearing. However, over a year has passed without the filing of said application, and perhaps the plaintiff no longer has an interest in pursuing the matter.

If there is still a possible intent of filing an application, we will be happy to review the procedure with you, and if not we would appreciate knowing this also, so that our case file might be taken from an active status.

Sincerely,


Larry Dobson
Assistant Secretary
Board of Zoning Appeals

LD:bh

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

December 23, 1974

TO The Files
FROM Jack H. Galbraith, Chief Planner *JHG*
SUBJECT Case No. BZA 9-74 - Request for variance

On this date Genevieve Williams came in and discussed what was needed to refile subject case for reconsideration by the Board of Zoning Appeals. Our conversation basically turned into an argument about whether or not dwelling units were really appropriate on alleys. Her desire was simply that I write a favorable recommendation to the Board of Zoning Appeals. My general advice to her was that I don't feel dwelling units are appropriate on alleys and that I felt conversions of garages on alleys were not appropriate for neighborhoods. I advised her what was necessary for this to be submitted for reconsideration, however, she advised that she would contact me again after the first of the year.

JHG:js

THE CITY OF WICHITA
OFFICE OF LAW DEPARTMENT

DATE November 4, 1974



**ON SAFETY
PHASE II**

TO Jack H. Galbraith, Secretary, Board of Zoning Appeals

FROM Lawrence J. Beilman, Assistant City Attorney

SUBJECT Contracting Unlimited, Inc. vs.
The Board of Zoning Appeals,
Case No. C-30618, BZA 9-74

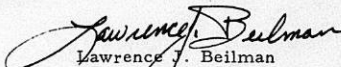
Jack, attached is a court certified copy of the Journal Entry of Judgment I filed today in the above referenced matter.

Please advise the Board of Zoning Appeals of those things we discussed the day of the District Court hearing and the status of this matter presently.

As per our agreed Journal Entry, plaintiff is to be allowed to refile for a rehearing of this matter *de novo*, i. e., a second rehearing of the entire matter, and are to be allowed to present any and all evidence pertinent to the matter. Also, there shall be no time limitation for the refiling for the rehearing and we have agreed to not raise the defense or requirement that there be new evidence that was not presentable at the first hearing before a rehearing is allowed. Make sure the Board of Zoning Appeals understands these stipulations when this matter approaches the rehearing date on your agenda.

I believe it would also be advisable to be sure and tape record the rehearing and to not give even the appearance that we, as the city, are attempting to unduly influence the Board of Zoning Appeals in their decision. It is my personal opinion that, if feasible, all the public Board of Zoning Appeals meetings should be tape recorded for our own protection and preservation of a complete record.

If you or the Board of Zoning Appeals have any questions, please contact either me or Rich Shull, your current legal counsel.


Lawrence J. Beilman
Assistant City Attorney

LJB:kh

cc: John Dekker, Director of Law
Richard A. Shull, Assistant City Attorney, Current Legal Counsel to the Board
of Zoning Appeals



2-62

JOHN DEKKER
City Attorney
LAWRENCE J. BELLMAN
Assistant City Attorney
600 City Building Annex
Wichita, Kansas 67202
262-0611 Ext. 245

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

CONTRACTING UNLIMITED, INC.,)	
)	
Plaintiff,)	
)	Case No. C-30618
vs.)	
)	Division No. 8
BOARD OF ZONING APPEALS OF)	
THE CITY OF WICHITA, KANSAS,)	
)	
Defendant.)	
)	

JOURNAL ENTRY

NOW, on this 15th day of October, 1974, the above entitled matter comes regularly on for trial before the Court, the plaintiff appears by and through its counsel, Charles M. Cline, and the defendant appears by and through its counsel, Lawrence J. Beilman, Assistant City Attorney.

THE COURT, after hearing statements of counsel and considering briefs filed and submitted by both parties and being fully and duly advised in the premises, upon stipulation and agreement by the defendant, finds that the matter should be remanded back to the Board of Zoning Appeals for a rehearing of the entire matter, do novo; and, further, that there shall be no time limitation nor defense of time for the filing of an application for rehearing; and, further, the defense of new evidence discovered after first hearing before a rehearing is allowed shall not be raised by the defendant; and, further, that plaintiff shall be granted a full and complete rehearing and be allowed to present any and all evidence pertinent to this matter.

IT IS, THEREFORE, PURSUANT TO SAID STIPULATION AND AGREEMENT BY THE DEFENDANT, ORDERED, ADJUDGED, AND DECREED that this matter is remanded to the Board of Zoning Appeals for a rehearing, do novo, and that there will be no time limitation nor defense of time for the filing of an application for rehearing and, further, the defense of new evidence discovered after first

hearing before a rehearing is allowed will not be raised by the defendant, and that the plaintiff be granted a full and complete rehearing and be allowed to present any and all evidence pertinent to this matter.

It is further ordered that the costs of this action shall be assessed against and paid by the plaintiff.

IT IS SO ORDERED.

TOM RAUM

for Judge Nicholas W. Klein
District Court, Division No. 8

APPROVED:

Lawrence J. Beilman
Lawrence J. Beilman, Assistant City Attorney
Attorney for Defendant, Board of Zoning
Appeals of the City of Wichita

Charles M. Cline
Charles M. Cline
Attorney for Plaintiff



Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 24 day of April 19 74
DOROTHY I. VAN ARSDALE, Clerk
Bertie Williams Deputy

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

October 16, 1974

TO The Files
FROM Jack H. Galbraith, Chief Planner
SUBJECT BZA 9-74 (Rehearing)

Steve Townsend, agent for Contracting Unlimited, was in the office on this date to obtain a copy of a BZA application. I supplied Mr. Townsend with a copy of the application forms for refiling his application, schedule of meeting and closing dates and advised him we would need an updated ownership list, a new filing fee and a new statement of facts wherein he should point out any and all facts he wants brought before the Board.

I requested that Mr. Townsend, or any other agent for the applicant, contact me personally when discussing this case.

JHG:js

October 10, 1974

Lawrence J. Beilman, Assistant City Attorney

Jack H. Galbraith, Secretary to Board of Zoning Appeals

Contracting Unlimited, Inc., vs. Board of Zoning Appeals
Case No. C-30618

This is to acknowledge that I will be available on Tuesday, October 15, 1974, for possible call for my testimony regarding subject case.

By memo of May 22, 1974, you were furnished with a copy of the following information:

1. BZA Minutes pertaining to Case No. BZA 9-74.
2. Correspondence forwarding copy of Resolution.
3. Copy of Resolution No. BZA 9-74.
4. Correspondence to applicant setting forth the Board's action to deny the application.
5. Secretary's Report to the Board.
6. Notice to Adjoining Property Owners.
7. Applicant's Statement of Justification and accompanying Survey.
8. Application.

By memo of June 20, 1974, we furnished you a copy of Martha McMurry's comments as related to the facts surrounding the case as she recalled them. All of the above information is in the BZA case file and is available to you.

In the past not all BZA hearings have been taped, and in checking our records we find that the April 23, 1974 hearing, at which subject case was heard, was not taped.

A presentation map, such as used in the BZA hearing, is being prepared and will be available for your use. I would suggest that we meet sometime tomorrow (Friday) to discuss this case since Monday is a holiday and the trial is set for Tuesday.

JHG:LD:js

THE CITY OF WICHITA
OFFICE OF LAW DEPARTMENT

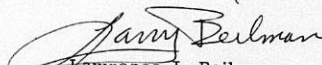
DATE October 9, 1974



TO Jack H. Galbraith, Secretary, BZA
FROM Lawrence J. Beilman, Assistant City Attorney
SUBJECT Contracting Unlimited, Inc. vs.
BZA, Case No. C-30618

Jack, this matter is set for trial 10/15/74 at 9:00 A.M. in Division 2 of District Court. I am not certain how the court will wish to proceed on this matter; therefore, I will need for you to be available in the event the court wants testimony from you regarding this case. Also, have available all materials pertinent to this matter including the tape of the hearing of this matter before the Board.

I will be in touch with you before the trial.


Lawrence J. Beilman
Assistant City Attorney

LJB:kh



June 20, 1974

Larry Beilman, Legal Counsel to the Board of Zoning Appeals
Jack H. Galbraith, Secretary

Summons associated with Case No. BZA 9-74

Concerning the above captioned case and the allegations in the petition concerning advice Martha McMurry gave to Mr. Townsend, I recently furnished her copies of the material and asked for her comments. Whether or not it is beneficial to you, attached is a copy of her reply that I received today.

If you have any questions, please advise.

JHG:js

Attachment

COMMENTS : Contracting Unlimited, Inc. vs. Board of Zoning Appeals of
the City of Wichita, Kansas

Mr. Townsend was referred to the Planning Department by the Division of Central Inspection in regard to requesting a variance of side and rear yard requirements for property located at 722 S. Belmont because the detached garage located at the rear of the property appeared to extend into the required rear and side yard setbacks. As Assistant Secretary for the Board of Zoning Appeals, I discussed the problem with a zoning inspector and Mr. Townsend. The inspector explained that the previous owner had been notified that the structure appeared to violate the setback regulations and that use of a detached garage for residential or office purposes was not permitted by the zoning regulations for that district.

According to Mr. Townsend, the garage had been converted for residential purposes prior to his purchasing the property and this had influenced his decision to buy the property. We discussed the possibility of attaching the garage to the house to convert it into a duplex, which would be a permitted use in the "A" Two Family Dwelling District. However, some uncertainty existed as to the exact distance from the rear structure to the property lines, and I suggested that Mr. Townsend obtain a survey to see if it would be necessary to apply for a variance. I pointed out that according to the provisions of the zoning ordinance, a rear yard located adjacent to a platted alley is measured from the center of the alley.

The survey subsequently obtained by Mr. Townsend did indicate that the structure violated the required rear and side yards, and he again contacted me about filing an application for variance. I did not assure Mr. Townsend that the recommendation of the staff to the Board of Zoning Appeals would be favorable. I in fact explained that the Board's recent action of similar cases (for example, those involving Clewal Construction, Inc.) would appear to indicate that it was unlikely that the Board would act favorably on his request because it would be especially difficult to justify the condition requiring "uniqueness" to exist since the previous owner had created the violations. I explained that the Board would have to find all five conditions to exist as required by state statute, and discussed in detail the issues involved in fulfilling each of the five conditions, pointing out why, in my opinion, Mr. Townsend might have difficulty in meeting them with regard to the property in question. I had several subsequent conversations with him, and reviewed his statement of justification with him over the telephone and in the office prior to his filing the application.

During the course of these conversations, Mr. Townsend stated that he thought that the presence and specific location of a "natural spring" on his property might constitute uniqueness because the garage should not be constructed so as to be located on the spring. I said that was possible, but that I could not say what the determination of the Board would be because the actual problem was created by the actions of the property owner. In addition, I pointed out that the property itself would have to be viewed to see if the

required conditions could be found to exist, especially with regard to assessing the possible effect that granting the variance could have on adjacent property. Mr. Townsend requested that we go together to look at the property, but I told him that since I was leaving Wichita and would have no part in preparing the Secretary's report to the Board, my viewing the property would serve no purpose. I assured him that the property would be field checked prior to preparation of the report to evaluate whether or not, in the opinion of the staff, it conformed with the five conditions required by law to be found to exist before a variance can be granted.



COMMENTS : Contracting Unlimited, Inc. vs. Board of Zoning Appeals of
the City of Wichita, Kansas

Mr. Townsend was referred to the Planning Department by the Division of Central Inspection in regard to requesting a variance of side and rear yard requirements for property located at 722 S. Belmont because the detached garage located at the rear of the property appeared to extend into the required rear and side yard setbacks. As Assistant Secretary for the Board of Zoning Appeals, I discussed the problem with a zoning inspector and Mr. Townsend. The inspector explained that the previous owner had been notified that the structure appeared to violate the setback regulations and that use of a detached garage for residential or office purposes was not permitted by the zoning regulations for that district.

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required conditions could be found to exist, especially with regard to assessing the possible effect that granting the variance could have on adjacent property. Mr. Townsend requested that we go together to look at the property, but I told him that since I was leaving Wichita and would have no part in preparing the Secretary's report to the Board, my viewing the property would serve no purpose. I assured him that the property would be field checked prior to preparation of the report to evaluate whether or not, in the opinion of the staff, it conformed with the five conditions required by law to be found to exist before a variance can be granted.



May 24, 1974

Larry Beilman, Legal Counsel for Board of Zoning Appeals

Jack H. Galbraith, Secretary

Summons associated with Case No. BZA 9-74

On May 22, 1974 we forwarded a copy of materials furnished to Charles Cline associated with the above captioned case. Today I received the attached summons and petition. I am particularly concerned about the reference as to a former employee, Martha McMurry, giving advice that the staff would support this request. Upon your review of this information I would appreciate discussing this matter with you at your convenience. Please be advised that also attached with the summons, which I did not Xerox for you, were copies of the material I furnished to you previously.

JHG:js

Attachment

cc: John Dekker, Director of Law

May 23, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Subject: Case No. BZA 9-74

Dear Mr. Townsend:

As you have requested, please find enclosed a copy of the Minutes of the Board of Zoning Appeals meeting of April 23, 1974, that pertain to your request for a variance. We have also furnished a copy of these minutes to your attorney, Mr. Charles Cline, along with other documents in the file.

If we can be of further assistance to you please contact our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js
Encl.

May 22, 1974

Larry Beilman, Legal Counsel to Board of Zoning Appeals

Jack H. Galbraith, Secretary to Board of Zoning Appeals

Notice of Appeal to District Court on Case No. BZA 9-74

On this date I, along with John Dekker, was served a notice of appeal to District Court on the above captioned case. Charles Cline, who now represents the applicant Mr. Steve Townsend, contacted our office and requested that we furnish the minutes of the Board of Zoning Appeals meeting that pertain to this case along with copies of other documents in the file. We therefore furnished him the following information, a copy of which is attached for your information and files:

1. BZA Minutes pertaining to Case No. BZA 9-74.
2. Correspondence forwarding copy of Resolution.
3. Copy of Resolution No. BZA 9-74.
4. Correspondence to applicant setting forth Board's action to deny application.
5. Secretary's report to the Board.
6. Notice to Adjoining Property Owners.
7. Applicant's Statement of Justification and accompanying Survey.
8. Application.

Please advise if we can furnish you any additional information.

JHG:js

cc: John Dekker, Director of Law

BEFORE THE BOARD OF ZONING APPEALS

IN THE MATTER)
)
 OF)
)
BZA 9-74)
_____)

NOTICE OF APPEAL TO THE DISTRICT COURT

TO: JACK GALBRAITH, Secretary of the Board of
 Zoning Appeals, and JOHN DEKKER, City Attorney.

TAKE NOTICE that Contracting Unlimited, Inc., does and has
appealed to the District Court of Sedgwick County, Kansas from the
decision rendered and made in the above entitled action of the Board of
Zoning Appeals on April 23, 1974, wherein their application for a
variance was denied, and from all other rulings and findings of said
Board adverse to Contracting Unlimited, Inc.

DATED: May 22, 1974

WENDELKEN, CLINE & CROCKETT
Attorneys for Contracting Unlimited, Inc.

By Charles M. Cline
Charles M. Cline

ACKNOWLEDGEMENT OF SERVICE

The undersigned, Jack Galbraith, Secretary of the Board of
Zoning Appeals and John Dekker, City Attorney, acknowledge service of the
foregoing Notice of Appeal to the Sedgwick County District Court by Con-
tracting Unlimited, Inc. on this _____ day of May, 1974.

Signed on 5/22/74
Jack Galbraith

John Dekker

WENDELKEN,
CLINE &
CROCKETT
ATTORNEYS AT LAW
SUITE 408 BROWN BLDG.,
WICHITA, KANSAS 67202
(316) 263-7504

May 1, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case No. BZA 9-74 -
Request for Variance

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on April 23, 1974, in connection with your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and generally located east of Belmont in an area south of Gilbert.

This Resolution reflects the official action of the Board and to deny your request. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

Encl.

cc: Contracting Unlimited, 658 S. Mission, 67207
Robert Feldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

RESOLUTION NO. BZA 9-74

WHEREAS, Contracting Unlimited, Inc., 658 S. Mission, Wichita, Kansas, 67207, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to Wichita, Sedgwick County, Kansas. Generally located east of Belmont in an area south of Gilbert.

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 April 23, 1974, consider said application; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested does not arise 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 in fact created by the actions of the applicant (owner) inasmuch as he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 of which variance is requested will not constitute unnecessary hardship upon the property owner represented in the application since the main structure may still be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

WHEREAS, the Board of Zoning Appeals has found that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare.

WHEREAS, the Board of Zoning Appeals has found that the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

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 not been found to exist.

Resolution No. BZA 9-74

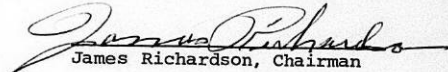
Page Two

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:


Lots 113 and 114 in Fairfax Addition to Wichita,
Sedgwick County, Kansas. Generally located
east of Belmont in an area south of Gilbert.

be denied.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1974.


James Richardson, Chairman

ATTEST:


Jack H. Galbraith, Secretary

April 24, 1974

Mr. Steve Townsend
658 South Mission
Wichita, Kansas 67207

Dear Mr. Townsend:

Subject: Case NO. BZA 9-74 -
Request for Variance .

At the regular meeting of the Board of Zoning Appeals on April 23, 1974, your request for a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet, on property zoned the "A" Two Family Dwelling District, and generally located on the east side of Belmont in an area between Gilbert and Morris, was considered.

It was the action of the Board to deny this request. A Resolution is being prepared which sets forth the official action of the Board and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Contracting Unlimited, 658 S. Mission, 67207
Ms. Wanda Reed, 721 S. Crestway, 67218
Robert Feldner, Supt. of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

SECRETARY'S REPORT
CASE NO. BZA 9-74

APPLICANT: Contracting Unlimited, 658 S. Mission, Wichita, Kansas 67207

AGENT: Steve Townsend, 658 S. Mission, Wichita, Kansas 67207

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet.

GENERAL LOCATION: On the east side of Belmont in an area between Gilbert and Morris.

ZONING: Subject property is zoned the "A" Two Family Dwelling District, as are those properties to the north, south, east, and west.

LAND USE: Subject property contains a single family dwelling as do those properties to the north, south, and west. The property to the east contains a duplex. Subject property also contains a detached accessory structure next to the alley that is the purpose of this request.

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.

Secretary's Report
BZA No. 9-74
Page Two

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 is requesting a variance of the rear yard and one side yard setback in order to permit the use of an accessory storage structure for residential purposes. The applicant desires to attach the accessory structure to the main structure in order to create a duplex, which is permitted in the "A" Two Family Dwelling District; however, such duplex would violate the rear yard setback and the north side yard setback required in the "A" Two Family Dwelling District and a variance of the setback requirements has been requested.

Some history of the property in question is warranted in order to gain a complete understanding of this case. Subject property contains a single family residence with attached garage which was constructed in 1949. On December 11, 1967, the previous owner of subject property, N. H. Cline, applied for a building permit to erect a 38' x 22' detached garage on the property and construction was completed on May 27, 1968. In February, 1969, the Department of Central Inspection received several complaints that Mr. Cline was utilizing the accessory structure, not as a garage, but for commercial and manufacturing uses in violation of the zoning ordinance. On June 6, 1973, Central Inspection reported that the violations had ceased. Shortly thereafter, Mr. Cline sold the property to the present applicant, Contracting Unlimited, Inc. On July 7, 1973, Mr. Steven Townsend, the agent of Contracting Unlimited, applied for a building permit to repair the accessory structure and to install windows. At that time, Mr. Townsend was informed that the structure could not be utilized for commercial or residential purposes and the application for a permit filled out by Mr. Townsend states that the structure would not be utilized for commercial or residential purposes. Several weeks ago, Mr. Townsend approached Central Inspection for a certificate of occupancy to use the structure for residential purposes and was informed that such a use would be in violation of the zoning ordinance.

Secretary's Report
BZA 9-74
Page Three

In viewing subject property in the field it was noted that the structure, for all intent and purposes, has already been converted to a residential structure with plumbing facilities and a separate mailbox with separate mailing address although no building permit had ever been issued to allow such a conversion. It was also noted that access to the structure would almost certainly be from the alley as the main residential structure only has enough parking space to provide for the main structure and additional parking would occur adjacent to the alley in the rear yard setback. In regards to the violation of the north side yard setback, it was observed that although the distance from the accessory structure to the property line is only 5.5', the actual distance to the fence line of the property to the north is 8 feet, there are three rather large trees growing on the property line itself and apparently the property owner to the north decided to construct his fence some two or three feet inside his own property rather than eliminate the trees.

UNIQUENESS

The applicant states in his letter of justification that the existence of an underground natural spring necessitated the location of the accessory structure causing unique circumstances. However, it is the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by the actions of the applicant (owner) in that he converted an accessory storage structure to a residential structure in violation of the zoning ordinance.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance will have an adverse effect on the adjacent property owners as it will permit the conversion of an accessory structure to a dwelling unit whose only logical access will be from an unpaved alley. The development of subject property for a duplex will not be compatible with adjacent single family homes to the north and south.

Secretary's Report
BZA 9-74
Page Four

HARDSHIP

The applicant has attempted to justify hardship by referring to the fact that he purchased the property with the intention of converting the rear building into a residence and if the application for a variance is not granted he will have purchased an asset which has no use. It should be recognized that unnecessary hardship must arise from the strict application of the zoning regulations to the specific piece of property. In other words, the hardship must be created by the provisions of the ordinance. It is the opinion of the Secretary that the hardship in this case was not created by the provisions of the ordinance, but rather by the actions of the applicant. The main structure may be used for residential purposes and the accessory building may still be used for accessory storage; the hardship created by the inability to utilize the accessory structure for residential purposes after it has already been remodeled for such use was entirely created by the actions of the applicant.

PUBLIC INTEREST

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety or general welfare; however, the requested variance does involve setbacks which are interiorly located within the block.

SPIRIT AND INTENT

In the opinion of the Secretary, the variance requested will be opposed to the general spirit and intent of Title 28, in that the Zoning Ordinance is designed to eliminate construction of residential structures whose primary access is from alleys.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

April 2, 1974

NOTICE TO ADJOINING PROPERTY OWNERS:

An application has been filed by Contracting Unlimited, 658 South Mission, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback adjacent to the north property line of Lot 114 from six feet to 5.5 feet and to reduce the required rear yard setback from 20 feet to 17 feet on property zoned the "A" Two Family Dwelling District, and legally described as follows:

Lots 113 and 114 in Fairfax Addition to
Wichita, Sedgwick County, Kansas. Generally
located east of Belmont in an area south of
Gilbert.

This application has been assigned Case No. BZA 9-74, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 23, 1974, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you desire, you may write to the Board of Zoning Appeals at 104 South Main to express your opinion on this matter. You are also welcome to speak or be represented by a spokesman at the Board of Zoning Appeals meeting when this matter will be considered.

If additional information is desired so that you may be fully informed on this matter, please call the Metropolitan Area Planning Department at 262-0611, Extension 205.

Jack H. Galbraith
Secretary

*27 Notices mailed to
adjoining property owners
4-2-74*

*10 Notices mailed
to MAPC members
4-2-74*

Steve Townsend
658 S. Mission
Wichita, Kansas 67207

March 20, 1974

Gentlemen:

I submit that the rear building at 722 S. Belmont, legally known as Lots 113 and 114, Fairfax Addition to Wichita, Kansas, lacks 2.8 feet to meet rear yard requirements and also lacks .5 feet on one side for side yard requirements for a residence. The requirements stated in the city ordinances for this location and zoning are: there must be 20 feet from the rear of the building to the center line of the alley, and that there must be 6 feet between the building and property line in a side yard.

In the future I would like to use the rear building as a residence. The rear building was built and placed on the lot for reasons that we feel are unique to this property. First, the lot is sub-standard in that it is smaller than the typical lot of today which compounds the problems of space and thus the placement of buildings. The front house was built in the typical location as are the neighboring homes. This happened to place it on a natural spring, which is on the front part of the lot. This natural spring saturates the local ground year round, continually flooding the foundation of the front house. I have put in a sump system under the house which is not usually done in homes that do not have basements. Generally, I have spent a lot of time and money trying to care for this problem without success. We feel that this is rather unusual and unique. Because of the spring the rear building was built at the rear of the lot so it would be removed from the problem area. If this had not been done it too would have been a building with a bad record of serious settling and maintenance problems. For the owner this would have been disastrous. The rear building was also placed off center to a small degree so that one of the neighborhoods natural assets and something that lends beauty and value to the property would not be cut down, a big Maple tree. Trees are expensive to cut down and remove.

We feel that granting the permit for variance will not infringe upon the rights of adjacent or surrounding property owners. The majority of the easements are still there in the full amount or just a small amount less than full.

If the variance is not granted it will constitute a hardship upon me because I bought the property with the intention of converting the rear building into a residence. This can be done by the granting of a variance and fulfilling the needs of central inspection for a duplex. If it does not happen this way I will have bought a building that will have no real and positive use that could benefit my property or the neighborhood. In the past this rear building has been an extreme problem to the neighborhood because of the

improper way the past owner has used it. He not only had many complaints but he violated several city ordinances by the way he used it. I am saying that with the proper conversion to a residence, it will be a good looking asset to the neighborhood, and to my property. It will also eliminate possible improper and illegal use of the building. It is not financially feasible to alter the basic structure to meet ordinances required on the rear and side yards. If this hardship is not relieved I will have bought and payed for something that is not usable to me and not an asset to the neighborhood, the building will just sit there and deteriorate and could possibly be misused by any future owner.

The granting of variance cannot possibly adversely affect public health, safety, morals, prosperity, order or general welfare. The alley's functional use will not be adversely affected as there is still plenty of rear yard and parking area between buildings and alley. Trash collection will not be hindered.

General spirit and intent of Title 28 will be fulfilled by the granting of variance. The surrounding neighbors are pleased with the idea that this neighborhood problem can be changed into a neighborhood asset by making the rear building into a residence. Granting the variance will not adversely affect property value and will relieve me of some serious financial problems that I might otherwise have with the property. I have pointed out that granting the variance will not affect the rights of adjacent property owners or public welfare. And due to the uniqueness of the lot there was no other choice to the placement of the building.

I would appreciate your approval on this matter.

Sincerely,



Steve Townsend

W. L. KORBER R. G. WAYMIRE
BAUGHMAN CO.
 S U R V E Y O R S

PHONE 316/262-7271

330 LAURA

WICHITA, KANSAS 67211

State of Kansas)

) SS

February 22, 1974

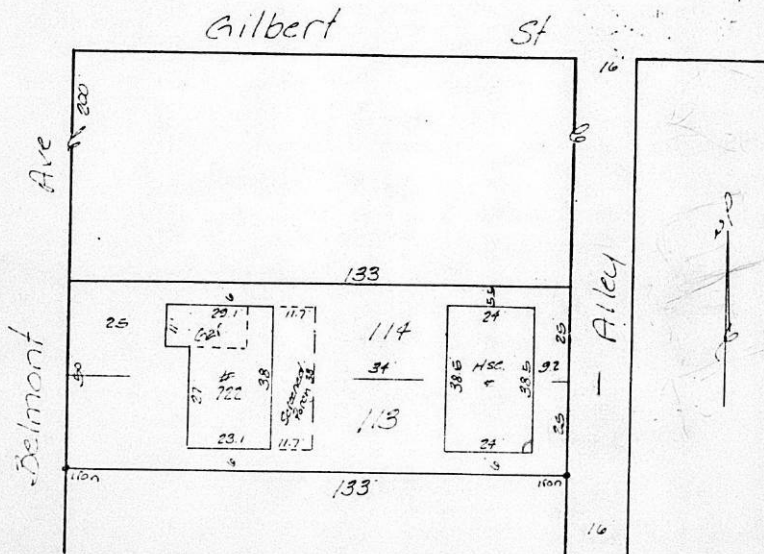
County of Sedgwick)

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 22nd day of February, 1974 survey Lots 113 and 114, Fairfax Addition to Wichita, Kansas.

On said lot is house No. 722 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

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

William J. Korber
 Surveyor



W. L. KORBER R. G. WAYMIRE
BAUGHMAN CO.
 S U R V E Y O R S

PHONE 316/262-7271

330 LAURA

WICHITA, KANSAS 67211

State of Kansas)
) SS
 County of Sedgwick)

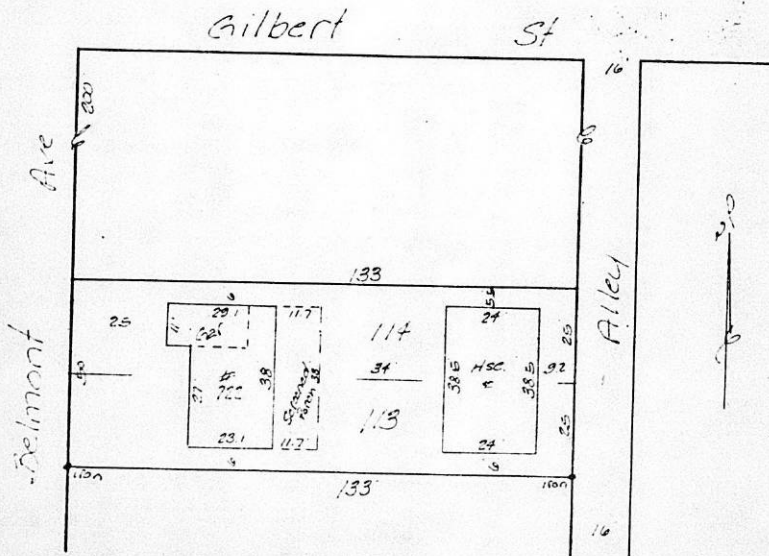
February 22, 1974

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 22nd day of February, 1974 survey Lots 113 and 114, Fairfax Addition to Wichita, Kansas.

On said lot is house No. 722 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

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

William E. ...
 Surveyor



721 South Crestway
Wichita, Kansas 67218
April 12, 1974

Board of Zoning Appeals
City Building Annex, Room 401
104 South Main
Wichita, Kansas 67202

Re Case No. BZA 9-74

Gentlemen:

I firmly object to any relaxation in the easement requirement as petitioned by Mr. Townsend.

I have recently purchased the duplex at 721 - 723 South Crestway. I had previously lived in Travel Aire City where restrictions are almost nonexistent. There I have seen the quality of renters who will live in alley-located dwellings. My experience as a community health nurse reinforces this observation. I feel I would need a fence along my property as a protection; yet, I can ill afford this expense at this time.

Also, I feel if this relaxation is granted to one person it will probably lead to requests by other individuals, and thus a further degrading of the block.

Sincerely,

Wanda Reed

Wanda Reed



PERMIT NUMBER

067869

APPLICATION

INSPECTION DEPARTMENT
CITY OF WICHITA, KANSAS
APPLICATION FOR RESIDENTIAL BUILDING PERMIT
AND CERTIFICATE OF OCCUPANCY

(Groups H. L. I-1 and I-2)

FORM 41-228 REV. 2-57

Wichita, Kansas, 7-5, 1973

Application is hereby made for a permit to _____ a structure at
(Erect-Repair-Remodel-Wreck-Add To)

No. _____ Street
in accordance with the following description and in conformity with the provisions of all laws and ordinances pertaining thereto.

Use or Occupancy: 1-Family Dwelling Garage Detached Number of Rooms _____
2-Family Dwelling Garage Attached in Dwelling _____
Multi-Family Garage or Shed Only

If Multi-Family: Total Number of Family Units _____ Number of Baths _____ Number of Other Rooms _____

Extreme Dimensions: Frontage on Street _____ Depth _____ Stories _____

Size of Basement: _____ Foundation Wall: Concrete Concrete Blocks Size of Joist: First Floor _____
Concrete Blocks Second Floor _____
Concrete Ceiling _____

Exterior Wall: Frame Concrete Block Wood Shingles
Brick Veneer Brick Composition
Stone Veneer Tile

Heat: Blower Furnace Floor Closet Coal Wood Wood or Coal
Gravity Pipe Attic Stoves Gas Oil Fireplace

Brick Flues: Number _____ Patented Pipe Flues: Number _____ Walls: Plaster
Size _____ Size _____ Dry Wall

New Plumbing: _____ New Electrical Work: _____ New Gas Fitting: _____

Area of Dwelling Space _____ sq. ft. _____ sq. ft. If Wrecking, Give
Garage, basmt. etc. _____ sq. ft. _____ sq. ft. Square Feet of
Building: Accessory Structs. _____ sq. ft. _____ sq. ft. Floor Area:
Total Adj. _____ sq. ft. _____ sq. ft.

If repairing, remodeling, wrecking or adding to, state what improvements are to be made.

*Contractor to be hired - Contract to be written -
no temporary occupancy at present -
no change of occupancy*

Estimate of Value: \$ 800.00

Is work being done under a contract? _____ Structure has been occupied as _____

Owner: _____ Address: _____

Builder: _____ Address: _____

Designer: _____ Address: _____

(Sign Below)

(Licensed Contractor) _____ (Owner) _____

By _____ (Authorized Representative) By _____ (Agent)

INSPECTION DEPARTMENT RECORD

Zoning Dist. AA A RB B BB LC Permit Refused Because _____
C D E F Permit Held Up for _____
Fire Zone 1 2 3 4 Application Taken by _____

Copy of this permit

APPLICATION FOR VARIANCEI. Name of Applicant Contracting UnlimitedMailing Address 658 S Mission 67207 Phone 686-1031Name of Authorized Agent Steve TownsendMailing Address 658 S Mission Phone 686-1031Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other)II. The variance requested is for rear Dwelling Unit,
rear yard 2.8 feet and side yard 2.5 feetfor property located 722 South Belmont
Wichita, Kansand legally described as: Lots 113 & 114, Fairfax
addition to Wichita, Kansasin the City of Wichita; and which is presently zoned A.

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 bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Contracting Unlimited Inc.
ApplicantSteve Townsend
Authorized AgentOFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 3:15 PM (a.m. - p.m.), March 22 19 74
together with appropriate fee of \$50.00.

CERTIFICATE OF OWNERSHIP

LAWYERS TITLE INSURANCE CORPORATION, Guarantee Title Division, hereby certifies the following to be a true and correct list of the property owners as shown by the last deed of record in the Office of the Register of Deeds of Sedgwick County, Kansas, within a 200 foot radius of and including the following described property, viz:

114
Lots 113 and ~~115~~ in Fairfax
Addition to Wichita, Sedgwick County,
Kansas.

DESCRIPTION	OWNER/OWNERS/ADDRESS
<u>FAIRFAX ADDITION</u>	
Lots 25 & 26	✓ Helen Neiswander c/o Dale E. Crane 857 Prairie Park Road 67218
Lots 27 & 28	✓ Dale E & Virginia Crane 857 Prairie Park Road 67218
Lots 29-30-31-32	✓ Billie Joe Charles Sagerty & Yoshie K. Sagerty 1801 Lexington Road 67218
Lots 33 & 34	✓ Jean M. Wolcott 247 N. Parkwood Lane 67218
Lots 35 & 36	✓ J. Lester & Kathryn M. Reeves 727 S. Crestway 67218
Lots 37 & 38 & N 8' of Lot 39	✓ Howard W. & Louise S. Ulfers 733 S. Crestway 67218
S 17' of Lot 39 & all of Lot 40 and N 16' of Lot 41	✓ Terry Eugene & Carol A. Colson 739 S. Crestway 67218
S 9' of Lot 41 & all of Lot 42	✓ Harlan P. & Edna Pearl Boyce 743 S. Crestway 67218
Lots 105 & 106	✓ Robert C. & Edith L. Bailey 746 S. Belmont 67218
Lots 107 & 108	✓ Don & Clara Gooden 251 S. Belmont 67218
Lots 109 & 110	✓ Bessie Olson 732 S. Belmont 67218
Lots 111 & 112	✓ White & Lambert Invest. Inc. 1144 S. Broadway 67214
Lots 113 & 114	✓ Contracting Unlimited, Inc. 658 S. Mission 67207
Lots 115 & 116	✓ Harry J. Tillma 716 S. Belmont 67218
Lots 117 & 118	✓ James H. & Denice C. McClarnon 712 S. Belmont 67218
Lots 119 & 120	✓ Richard C. & Ada M. Kinney 706 S. Belmont 67218
Lots 121 & 122	✓ Ruth Rogers 702 S. Belmont 67218

FAIRFAX ADDITION Cont'd

Lots 189-190-191-192 (E 70')	✓ Charles & Oma Haines 4223 E. Gilbert	67218
Lots 189-190-191-192 (W 62')	✓ Harold F. & Florence A. Weingartner 4221 E. Gilbert	67218
Lots 193 & 194	✓ Thomas H. & Mary E. Peterson 711 S. Belmont	67218
Lots 195 & 196	✓ Florence D. George 717 S. Belmont	67218
Lots 197 & 198	✓ Lee A. & Eva M. Lorimor 723 S. Belmont	67218
Lots 199 & 200	✓ James A. & Sharon L. Hall 727 S. Belmont	67218
Lots 201-202-203	✓ George M. Rakestraw, Dec'd Haskell H. Tennant 731 S. Belmont	67218
Lots 204-205	✓ H. Clifford & Louise Howe 739 S. Belmont	67218
Lots 206	✓ William Roy & Melissa A. Heath 745 S. Belmont	67218

Dated this 4th day of March, 1974 at 7:00 o'clock A. M.

LAWYERS TITLE INSURANCE CORPORATION
Guarantee Title Division

By Frank R. Hunkler
Title Officer

No. 341/f

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION		AMOUNT
[Handwritten Description]		
Name		
Address		
Type	Due Date	
Comments:		
Date	By	