

Case No. BZA 13-80 - William &
Julie Nicholson - Appeals of
the Superintendent of Central
Inspection on the issuance of
a building permit on BZA Case
No. 56-78.

BZA
13-80

ACTION

Posted
3-18-80
HST
✓ Jock/Sec 9-22-80

COMMITTEE Appeal denied DATE: 3-25-80

M.A.P.C. _____

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

Case No. BZA 13-80 - William & Julie Nicholson - Appeals of the Superintendent of Central Inspection on the issuance of a building permit on BZA Case No. 56-78.

SECRETARY'S REPORT
CASE NO. BZA 13-80

APPLICANT: William & Julie Nicholson, 401 North Belmont,
Wichita, Kansas

AGENT: James Walker, 320 Page Court, Wichita, Kansas.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code of the City of Wichita, appealing from decision of the Superintendent of Central Inspection in the issuance of a building permit for a second single-family dwelling on a zoning lot established by BZA Case No. 56-78 and approved by the Board of Zoning Appeals by Resolution No. BZA 56-78 on January 23, 1979 for a variance of the required rear yard and the side yard on the north for the remodeling of existing structure as a single-family dwelling.

GENERAL LOCATION: On the east side of Broadview and north of 3rd Street.

ZONING: Subject property is zoned the "AA" One-family Dwelling District as are all adjacent properties.

LAND USE: All properties are developed as single-family dwellings.

JURISDICTION:

The Board has jurisdiction to consider the appeal under the provisions outlined in Section 2.12.590.A, Code of the City of Wichita.

COMMENTS BY THE SECRETARY:

The applicant is appealing a decision of the Superintendent of Central Inspection in the issuance of a building permit to erect a second single-family dwelling on Lots 34, 36, 38, 40 and 42 except the south 16 feet of Lot 42 on Broadview, Hagny's replat of Capital Hill Addition, which was the property of record, submitted by Roger Bender, in a application for variances of a rear yard and a side yard setbacks and considered by the Board of Zoning Appeals on January 23, 1979. This request was necessary so that the applicant could secure a building permit to convert an existing structure (the carriage house which was formerly an accessory structure to the property known as 401 North Belmont) to a single-family dwelling.

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As indicated in the attached excerpts from the minutes of the January 23, 1979 meeting and the Resolution No. BEA 56-78, the variances of the setbacks as requested were granted by the Board on that date. Also attached is the letter submitted by the applicant stating the purpose and reason for the requested variances.

It should also be noted that the action of the Board was to grant the variance of the setback from the side property line on the north only for the existing structure, and the rear yard setback was reduced to eight feet for both the existing structure and any new structure.

In the minutes you will note that the staff recommendation, as part of the Secretary's Report, was that the variances be granted for the existing structure only. As you will also note, Galbraith stated that there should be no encroachment of the proposed garage structure into the 8 foot setback. In listening to the tapes of the meeting, the statement was made by Galbraith, that unless you make the requirement that the proposed garage also complies with the eight foot rear yard setback, as a detached accessory building the rear yard setback would only be required to be five feet. The actual motion made by Mr. Jacob was that the five conditions necessary for the granting of the variances be found to exist and the variances be granted subject to the staff recommendations.

A permit was issued by Central Inspection on March 1, 1979 on Lots 34, 36, 38 and 40 (part of Lot 42 was not included in the legal) to remodel the existing structure into a single-family dwelling. In accordance with the records of Central Inspection there was no permit issued at that time for the construction of the double garage that was shown on the original application for the requested variances. In testimony given at a recent court hearing, it was stated that the foundations for the garage were in place for a number of months during 1979.

On January 23, 1980 a permit for the erection of a one-family dwelling and attached garage was issued on the south 17' of Lot 38, Lot 40, and the north 9 feet of Lot 42, on Broadview in Hagny's replat of Capital Hill Addition. This resulted in the erection of a two story structure with a dwelling over the double garage that was previously started on the property. Only after this second permit was issued and the contractor was excavating for a sewer connection on this applicant's property was there any outward indication that an additional dwelling was being erected on the property. Subsequent action in District Court by the applicant of this appeal was dismissed by the court because the applicant had not exhausted all means of recourse before said action was filed in District Court. At that point, this case was filed appealing the determination of the Superintendent of Central Inspection in the issuance of the permit for a second single-family dwelling on the property previously described. A copy of the appeal application and the statement of the appellant is attached for your information.

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It is the opinion of the Secretary that the action of the Board of Zoning Appeals on January 23, 1979 to grant the variances to convert the existing carriage house to a single-family dwelling was based on the information submitted by the applicant. This included the copy of the letter from the applicant Roger Bender (December 12, 1978) and the submission of a site plan showing the existing carriage house on the property and a new garage plus a circular drive and landscaped front yard area. It was on this site plan that the Board justified the five conditions necessary to be found to exist prior to granting the variances. It is also the opinion of the Secretary that had the applicant submitted a plan showing the second dwelling unit on the property, that it would be difficult to justify the five conditions on the south portion of the site plan which was at that time a vacant, undeveloped area and was proposed for a garage and yard area.

It is apparent that the permit for the second dwelling was issued without benefit of the site plan that was a part of BZA Case 56-78 and that the provision of permitting the creation of residential "zoning lots" not in conformance with the 60' minimum width requirement of the subdivision rules and regulations were ignored in the determination by Central Inspection in the issuance of the second permit.

The Secretary subsequently requested from the Department of Law a legal opinion on the applicability of the term "zoning lot" in the issuance of building permits. A copy of this opinion is attached for your information.

In accordance with this opinion, the owner created a "zoning lot" on all of the property included in the legal description, which was submitted for action in BZA Case No. 56-78, when a building permit was issued on March 1, 1979 to remodel the carriage house into a single-family dwelling. This "zoning lot" did comply with the minimum lot area of the zoning ordinance and the minimum width of 60' as is now applicable for residential lots. When the second permit was issued on January 23, 1980, two zoning lots were created, one 58 feet and one 51 feet in width, each of which is not in compliance with the minimum width requirements of the Subdivision Rules and Regulations which are included by reference as a part of the zoning ordinance.

RECOMMENDATION:

In light of the legal opinion on the requirement that any new residential zoning lots comply with the 60 foot minimum frontage, and there are adequate methods that will permit relief from the required minimum standards to permit the creation of new zoning lots of less than the 60 foot minimum, it is recommended that the appeal be upheld and determine that an error was made in the issuance of the second permit.

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BEA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

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 north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to ___ and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

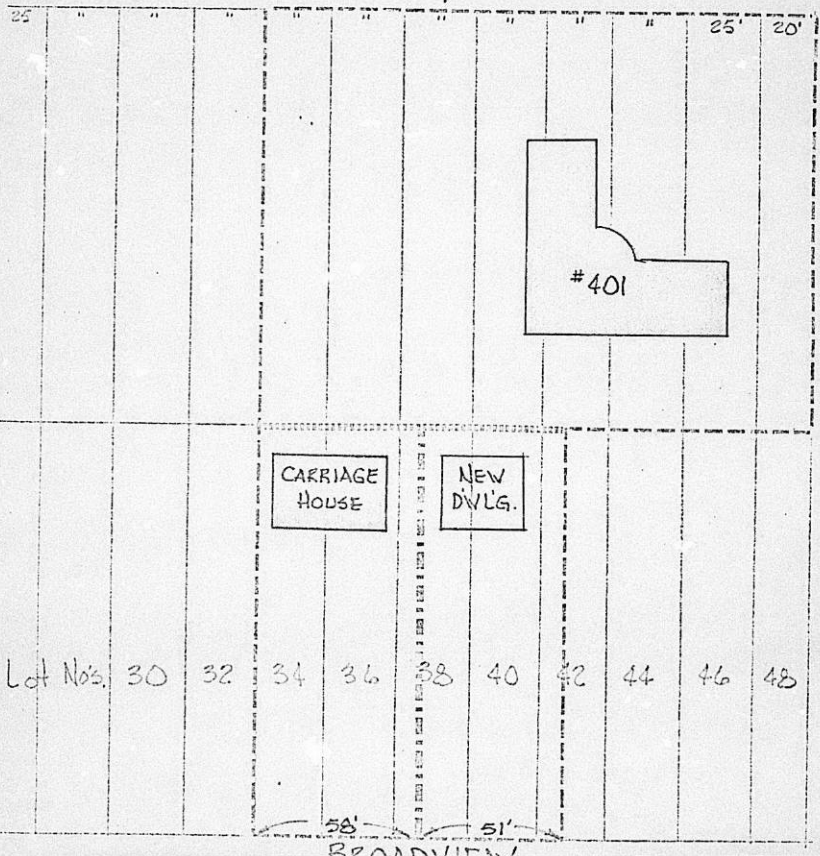
JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

N. BELMONT



Lot No's. 30 32 34 36 38 40 42 44 46 48

3RD ST.

58' 51'
BROADVIEW

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

RESOLUTION NO. BZA 56-78
PAGE TWO

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

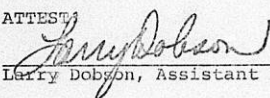
Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

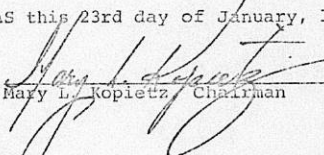
be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

ATTEST


Larry Dobson, Assistant Secretary


Mary L. Kopietz, Chairman

BENDER ASSOCIATES, P.A.

DECEMBER 12, 1978

Members:
Board of Zoning Appeals
First Floor, City Hall
455 North Main
Wichita, Kansas 67202

It is my desire to purchase the Carriage House and lot (109 x 137) located behind the house at 401 North Belmont.

My intent is to remodel the Carriage House and add a garage, to use as my personal residence. The Carriage House already has three (3) existing bedrooms, a living room, bath and kitchen on the second floor. The main level has a large garage area, stairs and two additional rooms. There is a full basement under the house with an outside entrance and numerous large windows for plenty of light.

The location of the Carriage House to the lot (see plot plan) is very close to the north and east property lines. It has been located that way since 1917 when it was built. I am not attaching any living areas or additions to the existing house. The garage will be detached. There are no easements of record on the plat.

Residency for this structure has been established through the years; at first by the servants and more recently by the owner from time to time.

In making this my residence, I will be entering the lot from Broadview (west) and will have a Broadview street address. I have also located (on the plot plan) the existing houses adjacent to the lot. The Carriage House sits very deep on the lot and is not close to any other structure.

I respectfully request that the four foot side yard on the north and the eight foot rear yard on the east be granted a variance so that I may use this structure for a residence.

Cordially,



Roger D. Bender
Architect

RDB/eh

ARCHITECTURE • INTERIORS • PLANNING

247 N. MARKET WICHITA, KANSAS 67202 (316) 264-4371

THE CITY OF WICHITA
OFFICE OF DEPARTMENT OF LAW

DATE March 17, 1980

RECEIVED

MAR 18 1980

TO JACK GALBRAITH, CHIEF PLANNER
FROM H. R. RUHN, ASSISTANT CITY ATTORNEY

METROPOLITAN PLANNING
ROUTE _____

SUBJECT Request for legal opinion --
issuance of building permits

I have reviewed the contents of the memo of March 3, 1980 concerning the above noted matter. Following such review and the informal discussions with you and Glen Lytle, I have arrived at the following conclusions. I recognize that there may be a difference of opinion in the interpretation of the several sections of the zoning code and subdivision regulations and for this reason it might be well to give some thought to appropriate amendments to avoid any such differences.

I do not believe it necessary to cite or analyze the pertinent Kansas enabling statutes. Suffice to say they authorize the zoning and subdivision regulations with which we are concerned here which limit the issuance of building permits to those situations where compliance with such regulations has been established. The subdivision regulations may and do take into account any existing zoning regulations and the zoning regulations may and do take into account the existing subdivision regulations.

The zoning code defines a "zoning lot" as follows:

"A parcel of land that is designated by its owner or developer, at the time of applying for an occupancy certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the requirements of the above and the requirements of the subdivision rules and regulations, such lot may consist of:

- (1) A single lot of record; or
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

It must be noted that the occupancy permit referred to is applied for coincident with the application for a building permit (28.04.220). It becomes rather clear then that the owner or developer determines the "zoning lot" at the time that the "occupancy certificate" is applied for. Further, a "zoning lot" must satisfy all the requirements of the zoning code at the time that the building permit is sought (28.04.220). This will apply in all cases unless a specific exception or exemption is spelled out in the zoning code or in the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 2.

Though the phrase "zoning lot" is not expressly used throughout the zoning code in connection with the zoning districts or classifications, we believe a "zoning lot" as defined above applies to all building or construction sites covered throughout the zoning districts and classifications of the zoning code -- otherwise there would appear to be no reason for the insertion of the phrase "zoning lot" in the definitions set forth in the zoning code. The creation of a "zoning lot" as set forth in the code clearly contemplates the utilization of tracts or lots platted under subdivision regulations as well as parcels of land not platted under subdivision regulations adopted in 1948. This would include parcels of land that might have been divided, subdivided or platted even prior to January 1, 1948.

Since the subdivision regulations now require a minimum width of 60' for residential construction and since the zoning code seems to incorporate by reference such requirements, we believe that all undeveloped parcels of land, irrespective of the date or manner of platting are subject to the 60' minimum width requirement. This is not to say that if a particular parcel of land was being used for a particular purpose at the time of the adoption of the 60' minimum lot width, it could not continue being so used. It can be but the use cannot be changed, enlarged, expanded or intensified without first meeting the requirements of the current regulations. This is because our statutory scheme (K.S.A. 12-709) protects "existing uses" from subsequent zoning but it does not protect either existing zoning or merely anticipated uses. Zoning amendments qualifying and changing the future residential uses of land (as well as land uses in other zoning districts) have been judicially held to be within the police powers of the municipality.

The "zoning lot" amendment of the zoning code was adopted subsequent to the adoption of the amendments to the minimum lot width requirements of the subdivision regulations of 1968. As we view it, the land falling within the category of the exemption of Article 3-105(F), (lots, tracts or parcels that have been sold off, divided, sub-divided, re-subdivided or replatted prior to January 1, 1948) need not be replatted nor further subdivided or changed to be utilized as all or part of a "zoning lot" under the zoning code. Such lots, tracts or parcels may separately or collectively with others, or parts thereof, meet the minimum lot width requirement of 60'. It appears reasonable to suggest that this interpretation was the intent of the zoning code when referring to the "requirements of the subdivision regulations". Nor are the lots, tracts or parcels that were platted under the 1948 subdivision regulations in any way invalidated or changed. On the contrary they too may separately or collectively with others, or parts thereof, meet the current minimum lot width requirement of the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 3.

In order to fully understand what appear to be the issues presented one must keep in mind that we are talking of two separate (though interrelated) things. On the one hand we are talking of subdivision regulations which are concerned primarily with the subdividing or platting of land which historically were developed to facilitate the transfer of ownership of a particular lot, tract or parcel by simplifying the legal description, i.e., to avoid the necessity of metes and bounds description. On the other hand we have the zoning regulations which are primarily concerned with the use of land in particular zoning districts. Granted, the two subjects are and should be to some extent related. The zoning regulations did not concern themselves primarily with the manner or method of "platting" or subdividing land and as the subdivision regulation concept was developed it did not concern itself directly with zoning.

The current subdivision regulations establish minimum requirements as to the laying out or subdividing of land by way of "platting" or "subdividing". They trace their origin to 1948 and have been subsequently amended. One of the significant amendments has been to establish a minimum width of 60' of platted lots (measured at the set back lines) to be used for the uses authorized in a residentially zoned district. The current provision applies to all platting and subdividing subsequent to 1968. Again, this refers only to establishing the minimum width size of the lots on a particular plat. The subdivision regulations adopted in January of 1948 established a similar minimum lot width of 50'. Prior to 1948 there were no subdivision regulations and consequently no minimum lot widths had been established. The current subdivision regulations specifically exempt from its provisions those lots, tracts or parcels which had been platted or subdivided prior to January 1, 1948. In other words the subdivision regulations were looking forward to the "platting" exercises and exempted them from the requirements of the platting regulations adopted in 1948 as subsequently amended.

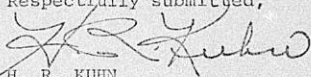
The conclusion that we have reached is that all parcels of land not previously utilized for a specific use under prior platting or subdivision regulations are subject to the minimum width requirements set forth in the current subdivision regulations. It is our opinion that any building permit issued for construction of an improvement on a lot or parcel of land not meeting the current minimum lot width requirement was improvidently issued.

Mr. Jack Galbraith
March 17, 1980
Page 4.

The foregoing conclusions may seem somewhat restrictive and severe. However, it must be remembered that relief is available to the owner of a parcel of land not meeting the current minimum lot width requirement for an intended use. Both the zoning code and subdivision regulations contain appeal provisions wherein relief may be available to the owner of a parcel of land by following the "variance" procedures therein contained.

If we can be of further assistance, please advise.

Respectfully submitted,


H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

SECRETARY'S REPORT
CASE NO. BZA 13-80

APPLICANT: William & Julie Nicholson, 401 North Belmont,
Wichita, Kansas

AGENT: James Walker, 320 Page Court, Wichita, Kansas.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code of the City of Wichita, appealing from decision of the Superintendent of Central Inspection in the issuance of a building permit for a second single-family dwelling on a zoning lot established by BZA Case No. 56-78 and approved by the Board of Zoning Appeals by Resolution No. BZA 56-78 on January 23, 1979 for a variance of the required rear yard and the side yard on the north for the remodeling of existing structure as a single-family dwelling.

GENERAL LOCATION: On the east side of Broadview and north of 3rd Street.

ZONING: Subject property is zoned the "AA" One-family Dwelling District as are all adjacent properties.

LAND USE: All properties are developed as single-family dwellings.

JURISDICTION:

The Board has jurisdiction to consider the appeal under the provisions outlined in Section 2.12.590.A, Code of the City of Wichita.

COMMENTS BY THE SECRETARY:

The applicant is appealing a decision of the Superintendent of Central Inspection in the issuance of a building permit to erect a second single-family dwelling on Lots 34, 36, 38, 40 and 42 except the south 16 feet of Lot 42 on Broadview, Hagny's replat of Capital Hill Addition, which was the property of record, submitted by Roger Bender, in an application for variances of a rear yard and a side yard setbacks and considered by the Board of Zoning Appeals on January 23, 1979. This request was necessary so that the applicant could secure a building permit to convert an existing structure (the carriage house which was formerly an accessory structure to the property known as 401 North Belmont) to a single-family dwelling.

Page 2
BEA 13-80
BEA AGENDA
3-25-80

As indicated in the attached excerpts from the minutes of the January 23, 1979 meeting and the Resolution No. BZA 56-78, the variances of the setbacks as requested were granted by the Board on that date. Also attached is the letter submitted by the applicant stating the purpose and reason for the requested variances.

It should also be noted that the action of the Board was to grant the variance of the setback from the side property line on the north only for the existing structure, and the rear yard setback was reduced to eight feet for both the existing structure and any new structure.

In the minutes you will note that the staff recommendation, as part of the Secretary's Report, was that the variances be granted for the existing structure only. As you will also note, Galbraith stated that there should be no encroachment of the proposed garage structure into the 8 foot setback. In listening to the tapes of the meeting, the statement was made by Galbraith, that unless you make the requirement that the proposed garage also complies with the eight foot rear yard setback, as a detached accessory building the rear yard setback would only be required to be five feet. The actual motion made by Mr. Jacob was that the five conditions necessary for the granting of the variances be found to exist and the variances be granted subject to the staff recommendations.

A permit was issued by Central Inspection on March 1, 1979 on Lots 34, 36, 38 and 40 (part of Lot 42 was not included in the legal) to remodel the existing structure into a single-family dwelling. In accordance with the records of Central Inspection there was no permit issued at that time for the construction of the double garage that was shown on the original application for the requested variances. In testimony given at a recent court hearing, it was stated that the foundations for the garage were in place for a number of months during 1979.

On January 23, 1980 a permit for the erection of a one-family dwelling and attached garage was issued on the south 17' of Lot 38, Lot 40, and the north 9 feet of Lot 42, on Broadview in Hagny's replat of Capital Hill Addition. This resulted in the erection of a two story structure with a dwelling over the double garage that was previously started on the property. Only after this second permit was issued and the contractor was excavating for a sewer connection on this applicant's property was there any outward indication that an additional dwelling was being erected on the property. Subsequent action in District Court by the applicant of this appeal was dismissed by the court because the applicant had not exhausted all means of recourse before said action was filed in District Court. At that point, this case was filed appealing the determination of the Superintendent of Central Inspection in the issuance of the permit for a second single-family dwelling on the property previously described. A copy of the appeal application and the statement of the appellant is attached for your information.

Page 3
BZA 13-30
BZA AGENDA
3-25-80

It is the opinion of the Secretary that the action of the Board of Zoning Appeals on January 23, 1979 to grant the variances to convert the existing carriage house to a single-family dwelling was based on the information submitted by the applicant. This included the copy of the letter from the applicant Roger Bender (December 12, 1978) and the submission of a site plan showing the existing carriage house on the property and a new garage plus a circular drive and landscaped front yard area. It was on this site plan that the Board justified the five conditions necessary to be found to exist prior to granting the variances. It is also the opinion of the Secretary that had the applicant submitted a plan showing the second dwelling unit on the property, that it would be difficult to justify the five conditions on the south portion of the site plan which was at that time a vacant, undeveloped area and was proposed for a garage and yard area.

It is apparent that the permit for the second dwelling was issued without benefit of the site plan that was a part of BZA Case 56-78 and that the provision of permitting the creation of residential "zoning lots" not in conformance with the 60' minimum width requirement of the subdivision rules and regulations were ignored in the determination by Central Inspection in the issuance of the second permit.

The Secretary subsequently requested from the Department of Law a legal opinion on the applicability of the term "zoning lot" in the issuance of building permits. A copy of this opinion is attached for your information.

In accordance with this opinion, the owner created a "zoning lot" on all of the property included in the legal description, which was submitted for action in BZA Case No. 56-78, when a building permit was issued on March 1, 1979 to remodel the carriage house into a single-family dwelling. This "zoning lot" did comply with the minimum lot area of the zoning ordinance and the minimum width of 60' as is now applicable for residential lots. When the second permit was issued on January 23, 1980, two zoning lots were created, one 58 feet and one 51 feet in width, each of which is not in compliance with the minimum width requirements of the Subdivision Rules and Regulations which are included by reference as a part of the zoning ordinance.

RECOMMENDATION:

In light of the legal opinion on the requirement that any new residential zoning lots comply with the 60 foot minimum frontage, and there are adequate methods that will permit relief from the required minimum standards to permit the creation of new zoning lots of less than the 60 foot minimum, it is recommended that the appeal be upheld and determine that an error was made in the issuance of the second permit.

BOARD OF ZONING APPEALS

MINUTES

JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BEA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to ___ and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

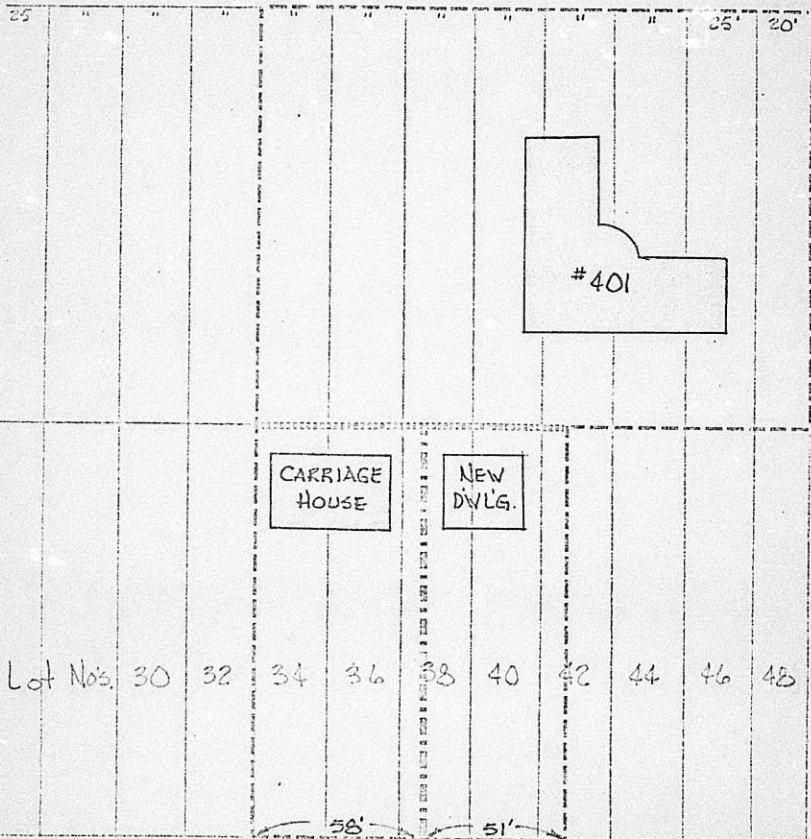
JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

N. BELMONT



RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "2A" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

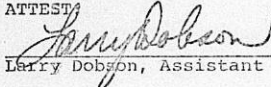
Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

ATTEST


Larry Dobson, Assistant Secretary


Mary L. Kopicetz, Chairman

BENDER ASSOCIATES, P.A.

DECEMBER 12, 1978

Members:
Board of Zoning Appeals
First Floor, City Hall
455 North Main
Wichite, Kansas 67202

It is my desire to purchase the Carriage House and lot (199 x 137) located behind the house at 401 North Belmont.

My intent is to remodel the Carriage House and add a garage, to use as my personal residence. The Carriage House already has three (3) existing bedrooms, a living room, bath and kitchen on the second floor. The main level has a large garage area, stairs and two additional rooms. There is a full basement under the house with an outside entrance and numerous large windows for plenty of light.

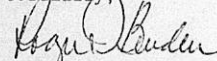
The location of the Carriage House to the lot (see plot plan) is very close to the north and east property lines. It has been located that way since 1917 when it was built. I am not attaching any living areas or additions to the existing house. The garage will be detached. There are no easements of record on the plat.

Residency for this structure has been established through the years; at first by the servants and more recently by the owner from time to time.

In making this my residence, I will be entering the lot from Broadview (west) and will have a Broadview street address. I have also located (on the plot plan) the existing houses adjacent to the lot. The Carriage House sits very deep on the lot and is not close to any other structure.

I respectfully request that the four foot side yard on the north and the eight foot rear yard on the east be granted a variance so that I may use this structure for a residence.

Cordially,


Roger D. Bender
Architect

RDB/eh

ARCHITECTURE • INTERIORS • PLANNING
247 N. MARKET WICHITA, KANSAS 67202 (316) 264-4371

THE CITY OF WICHITA

OFFICE OF DEPARTMENT OF LAW

DATE March 17, 1980

RECEIVED

MAR 18 1980

TO JACK GALBRAITH, CHIEF PLANNER

METROPOLITAN PLANNING

FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

ROUTE

SUBJECT Request for legal opinion --
issuance of building permits

I have reviewed the contents of the memo of March 3, 1980 concerning the above noted matter. Following such review and the informal discussions with you and Glen Lytle, I have arrived at the following conclusions. I recognize that there may be a difference of opinion in the interpretation of the several sections of the zoning code and subdivision regulations and for this reason it might be well to give some thought to appropriate amendments to avoid any such differences.

I do not believe it necessary to cite or analyze the pertinent Kansas enabling statutes. Suffice to say they authorize the zoning and subdivision regulations with which we are concerned here which limit the issuance of building permits to those situations where compliance with such regulations has been established. The subdivision regulations may and do take into account any existing zoning regulations and the zoning regulations may and do take into account the existing subdivision regulations.

The zoning code defines a "zoning lot" as follows:

"A parcel of land that is designated by its owner or developer, at the time of applying for an occupancy certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the requirements of the above and the requirements of the subdivision rules and regulations, such lot may consist of:

- (1) A single lot of record; or
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

It must be noted that the occupancy permit referred to is applied for coincident with the application for a building permit (28.04.220). It becomes rather clear then that the owner or developer determines the "zoning lot" at the time that the "occupancy certificate" is applied for. Further, a "zoning lot" must satisfy all the requirements of the zoning code at the time that the building permit is sought (28.04.220). This will apply in all cases unless a specific exception or exemption is spelled out in the zoning code or in the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 2.

Though the phrase "zoning lot" is not expressly used throughout the zoning code in connection with the zoning districts or classifications, we believe a "zoning lot" as defined above applies to all building or construction sites covered throughout the zoning districts and classifications of the zoning code -- otherwise there would appear to be no reason for the insertion of the phrase "zoning lot" in the definitions set forth in the zoning code. The creation of a "zoning lot" as set forth in the code clearly contemplates the utilization of tracts or lots platted under subdivision regulations as well as parcels of land not platted under subdivision regulations adopted in 1948. This would include parcels of land that might have been divided, subdivided or platted even prior to January 1, 1948.

Since the subdivision regulations now require a minimum width of 60' for residential construction and since the zoning code seems to incorporate by reference such requirements, we believe that all undeveloped parcels of land, irrespective of the date or manner of platting are subject to the 60' minimum width requirement. This is not to say that if a particular parcel of land was being used for a particular purpose at the time of the adoption of the 60' minimum lot width, it could not continue being so used. It can be but the use cannot be changed, enlarged, expanded or intensified without first meeting the requirements of the current regulations. This is because our statutory scheme (K.S.A. 12-709) protects "existing uses" from subsequent zoning but it does not protect either existing zoning or merely anticipated uses. Zoning amendments qualifying and changing the future residential uses of land (as well as land uses in other zoning districts) have been judicially held to be within the police powers of the municipality.

The "zoning lot" amendment of the zoning code was adopted subsequent to the adoption of the amendments to the minimum lot width requirements of the subdivision regulations of 1968. As we view it, the land falling within the category of the exemption of Article 3-105(F), (lots, tracts or parcels that have been sold off, divided, sub-divided, re-subdivided or replatted prior to January 1, 1948) need not be replatted nor further subdivided or changed to be utilized as all or part of a "zoning lot" under the zoning code. Such lots, tracts or parcels may separately or collectively with others, or parts thereof, meet the minimum lot width requirement of 60'. It appears reasonable to suggest that this interpretation was the intent of the zoning code when referring to the "requirements of the subdivision regulations". Nor are the lots, tracts or parcels that were platted under the 1948 subdivision regulations in any way invalidated or changed. On the contrary they too may separately or collectively with others, or parts thereof, meet the current minimum lot width requirement of the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 3.

In order to fully understand what appear to be the issues presented one must keep in mind that we are talking of two separate (though interrelated) things. On the one hand we are talking of subdivision regulations which are concerned primarily with the subdividing or platting of land which historically were developed to facilitate the transfer of ownership of a particular lot, tract or parcel by simplifying the legal description, i.e., to avoid the necessity of metes and bounds description. On the other hand we have the zoning regulations which are primarily concerned with the use of land in particular zoning districts. Granted, the two subjects are and should be to some extent related. The zoning regulations did not concern themselves primarily with the manner or method of "platting" or subdividing land and as the subdivision regulation concept was developed it did not concern itself directly with zoning.

The current subdivision regulations establish minimum requirements as to the laying out or subdividing of land by way of "platting" or "subdividing". They trace their origin to 1948 and have been subsequently amended. One of the significant amendments has been to establish a minimum width of 60' of platted lots (measured at the set back lines) to be used for the uses authorized in a residentially zoned district. The current provision applies to all platting and subdividing subsequent to 1968. Again, this refers only to establishing the minimum width size of the lots on a particular plat. The subdivision regulations adopted in January of 1948 established a similar minimum lot width of 50'. Prior to 1948 there were no subdivision regulations and consequently no minimum lot widths had been established. The current subdivision regulations specifically exempt from its provisions those lots, tracts or parcels which had been platted or subdivided prior to January 1, 1948. In other words the subdivision regulations were looking forward to the "platting" exercises and exempted them from the requirements of the platting regulations adopted in 1948 as subsequently amended.

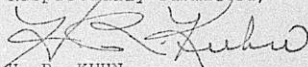
The conclusion that we have reached is that all parcels of land not previously utilized for a specific use under prior platting or subdivision regulations are subject to the minimum width requirements set forth in the current subdivision regulations. It is our opinion that any building permit issued for construction of an improvement on a lot or parcel of land not meeting the current minimum lot width requirement was improvidently issued.

Mr. Jack Galbraith
March 17, 1980
Page 4.

The foregoing conclusions may seem somewhat restrictive and severe. However, it must be remembered that relief is available to the owner of a parcel of land not meeting the current minimum lot width requirement for an intended use. Both the zoning code and subdivision regulations contain appeal provisions wherein relief may be available to the owner of a parcel of land by following the "variance" procedures therein contained.

If we can be of further assistance, please advise.

Respectfully submitted,


H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

Map No. 5747 **NE**
 Sec. 23
 Twp. 27
 Range 1E

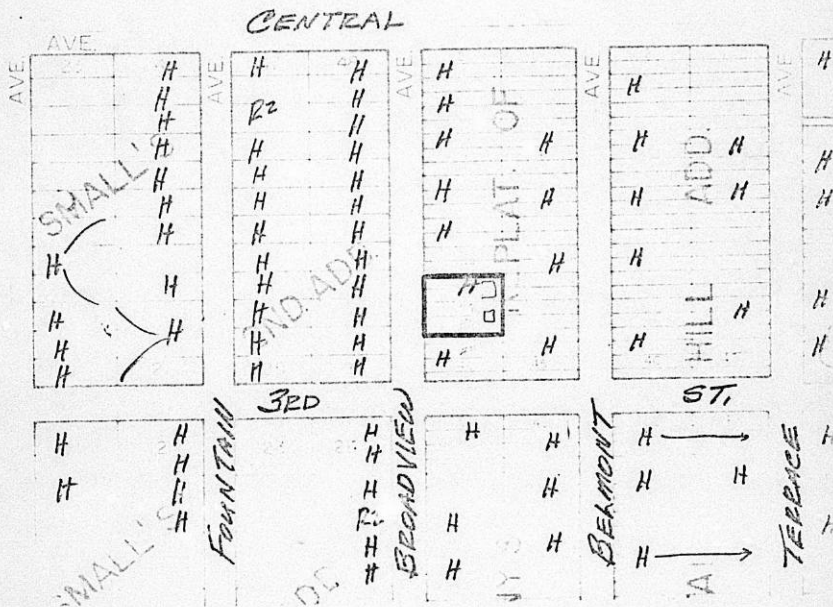
EZA- 13-80
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: 0.35 (109 ft. by 140 ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East SINGLE FAM South SINGLE FAM
 West SINGLE 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 _____



THE CITY OF WICHITA

OFFICE OF DEPARTMENT OF LAW

DATE March 17, 1980

RECEIVED

MAR 18 1980

TO JACK GALBRAITH, CHIEF PLANNER
FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

METROPOLITAN PLANNING
ROUTE 26

SUBJECT Request for legal opinion --
issuance of building permits

I have reviewed the contents of the memo of March 3, 1980 concerning the above noted matter. Following such review and the informal discussions with you and Glen Lytle, I have arrived at the following conclusions. I recognize that there may be a difference of opinion in the interpretation of the several sections of the zoning code and subdivision regulations and for this reason it might be well to give some thought to appropriate amendments to avoid any such differences.

I do not believe it necessary to cite or analyze the pertinent Kansas enabling statutes. Suffice to say they authorize the zoning and subdivision regulations with which we are concerned here which limit the issuance of building permits to those situations where compliance with such regulations has been established. The subdivision regulations may and do take into account any existing zoning regulations and the zoning regulations may and do take into account the existing subdivision regulations.

The zoning code defines a "zoning lot" as follows:

"A parcel of land that is designated by its owner or developer, at the time of applying for an occupancy certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the requirements of the above and the requirements of the subdivision rules and regulations, such lot may consist of:

- (1) A single lot of record; or
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

It must be noted that the occupancy permit referred to is applied for coincident with the application for a building permit (28.04.220). It becomes rather clear then that the owner or developer determines the "zoning lot" at the time that the "occupancy certificate" is applied for. Further, a "zoning lot" must satisfy all the requirements of the zoning code at the time that the building permit is sought (28.04.220). This will apply in all cases unless a specific exception or exemption is spelled out in the zoning code or in the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 2.

Though the phrase "zoning lot" is not expressly used throughout the zoning code in connection with the zoning districts or classifications, we believe a "zoning lot" as defined above applies to all building or construction sites covered throughout the zoning districts and classifications of the zoning code -- otherwise there would appear to be no reason for the insertion of the phrase "zoning lot" in the definitions set forth in the zoning code. The creation of a "zoning lot" as set forth in the code clearly contemplates the utilization of tracts or lots platted under subdivision regulations as well as parcels of land not platted under subdivision regulations adopted in 1948. This would include parcels of land that might have been divided, subdivided or platted even prior to January 1, 1948.

Since the subdivision regulations now require a minimum width of 60' for residential construction and since the zoning code seems to incorporate by reference such requirements, we believe that all undeveloped parcels of land, irrespective of the date or manner of platting are subject to the 60' minimum width requirement. This is not to say that if a particular parcel of land was being used for a particular purpose at the time of the adoption of the 60' minimum lot width, it could not continue being so used. It can be but the use cannot be changed, enlarged, expanded or intensified without first meeting the requirements of the current regulations. This is because our statutory scheme (K.S.A. 12-709) protects "existing uses" from subsequent zoning but it does not protect either existing zoning or merely anticipated uses. Zoning amendments qualifying and changing the future residential uses of land (as well as land uses in other zoning districts) have been judicially held to be within the police powers of the municipality.

The "zoning lot" amendment of the zoning code was adopted subsequent to the adoption of the amendments to the minimum lot width requirements of the subdivision regulations of 1968. As we view it, the land falling within the category of the exemption of Article 3-105(F), (lots, tracts or parcels that have been sold off, divided, sub-divided, re-subdivided or replatted prior to January 1, 1948) need not be replatted nor further subdivided or changed to be utilized as all or part of a "zoning lot" under the zoning code. Such lots, tracts or parcels may separately or collectively with others, or parts thereof, meet the minimum lot width requirement of 60'. It appears reasonable to suggest that this interpretation was the intent of the zoning code when referring to the "requirements of the subdivision regulations". Nor are the lots, tracts or parcels that were platted under the 1948 subdivision regulations in any way invalidated or changed. On the contrary they too may separately or collectively with others, or parts thereof, meet the current minimum lot width requirement of the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 3.

In order to fully understand what appear to be the issues presented one must keep in mind that we are talking of two separate (though interrelated) things. On the one hand we are talking of subdivision regulations which are concerned primarily with the subdividing or platting of land which historically were developed to facilitate the transfer of ownership of a particular lot, tract or parcel by simplifying the legal description, i.e., to avoid the necessity of metes and bounds description. On the other hand we have the zoning regulations which are primarily concerned with the use of land in particular zoning districts. Granted, the two subjects are and should be to some extent related. The zoning regulations did not concern themselves primarily with the manner or method of "platting" or subdividing land and as the subdivision regulation concept was developed it did not concern itself directly with zoning.

The current subdivision regulations establish minimum requirements as to the laying out or subdividing of land by way of "platting" or "subdividing". They trace their origin to 1948 and have been subsequently amended. One of the significant amendments has been to establish a minimum width of 60' of platted lots (measured at the set back lines) to be used for the uses authorized in a residentially zoned district. The current provision applies to all platting and subdividing subsequent to 1968. Again, this refers only to establishing the minimum width size of the lots on a particular plat. The subdivision regulations adopted in January of 1948 established a similar minimum lot width of 50'. Prior to 1948 there were no subdivision regulations and consequently no minimum lot widths had been established. The current subdivision regulations specifically exempt from its provisions those lots, tracts or parcels which had been platted or subdivided prior to January 1, 1948. In other words the subdivision regulations were looking forward to the "platting" exercises and exempted them from the requirements of the platting regulations adopted in 1948 as subsequently amended.

The conclusion that we have reached is that all parcels of land not previously utilized for a specific use under prior platting or subdivision regulations are subject to the minimum width requirements set forth in the current subdivision regulations. It is our opinion that any building permit issued for construction of an improvement on a lot or parcel of land not meeting the current minimum lot width requirement was improvidently issued.

Mr. Jack Galbraith
March 17, 1980
Page 4.

The foregoing conclusions may seem somewhat restrictive and severe. However, it must be remembered that relief is available to the owner of a parcel of land not meeting the current minimum lot width requirement for an intended use. Both the zoning code and subdivision regulations contain appeal provisions wherein relief may be available to the owner of a parcel of land by following the "variance" procedures therein contained.

If we can be of further assistance, please advise.

Respectfully submitted,



H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

SECRETARY'S REPORT
CASE NO. BZA 13-80

APPLICANT: William & Julie Nicholson, 401 North Belmont,
Wichita, Kansas

AGENT: James Walker, 320 Page Court, Wichita, Kansas.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code
of the City of Wichita, appealing from decision
of the Superintendent of Central Inspection in
the issuance of a building permit for a second
single-family dwelling on a zoning lot establish
by BZA Case No. 56-78 and approved by the Board
of Zoning Appeals by Resolution No. BZA 56-78 of
January 23, 1979 for a variance of the required
rear yard and the side yard on the north for the
remodeling of existing structure as a single-
family dwelling.

GENERAL LOCATION: On the east side of Broadview and north of 3rd
Street.

ZONING: Subject property is zoned the "AA" One-family
Dwelling District as are all adjacent properties.

LAND USE: All properties are developed as single-family
dwellings.

JURISDICTION:

The Board has jurisdiction to consider the appeal under the
provisions outlined in Section 2.12.590.A, Code of the City of
Wichita.

COMMENTS BY THE SECRETARY:

The applicant is appealing a decision of the Superintendent
of Central Inspection in the issuance of a building permit to
erect a second single-family dwelling on Lots 34, 36, 38, 40 and 42
except the south 16 feet of Lot 42 on Broadview, Hagny's replat of
Capital Hill Addition, which was the property of record, submitted
by Roger Bender, in a application for variances of a rear yard and
a side yard setbacks and considered by the Board of Zoning Appeals
on January 23, 1979. This request was necessary so that the applic
could secure a building permit to convert an existing structure (th
carriage house which was formerly an accessory structure to the
property known as 401 North Belmont) to a single-family dwelling.

Page 2
BZA 13-80
BZA AGENDA
3-25-80

As indicated in the attached excerpts from the minutes of the January 23, 1979 meeting and the Resolution No. BZA 56-78, the variances of the setbacks as requested were granted by the Board on that date. Also attached is the letter submitted by the applicant stating the purpose and reason for the requested variances.

It should also be noted that the action of the Board was to grant the variance of the setback from the side property line on the north only for the existing structure, and the rear yard setback was reduced to eight feet for both the existing structure and any new structure.

In the minutes you will note that the staff recommendation, as part of the Secretary's Report, was that the variances be granted for the existing structure only. As you will also note, Galbraith stated that there should be no encroachment of the proposed garage structure into the 8 foot setback. In listening to the tapes of the meeting, the statement was made by Galbraith, that unless you make the requirement that the proposed garage also complies with the eight foot rear yard setback, as a detached accessory building the rear yard setback would only be required to be five feet. The actual motion made by Mr. Jacob was that the five conditions necessary for the granting of the variances be found to exist and the variances be granted subject to the staff recommendations.

A permit was issued by Central Inspection on March 1, 1979 on Lots 34, 36, 38 and 40 (part of Lot 42 was not included in the legal) to remodel the existing structure into a single-family dwelling. In accordance with the records of Central Inspection there was no permit issued at that time for the construction of the double garage that was shown on the original application for the requested variances. In testimony given at a recent court hearing, it was stated that the foundations for the garage were in place for a number of months during 1979.

On January 23, 1980 a permit for the erection of a one-family dwelling and attached garage was issued on the south 17' of Lot 38, Lot 40, and the north 9 feet of Lot 42, on Broadview in Hagny's replat of Capital Hill Addition. This resulted in the erection of a two story structure with a dwelling over the double garage that was previously started on the property. Only after this second permit was issued and the contractor was excavating for a sewer connection on this applicant's property was there any outward indication that an additional dwelling was being erected on the property. Subsequent action in District Court by the applicant of this appeal was dismissed by the court because the applicant had not exhausted all means of recourse before said action was filed in District Court. At that point, this case was filed appealing the determination of the Superintendent of Central Inspection in the issuance of the permit for a second single-family dwelling on the property previously described. A copy of the appeal application and the statement of the appellant is attached for your information.

Page 3
BZA 13-30
BZA AGENDA
3-25-80

It is the opinion of the Secretary that the action of the Board of Zoning Appeals on January 23, 1979 to grant the variances to convert the existing carriage house to a single-family dwelling was based on the information submitted by the applicant. This included the copy of the letter from the applicant Roger Bender (December 12, 1978) and the submission of a site plan showing the existing carriage house on the property and a new garage plus a circular drive and landscaped front yard area. It was on this site plan that the Board justified the five conditions necessary to be found to exist prior to granting the variances. It is also the opinion of the Secretary that had the applicant submitted a plan showing the second dwelling unit on the property, that it would be difficult to justify the five conditions on the south portion of the site plan which was at that time a vacant, undeveloped area and was proposed for a garage and yard area.

It is apparent that the permit for the second dwelling was issued without benefit of the site plan that was a part of BZA Case 56-78 and that the provision of permitting the creation of residential "zoning lots" not in conformance with the 60' minimum width requirement of the subdivision rules and regulations were ignored in the determination by Central Inspection in the issuance of the second permit.

The Secretary subsequently requested from the Department of Law a legal opinion on the applicability of the term "zoning lot" in the issuance of building permits. A copy of this opinion is attached for your information.

In accordance with this opinion, the owner created a "zoning lot" on all of the property included in the legal description, which was submitted for action in BZA Case No. 56-78, when a building permit was issued on March 1, 1979 to remodel the carriage house into a single-family dwelling. This "zoning lot" did comply with the minimum lot area of the zoning ordinance and the minimum width of 60' as is now applicable for residential lots. When the second permit was issued on January 23, 1980, two zoning lots were created, one 58 feet and one 51 feet in width, each of which is not in compliance with the minimum width requirements of the Subdivision Rules and Regulations which are included by reference as a part of the zoning ordinance.

RECOMMENDATION:

In light of the legal opinion on the requirement that any new residential zoning lots comply with the 60 foot minimum frontage, and there are adequate methods that will permit relief from the required minimum standards to permit the creation of new zoning lots of less than the 60 foot minimum, it is recommended that the appeal be upheld and determine that an error was made in the issuance of the second permit.

() Published in the Daily Record, March 3, 1980

OFFICIAL NOTICE

NOTICE IS HEREBY given that on the 25th day of March, 1980, the Board of Zoning Appeals of the City of Wichita, Kansas, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas will consider the following applications at 1:30 p.m.

1. Case No. BZA 13-80 - William & Julie Nicholson, 401 North Belmont, Wichita, Kansas, pursuant to Section 2.12.590.A, Code of the City of Wichita, is appealing the interpretation of the Superintendent of Central Inspection in the issuance of a building permit for a second single-family dwelling on a zoning lot established by BZA Case No. 56-78 and approved by the Board of Zoning Appeals by Resolution No. BZA 56-78 on January 23, 1979 for a variance of the required rear yard and the side yard on the north for the remodeling of an existing structure as a single-family dwelling, on property zoned the "AA" One-family Dwelling District and legally described as follows:

Lots 34, 36, 38, 40 and 42, except the south 16 feet of lot 42 on Broadview in Hagney's Replat of Capitol Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

as provided in City Ordinances hereinabove described and Section 2.12.560 et. seq., Code of the City of Wichita, Sedgwick County, Kansas, and the same will there be discussed and considered by the said Board of Zoning Appeals and all persons interested in said matters will be heard at this time concerning their views and wishes in the premises, and any protest against any of the provisions of the appeal will be considered by the Board of Zoning Appeals as by law provided.

WITNESS my hand and seal this 29th day of February, 1980.

Earl Henderson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

() Published in the Daily Record, March 3, 1980

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WITNESS my hand and seal this 29th day of February, 1980.

Earl Henderson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BZA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

BZA MINUTES

January 23, 1979

Page 6

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

-
3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BZA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the northeast corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the Opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

BZA MINUTES
January 23, 1979
Page 4

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

-
3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

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

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

THE CITY OF WICHITA

JOHN DEKKER, Director of Law and City Attorney
JOE M. BIGGLE, JR., Assistant City Attorney



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4691

March 21, 1980

Mr. Richard V. Foote
Attorney at Law
301 N. Market
Wichita, Kansas 67202

Mr. James A. Walker
Attorney at Law
320 Page Court
220 W. Douglas
Wichita, Kansas 67202

RE: Board of Zoning Appeals
Case No. 13-80

Gentlemen:

I am writing in regard to the above captioned BZA case which is set for consideration on March 25, 1980. I understand that you have previously been forwarded a packet of information by the BZA secretary including a copy of a legal opinion written by H. R. Kuhn, Assistant City Attorney.

The procedure for the hearing will be informal, and I am suggesting, with the Board's approval, that a general background of the case first be presented by Mr. Galbraith or Mr. Lytle. Following that, the appellant's attorney, Mr. Walker, can make his presentation and call any witnesses he feels are necessary. Following that, Mr. Bender's attorney, Mr. Foote, can make his presentation and call any witnesses. I assume that one or both of the attorneys may also wish to make a rebuttal presentation.

It will also be necessary to allow any interested neighboring landowners to be heard. Also, the members of the BZA will be wanting to ask questions of the attorneys and witnesses.

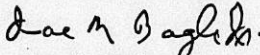
Although not wanting to put off any necessary testimony, it is my hope that the bulk, if not the entire presentation by the parties, can be made by the respective parties' attorneys. If

Richard V. Foote, Attorney at Law
James A. Walker, Attorney at Law
Page 2
March 21, 1980

some effort is not made to hold the witnesses to a minimum, the hearing could become endless, and for no real purpose.

If you have any questions concerning this procedure, please let me know.

Very truly yours,



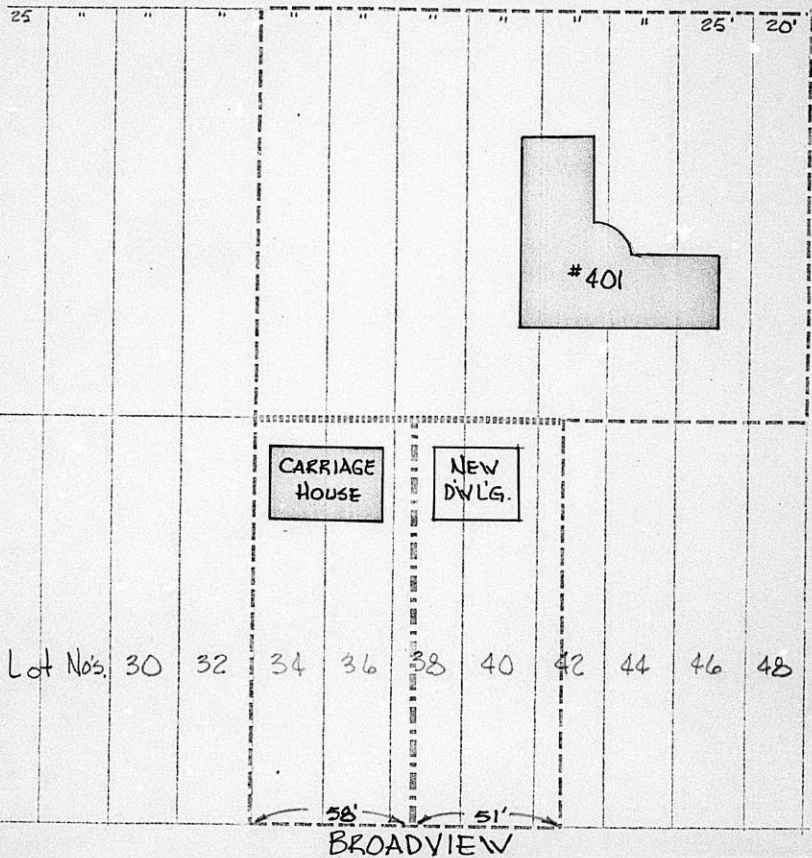
Joe M. Bogle, Sr.
Assistant City Attorney

JMB:kh

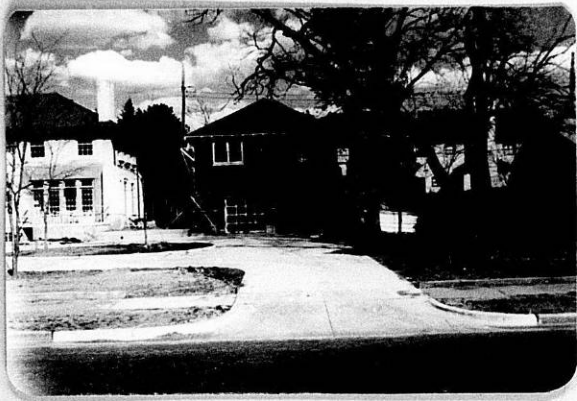
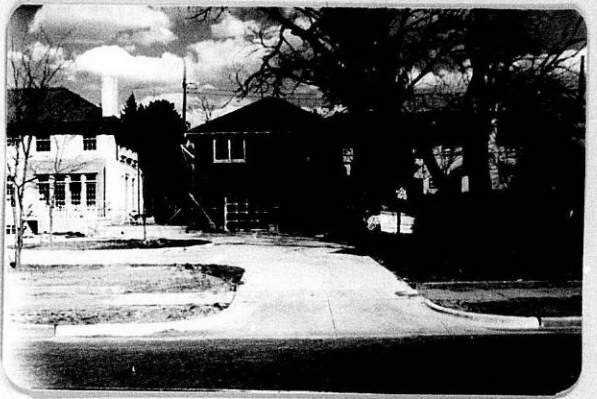
cc: Jack Galbraith
Members of the Board of Zoning Appeals

BZA 13-80

N. BELMONT



3RD ST.



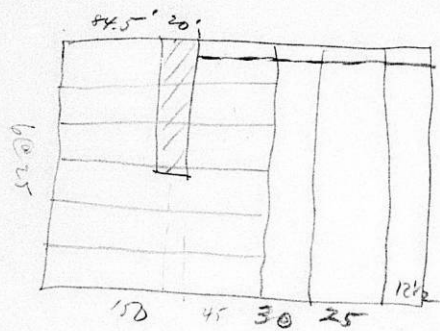
Phone conversation w/ G. Quinn 3-12-80

Permit issued to remodel
carriage house on 3-1-79

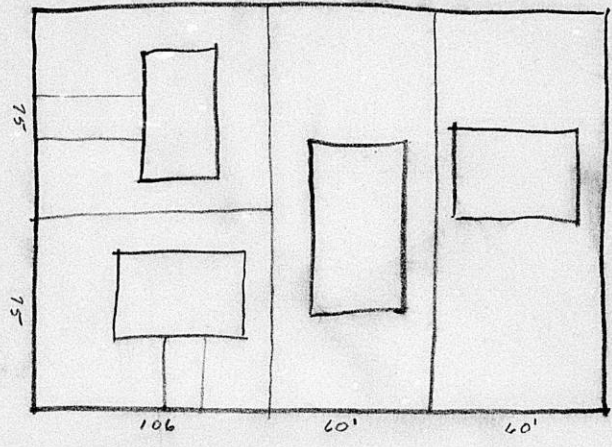
No garage indicated on permit,
and the foundations for the
detached garage were in place
for a number of months before

a permit was issued on 1-23-80

for the erection of a dwelling on 5-17-80
2-2-80
2-5-80



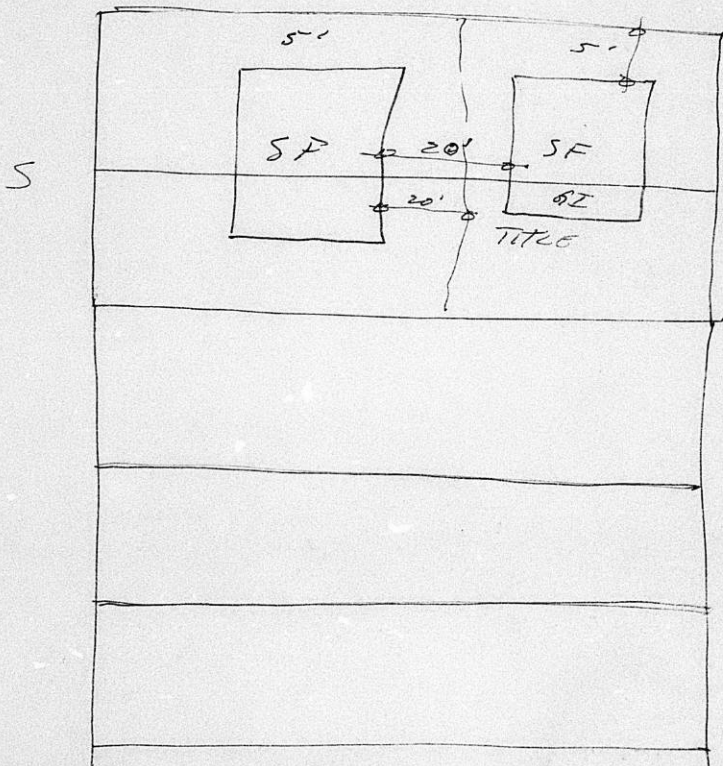
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BROADVIEW

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ACT.



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remarks: *Would you like me to
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remarks: *State Bob's
question about examples.
See if you can sketch some.*

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

March 3, 1980

TO H. R. Kuhn, Assistant City Attorney

FROM Jack H. Galbraith, Chief Planner

SUBJECT Request for legal opinion.

At the present time, there have been several instances related to the interpretation of the zoning ordinance and the subdivision rules and regulations that have created some concerns for us. One such interpretation has resulted in action between two adjoining property owners over the issuance of a building permit for a second single-family dwelling on a parcel of land that was originally submitted to the Board of Zoning Appeals as a zoning lot with a request for a variance of the rear yard from 20 feet to 8 feet to remodel an existing structure into a single-family residence.

We would appreciate your review and opinion of the term in the zoning ordinance "zoning lot", particularly as it relates to the subdivision rules and regulations. This definition was inserted into the ordinance approximately 5 years ago in conjunction with the sign provision amendments to prevent aborting certain provisions of the sign limitations. It does not, however, nor was it intended to strictly limit the use of the term "zoning lot" to that particular situation.

As Lytle and I discussed with you briefly, you will note in the definition of a "zoning lot" that it may consist of several lots, or even down to a portion of a lot of record, provided it also satisfies the requirements of the subdivision rules and regulations. Within the subdivision rules and regulations are certain exemptions as set forth in Section 3-105, and also provisions for lot splits as set forth in Article 6. Also in the subdivision rules and regulations there are minimum lot widths set forth in Section 7-204 in which the minimum is set at 60 feet, which we believe is the key issue that does not permit new zoning lots to be created which have less frontage than that.

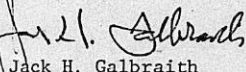
In the previously mentioned case between the two property owners, the zoning lot submitted to the Board of Zoning

Page Two .
H. R. Kuhn, Assistant City Attorney
March 3, 1980

Appeals consisted of four 25 foot lots plus 9 feet of an additional lot, all of which was sold from a previous ownership (one zoning lot) which was used as a single-family dwelling and accessory structures. The sell-off created the second zoning lot, both of which meet the minimum standards set forth in the subdivision rules and regulations for the minimum 60 foot width. The eventual creation of the third zoning lot out of the parcel sold off, both of which now have less than the minimum requirement of 60 feet for each zoning lot, is the questionable interpretation. In this particular area of the city, we believe that the majority of properties are developed on "zoning lots" of at least 75 feet or more, and the division of such parcels without regard to the general pattern of the neighborhood will possibly create problems. It should be noted, however, that there are probably 50 ownerships on the west side of the street.

Prior to 1968, the subdivision rules and regulations permitted lots to be platted at a minimum of 50 feet. Prior to 1948 there apparently were no minimum widths required and in many older areas of the city, many properties are platted in 25 foot lots. In much of the older areas of the city, redevelopment is occurring where a dilapidated structure has been removed from possibly six or eight 25 foot lots, which by definition was a zoning lot for the existing structure. When the property is redeveloped for a number of structures, each of which must be on an individual zoning lot, should the creation of the new zoning lots be required to comply with the provisions of the subdivision rules and regulations and have the minimum 60 foot width? We believe that the answer is yes.] 7

Possibly prior to writing an opinion, it might be helpful for you to meet with Mr. Feldner and me and other staff persons to better understand some of the problems related to the matter. I will be glad to set up a meeting at your convenience. Please advise when you can be available.


Jack H. Galbraith
Chief Planner

JHG:GEL:el

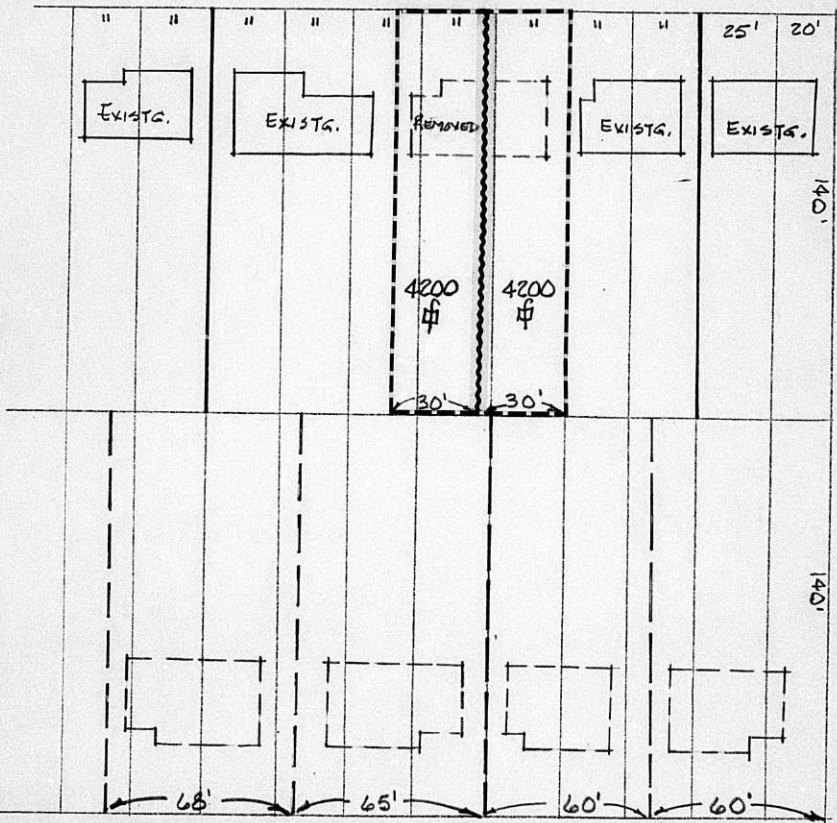
cc: John Dekker, Director of Law
✓ Robert A. Lakin, Director of Planning
Don Anderson, Director of Housing and Economic Development
Robert B. Feldner, Superintendent of Central Inspection

"	"	"	"	50'

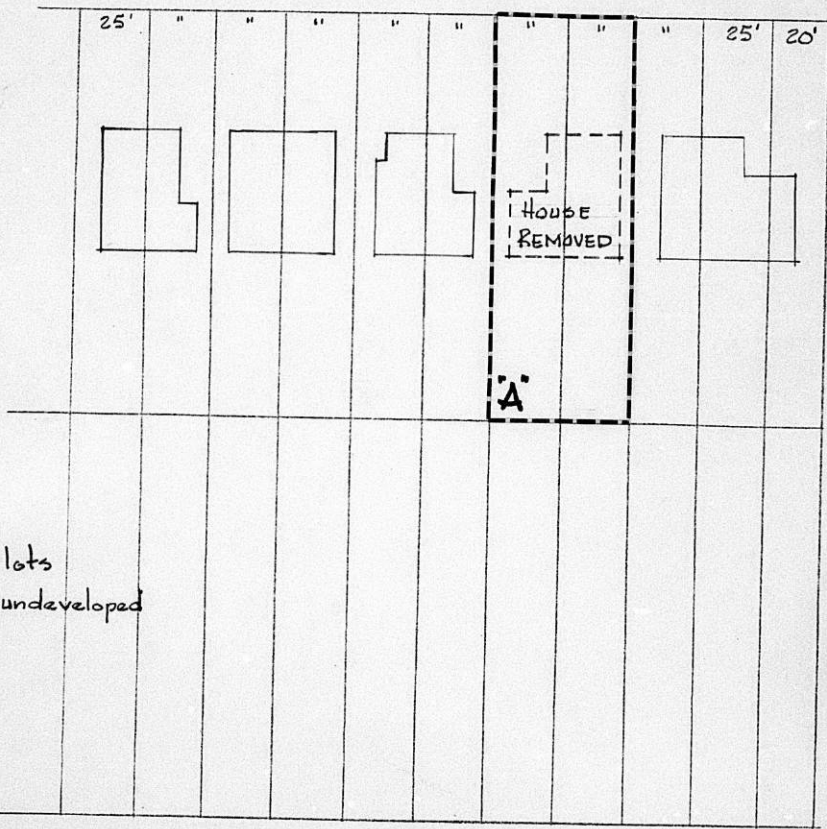
7

"C"

"D"

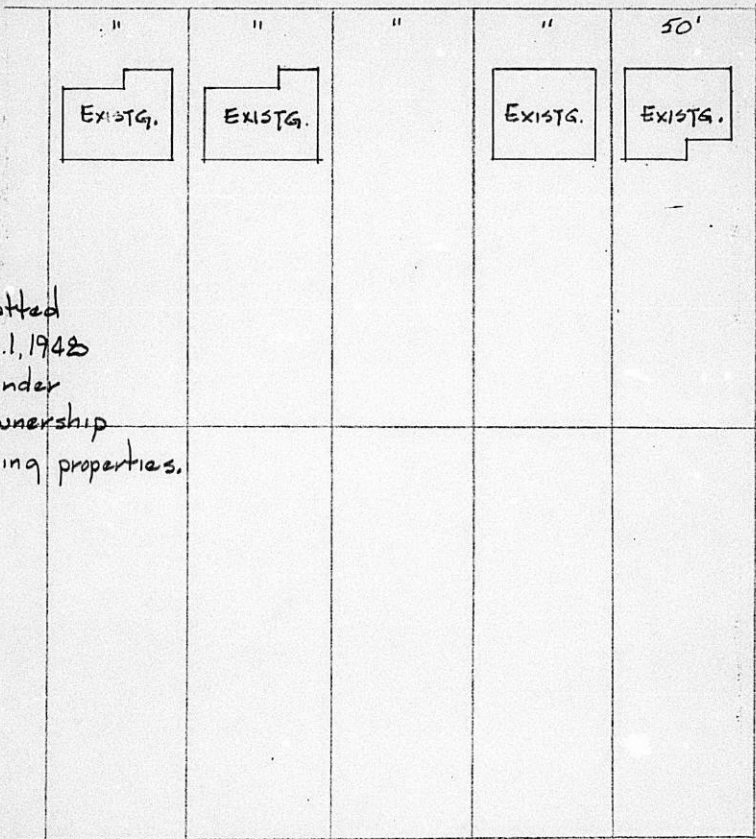


"	"	"	"	50'

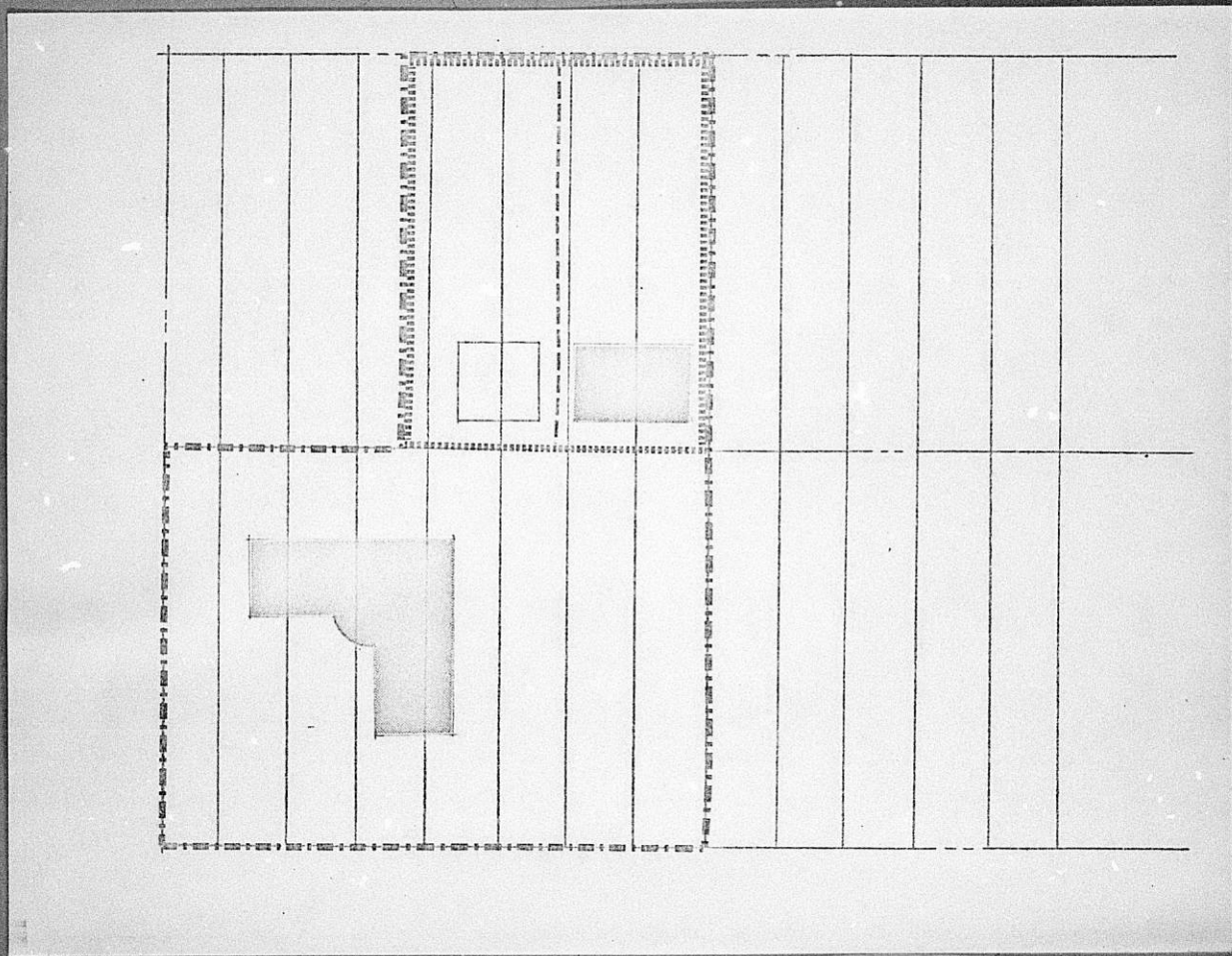


All vacant lots
previously undeveloped

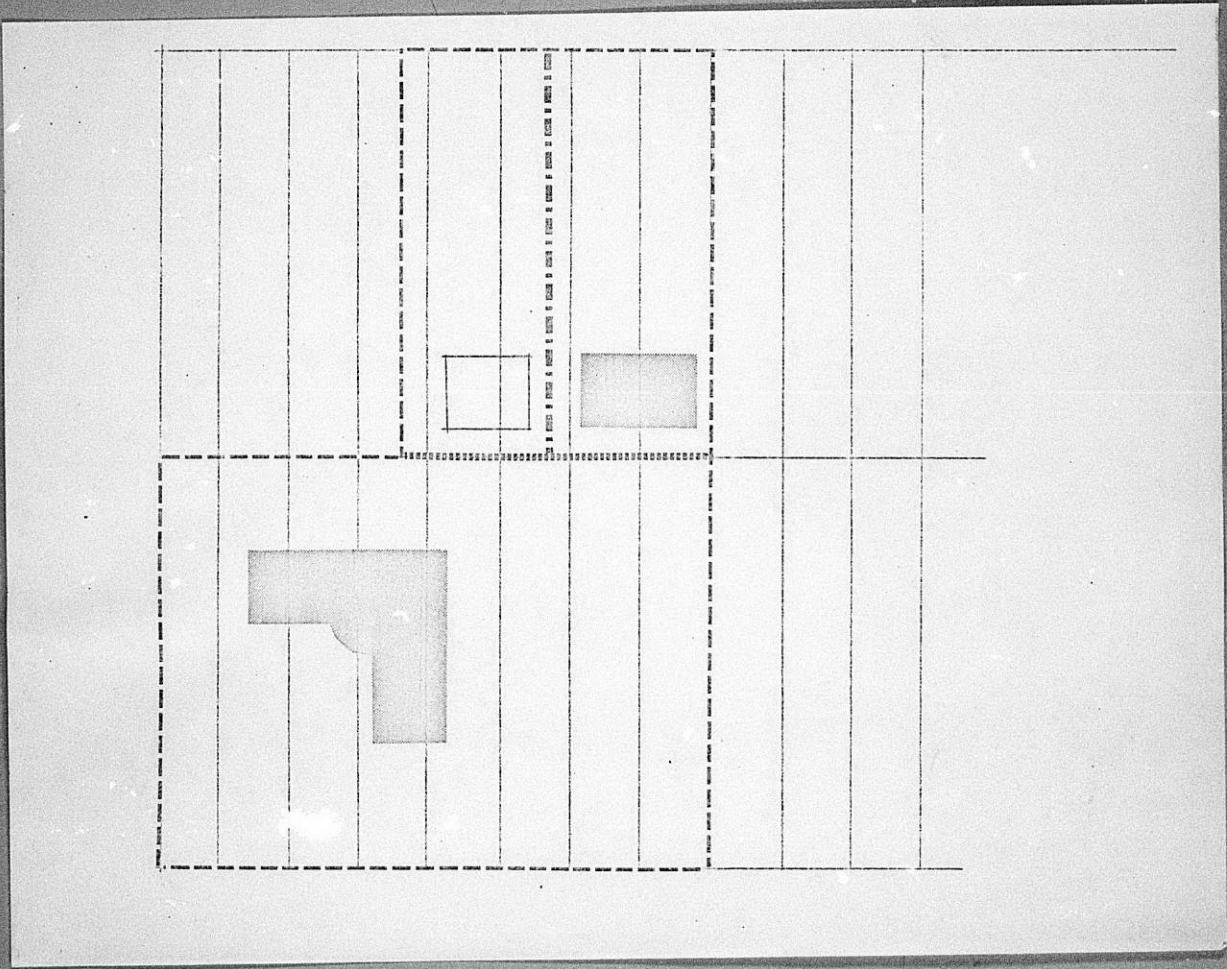
"B"

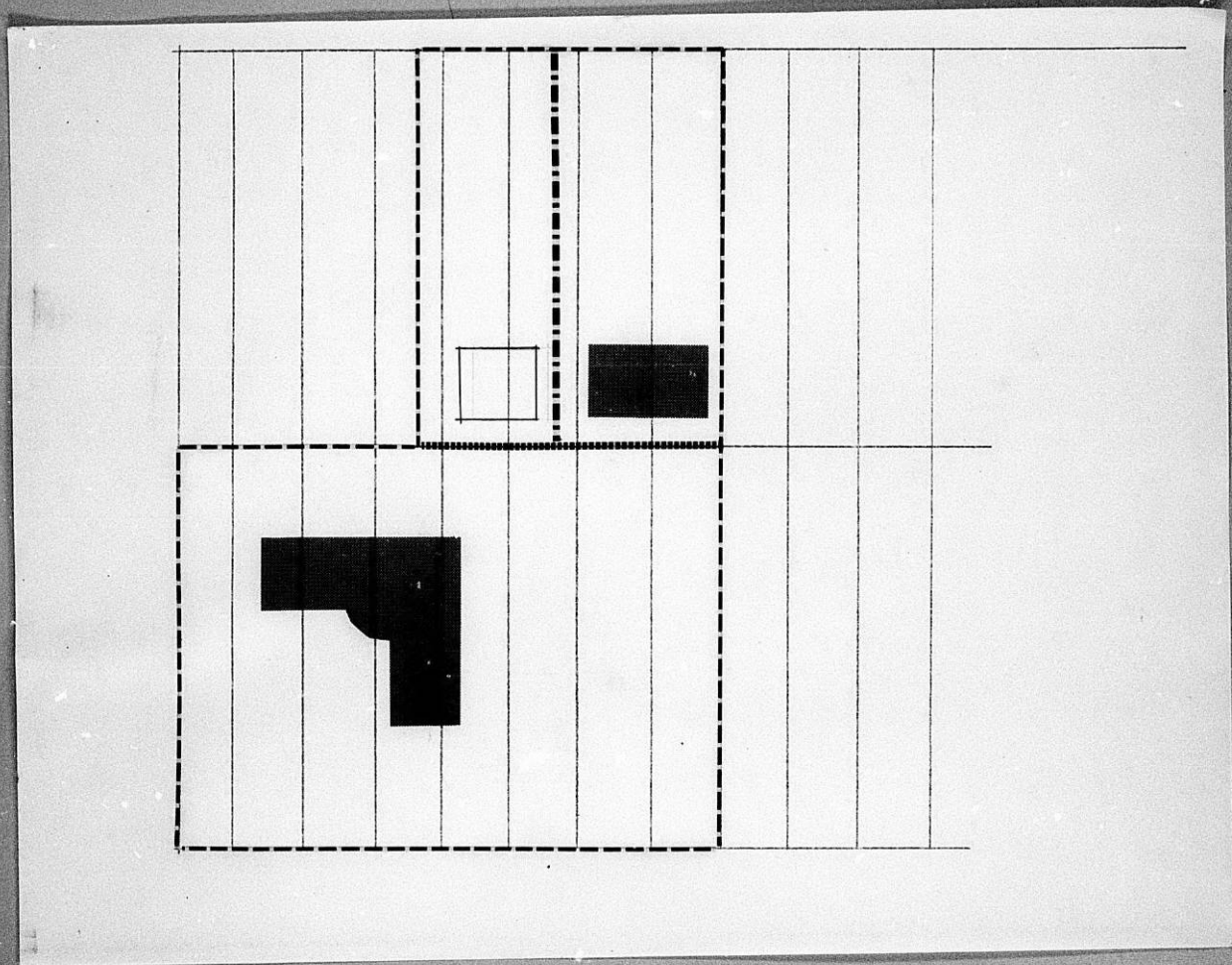


All lots platted
before Jan. 1, 1948
and held under
distinct ownership
from adjoining properties.

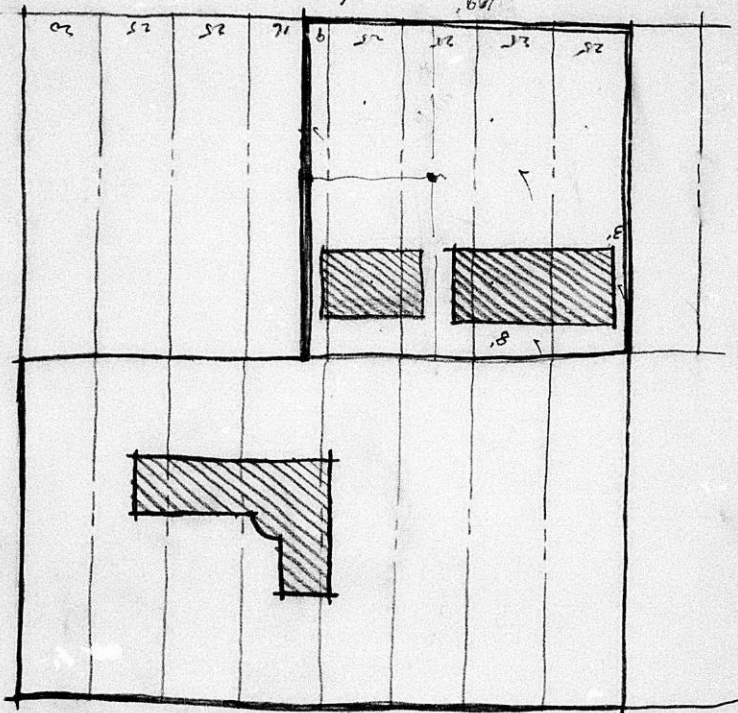


A grid table with 5 columns and 2 rows, centered on a dark background. The table is composed of 10 empty rectangular cells. The grid is defined by thin black lines. There are four vertical lines and one horizontal line. The table is positioned in the center of the page, with a dark border around it. There are small L-shaped marks at the corners of the page, likely for mounting or scanning purposes.



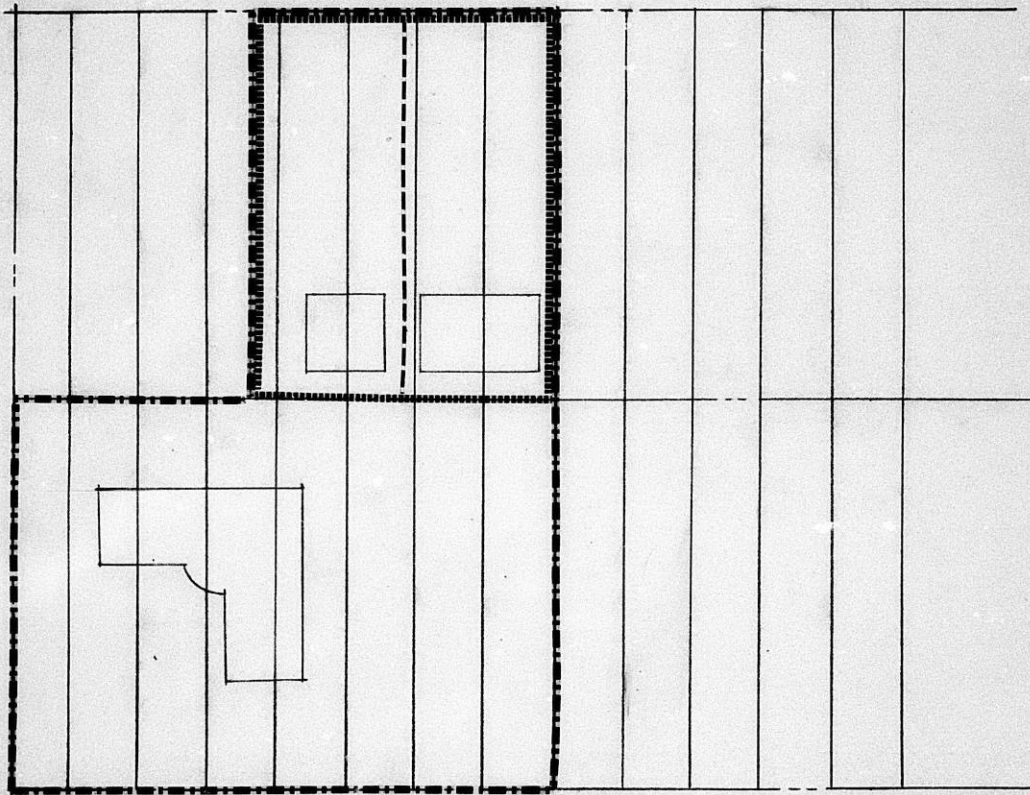


BROADVIEW



3RD

BELMONT



SECRETARY'S REPORT
CASE NO. BZA 13-80

APPLICANT: William & Julie Nicholson, 401 North Belmont,
Wichita, Kansas

AGENT: James Walker, 320 Page Court, Wichita, Kansas.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code
of the City of Wichita, appealing from decision
of the Superintendent of Central Inspection in
the issuance of a building permit for a second
single-family dwelling on a zoning lot established
by BZA Case No. 56-78 and approved by the Board
of Zoning Appeals by Resolution No. BZA 56-78 on
January 23, 1979 for a variance of the required
rear yard and the side yard on the north for the
remodeling of existing structure as a single-
family dwelling.

GENERAL LOCATION: On the east side of Broadview and north of 3rd
Street.

ZONING: Subject property is zoned the "AA" One-family
Dwelling District as are all adjacent properties.

LAND USE: All properties are developed as single-family
dwellings.

JURISDICTION:
The Board has jurisdiction to consider the appeal under the
provisions outlined in Section 2.12.590.A, Code of the City of
Wichita.

COMMENTS BY THE SECRETARY:

The applicant is appealing a decision of the Superintendent
of Central Inspection in the issuance of a building permit to
erect a second single-family dwelling on Lots 34, 36, 38, 40 and 42
except the south 16 feet of Lot 42 on Broadview, Hagny's replat of
Capital Hill Addition, which was the property of record, submitted
by Roger Bender, in a application for variances of a rear yard and
a side yard setbacks and considered by the Board of Zoning Appeals
on January 23, 1979. This request was necessary so that the applic
could secure a building permit to convert an existing structure (th
carriage house which was formerly an accessory structure to the
property known as 401 North Belmont) to a single-family dwelling.

Page 2
BZA 13-80
BZA AGENDA
3-25-80

As indicated in the attached excerpts from the minutes of the January 23, 1979 meeting and the Resolution No. BZA 56-78, the variances of the setbacks as requested were granted by the Board on that date. Also attached is the letter submitted by the applicant stating the purpose and reason for the requested variances.

It should also be noted that the action of the Board was to grant the variance of the setback from the side property line on the north only for the existing structure, and the rear yard setback was reduced to eight feet for both the existing structure and any new structure.

In the minutes you will note that the staff recommendation, as part of the Secretary's Report, was that the variances be granted for the existing structure only. As you will also note, Galbraith stated that there should be no encroachment of the proposed garage structure into the 8 foot setback. In listening to the tapes of the meeting, the statement was made by Galbraith, that unless you make the requirement that the proposed garage also complies with the eight foot rear yard setback, as a detached accessory building the rear yard setback would only be required to be five feet. The actual motion made by Mr. Jacob was that the five conditions necessary for the granting of the variances be found to exist and the variances be granted subject to the staff recommendations.

A permit was issued by Central Inspection on March 1, 1979 on Lots 34, 36, 38 and 40 (part of Lot 42 was not included in the legal) to remodel the existing structure into a single-family dwelling. In accordance with the records of Central Inspection there was no permit issued at that time for the construction of the double garage that was shown on the original application for the requested variances. In testimony given at a recent court hearing, it was stated that the foundations for the garage were in place for a number of months during 1979.

On January 23, 1980 a permit for the erection of a one-family dwelling and attached garage was issued on the south 17' of Lot 38, Lot 40, and the north 9 feet of Lot 42, on Broadview in Hagny's replat of Capital Hill Addition. This resulted in the erection of a two story structure with a dwelling over the double garage that was previously started on the property. Only after this second permit was issued and the contractor was excavating for a sewer connection on this applicant's property was there any outward indication that an additional dwelling was being erected on the property. Subsequent action in District Court by the applicant of this appeal was dismissed by the court because the applicant had not exhausted all means of recourse before said action was filed in District Court. At that point, this case was filed appealing the determination of the Superintendent of Central Inspection in the issuance of the permit for a second single-family dwelling on the property previously described. A copy of the appeal application and the statement of the appellant is attached for your information.

Page 3
BZA 13-80
BZA AGENDA
3-25-80

It is the opinion of the Secretary that the action of the Board of Zoning Appeals on January 23, 1979 to grant the variances to convert the existing carriage house to a single-family dwelling was based on the information submitted by the applicant. This included the copy of the letter from the applicant Roger Bender (December 12, 1978) and the submission of a site plan showing the existing carriage house on the property and a new garage plus a circular drive and landscaped front yard area. It was on this site plan that the Board justified the five conditions necessary to be found to exist prior to granting the variances. It is also the opinion of the Secretary that had the applicant submitted a plan showing the second dwelling unit on the property, that it would be difficult to justify the five conditions on the south portion of the site plan which was at that time a vacant, undeveloped area and was proposed for a garage and yard area.

It is apparent that the permit for the second dwelling was issued without benefit of the site plan that was a part of BZA Case 56-78 and that the provision of permitting the creation of residential "zoning lots" not in conformance with the 60' minimum width requirement of the subdivision rules and regulations were ignored in the determination by Central Inspection in the issuance of the second permit.

The Secretary subsequently requested from the Department of Law a legal opinion on the applicability of the term "zoning lot" in the issuance of building permits. A copy of this opinion is attached for your information.

In accordance with this opinion, the owner created a "zoning lot" on all of the property included in the legal description, which was submitted for action in BZA Case No. 56-78, when a building permit was issued on March 1, 1979 to remodel the carriage house into a single-family dwelling. This "zoning lot" did comply with the minimum lot area of the zoning ordinance and the minimum width of 60' as is now applicable for residential lots. When the second permit was issued on January 23, 1980, two zoning lots were created, one 58 feet and one 51 feet in width, each of which is not in compliance with the minimum width requirements of the Subdivision Rules and Regulations which are included by reference as a part of the zoning ordinance.

RECOMMENDATION:

In light of the legal opinion on the requirement that any new residential zoning lots comply with the 60 foot minimum frontage, and there are adequate methods that will permit relief from the required minimum standards to permit the creation of new zoning lots of less than the 60 foot minimum, it is recommended that the appeal be upheld and determine that an error was made in the issuance of the second permit.

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BEA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to ___ and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

-
3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

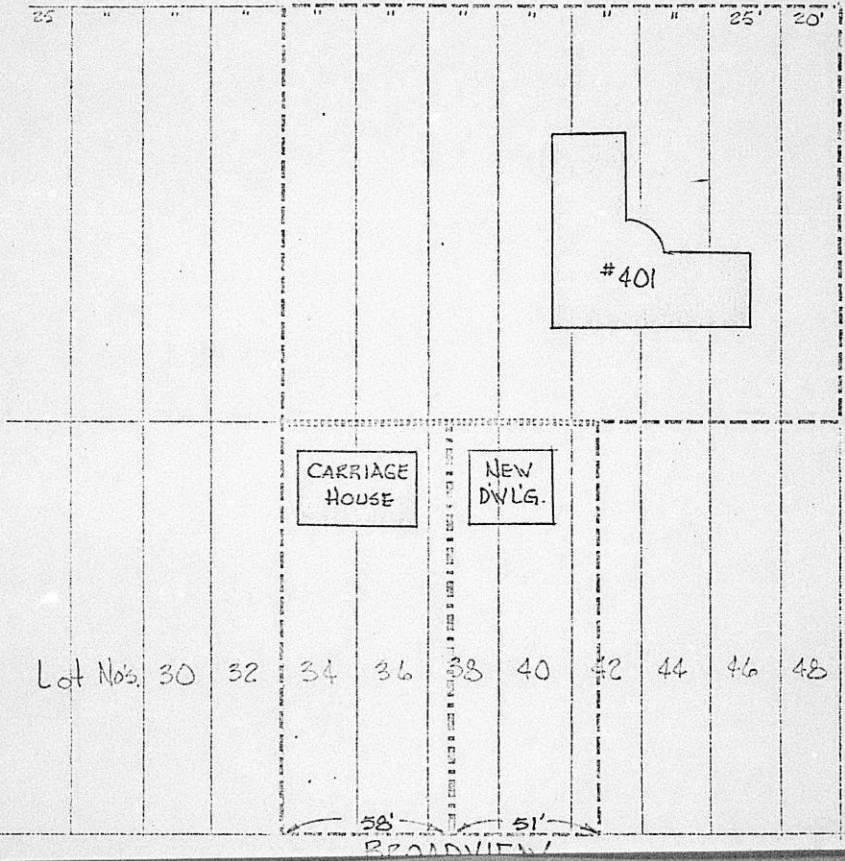
JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

N. BELMONT



RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

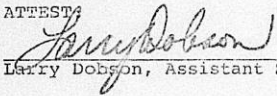
Lots 34, 36, 38, 40 and 42, except South
16 feet of lot 42 on Broadview in Hagney's
Replat of Capital Hill Addition, Sedgwick
County, Kansas. Generally located on the
east side of Broadview in an area north of
Third Street

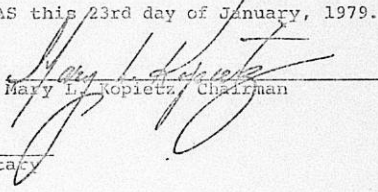
be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

ATTEST


Larry Dobson, Assistant Secretary


Mary L. Kopyetz, Chairman

BENDER ASSOCIATES, P.A.

DECEMBER 12, 1978

Members:

Board of Zoning Appeals
First Floor, City Hall
455 North Main
Wichita, Kansas 67202

It is my desire to purchase the Carriage House and lot (199 x 137) located behind the house at 401 North Belmont.

My intent is to remodel the Carriage House and add a garage, to use as my personal residence. The Carriage House already has three (3) existing bedrooms, a living room, bath and kitchen on the second floor. The main level has a large garage area, stairs and two additional rooms. There is a full basement under the house with an outside entrance and numerous large windows for plenty of light.

The location of the Carriage House to the lot (see plot plan) is very close to the north and east property lines. It has been located that way since 1917 when it was built. I am not attaching any living areas or additions to the existing house. The garage will be detached. There are no easements of record on the plat.

Residency for this structure has been established through the years; at first by the servants and more recently by the owner from time to time.

In making this my residence, I will be entering the lot from Broadview (west) and will have a Broadview street address. I have also located (on the plot plan) the existing houses adjacent to the lot. The Carriage House sits very deep on the lot and is not close to any other structure.

I respectfully request that the four foot side yard on the north and the eight foot rear yard on the east be granted a variance so that I may use this structure for a residence.

Cordially,



Roger D. Bender
Architect

RDB/eh

ARCHITECTURE • INTERIORS • PLANNING
247 N. MARKET WICHITA, KANSAS 67202 (316) 264-4371

THE CITY OF WICHITA
OFFICE OF DEPARTMENT OF LAW

DATE March 17, 1980

RECEIVED

MAR 18 1980

TO JACK GALBRAITH, CHIEF PLANNER
FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

METROPOLITAN PLANNING
ROUTE _____

SUBJECT Request for legal opinion --
issuance of building permits

I have reviewed the contents of the memo of March 3, 1980 concerning the above noted matter. Following such review and the informal discussions with you and Glen Lytle, I have arrived at the following conclusions. I recognize that there may be a difference of opinion in the interpretation of the several sections of the zoning code and subdivision regulations and for this reason it might be well to give some thought to appropriate amendments to avoid any such differences.

I do not believe it necessary to cite or analyze the pertinent Kansas enabling statutes. Suffice to say they authorize the zoning and subdivision regulations with which we are concerned here which limit the issuance of building permits to those situations where compliance with such regulations has been established. The subdivision regulations may and do take into account any existing zoning regulations and the zoning regulations may and do take into account the existing subdivision regulations.

The zoning code defines a "zoning lot" as follows:

"A parcel of land that is designated by its owner or developer, at the time of applying for an occupancy certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the requirements of the above and the requirements of the subdivision rules and regulations, such lot may consist of:

- (1) A single lot of record; or
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

It must be noted that the occupancy permit referred to is applied for coincident with the application for a building permit (28.04.220). It becomes rather clear then that the owner or developer determines the "zoning lot" at the time that the "occupancy certificate" is applied for. Further, a "zoning lot" must satisfy all the requirements of the zoning code at the time that the building permit is sought (28.04.220). This will apply in all cases unless a specific exception or exemption is spelled out in the zoning code or in the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 2.

Though the phrase "zoning lot" is not expressly used throughout the zoning code in connection with the zoning districts or classifications, we believe a "zoning lot" as defined above applies to all building or construction sites covered throughout the zoning districts and classifications of the zoning code -- otherwise there would appear to be no reason for the insertion of the phrase "zoning lot" in the definitions set forth in the zoning code. The creation of a "zoning lot" as set forth in the code clearly contemplates the utilization of tracts or lots platted under subdivision regulations as well as parcels of land not platted under subdivision regulations adopted in 1948. This would include parcels of land that might have been divided, subdivided or platted even prior to January 1, 1948.

Since the subdivision regulations now require a minimum width of 60' for residential construction and since the zoning code seems to incorporate by reference such requirements, we believe that all undeveloped parcels of land, irrespective of the date or manner of platting are subject to the 60' minimum width requirement. This is not to say that if a particular parcel of land was being used for a particular purpose at the time of the adoption of the 60' minimum lot width, it could not continue being so used. It can be but the use cannot be changed, enlarged, expanded or intensified without first meeting the requirements of the current regulations. This is because our statutory scheme (K.S.A. 12-709) protects "existing uses" from subsequent zoning but it does not protect either existing zoning or merely anticipated uses. Zoning amendments qualifying and changing the future residential uses of land (as well as land uses in other zoning districts) have been judicially held to be within the police powers of the municipality.

The "zoning lot" amendment of the zoning code was adopted subsequent to the adoption of the amendments to the minimum lot width requirements of the subdivision regulations of 1968. As we view it, the land falling within the category of the exemption of Article 3-105(F), (lots, tracts or parcels that have been sold off, divided, sub-divided, re-subdivided or replatted prior to January 1, 1948) need not be replatted nor further subdivided or changed to be utilized as all or part of a "zoning lot" under the zoning code. Such lots, tracts or parcels may separately or collectively with others, or parts thereof, meet the minimum lot width requirement of 60'. It appears reasonable to suggest that this interpretation was the intent of the zoning code when referring to the "requirements of the subdivision regulations". Nor are the lots, tracts or parcels that were platted under the 1948 subdivision regulations in any way invalidated or changed. On the contrary they too may separately or collectively with others, or parts thereof, meet the current minimum lot width requirement of the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 3.

In order to fully understand what appear to be the issues presented one must keep in mind that we are talking of two separate (though interrelated) things. On the one hand we are talking of subdivision regulations which are concerned primarily with the subdividing or platting of land which historically were developed to facilitate the transfer of ownership of a particular lot, tract or parcel by simplifying the legal description, i.e., to avoid the necessity of metes and bounds description. On the other hand we have the zoning regulations which are primarily concerned with the use of land in particular zoning districts. Granted, the two subjects are and should be to some extent related. The zoning regulations did not concern themselves primarily with the manner or method of "platting" or subdividing land and as the subdivision regulation concept was developed it did not concern itself directly with zoning.

The current subdivision regulations establish minimum requirements as to the laying out or subdividing of land by way of "platting" or "subdividing". They trace their origin to 1948 and have been subsequently amended. One of the significant amendments has been to establish a minimum width of 60' of platted lots (measured at the set back lines) to be used for the uses authorized in a residentially zoned district. The current provision applies to all platting and subdividing subsequent to 1968. Again, this refers only to establishing the minimum width size of the lots on a particular plat. The subdivision regulations adopted in January of 1948 established a similar minimum lot width of 50'. Prior to 1948 there were no subdivision regulations and consequently no minimum lot widths had been established. The current subdivision regulations specifically exempt from its provisions those lots, tracts or parcels which had been platted or subdivided prior to January 1, 1948. In other words the subdivision regulations were looking forward to the "platting" exercises and exempted them from the requirements of the platting regulations adopted in 1948 as subsequently amended.

The conclusion that we have reached is that all parcels of land not previously utilized for a specific use under prior platting or subdivision regulations are subject to the minimum width requirements set forth in the current subdivision regulations. It is our opinion that any building permit issued for construction of an improvement on a lot or parcel of land not meeting the current minimum lot width requirement was improvidently issued.

Mr. Jack Galbraith
March 17, 1980
Page 4.

The foregoing conclusions may seem somewhat restrictive and severe. However, it must be remembered that relief is available to the owner of a parcel of land not meeting the current minimum lot width requirement for an intended use. Both the zoning code and subdivision regulations contain appeal provisions wherein relief may be available to the owner of a parcel of land by following the "variance" procedures therein contained.

If we can be of further assistance, please advise.

Respectfully submitted,



H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

THE CITY OF WICHITA



BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4421

April 2, 1980

Mr. James Walker, Attorney
320 Page Court
Wichita, Kansas 67202

Re: Appeal of Decision to
issue Building Permit
Case No. BZA 13-80

Dear Mr. Walker:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on your appeal on the determination of the Superintendent of Central Inspection to issue a permit for the second single-family dwelling on property covered by BZA Case No. 56-78.

This Resolution reflects the official action of the Board to deny your appeal and uphold the determination by the Superintendent of Central Inspection in the issuance of the permit. It is forwarded to you for your information and files.

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

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL:sad
Enclosure

cc: William & Julie Nicholson, 401 North Belmont, Wichita 67208
Robert Feldner, Superintendent of Central Inspection
Joe Donnelly, Housing and Zoning Administrator
Don Gisick, City Clerk
Roger Bender, 930 Riverview, Wichita, Kansas
Richard Foote, Attorney at Law, 301 North Market, Wichita 67202

RESOLUTION NO. BZA 13-80

WHEREAS, William and Julie Nicholson, 401 North Belmont, Wichita, Kansas, pursuant to Section 2.12.590.A, Code of the City of Wichita, has appealed from the decision of the Superintendent of Central Inspection, who has determined and issued a permit for the construction of the second one-family dwelling on property which was a part of Resolution No. BZA 56-78 and legally described as Lots 34, 36, 38, 40 and 42, except the south 16 feet of Lot 42 on Broadview, Hagny's Replat of Capital Hill Addition; and

WHEREAS, the appellant contends that the issuance of the permit violates the zoning ordinances and subdivision regulations applicable to said property, specifically the creation of two zoning lots not in compliance with the minimum requirements, and the construction authorized by Building Permit No. D39998 is not in compliance with the variance granted on January 23, 1979, in Case No. BZA 56-78 or the intention of the Board of Zoning Appeals in granting the variance; and

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

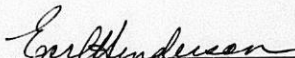
WHEREAS, the Board of Zoning Appeals did, at the meeting of March 25, 1980, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an appeal under the provisions of Section 2.12.590.A, Code of the City of Wichita; and


WHEREAS, the Board of Zoning Appeals has determined that the decision rendered by the Superintendent of Central Inspection to issue Building Permit No. D39998 for the erection of a one-family dwelling on subject property covered by Resolution No. BZA 56-78 was properly issued in conformance to all applicable regulations.

NOW THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the appeal be denied and the permit for the erection of the one-family dwelling be held properly issued.

ADOPTED AT WICHITA, KANSAS this 25th day of March, 1980.


Earl Henderson, Chairman

ATTEST:


Glen E. Lytle, Assistant Secretary

March 27, 1980

Mr. James Walker, Attorney
320 Page Court
Wichita, Kansas 67302

Re: Appeal of Decision to
Issue Building Permit
Case No. BZA 13-80

Dear Mr. Walker:

At the regular meeting of the Board of Zoning Appeals on March 25, 1980, your appeal on the determination of the Superintendent of Central Inspection to issue a permit for the second single-family dwelling on property covered by BZA Case No. 56-78 was considered.

It was the action of the Board to deny your appeal and uphold the determination by the Superintendent of Central Inspection in the issuance of the permit.

A Resolution setting forth the official action of the Board is being prepared 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 yours,

Glen E. Lytle
Assistant Secretary

GEL:sad

cc: William & Julie Nicholson, 401 North Belmont, Wichita 67208
Robert Feldner, Superintendent of Central Inspection
Joe Donnelly, Housing and Zoning Administrator
Don Gisick, City Clerk
Roger Bender, 930 Riverview, Wichita, Kansas
Richard Foote, Attorney at Law, 301 North Market, Wichita 67302

551-01
(3)

January 5, 1979

Roger Bender
930 Riverview
Wichita, Kansas

Dear Roger:

We have discussed recently that the closing of my purchase of the property located on North Belmont and the closing of my sale to you of a portion of that property that fronts Broadview is scheduled to take place in advance of the hearing on a building restriction variance which you have requested with respect to the property you are purchasing. The purpose of this letter is to set forth our agreement with respect to the closing of these two sales prior to your hearing. We have agreed as follows:

1. I will close the purchase of the property on North Belmont as scheduled. On the same day, we will close the sale of the portion of that property which I have agreed to sell to you as set forth in our purchase agreement.
2. You will proceed with your request to obtain the variance necessary to obtain the building permit for the renovation of the structure on your property.
3. If you are unable to obtain such building permit because the structure does not set back a sufficient number of feet from my property, then I will convey to you at no additional cost the necessary additional footage from my property in order for you to obtain said building permit. In the event it becomes necessary to make this additional conveyance in order for you to get your building permit, you agree to assign to me a perpetual easement with respect to the property that I have conveyed to you so that you may obtain the building permit.

*Submitted to BZ4
on 3-25-80
by Mrs. Walker.*

Roger Bender
January 5, 1979
Page Two

4. If, after the conveyance referred to in the paragraph above, it is subsequently determined that you will not be allowed to obtain the building permit and that there is no other feasible way to obtain a permit, then I will repurchase from you the property that I have sold to you at the same price which you have paid to me.

If the above accurately sets forth our agreement with respect to these matters, please sign in the space provided below.

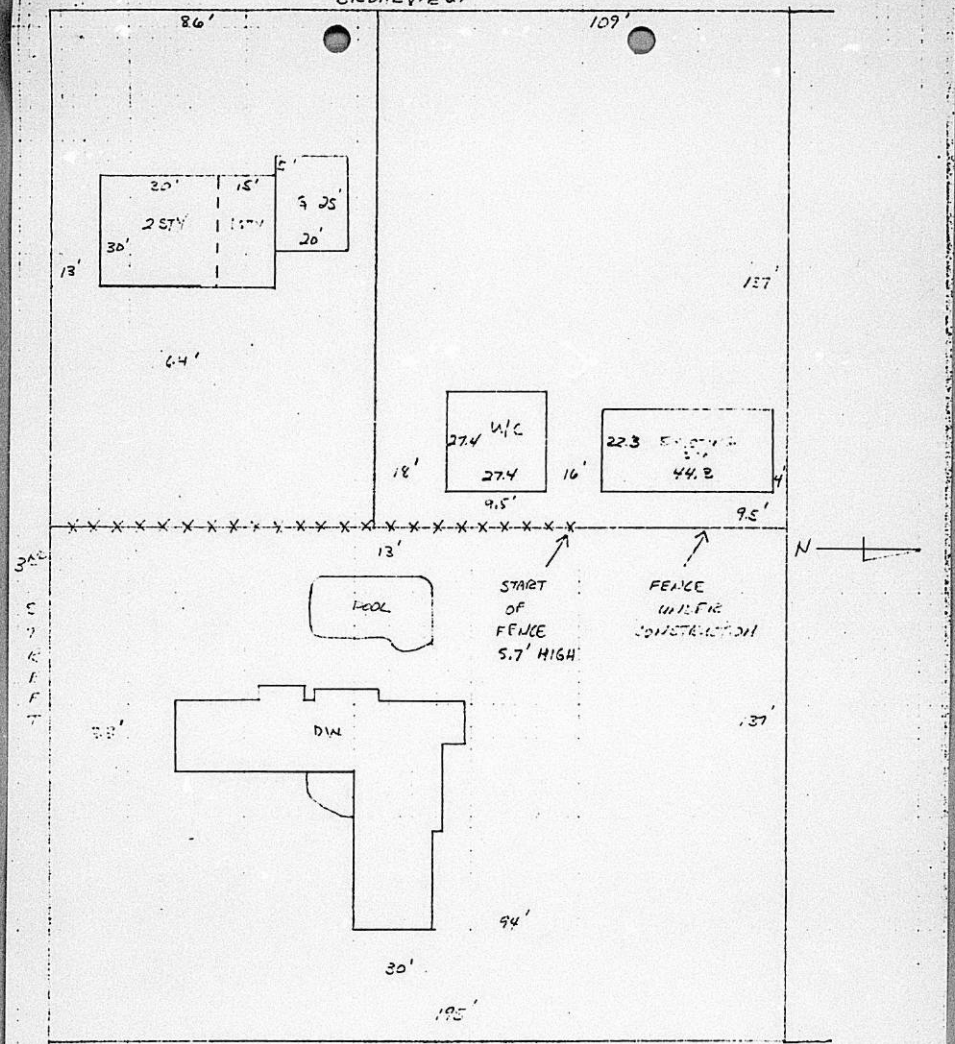
Very truly yours,

Bill Nicholson

Roger Bender

Dated: _____

BROOKLYN



32'
C
7
K
E
F
T

BELMONT

PLOT PLAN

Submitted to
BZA on 3-25-80
by Sam. Walker



BOWEN H. BRADY • REALTOR
OFFICE 22 445 EAST KELLOGG WICHITA, KANSAS 67207
TELEPHONE: OFFICE (316) 684-0175 MOBILE 264-7754

March 3, 1980

Mr. Jim Walker
Third Floor
Page Court Building
220 West Douglas
Wichita, Kansas 67202

Re: 401 North Belmont
Wichita, Kansas

Dear Mr. Walker:

In response to your request of February 26, 1980, I made an exterior inspection of the subject property, 401 North Belmont, and also the two properties to the rear located on Broadview. The purpose was to estimate any detrimental effect on the subject property by a new dwelling under construction on Broadview.

Until the mid 1960's the dwelling was used to house the Wichita Art Association. At that time it included eight lots on Belmont and eight lots on Broadview with a total size of 195 feet x 274 feet. The property was purchased for a private residence in the mid 1960's. The existing two story dwelling is 5,227 square feet in size with a 2,231 square foot basement. There was also a two story carriage house with a full basement, garage on the first floor and living space on the second floor. Each floor was 1,209 square feet in size.

In the mid 1960's, the property was purchased for use as a private dwelling and a building site on the northeast corner of Broadview and 3rd Street was sold off. This site was 86 feet x 137 feet in size. A two story dwelling with a two-car attached garage was constructed on this site in the latter 1960's. According to my information, early in 1979, the subject property and carriage house was purchased and the balance of the property on Broadview, 109 feet x 137 feet in size containing the carriage house was sold to another owner. The subject property was retained as a private residence.

A good quality concrete swimming pool, 16 feet x 32 feet in size is nearing completion in the rear yard of the subject property. The pool was constructed by Mattingly and the surrounding patio area has been completed but the accessory equipment has not yet been installed.



SENIOR RESIDENTIAL APPRAISER
SOCIETY OF REAL ESTATE APPRAISERS



BOWEN H. BRADY • REALTOR
OFFICE 14 • 8405 EAST KELLOGG • WICHITA, KANSAS 67207

page 2 -

It appears that the carriage house is being completely renovated by the purchaser of the property on Broadview. In addition, a garage with separate living quarters on the second floor has been framed up. The south windows of the second floor building under construction look down on the swimming pool across a solid board fence of the subject property that is 5.7 feet high. The question is, what effect does the building under construction have on the value of the subject property?

A plot plan sketch was made of the subject dwelling, the swimming pool, the two story dwelling constructed on Broadview in the latter 1960's, the carriage house and the building under construction. An approximation of the elevations of the three structures on Broadview was then made in relation to the elevation of the subject property.

From a point on the subject property, south and east of the swimming pool, photos were taken of the two story dwelling constructed in the latter 1960's and a photo of the carriage house and the building under construction. From a point east of the north end of the swimming pool a photo was taken of the building under construction.

Based on this information, in my opinion, the fence screens the view of the swimming pool from the second floor windows of the dwelling on Broadview, constructed in 1960, although people standing to the south and east of the pool would be visible. These windows are approximately eighty-five feet from the pool. The pool is visible from the second story windows of the carriage house, fifty-five feet from the pool, but there is adequate room north of the pool to screen this view. The south windows on the second floor of the building under construction, however, have a view of almost the entire pool. Screening this view for privacy of the subject property could be difficult because there is only twenty-five feet between these windows and the pool.

An analysis was made of recent sales of dwellings in the area and most dwellings similar in type to the subject dwelling have been selling at prices ranging from \$30 per square foot to over \$40 per square foot. This would indicate a general value range for the subject property of \$150,000 to \$200,000 or over. Previous studies have indicated that the maximum value added to a property by exterior improvements such as swimming pools, tennis courts, etc., is ten percent of the value of the property.

In other words, assuming no unusual construction difficulties, a property with a value of \$150,000 would be increased in value by the cost of installing a swimming pool up to a maximum of \$15,000.



BOWEN H. BRADY • REALTOR
OFFICE 14 • 6405 EAST KELLOGG • WICHITA, KANSAS 67207

page 3 -

The swimming pool is new, of good quality construction, and in my opinion would cost between \$10,000 and \$12,000. It would appear, therefore, from this information that under typical conditions the value of the subject property would be increased by the cost of the swimming pool. Typical conditions, however, assume that the swimming pool has reasonable privacy from surrounding properties. The second floor windows of the dwelling constructed in the 1960's on Broadview and the second floor windows of the carriage house do have some limited view of the swimming pool area, but these windows are in the sleeping area of the two structures and are partially screened or could easily be screened. The second floor windows on the south of the dwelling under construction have a view of almost the entire pool. This view would be difficult to screen and these windows are in the living area on the second floor.

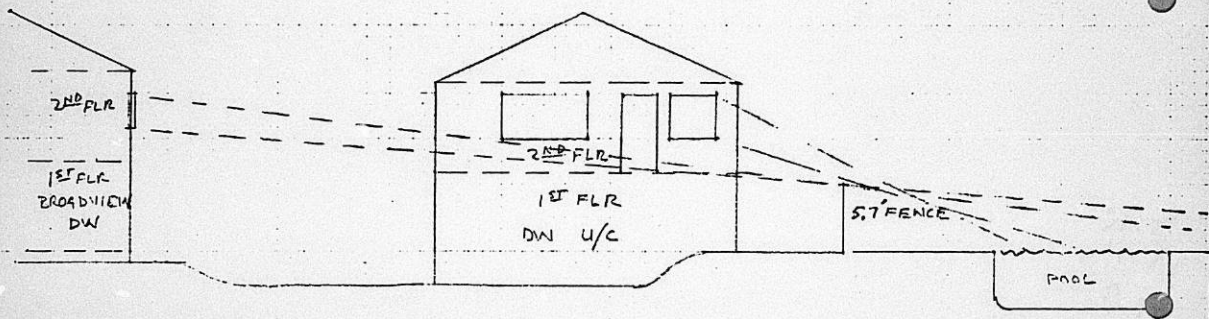
Analysis of sales information indicates that swimming pools on properties similar to the subject property are used primarily for entertaining and that reasonable privacy is desired and expected. In my opinion, the lack of privacy of the subject pool under the existing conditions would reduce its value to a prospective purchaser by at least fifty percent or \$5,000 to \$6,000. Although no detailed analysis was made of the effect of the dwelling under construction on the subject dwelling itself, in my opinion, the lack of privacy in the rear yard of the subject dwelling is no doubt also detrimental to the value of the subject property.

I left copies of the photos I took from the swimming pool area with you February 28, 1980. I am enclosing with this letter, copies of the plot plan and elevation studies that I made showing the possible views of the swimming pool area from both the house on Broadview constructed in the 1960's and from the building now under construction next to the carriage house.

Sincerely,

Bowen H. Brady

BHB/dh
Encl: 2



SOUTH ELEVATION

SCALE 1" = 10'

Submitted by Sen.
Walker on 3-25-80



Application for Building Permit

PERMIT NO. 033703

I. IMPORTANT: Complete ALL Items, Mark Boxes Where Applicable

LOCATION OF BUILDING CARD 1: STREET NUMBER DIR. 414 N STREET NAME BROADVIEW TYPE DIR. UNIT SECONDARY ADDRESS

CARD 2: LOT(S) 34-36-38-40 & 42 BLOCK MAGWAYS ADDITION REPLAT ZONE: Dist Fire A23

CARD 3: LOT(S) B. E. R. ST-78 BLOCK OF CAPITAL HILL LOT SPLIT NO.

If Notes and Bounds, Attach Additional Information

II. TYPE AND COST OF BUILDING - All Applicants Complete A - E

A. TYPE OF IMPROVEMENT
 New Building
 Addition (If Residential, enter number of new housing units added, if any, in Part E)
 Alteration (See 2 above)
 Repair, Replacement
 Wrecking (if multi-family residential, enter number of units in Building in Part E, 3)
 Move-in (relocation)

B. OWNERSHIP
 PUBLIC
 PRIVATE

C. FLOOD PLAIN AREA **FLOOR ELEVATION BY CITY DATUM**

D. VALUATION: 1. \$ 19250 VALUATION TO NEAREST DOLLAR

E. PROPOSED USE - For "Wrecking" Most Recent Use
 Residential:
 One-Family
 Two-Family
 Multi-Family (*)
 Garage-Attached
 Garage-Detached
 Carport-Attached
 Carport-Detached
 Storage Shed
 Other - Specify _____
 Commercial:
 Amusement, Recreational Building
 Church, Religious Building
 Industrial Building
 Parking Garage
 Service Station
 Hospital, Institutional Building
 Office, Bank, Professional Building
 Public Works, Utilities
 School, Educational Building
 Stores, Mercantile Building
 Transient Hotel, Dormitory, etc.*
 Other Buildings
 Structures Other Than Buildings

F. Project Name: RENOVAL CARABAGA HOUSE Const. Type 1 Hour 14 Occupancy (Group) A23

III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete parts H through R; for wrecking complete only part R; for all others, skip to IV.

H. FOUNDATION
 Concrete
 Concrete Block
 Wood
 Other

I. STRUCTURE (Principal Type of Frame)
 Masonry (Wall Bearing)
 Steel
 Concrete
 Wood
 Other

J. COVERING
 Roof:
 Wood
 Composition
 Metal
 Concrete
 Built-Up
 Other TILE
 Exterior Walls:
 Wood
 Masonry
 Metal
 Composition
 Asbestos
 Other
 Interior Walls:
 Dry Wall
 Plaster
 Masonry
 Other

K. DIMENSIONS:
 1. 2 Number of Stories
 2. _____ Basement
 3. _____ Total Sq. Ft.
 4. _____ Building Height

L. TYPE OF WATER SUPPLY
 Public
 Private -
 Approved by Health

M. TYPE OF SEWAGE DISPOSAL
 Public
 Private -
 Approved by Health

N. NUMBER OF STAIRWAYS
 1. _____ Basement to 1st
 2. _____ 1st to 2nd
 3. _____ 2nd to Roof

D. NUMBER OF OFF-STREET PARKING SPACES
 1. _____ Enclosed
 2. _____ Outdoors

P. ESCALATORS
 1. _____ No. of Escalators
 2. _____ No. of Elevators

Q. RESIDENTIAL
 1. _____ No. Bedrooms
 2. _____ No. Bathrooms

R. REQUIREMENTS:
 Sidewalk now xp
 Historical Structure
 Partial Permit

IV. IDENTIFICATION - To be completed on all applications

1. (DAYWORK) OWNER RODOLFO RODRIGUEZ BERNAL CITY Toronto STATE Ont

STREET NUMBER DIR. STREET NAME TYPE DIR. ZIP CODE TELEPHONE

CONTRACTOR AL SOLOMONBA LICENSE NO. 600870

3. ARCHITECT AND/OR ENGINEER

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or circumvent the provisions of any other state or local law regulating construction or the performance of construction.

Signature of Applicant Al Solomonba Address 1907 Orient Telephone 942-0905 Date 3-1-78

PERMIT STATUS Other Permits Required: Plumbing Electrical Mechanical Elevator Gas Other

PERMIT FEE \$ 119210101 Date 03/01/78 Application approved by [Signature]

VOID UNLESS WORK STARTED WITHIN 120 DAYS

Application not filed prior to date approved up to the following:
 1st floor Foundations Lower available or treated 10' extension, existing power U.S. 54 setback E.P.C.A. Discharge

Submitted to
BZA on
3-25-80 by
Mr. Walker



Application for Building Permit

PERMIT NO. 739998**I. IMPORTANT: Complete ALL Items, Mark Boxes Where Applicable**

LOCATION OF BUILDING CARD <u>1</u>	STREET NUMBER DIR. <u>410 N Broadview</u>	STREET NAME	TYPE DIR.	UNIT	SECONDARY ADDRESS
CARD <u>2</u>	LOT(S) <u>S-17'04 38-44</u>	BLOCK <u>MAGNAYS PLAT OF</u>	ADDITION	ZONE: Dist <u>AP-3</u>	Fire
CARD <u>3</u>	LOT(S) <u>40 8' N 9' - 42</u>	BLOCK <u>CAPITOL HILL</u>	ADDITION	LOT SPLIT NO.	

If Mates and Bounds, Attach Additional Information

CARD 4**II. TYPE AND COST OF BUILDING - All Applicants Complete A - E**

A. TYPE OF IMPROVEMENT <input checked="" type="checkbox"/> New Building <input type="checkbox"/> Addition (If Residential, enter number of new housing units added, if any, in Part E) <input type="checkbox"/> Alteration (See 2 above) <input type="checkbox"/> Repair, Replacement <input type="checkbox"/> Wrecking (If multi-family residential, enter number of units in Building in Part E, 3) <input type="checkbox"/> Move-in (relocation)		D. VALUATION: 1. \$ <u>28900</u> VALUATION TO Nearest Dollar	
B. OWNERSHIP <input type="checkbox"/> PUBLIC <input checked="" type="checkbox"/> PRIVATE		E. PROPOSED USE - For "Wrecking" Most Recent Use Residential: <input checked="" type="checkbox"/> One-Family <input type="checkbox"/> Two-Family <input type="checkbox"/> Multi-Family (*) <input type="checkbox"/> Garage-Attached <input type="checkbox"/> Garage-Detached <input type="checkbox"/> Carport-Attached <input type="checkbox"/> Carport-Detached <input type="checkbox"/> Storage Shed <input type="checkbox"/> Other - Specify _____	
C. FLOOD PLAIN AREA <input checked="" type="checkbox"/> FLOOR ELEVATION BY CITY DATUM: _____		Commercial: <input type="checkbox"/> Amusement, Recreational Building <input type="checkbox"/> Church, Religious Building <input type="checkbox"/> Industrial Building <input type="checkbox"/> Parking Garage <input type="checkbox"/> Service Station <input type="checkbox"/> Hospital, Institutional Building <input type="checkbox"/> Office, Bank, Professional Building <input type="checkbox"/> Public Works, Utilities <input type="checkbox"/> School, Educational Building <input type="checkbox"/> Stores, Mercantile Building <input type="checkbox"/> Transient Hotel, Dormitory, etc. <input type="checkbox"/> Other Buildings <input type="checkbox"/> Structures Other Than Buildings	
F. Project Name: <u>ERECT 1 Rm apt Gar No 132</u>		Const. Type <input checked="" type="checkbox"/> Hour <input checked="" type="checkbox"/> Occupancy (Group) <u>13</u>	
G. DESCRIPTION OF WORK: <u>766 H BSE ABOVE 766 H GR</u>			

CARD 5**III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete parts H through R; for wrecking complete only part K; for all others, skip to IV.**

H. FOUNDATION <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Concrete Block <input type="checkbox"/> Wood <input type="checkbox"/> Other		J. COVERING Roof: <input type="checkbox"/> Wood <input type="checkbox"/> Composition <input type="checkbox"/> Metal <input type="checkbox"/> Concrete <input type="checkbox"/> Built-Up <input checked="" type="checkbox"/> Other <u>TILE</u> Exterior Walls: <input type="checkbox"/> Wood <input type="checkbox"/> Masonry <input type="checkbox"/> Metal <input type="checkbox"/> Composition <input type="checkbox"/> Asbestos <input checked="" type="checkbox"/> Other <u>Stucco</u> Interior Walls: <input type="checkbox"/> Dry Wall <input type="checkbox"/> Plaster <input type="checkbox"/> Masonry <input type="checkbox"/> Other		K. DIMENSIONS: 1. <u>2</u> Number of Stories 2. _____ Basement 3. <u>766</u> Total Sq. Ft. 4. _____ Building Height		N. NUMBER OF OFF-STREET PARKING SPACES 1. _____ Enclosed 2. _____ Outdoors	
I. STRUCTURE (Principal Type of Frame) <input type="checkbox"/> Masonry (Wall Bearing) <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Wood <input type="checkbox"/> Other Roof: <input checked="" type="checkbox"/> Wood <input type="checkbox"/> Metal <input type="checkbox"/> Concrete <input type="checkbox"/> Other Floor: <input checked="" type="checkbox"/> Wood <input type="checkbox"/> Concrete <input type="checkbox"/> Other		L. TYPE OF WATER SUPPLY <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private - <input type="checkbox"/> Approved by Health		P. 1. _____ No. of Escalators 2. _____ No. of Elevators			
		M. TYPE OF SEWAGE DISPOSAL <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private - <input type="checkbox"/> Approved by Health		Q. RESIDENTIAL 1. <input checked="" type="checkbox"/> No. Bedrooms 2. <input checked="" type="checkbox"/> No. Bathrooms			
		N. NUMBER OF STAIRWAYS 1. _____ Basement to 1st 2. <u>1</u> 1st to 2nd 3. _____ 2nd to Roof		R. REQUIREMENTS: <input type="checkbox"/> Sidewalk <input type="checkbox"/> Historical Structure <input type="checkbox"/> Partial Permit			

CARD 6**IV. IDENTIFICATION - To be completed on all applications**

1. <input type="checkbox"/> (DAYWORK)	OWNER <u>ROGAK BENDER</u>	CITY <u>COVINGTON</u>	STATE <u>LA</u>
	STREET NUMBER DIR. <u>410 N Broadview</u>	STREET NAME	ZIP CODE <u>70038</u>
	CONTRACTOR <u>DAUGERT & SPEARS</u>	TELEPHONE <u>437-4371</u>	LICENSE NO. <u>D00305</u>
3. ARCHITECT AND/OR ENGINEER I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction. Signature of Applicant <u>[Signature]</u> Address <u>1958 Burns</u> Telephone _____ Date <u>1-23-83</u>			
PERMIT City Permit Required: <input checked="" type="checkbox"/> Plumbing <input checked="" type="checkbox"/> Electrical <input checked="" type="checkbox"/> Mechanical <input type="checkbox"/> Boiler <input type="checkbox"/> Elevator <input type="checkbox"/> Sewer <input type="checkbox"/> Other _____ STATUS PERMIT FEE: \$ <u>1,124.00</u> Date <u>01/23/83</u> Application approved by <u>[Signature]</u> VOID UNLESS WORK STARTED WITHIN 120 DAYS			

Application and Plat plans checked and approved as to the following:
 Subsoils Foundations Erosion control or needed () 10' easement, existing same () U.S. 54 setback () 11' for balconies

SET BACK AND SIDE YARDS SHALL CONFORM WITH ZONING ORDINANCE

CASH CHECK

CITY OF WICHITA, KANSAS

App. No.

Permit

CENTRAL INSPECTION DIVISION

No. 039998

Permission is hereby granted to erect

a structure at No. 410 N. Broadway and to be used for

Ham

All work to be done in compliance with the laws and ordinances pertaining to same and in conformity with the plans or application filed with, and approved by, the Inspection Department.

Estimated Cost \$ 28,900 Fee \$ 124.00

KEEP PERMIT
ON PREMISES

Owner

Roger Bender

Date 1/23, 1980

Address

410 N. Broadway

SUPERINTENDENT of
CENTRAL INSPECTION

Contractor

Robert J. Spears

Issued by epj

Address
Subject to refund of 50% if application
is made within ten (10) days.

VOID UNLESS STAMPED BY CASHIER

KA-DD1 REV. 11-75 VOID UNLESS WORK IS STARTED WITHIN 120 DAYS

Submitted to B24
on 3-25-80 by
Mr. Walker

WENDELKEN, CLINE & CROCKETT
ATTORNEYS AT LAW

CLYDE WENDELKEN
CHARLES M. CLINE
DAVID G. CROCKETT
DAVID A. GRIPP
LESLIE F. HULNICK
HOWARD N. MENAKER

SUITE 405, BROWN BUILDING
WICHITA, KANSAS 67202
(316) 263-7896

EAST SIDE FINANCIAL CENTER
7701 E. KELLOGG
WICHITA, KANSAS 67207
(316) 684-8114

January 22, 1979

REPLY TO
The Amidon House
1005 North Market
Wichita, Ks. 67214

Mr. Jack H. Galbraith
Board of Zoning Appeals
City Hall
455 North Main
Wichita, Kansas 67202

Re: Case No. BZA 56-78, docketed for January 23, 1979

Dear Mr. Galbraith:

As you know, this office represents Mr. and Mrs. Howard K. Pierce of 424 North Broadview, Wichita, in this case in which Roger D. Bender is the applicant for a limited variance.

This is written for the file and to document the position of the Pierces. As the adjacent property owners of the property to the north of Mr. Bender's and as people primarily effected by the request, their position is:

1. The setback can be varied from 6 feet to approximately 3 feet along their south, east-west property line for the distance of about 27 feet 3 inches and immediately north of the captioned carriage house,
2. This in no manner should be taken as indication of a willingness to extend any variance west of the north west corner of the existing carriage house,



Mr. Jack H. Galbraith
January 22, 1979
Page Two

3. Neither should this willingness be considered as acquiescence to a zoning change from the existing "AA" Single Family Dwelling status in the immediate area, and
4. The exigencies of this particular request prompt this approval.

It is our understanding Mr. Bender intends to remodel and restore the carriage house as a dwelling for his family, construct an unattached garage to the south of the carriage house and install a drive which will not be offensive to the Pierces to the north.

Thank you as usual.

Yours truly,

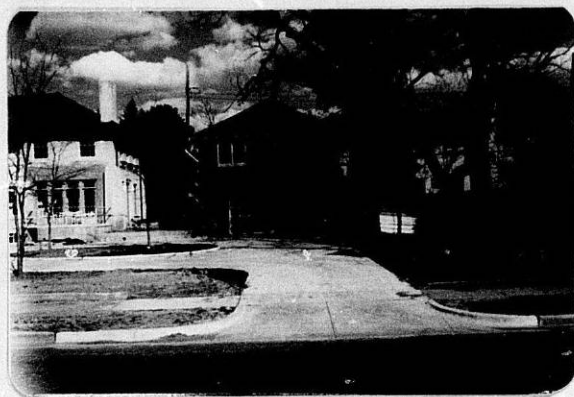
WENDELKEN, CLINE, CROCKETT & HULNICK



Clyde Wendelken

CW:csw

cc: Mr. and Mrs. Howard K. Pierce
Mr. Roger D. Bender



Submitted by Svr. Walker
on 3-25-80

REAL ESTATE PURCHASE CONTRACT

This Agreement, Made and entered into this 3rd day of November 1978
by and between BILL NICHOLSON
party of the First Part, hereinafter referred to as "Seller," whether one or more, and
ROGER BENDER
party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

Lots 34, 36, 38, 40 and 42 except South
16 feet of Lot 42 on Broadview in Hagney's
Replat of Capital Hill Addition

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above described real property, the sum of Fifty-six Thousand and Five Hundred
and no/100ths (\$56,500.00) Dollars
in manner following, to-wit:

Five Thousand Dollars (\$5,000.00) as Earnest Money
deposited, with balance due and payable at closing.

3. The Seller, at his option, agrees to furnish to the Buyer, either a complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to Easements and Restrictions of Record.

The Title Evidence shall be sent to Buyer's Attorney
for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. The Buyer agrees to and does hereby deposit with Seller
the sum of Five Thousand and no/100ths (\$5,000.00) Dollars,
earnest money, as a guarantee that the terms and conditions of this contract shall be fulfilled by him, said deposit to be applied on the purchase price upon acceptance of title by the Buyer and delivery of deed by the Seller. In the event the Buyer shall fail to fulfill his obligation hereunder, the Seller may, at his option, cancel this agreement, and thereupon the aforementioned deposit shall become the property of the Seller and his Agent, not as a penalty but as liquidated damages. Provided, however, that in the event the Seller is unable to furnish merchantable title, the earnest money deposited shall be returned to the Buyer, and this Agreement shall be null and void and of no further force and effect.

6. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer) and interest, if any shall be adjusted and prorated as of Date of Closing. Taxes shall be prorated for calendar year on the basis of taxes levied, or for prior year.

7. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before January 15, 1979.

9. Possession to be given to Buyer on xxxxx Closing.

10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 50% by seller and 50% by buyer.

Additional Conditions on Back.

11. This Agreement is subject to Buyer obtaining financing for the purchase of the property in the amount of \$45,000.00 under reasonable terms and conditions.

12. This Agreement is subject to Buyer obtaining necessary building permits to remodel the existing structures located on the property and obtaining a variance with respect to local building codes for the purpose of obtaining said permit.

13. This Agreement is further subject to Seller purchasing from owner the property described above as well as additional lots located on Belmont in Hagny's Replat Capital Hill Addition.

Real Estate Contract

TO

Dated

Land



ABSTRACTS
TITLE ENDORSE
REAL ESTATE CLOSINGS

ROGER N. BELL
JOHN M. BELL

434 NORTH MAIN
PHONE 267-0271

January 5, 1979

Roger Bender
930 Riverview
Wichita, Kansas

Dear Roger:

We have discussed recently that the closing of my purchase of the property located on North Belmont and the closing of my sale to you of a portion of that property that fronts Broadview is scheduled to take place in advance of the hearing on a building restriction variance which you have requested with respect to the property you are purchasing. The purpose of this letter is to set forth our agreement with respect to the closing of these two sales prior to your hearing. We have agreed as follows:

1. I will close the purchase of the property on North Belmont as scheduled. On the same day, we will close the sale of the portion of that property which I have agreed to sell to you as set forth in our purchase agreement.
2. You will proceed with your request to obtain the variance necessary to obtain the building permit for the renovation of the structure on your property.
3. If you are unable to obtain such building permit because the structure does not set back a sufficient number of feet from my property, then I will convey to you at no additional cost the necessary additional footage from my property in order for you to obtain said building permit. In the event it becomes necessary to make this additional conveyance in order for you to get your building permit, you agree to assign to me a perpetual easement with respect to the property that I have conveyed to you so that you may obtain the building permit.

Roger Bender
January 5, 1979
Page Two

4. If, after the conveyance referred to in the paragraph above, it is subsequently determined that you will not be allowed to obtain the building permit and that there is no other feasible way to obtain a permit, then I will repurchase from you the property that I have sold to you at the same price which you have paid to me.

If the above accurately sets forth our agreement with respect to these matters, please sign in the space provided below.

Very truly yours,


Bill Nicholson

Roger Bender

Dated: _____

W

WARRANTY DEED (STATUTORY)

(Joint Tenancy)

STATE OF KANSAS }
SEDGWICK COUNTY }
FILED FOR RECORD AT }
... 4... 2... P.M. }
FEB 6 1979 }
NO 4 24967 }
BETTE F. McCART }
REGISTER OF DEEDS }

GRANTORS,

F. William Nicholson and Julianne A. Nicholson,
husband and wife,

CONVEY AND WARRANT TO

Roger Bender

Pat Hatfield
Notary

as joint tenants with the right of survivorship and not as tenants in common, the following described premises situated in Sedgwick County, Kansas, to-wit:

All of Lots 34, 36, 38 and 40 and the North 9 feet of Lot 42, all on Broadview Avenue, in Hagny's Re-plat of Capital Hill Addition to Wichita, Sedgwick County, Kansas; EXCEPT any portion thereof lying within the South 16 feet of said Lot 42,

for the sum of One dollar (\$1.00) and other good and valuable consideration.

Subject to: Easements and Restrictions of Record.

Dated this 30th day of January 19 79

F. William Nicholson
F. William Nicholson
Julianne A. Nicholson
Julianne A. Nicholson

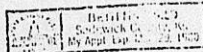
STATE OF KANSAS, SEDGWICK COUNTY, ss.

BE IT REMEMBERED, That on this 30th day of January A. D. 19 79 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came F. William Nicholson and Julianne A. Nicholson, husband and wife, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

My appointment expires: 3-29-80, 19

Beth Hatfield
Beth Hatfield Notary Public



1979-79 500 (P)

WENDELKEN, CLINE, CROCKETT & HULNICK
ATTORNEYS AT LAW



CLYDE WENDELKEN
CHARLES M. CLINE
DAVID G. CROCKETT
LESLIE F. HULNICK
JOHN F. REALS

THE AMIDON HOUSE
1008 N. MARKET
WICHITA, KANSAS 67214
(316) 263-7595

March 13, 1980

Mr. Jack H. Galbraith, Secretary
Board of Zoning Appeals
City Building
455 North Main
Wichita, Kansas 67202

Re: Case No. BZA 13-80

Dear Mr. Galbraith:

Would you please bring my January 22, 1979 letter addressed to you in connection with Roger D. Bender's application for an alleged limited variance to the hearing before the Board of Zoning Appeals on March 25, 1980 at 1:30 p.m.

Thank you.

Yours truly,

WENDELKEN, CLINE, CROCKETT & HULNICK

Clyde
Clyde Wendelken

CW:csw

RECEIVED

MAR 14 1980

METROPOLITAN PLANNING
ROUTE 25

SECRETARY'S REPORT
CASE NO. BZA 13-80

APPLICANT: William & Julie Nicholson, 401 North Belmont,
Wichita, Kansas

AGENT: James Walker, 320 Page Court, Wichita, Kansas.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code
of the City of Wichita, appealing from decision
of the Superintendent of Central Inspection in
the issuance of a building permit for a second
single-family dwelling on a zoning lot establish
by BZA Case No. 56-78 and approved by the Board
of Zoning Appeals by Resolution No. BZA 56-78 on
January 23, 1979 for a variance of the required
rear yard and the side yard on the north for the
remodeling of existing structure as a single-
family dwelling.

GENERAL LOCATION: On the east side of Broadview and north of 3rd
Street.

ZONING: Subject property is zoned the "AA" One-family
Dwelling District as are all adjacent propertie

LAND USE: All properties are developed as single-family
dwellings.

JURISDICTION:

The Board has jurisdiction to consider the appeal under the
provisions outlined in Section 2.12.590.A, Code of the City of
Wichita.

COMMENTS BY THE SECRETARY:

The applicant is appealing a decision of the Superintendent
of Central Inspection in the issuance of a building permit to
erect a second single-family dwelling on Lots 34, 36, 38, 40 and 42
except the south 16 feet of Lot 42 on Broadview, Hagny's replat of
Capital Hill Addition, which was the property of record, submitted
by Roger Bender, in a application for variances of a rear yard and
a side yard setbacks and considered by the Board of Zoning Appeals
on January 23, 1979. This request was necessary so that the applic
could secure a building permit to convert an existing structure (th
carriage house which was formerly an accessory structure to the
property known as 401 North Belmont) to a single-family dwelling.

Page 2
BZA 13-80
BZA AGENDA
3-25-80

As indicated in the attached excerpts from the minutes of the January 23, 1979 meeting and the Resolution No. BZA 56-78, the variances of the setbacks as requested were granted by the Board on that date. Also attached is the letter submitted by the applicant stating the purpose and reason for the requested variances.

It should also be noted that the action of the Board was to grant the variance of the setback from the side property line on the north only for the existing structure, and the rear yard setback was reduced to eight feet for both the existing structure and any new structure.

In the minutes you will note that the staff recommendation, as part of the Secretary's Report, was that the variances be granted for the existing structure only. As you will also note, Galbraith stated that there should be no encroachment of the proposed garage structure into the 8 foot setback. In listening to the tapes of the meeting, the statement was made by Galbraith, that unless you make the requirement that the proposed garage also complies with the eight foot rear yard setback, as a detached accessory building the rear yard setback would only be required to be five feet. The actual motion made by Mr. Jacob was that the five conditions necessary for the granting of the variances be found to exist and the variances be granted subject to the staff recommendations.

A permit was issued by Central Inspection on March 1, 1979 on Lots 34, 36, 38 and 40 (part of Lot 42 was not included in the legal) to remodel the existing structure into a single-family dwelling. In accordance with the records of Central Inspection there was no permit issued at that time for the construction of the double garage that was shown on the original application for the requested variances. In testimony given at a recent court hearing, it was stated that the foundations for the garage were in place for a number of months during 1979.

On January 23, 1980 a permit for the erection of a one-family dwelling and attached garage was issued on the south 17' of Lot 38, Lot 40, and the north 9 feet of Lot 42, on Broadview in Ragny's replat of Capital Hill Addition. This resulted in the erection of a two story structure with a dwelling over the double garage that was previously started on the property. Only after this second permit was issued and the contractor was excavating for a sewer connection on this applicant's property was there any outward indication that an additional dwelling was being erected on the property. Subsequent action in District Court by the applicant of this appeal was dismissed by the court because the applicant had not exhausted all means of recourse before said action was filed in District Court. At that point, this case was filed appealing the determination of the Superintendent of Central Inspection in the issuance of the permit for a second single-family dwelling on the property previously described. A copy of the appeal application and the statement of the appellant is attached for your information.

Page 3
BZA 13-30
BZA AGENDA
3-25-80

It is the opinion of the Secretary that the action of the Board of Zoning Appeals on January 23, 1979 to grant the variances to convert the existing carriage house to a single-family dwelling was based on the information submitted by the applicant. This included the copy of the letter from the applicant Roger Bender (December 12, 1978) and the submission of a site plan showing the existing carriage house on the property and a new garage plus a circular drive and landscaped front yard area. It was on this site plan that the Board justified the five conditions necessary to be found to exist prior to granting the variances. It is also the opinion of the Secretary that had the applicant submitted a plan showing the second dwelling unit on the property, that it would be difficult to justify the five conditions on the south portion of the site plan which was at that time a vacant, undeveloped area and was proposed for a garage and yard area.

It is apparent that the permit for the second dwelling was issued without benefit of the site plan that was a part of BZA Case 56-78 and that the provision of permitting the creation of residential "zoning lots" not in conformance with the 60' minimum width requirement of the subdivision rules and regulations were ignored in the determination by Central Inspection in the issuance of the second permit.

The Secretary subsequently requested from the Department of Law a legal opinion on the applicability of the term "zoning lot" in the issuance of building permits. A copy of this opinion is attached for your information.

In accordance with this opinion, the owner created a "zoning lot" on all of the property included in the legal description, which was submitted for action in BZA Case No. 56-78, when a building permit was issued on March 1, 1979 to remodel the carriage house into a single-family dwelling. This "zoning lot" did comply with the minimum lot area of the zoning ordinance and the minimum width of 60' as is now applicable for residential lots. When the second permit was issued on January 23, 1980, two zoning lots were created, one 53 feet and one 51 feet in width, each of which is not in compliance with the minimum width requirements of the Subdivision Rules and Regulations which are included by reference as a part of the zoning ordinance.

RECOMMENDATION:

In light of the legal opinion on the requirement that any new residential zoning lots comply with the 60 foot minimum frontage, and there are adequate methods that will permit relief from the required minimum standards to permit the creation of new zoning lots of less than the 60 foot minimum, it is recommended that the appeal be upheld and determine that an error was made in the issuance of the second permit.

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BEA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

January 23, 1979

Page 5

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

January 23, 1979

Page 7

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kopietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

-
3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

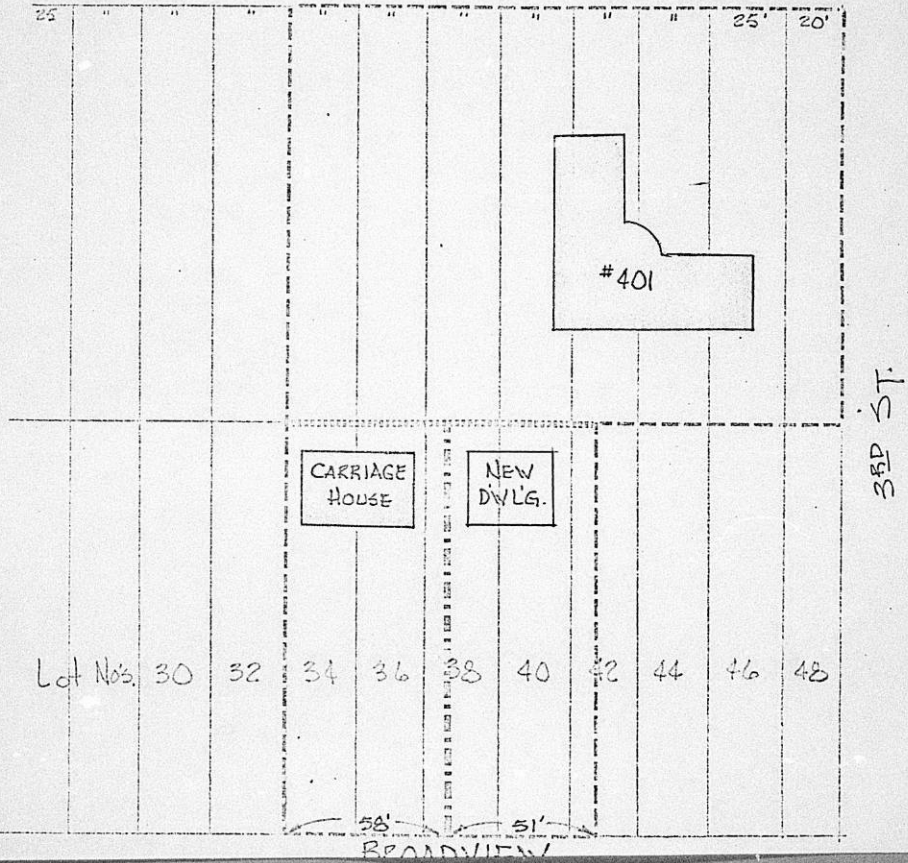
JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

N. BELMONT



RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

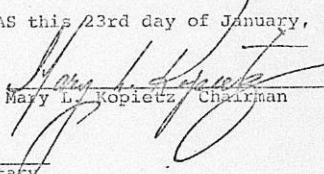
be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

ATTEST


Larry Dobson, Assistant Secretary


Mary L. Kopietz, Chairman

BENDER ASSOCIATES, P.A.

DECEMBER 12, 1978

Members:
Board of Zoning Appeals
First Floor, City Hall
455 North Main
Wichita, Kansas 67202

It is my desire to purchase the Carriage House and lot (109 x 137) located behind the house at 401 North Belmont.

My intent is to remodel the Carriage House and add a garage, to use as my personal residence. The Carriage House already has three (3) existing bedrooms, a living room, bath and kitchen on the second floor. The main level has a large garage area, stairs and two additional rooms. There is a full basement under the house with an outside entrance and numerous large windows for plenty of light.

The location of the Carriage House to the lot (see plot plan) is very close to the north and east property lines. It has been located that way since 1917 when it was built. I am not attaching any living areas or additions to the existing house. The garage will be detached. There are no easements of record on the plat.

Residency for this structure has been established through the years; at first by the servants and more recently by the owner from time to time.

In making this my residence, I will be entering the lot from Broadview (west) and will have a Broadview street address. I have also located (on the plot plan) the existing houses adjacent to the lot. The Carriage House sits very deep on the lot and is not close to any other structure.

I respectfully request that the four foot side yard on the north and the eight foot rear yard on the east be granted a variance so that I may use this structure for a residence.

Cordially,



Roger D. Bender
Architect

RDB/eh

ARCHITECTURE • INTERIORS • PLANNING
247 N. MARKET WICHITA, KANSAS 67202 (316) 264-4371

THE CITY OF WICHITA
OFFICE OF DEPARTMENT OF LAW

DATE March 17, 1980

RECEIVED

MAR 18 1980

TO JACK GALBRAITH, CHIEF PLANNER
FROM H. R. KUHN, ASSISTANT CITY ATTORNEY

METROPOLITAN PLANNING
ROUTE _____

SUBJECT Request for legal opinion --
issuance of building permits

I have reviewed the contents of the memo of March 3, 1980 concerning the above noted matter. Following such review and the informal discussions with you and Glen Lytle, I have arrived at the following conclusions. I recognize that there may be a difference of opinion in the interpretation of the several sections of the zoning code and subdivision regulations and for this reason it might be well to give some thought to appropriate amendments to avoid any such differences.

I do not believe it necessary to cite or analyze the pertinent Kansas enabling statutes. Suffice to say they authorize the zoning and subdivision regulations with which we are concerned here which limit the issuance of building permits to those situations where compliance with such regulations has been established. The subdivision regulations may and do take into account any existing zoning regulations and the zoning regulations may and do take into account the existing subdivision regulations.

The zoning code defines a "zoning lot" as follows:

"A parcel of land that is designated by its owner or developer, at the time of applying for an occupancy certificate as a tract, all of which is to be used, developed or built upon as a unit under single ownership. As long as it satisfies the requirements of the above and the requirements of the subdivision rules and regulations, such lot may consist of:

- (1) A single lot of record; or
- (2) A portion of a lot of record; or
- (3) A combination of complete lots of record, complete lots and portions of lots of record, or portions of lots of record."

It must be noted that the occupancy permit referred to is applied for coincident with the application for a building permit (28.04.220). It becomes rather clear then that the owner or developer determines the "zoning lot" at the time that the "occupancy certificate" is applied for. Further, a "zoning lot" must satisfy all the requirements of the zoning code at the time that the building permit is sought (28.04.220). This will apply in all cases unless a specific exception or exemption is spelled out in the zoning code or in the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 2.

Though the phrase "zoning lot" is not expressly used throughout the zoning code in connection with the zoning districts or classifications, we believe a "zoning lot" as defined above applies to all building or construction sites covered throughout the zoning districts and classifications of the zoning code -- otherwise there would appear to be no reason for the insertion of the phrase "zoning lot" in the definitions set forth in the zoning code. The creation of a "zoning lot" as set forth in the code clearly contemplates the utilization of tracts or lots platted under subdivision regulations as well as parcels of land not platted under subdivision regulations adopted in 1948. This would include parcels of land that might have been divided, subdivided or platted even prior to January 1, 1948.

Since the subdivision regulations now require a minimum width of 60' for residential construction and since the zoning code seems to incorporate by reference such requirements, we believe that all undeveloped parcels of land, irrespective of the date or manner of platting are subject to the 60' minimum width requirement. This is not to say that if a particular parcel of land was being used for a particular purpose at the time of the adoption of the 60' minimum lot width, it could not continue being so used. It can be but the use cannot be changed, enlarged, expanded or intensified without first meeting the requirements of the current regulations. This is because our statutory scheme (K.S.A. 12-709) protects "existing uses" from subsequent zoning but it does not protect either existing zoning or merely anticipated uses. Zoning amendments qualifying and changing the future residential uses of land (as well as land uses in other zoning districts) have been judicially held to be within the police powers of the municipality.

The "zoning lot" amendment of the zoning code was adopted subsequent to the adoption of the amendments to the minimum lot width requirements of the subdivision regulations of 1968. As we view it, the land falling within the category of the exemption of Article 3-105(F), (lots, tracts or parcels that have been sold off, divided, sub-divided, re-subdivided or replatted prior to January 1, 1948) need not be replatted nor further subdivided or changed to be utilized as all or part of a "zoning lot" under the zoning code. Such lots, tracts or parcels may separately or collectively with others, or parts thereof, meet the minimum lot width requirement of 60'. It appears reasonable to suggest that this interpretation was the intent of the zoning code when referring to the "requirements of the subdivision regulations". Nor are the lots, tracts or parcels that were platted under the 1948 subdivision regulations in any way invalidated or changed. On the contrary they too may separately or collectively with others, or parts thereof, meet the current minimum lot width requirement of the subdivision regulations.

Mr. Jack Galbraith
March 17, 1980
Page 3.

In order to fully understand what appear to be the issues presented one must keep in mind that we are talking of two separate (though interrelated) things. On the one hand we are talking of subdivision regulations which are concerned primarily with the subdividing or platting of land which historically were developed to facilitate the transfer of ownership of a particular lot, tract or parcel by simplifying the legal description, i.e., to avoid the necessity of metes and bounds description. On the other hand we have the zoning regulations which are primarily concerned with the use of land in particular zoning districts. Granted, the two subjects are and should be to some extent related. The zoning regulations did not concern themselves primarily with the manner or method of "platting" or subdividing land and as the subdivision regulation concept was developed it did not concern itself directly with zoning.

The current subdivision regulations establish minimum requirements as to the laying out or subdividing of land by way of "platting" or "subdividing". They trace their origin to 1948 and have been subsequently amended. One of the significant amendments has been to establish a minimum width of 60' of platted lots (measured at the set back lines) to be used for the uses authorized in a residentially zoned district. The current provision applies to all platting and subdividing subsequent to 1968. Again, this refers only to establishing the minimum width size of the lots on a particular plat. The subdivision regulations adopted in January of 1948 established a similar minimum lot width of 50'. Prior to 1948 there were no subdivision regulations and consequently no minimum lot widths had been established. The current subdivision regulations specifically exempt from its provisions those lots, tracts or parcels which had been platted or subdivided prior to January 1, 1948. In other words the subdivision regulations were looking forward to the "platting" exercises and exempted them from the requirements of the platting regulations adopted in 1948 as subsequently amended.

The conclusion that we have reached is that all parcels of land not previously utilized for a specific use under prior platting or subdivision regulations are subject to the minimum width requirements set forth in the current subdivision regulations. It is our opinion that any building permit issued for construction of an improvement on a lot or parcel of land not meeting the current minimum lot width requirement was improvidently issued.

Mr. Jack Galbraith
March 17, 1930
Page 4.

The foregoing conclusions may seem somewhat restrictive and severe. However, it must be remembered that relief is available to the owner of a parcel of land not meeting the current minimum lot width requirement for an intended use. Both the zoning code and subdivision regulations contain appeal provisions wherein relief may be available to the owner of a parcel of land by following the "variance" procedures therein contained.

If we can be of further assistance, please advise.

Respectfully submitted,



H. R. KUHN
ASSISTANT CITY ATTORNEY

HRK:mb
cc: John Dekker

() Published in the Daily Record, March 3, 1980

OFFICIAL NOTICE

NOTICE IS HEREBY given that on the 25th day of March, 1980, the Board of Zoning Appeals of the City of Wichita, Kansas, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas will consider the following applications at 1:30 p.m.

1. Case No. BZA 13-80 - William & Julie Nicholson, 401 North Belmont, Wichita, Kansas, pursuant to Section 2.12.590.A, Code of the City of Wichita, is appealing the interpretation of the Superintendent of Central Inspection in the issuance of a building permit for a second single-family dwelling on a zoning lot established by BZA Case No. 56-78 and approved by the Board of Zoning Appeals by Resolution No. BZA 56-78 on January 23, 1979 for a variance of the required rear yard and the side yard on the north for the remodeling of an existing structure as a single-family dwelling, on property zoned the "AA" One-family Dwelling District and legally described as follows:

Lots 34, 36, 38, 40 and 42, except the south 16 feet of lot 42 on Broadview in Hagney's Replat of Capitol Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

as provided in City Ordinances hereinabove described and Section 2.12.560 et. seq., Code of the City of Wichita, Sedgwick County, Kansas, and the same will there be discussed and considered by the said Board of Zoning Appeals and all persons interested in said matters will be heard at this time concerning their views and wishes in the premises, and any protest against any of the provisions of the appeal will be considered by the Board of Zoning Appeals as by law provided.

WITNESS my hand and seal this 29th day of February, 1980.

Earl Henderson, Chairman

ATTEST:

Jack H. Galbraith, Secretary

BZA CASE NO. 13-80

2 NOTICES SENT TO APPLICANT/AGENT

10 NOTICES SENT TO MAPC

1 NOTICES SENT TO CPO

25 NOTICES SENT TO ADJOINING PROPERTY OWNERS

38 TOTAL NOTICES SENT 3-3-80

BOARD OF ZONING APPEALS

CASE NO. 13-80

CITY OF WICHITA, KANSAS

FILED _____

APPEAL FROM ORDER OR DECISION OF THE
SUPERINTENDENT OF CENTRAL INSPECTION

I. Name of Appellant William and Julie Nicholson, husband and wife
Mailing Address 401 North Belmont Phone _____
Name of Agent James A. Walker of Martin, Pringle, Fair, Davis
& Oliver
Mailing Address 320 Page Court Phone 265-9311
Relationship of appellant to property is that of Other (adjoining
Owner, Tenant, Lessee, Other). landowner)

II. The appellant herein appeals from a decision, determination or an order of the Superintendent of Central Inspection, as follows:

The issuance of Building Permit No. D39998 for the construction of a One-Family Dwelling and the interpretation of Central Inspection of Resolution No. 56-78 (see attached statement)

for property located 414 and 410 North Broadview
and legally described as: Lots 34, 36, 38, 40 and 42 except
South 16 feet of Lot 42 on Broadview, Hagny's Replat of
Capital Hill Addition

"AA" One Family Dwelling
in the City of Wichita; and which is presently zoned District. The
decision was rendered January 23, 1980, and refers to Sections
28.04.020 and 28.04.040 of the Code of the City of Wichita.

III. The appellant 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, and 4 of the instructions.

Appellants WILLIAM AND JULIE NICHOLSON
MARTIN, PRINGLE, FAIR, DAVIS & OLIVER
BY Authorized Agent James A. Walker

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals, 9:45 (a.m. - ~~p.m.~~), FEB. 29, 19 80, together with appropriate fee of \$50.00.

Signed Glenn Lytle

STATEMENT OF APPELLANT

This appeal is taken from the decision of the Superintendent of Central Inspection to issue Building Permit No. D39998 to Calvert & Spears, the contractor of owners, Roger and Sistie Bender, for the construction of a One-Family Dwelling on the real property described herein. The construction authorized by Building Permit No. D39998 is not in compliance with the variance granted on January 23, 1979, in Case No. BZA 56-78 or the intention of the Board of Zoning Appeals in granting said variance. (See Minutes of Board of Zoning Appeals attached hereto.)

The construction authorized by Building Permit No. D39998 violates the zoning ordinances and subdivision regulations applicable to said property, specifically the minimum width requirements, and the real property described in said Building Permit does not constitute a zoning lot as defined in the zoning ordinances.

#5678

BOARD OF ZONING APPEALS
MINUTES
JANUARY 23, 1979



The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held Tuesday, January 23, 1979, in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at 1:30 p.m.

The following Board members were present: Mary Kopietz, Chairman, Angela Squires, Vice-Chairman, Marjorie Taylor and Thomas Jacob. James Richardson was absent.

Also present were: Tom Powell, Legal Counsel; Jack Galbraith, Secretary; Larry Dobson, Assistant Secretary; and Beverly Craig of the Planning Department staff.

1. Approval of the Minutes of December 19, 1978.

MOTION: TAYLOR moved, JACOB seconded and it carried unanimously that the minutes of December 19, 1978 be approved as mailed. (RICHARDSON was absent.)

2. Case No. BZA 56-78 - Roger Bender, 247 North Market, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagny's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the north side yard setback and the rear yard setback to permit the remodeling of an existing carriage house for use as his personal residence.

The carriage house is shown as being located in the north-east corner of subject property, four feet from the north property line and eight feet from the east property line. The structure has been so located since its construction in 1917. The applicant is contracting to purchase subject property, which until now has been held under one ownership with property to the east. The sell-off creates a rear, or east, property line eight feet from this structure, as opposed to the twenty feet required for a rear yard setback. The required side yard setback for a residence in this "AA" zoning district is six feet.

The applicant emphasizes that the outside dimensions of the carriage house will not be altered, but rather the interior will be remodeled and a detached garage will be constructed south of the existing structure. The proposed garage is also shown as maintaining an eight foot rear yard. It should be noted that a detached garage may be located as close as five feet to the rear property line, but if attached to the main residential structure, it must also comply with the twenty foot setback, or obtain a variance from same.

It should be pointed out that a question has been raised as to the exact location of the structure from the north property

line. We have been advised that the fence on the property to the north is not on the property line, but rather, is one foot on the property to the north. If that is the case, a variance is needed from 6 to 3 feet rather than 6 to 4 feet as advertised. In raising this issue with the Law Department, their opinion is that since the only property affected by a variance of the side yard setback is the property owner to the north, and inasmuch as that property owner is aware of the request and knows the location of the structure, the Board has the authority to approve the variance for a lesser area than advertised. The applicant should be prepared, however, to provide the Board with the exact dimension of the structure from the north property line.

Residency in the carriage house was established originally by servants and more recently by the property owner on occasion. It is not known if this structure has ever been rented as a residence.

Vehicular access to the carriage house has always been from Belmont Avenue to the east. The applicant proposes a new curb opening to Broadview for the purpose of providing access to this property. Due to the location of this structure deep on the lot there are no nearby adjacent structures on adjoining properties. The nearest structure would be over thirty feet away on the property to the north.

UNIQUENESS:

It is the opinion of the Secretary that this may be an unique situation inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired will not adversely affect the public interest inasmuch as these variances are located adjacent to interior lot lines.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements.

RECOMMENDATION:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist and it is therefore recommended that the variance be granted subject to the following condition:

1. The north side yard setback and the rear yard setback shall be reduced to ___ and eight feet respectively for the existing structure only.

GALBRAITH then passed around a letter from an attorney representing the property owner to the north, which stated there was no objection to the case provided the applicant did not develop additional facilities adjacent to his property line that would violate the setback.

GALBRAITH continued that condition number 1 should be revised to reflect the north side yard setback as 3 feet, or to whatever is determined to be the correct measurement, for the existing structure only, and the rear yard setback as 8 feet for both the existing structure and any new structure. He stated CPO Council "G" had recommended that the application be approved.

TAYLOR asked what the proximity of the home on the property to the east was to the east property line of subject property. GALBRAITH stated he believed the applicant could better advise the Board on this aspect.

FRED HANLEY, 439 North Belmont, appeared before the Board stating his main concern was the parking connected with the main house since the garage had now been sold. GALBRAITH answered that staff did not have any information and again, perhaps the applicant could reply to this. HANLEY said that he did not have an objection to the application for variance as presented to the Board.

ROGER BENDER, 930 Riverside, the applicant, then spoke to the Board explaining that the house to the east is at least 30-35 feet from its west property line. He said the present owners of the house intended to build a new garage, pointing out the general area on the map and stating there was, to his belief, sufficient room to accomplish this purpose.

GALBRAITH asked the applicant to clarify the amount of setback being requested. BENDER replied 3'4" on the north and 9' on the back, were the actual measurements. KOPIETZ then said the Board should leave the request at an even amount of 3 feet and 8 feet respectively. GALBRAITH said that the Board should establish that there will be no encroachment of the proposed garage structure into the 8 foot setback. BENDER stated that the wall of the proposed garage would be set on the same line as the existing structure.

No one else appeared in favor of the application, and no one else appeared in opposition.

MOTION: JACOB moved, SQUIRES SECONDED and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the north side yard setback to three feet for the existing structure only and the rear yard setback to eight feet for both the existing structure and any new structure. (RICHARDSON was absent.)

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 56-78

WHEREAS, Roger Bender, 247 N. Market, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the north side yard setback from 6 foot to 4 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 1979, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, upon clarification of the exact location of an existing structure upon the property, the board's legal counsel has determined that the Board has the jurisdiction to consider a variance of the north side yard setback to three feet instead of four feet as advertised; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as this structure has been located here for over sixty years and would not be expanded to increase any nonconformity of setbacks; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the conversion of this structure to a separate single family residence will be done without expansion of the existing structure and should be an improvement to the neighborhood; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as a permit for remodeling of this structure for a residence could not be obtained under separate ownership from the original parcel; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that these variances are located adjacent to interior lot lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the nonconforming structure is not being enlarged and will be used as a permanent residence, conforming to all other requirements; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that a variance to reduce the north side yard setback from 6 foot to 3 foot and the rear yard setback from 20 foot to 8 foot, on property zoned the "AA" Single Family Dwelling District, and legally described as:

Lots 34, 36, 38, 40 and 42, except South 16 feet of lot 42 on Broadview in Hagney's Replat of Capital Hill Addition, Sedgwick County, Kansas. Generally located on the east side of Broadview in an area north of Third Street

be approved subject to the following condition:

1. The North side yard setback shall be reduced to three (3) feet for the existing structure only, and the rear yard setback shall be reduced to eight (8) feet for both the existing structure and any new structure.

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

Mary L. Kопietz, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

-
3. Case No. BZA 57-78 - Planned Parenthood of Kansas, Inc., 158 North Grove, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of an off-street parking lot on property zoned the "A" Two Family Dwelling District, and legally described as:

Lots 1 & 3 on Spruce St., in Stites Bros Second Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Spruce in an area north of Central (517 N. Spruce).

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

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.145 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants desire to enlarge an existing office building

on Light Commercial property adjacent to the south of subject property. In order to comply with the off-street parking requirements of the zoning ordinance, additional parking must be provided. This request for an exception to provide off-street parking on subject property would help meet these parking requirements.

Planned Parenthood of Kansas is the recent purchaser of both properties and will be moving its operation to this location. They have submitted a site plan, which has been approved by Traffic Engineering, showing their intent to provide screening along the west and north property lines and to maintain the front 25 foot landscaped setback on subject property. Access to the parking lot would be from an east/west alley which separates subject property from the use it is intended to serve. An existing single family structure would be removed from subject property.

It is the opinion of the Secretary that this is a logical and proper request and that with proper screening for adjacent residential properties, would not adversely affect the general area.

RECOMMENDATION:

It is the recommendation of the Secretary that the application to permit the installation or construction of an off-street parking lot be approved subject to the following conditions:

1. The parking areas shall be used for passenger vehicles only and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicle, equipment, materials or supplies.
2. Only such signs as are necessary for the proper operation of the parking lots shall be permitted.
3. In no case shall a fee be charged for parking facilities provided hereunder.
4. The off-street parking lot and all driveways providing ingress and egress to the parking lot shall be paved with concrete, asphaltic concrete, or asphalt, and shall be maintained in good condition and free of all weeds, dust, trash and debris.
5. All parking spaces abutting property lines shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces. All parking areas shall have adequate markings for channelization and movement of vehicles.

SET BACK AND SIDE YARDS SHALL CONFORM WITH ZONING ORDINANCE

CASH CHECK CITY OF WICHITA, KANSAS App. No. _____
Permit CENTRAL INSPECTION DIVISION

No. 039998

Permission is hereby granted to erect
a structure at No. 410 N. Broadway and to be used for
Ham

All work to be done in compliance with the laws and ordinances pertaining to same and in conformity with the plans or application filed with, and approved by, the Inspection Department.

Estimated Cost \$ 28,900 Fee \$ 124.00 **KEEP PERMIT ON PREMISES**

Owner Roger Bender Date 1/23, 1980

Address 414 N. Broadway SUPERINTENDENT of

Contractor Calvert & Spears CENTRAL INSPECTION

Address 1958 Burns Issued by ep

Subject to refund of 50% if application is made within ten (10) days. VOID UNLESS STAMPED BY CASHIER

KA-DD1 REV. 11-75 VOID UNLESS WORK IS STARTED WITHIN 120 DAYS



Application for Building Permit

PERMIT NO. **D39998****I. IMPORTANT: Complete ALL Items, Mark Boxes Where Applicable**

LOCATION OF BUILDING CARD 1	STREET NUMBER DIR. 410 N Broadview	STREET NAME	TYPE DIR.	UNIT	SECONDARY ADDRESS
CARD 2	LOT(S) 3-17'0A 38-44	BLOCK WAGNER'S	ADDITION PLAT d f	ZONE: Dist AP-3 Fire	
CARD 3	LOT(S) 40 8' N 9' L 42	BLOCK CAPITOL	ADDITION HILL	LOT SPLIT NO.	

If Mates and Bounds, Attach Additional Information

CARD 4

II. TYPE AND COST OF BUILDING - All Applicants Complete A - E

A. TYPE OF IMPROVEMENT
 1 New Building
 2 Addition (If Residential, enter number of new housing units added, if any, in Part E)
 3 Alteration (See 2 above)
 4 Repair, Replacement
 5 Wrecking (If multi-family residential, enter number of units in Building in Part E, 3)
 6 Move-In (relocation)

B. OWNERSHIP
 1 PUBLIC
 2 PRIVATE

C. FLOOD PLAIN AREA Y N
 FLOOR ELEVATION BY CITY DATUM

D. VALUATION:
 1. \$ **28900** VALUATION TO Nearest Dollar

E. PROPOSED USE - For "Wrecking" Most Recent Use
Residential:
 1 One-Family
 2 Two-Family
 3 Multi-Family (*)
 4 Garage-Attached
 5 Garage-Detached
 6 Carport-Attached
 7 Carport-Detached
 8 Storage Shed
 9 Other - Specify _____
Commercial:
 A Amusement, Recreational Building
 B Church, Religious Building
 C Industrial Building
 D Parking Garage
 E Service Station
 F Hospital, Institutional Building
 G Office, Bank, Professional Building
 H Public Works, Utilities
 I School, Educational Building
 J Stores, Mercantile Building
 K Transient Hotel, Dormitory, etc.
 L Other Buildings
 M Structures Other Than Buildings

F. Project Name: **ELECT 1 Plan at Carl No 88** Const. Type 1 Hour 2 Occupancy (Group) 3

G. DESCRIPTION OF WORK: **766th BSE ABOVE 766th G/L**

CARD 5

III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete parts H through R. For wrecking complete only part K; for all others, skip to IV.

H. FOUNDATION
 1 Concrete
 2 Concrete Block
 3 Wood
 4 Other _____

I. STRUCTURE (Principal Type of Frame)
 1 Masonry (Wall Bearing)
 2 Steel
 3 Concrete
 4 Wood
 5 Other _____

Roof:
 1 Wood
 2 Metal
 3 Concrete
 4 Other _____

Floor:
 1 Wood
 2 Concrete
 3 Other _____

J. COVERING
Roof:
 1 Wood
 2 Composition
 3 Metal
 4 Concrete
 5 Built-Up
 6 Other **TILE**

Exterior Walls:
 1 Wood
 2 Masonry
 3 Metal
 4 Composition
 5 Asbestos
 6 Other **Stucco**

Interior Walls:
 1 Dry Wall
 2 Plaster
 3 Masonry
 4 Other _____

K. DIMENSIONS:
 1. 1 Number of Stories
 2. 2 Basement
 3. 3 Total Sq. Ft. **766**
 4. 4 Building Height

L. TYPE OF WATER SUPPLY
 1 Public
 2 Private -
 A Approved by Health

M. TYPE OF SEWAGE DISPOSAL
 1 Public
 2 Private -
 A Approved by Health

N. NUMBER OF STAIRWAYS
 1. 1 Basement to 1st
 2. 2 1st to 2nd
 3. 3 2nd to Roof

O. NUMBER OF OFF-STREET PARKING SPACES
 1. 1 Enclosed
 2. 2 Outdoors

P.
 1. 1 No. of Escalators
 2. 2 No. of Elevators

Q. RESIDENTIAL
 1. 1 No. Bedrooms
 2. 2 No. Bathrooms

R. REQUIREMENTS:
 1 Sidewalk
 2 Historical Structure
 3 Partial Permit

CARD 6

IV. IDENTIFICATION - To be completed on all applications

(DAYWORK) OWNER **ROGER BANDER** CITY **WICHITA** STATE **KS**

STREET NUMBER DIR. **414 N Broadview** STREET NAME **BROADVIEW** TYPE DIR. **W** ZIP CODE **67208** TELEPHONE **82644371**

CARD 2 CONTRACTOR **CALVERT & SPEARS** LICENSE NO. **D00305**

3. ARCHITECT AND/OR ENGINEER

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

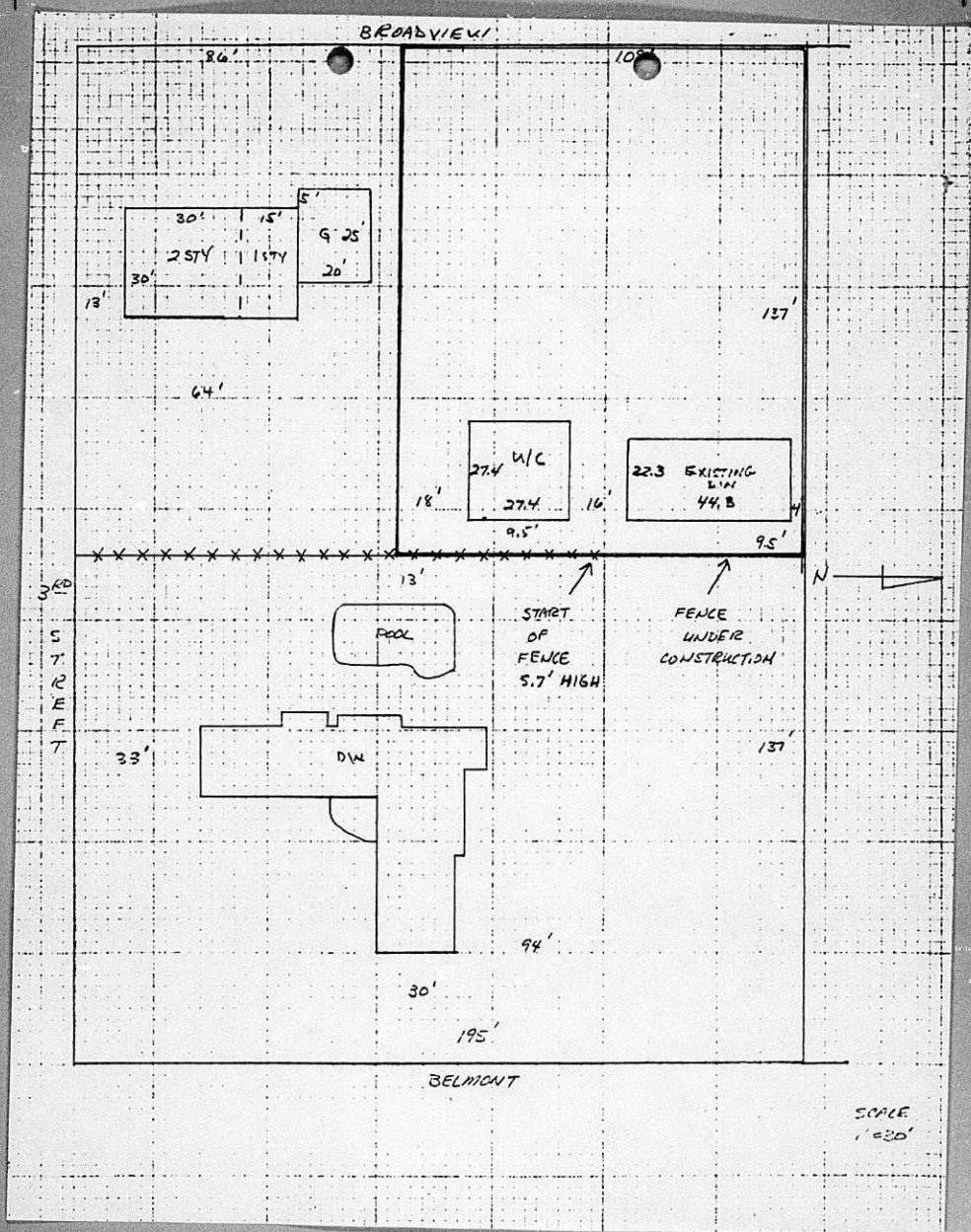
Signature of Applicant **[Signature]** Address **1958 Burns** Telephone **1-23-88** Date

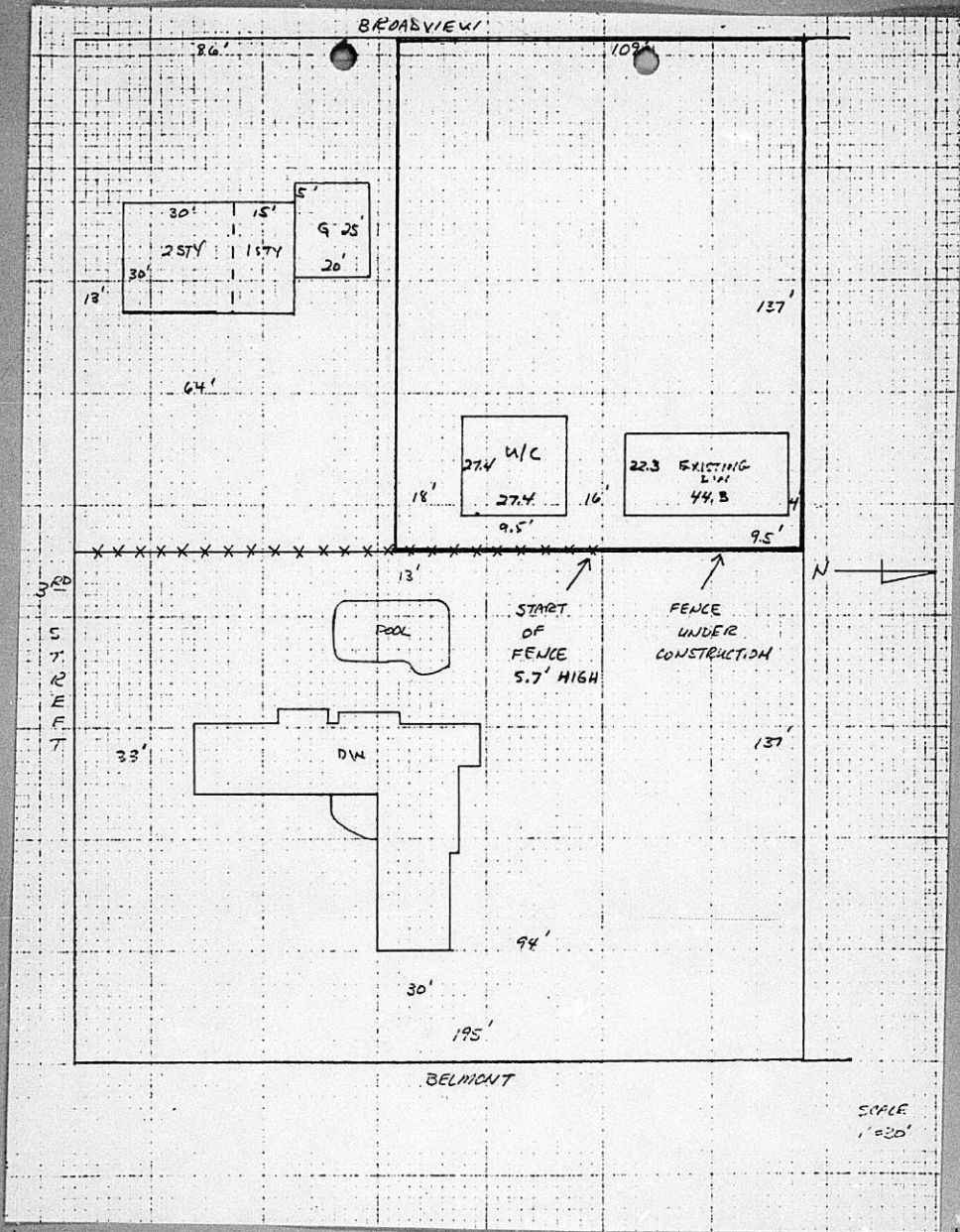
PERMIT STATUS Original Renewal Extension Mechanical Electrical Elevator Other

DATE FILED **1/12/60** Date **1/13/60** Applicant approved by **[Signature]**

VOID UNLESS CANCELLED WITHIN 120 DAYS

Application and Plan shall be filed and approved as to the following:
 Electrical Mechanical Plumbing Fire Other





OWNERSHIP LIST

Lot	Addition	Property Owner
Lot 25, on Fountain	Small's 2nd Add.	✓ George S. Shrewsbury Luise B. Shrewsbury 402 N. Fountain 67208
Lot 27, on Fountain	" " " "	✓ David K. Warbinton Vickie Warbinton 400 N. Fountain 67208
Lot 29, on Fountain	" " " "	✓ Barbara C. Bernstorf 408 N. Fountain 67208
Lot 31, on Fountain	" " " "	✓ Dolly Gideon Dixie L. Hand 7422 N. Fountain 67208
Lot 33, on Fountain	" " " "	✓ Dixie L. Hand 422 N. Fountain 67208
Lot 26 & S½ Lot 28, on Broadview	" " " "	✓ Carl F. Johnson Lucy M. Johnson 401 N. Broadview 67208
North 25' of Lot 28 & South 25' of Lot 30, on Broadview	" " " "	✓ Michael W. Gilbreath Jary K. See Gilbreath 409 N. Broadview 67208
North 25' of Lot 30 & South 25' Lot 32, on Broadview	" " " "	✓ Richard Thomas Taylor Dianne M. Taylor 415 N. Broadview 67208
North 25' of Lot 32, & all lot 34, on Broadview	" " " "	✓ James L. Hungerford Kristin K. Hungerford 425 N. Broadview 67208
Lot 36 on Broadview	" " " "	✓ John H. Brewer Carolyn A. Brewer 427 N. Broadview 67208
Lot 38, on Broadview	" " " "	✓ Keith R. Leland Carol Leland 431 N. Broadview 67208
Lot 40 on Broadview	" " " "	✓ Charlotte Kinsley Maxine & Janet Kinsley Virginia Miller 437 N. Broadview 67208
North 50' of Lot 24 on Broadview	Small's Add.	✓ Glen W. Brammer Alice E. Brammer 351 N. Broadview 67208
Lot 18 on Broadview	Hagny's Replat of Capital Hill Add.	✓ Terry J. Cox H. Kay Cox 436 N. Broadview 67208
Lot 20, 22, 24, on Broadview	" " " "	✓ David D. Stapleton Frances Kay Stapleton 1015 S. Bleckley Dr. 67218

*resent to
432 N. Broadview
returned 3-7-80*

Lot	Addition	Property owner
Lots 26, 28, 30, 32, on Broadview	Hagny's Replat of Capital Hill Add.	✓ Howard K. Pierce (deceased) Mildred Pierce 424 N. Broadview 67208
Lots 34, 36, 38, 40 & N 9' of Lot 42, exc. any part thereof lying within South 16' of Lot 42	" " " "	✓ Roger Bender 420 N. Broadview 67208
South 16' of Lot 42, All lots 44, 46 & 48 on Broadview	" " " "	Francis R. Aksamit ✓ Rebecca E. Aksamit 404 N. Broadview 67208
Lots 50, 52, 54 on Broadview	" " " "	✓ Mark H. Adams Jeanette C. Adams 345 N. Belmont 67208
Lots 17, 19, 21, 23, on Belmont	" " " "	Sandra J. Hanley ✓ 439 N. Belmont 67208
Lots 25, 27, 29, 31 on Belmont	" " " "	J.M. Walsh ✓ Anna Walsh 425 N. Belmont 67208
Lots 33, 35, 37, 39, 41, 43, 45, 47 on Belmont	" " " "	F. William Nicholson D Julianne A. Nicholson 401 N. Belmont 67208
Lots 49 & 51, on Belmont	" " " "	Mark H. Adams ✓ Jeanette C. Adams 345 N. Belmont 67208
Lots 30 & 32 on Belmont	" " " "	Odis E. Shoaf Jr . ✓ Martha L. Shoaf 426 N. Belmont 67208
Lots 34, 36, 38, 40, 42, 44 on Belmont	" " " "	✓ John E. Coultis Ruth E. Coultis 400 N. Belmont 67208

We hereby certify the foregoing to be a true and correct list of the property owners of:

A 200 foot radius of Lots 34, 36
38, 40 and 42, except the South 16
feet of Lot 42, on Broadview, Hagny's
Replat of Capital Hill Addition to
Wichita, Sedgwick County, Kansas

as shown by the last deeds of record on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 28th day of February, 1980 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE COMPANY, INC.

By: *Mary Gable*
Vice President

Order NO. 285893
rmk

**MICROFILMED
FROM THE BEST
AVAILABLE COPY**

FORM 29-11 PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.

Planning

DESCRIPTION	AMOUNT
City BZA Appeal	\$ 50.00

NAME: JAMES WACKER
 ADDRESS: 320 Payne Ct, 220 W. Douglas
 FUND: 10-00-000-40071 DUE DATE: 1007-000-000
 COMMENTS: _____
 DATE: 2/24/70 BY: [Signature]

WICHITA - SEDGWICK COUNTY
W S C
 BZA-13-50

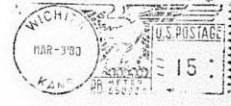
BOARD OF ZONING APPEALS
 CITY HALL - TENTH FLOOR
 455 NORTH MAIN STREET
 WICHITA, KANSAS 67202

ADDRESSES UNKNOWN
 SOUTHEAST

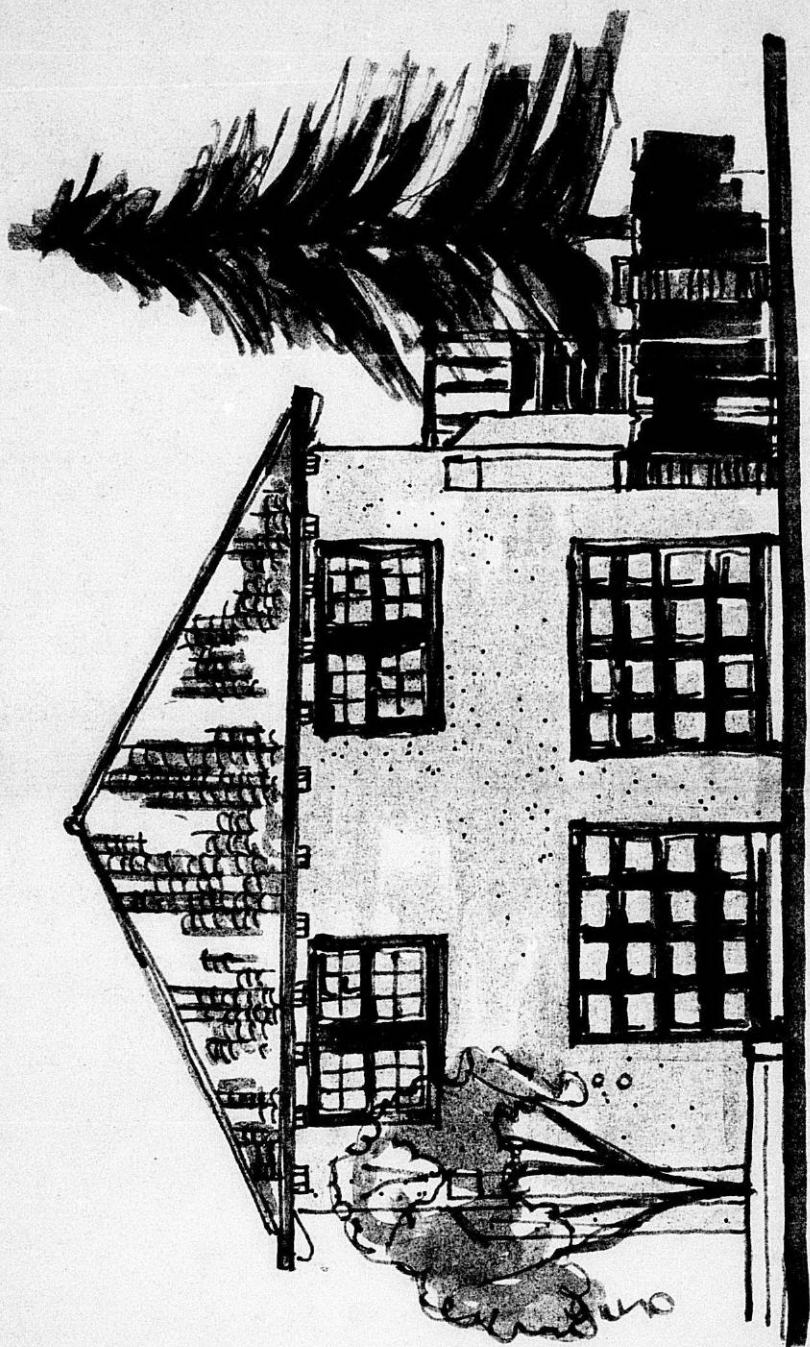
10/10
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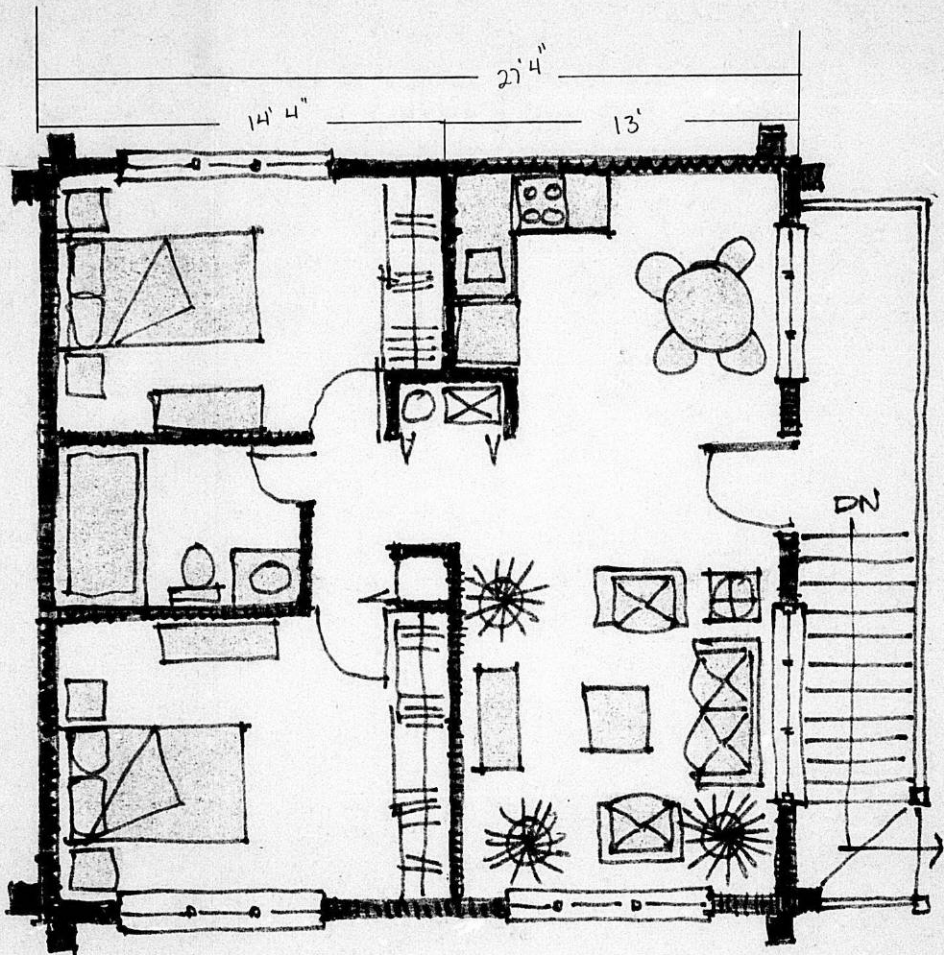
David D. & Frances K. Stapleton
 1015 South Bleckley Drive
 Wichita, Kansas 67218

432 N. Broadview

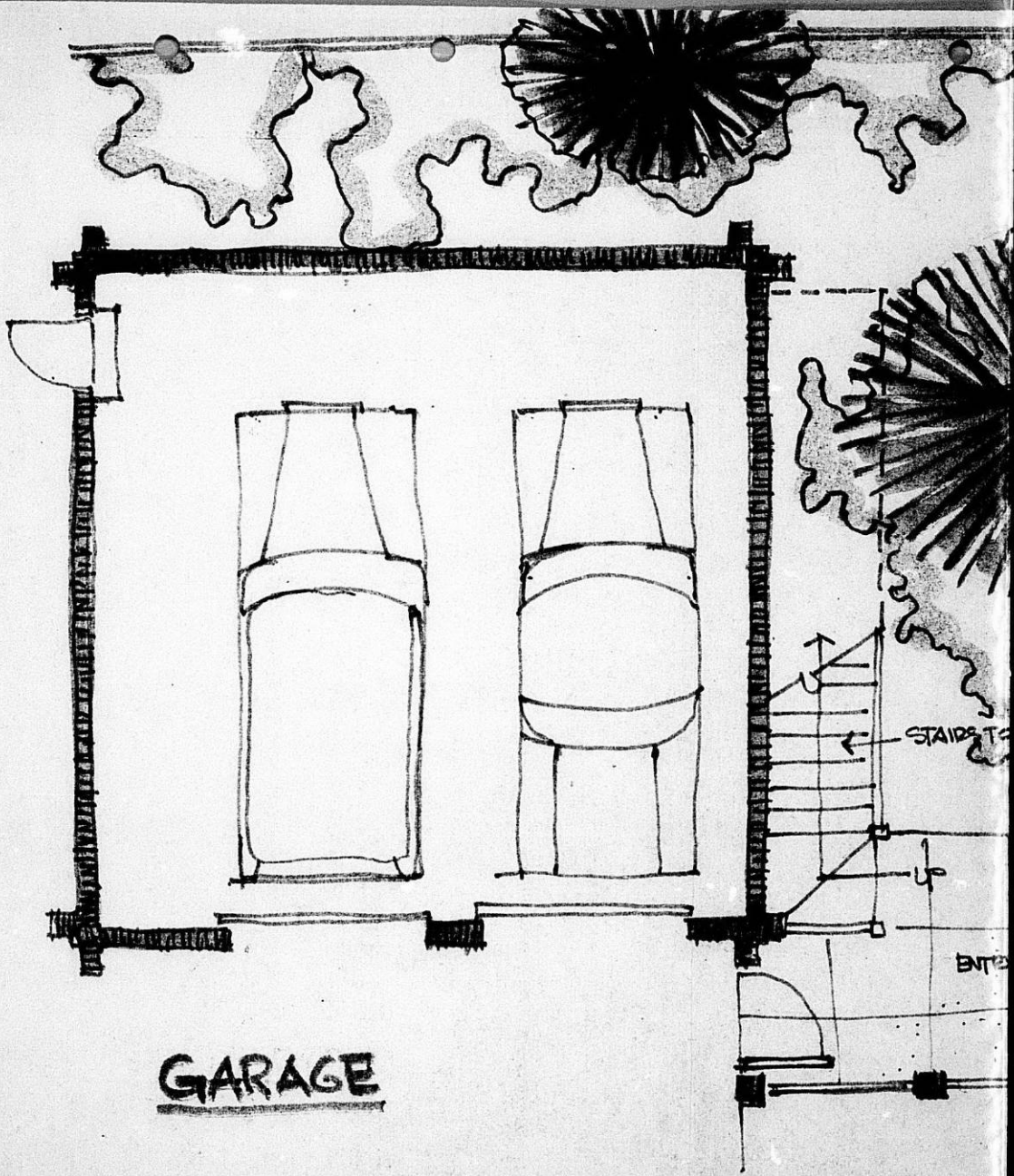


Submitted by Mrs. Fort
on 3-25-80

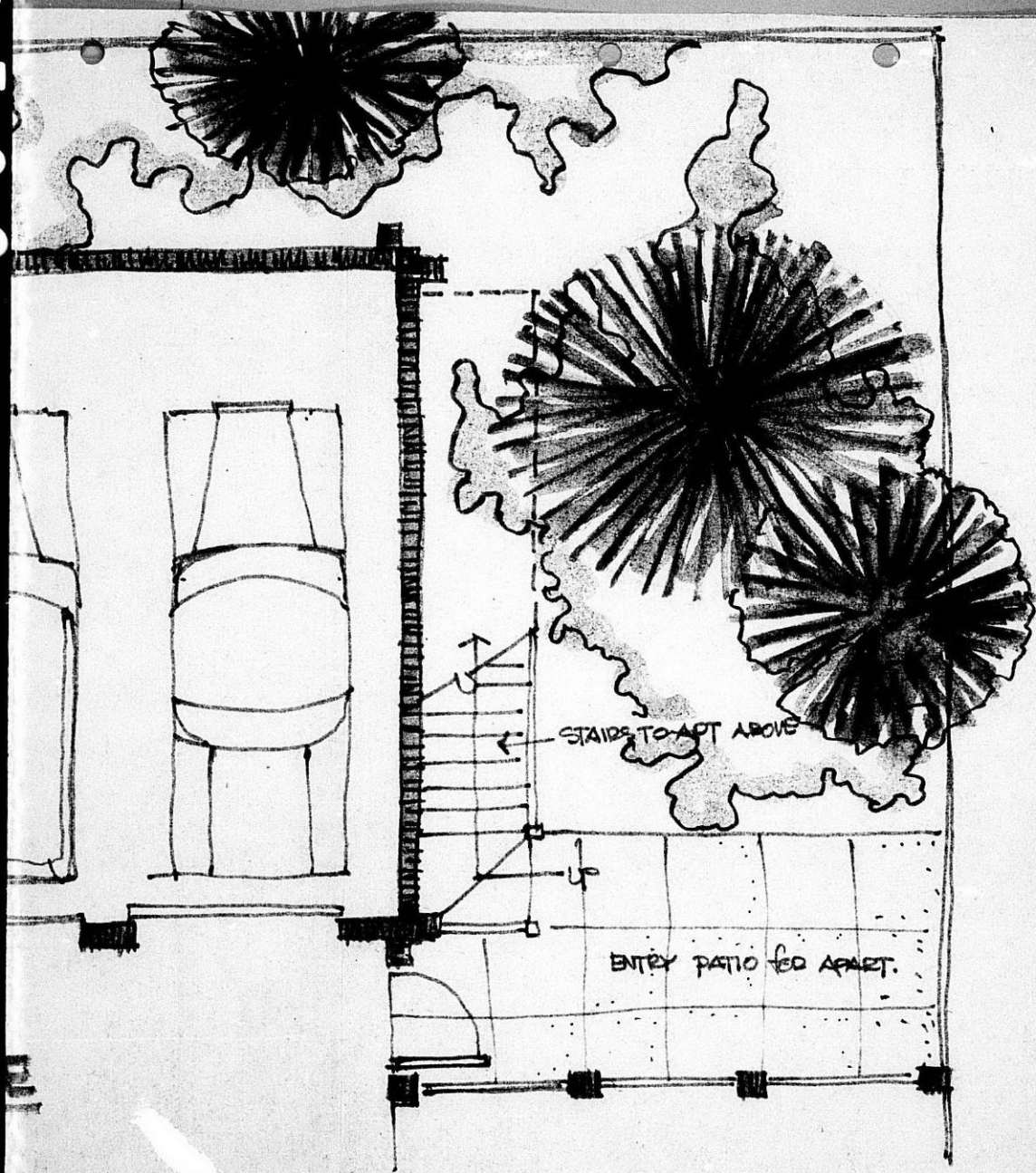




APARTMENT ABOVE GARAGE



GARAGE



STAIRS TO APT ABOVE

ENTRY PATIO FOR APPT.