

5750 B
POSTED
3-27-85

ACTION

BZA 2485 APPROVE 4-23-85
DATE

200' 1/2 Sec 5-31-85
Start 6-18-85
Record ✓

Case No. BZA 21-85 - James Gardner, Jr. - requests a variance to reduce the required side yard setback from 4 feet to not less than 1 foot 6 inches for the installation of a window well and to reduce the required side yard setback

Map No. 5350 B

BZA 21-85
Filed _____

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E AA S AA W AA N AA
3. Land Use: East I-F South I-F
West River North I-F
4. Area (is) (~~to not~~) platted.



LOS ANGELES COUNTY
REGISTERED PROFESSIONAL SURVEYOR
MORRISON, TULLOCH & GROVE, P.A.
U.S.A.

Spauld
No. 2153C

REGISTERED PROFESSIONAL SURVEYOR

May 2, 1985

James L. Gardner, II
2517 Porter
Wichita, Ks. 67204

Re: BZA 21-85 - Request for Variance

Dear Jim,

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on April 23, 1985.

This Resolution reflects the official action of the Board to approve, your request and sets out the conditions of approval. 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

Encl.

cc: Monty Robson, Superintendent of Central Inspection (2)
Don Gisick, City Clerk

RESOLUTION NO. BZA 21-85

WHEREAS, James L. Gardner, II, 2517 Porter, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 4 feet to not less than 1½ feet for the installation of a window well and to reduce the side yard setback from 6 feet to 5.4 feet for the existing wall of the garage on property zoned the "AA" One-family Dwelling District and legally described as follows:

Lot 9 and the north half of Lot 10, Block 5,
Builder's Fifth Addition to Wichita, Sedgwick
County, Kansas. Generally located on the west
side of Porter and south of 25th Street North
(2517 Porter).

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of April 23, 1985, consider said application; and

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

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as the proposed window well will be essentially below grade and is to be located at the only exterior wall of the basement that is large enough to provide the desired utility for light and air and the emergency exit, and provided further, the existing wall has violated the side yard setback since the original construction; 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 projection of the window well into the side yard should not interfere with the light and air of the adjacent property owner; 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 the existing conditions were not created by the present property owner, and the desire to provide more habitable living space in the basement requires a minimum amount of window area and for safety, the emergency exit is being provided; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the construction will not interfere with any existing or needed utility easements; 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 construction will not change the general openness between the two structures and the above grade construction will essentially be unchanged; and

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback from 4 feet to not less than 1½ feet for

the installation of a window well and to reduce the side yard setback from 6 feet to 5.4 feet for the existing wall of the garage on property zoned the "AA" One-family Dwelling District and legally described as follows:

Lot 9 and the north half of Lot 10, Block 5, Builder's Fifth Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Porter and south of 25th Street North (2517 Porter).

be approved subject to the following conditions:

1. The window well shall not be constructed closer than 1.7 feet to the north property line.
2. The side yard setback for the existing garage wall shall be reduced to 5.4 feet.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1985.


William Goebel, Vice President

ATTEST:


Glen E. Lytle, Assistant Secretary

THE CITY OF WICHITA

OFFICE OF CITIZEN PARTICIPATION
Division of CRS

DATE April 16, 1985

TO Glen Lytle, Special Assistant for Zoning

FROM Barry L. Carroll, Administrative Aide III

SUBJECT BZA 21-85: WEST SIDE OF PORTER &
SOUTH OF 25TH STREET NORTH (251.
PORTER)

On Wednesday, April 10, 1985 CPO Neighborhood Council "J" considered the captioned case, a request for a variance to reduce the required side yard setback from 4 feet to not less than 1 foot 6 inches for the installation of a window well and to reduce the required side yard setback from 6 feet to 5.4 feet for the existing structure that was constructed in error, on property zoned the "AA" One-Family Dwelling District. After discussion the Council voted 6-0 to recommend approval of the requested variance.

Council members were provided the notice to adjoining property owners and a map of the area. MAPD staff comments were available.

Please provide the Council's recommendation to the Board of Zoning Appeals when BZA 21-85 is considered on April 23.

Barry L. Carroll
Barry L. Carroll
Administrative Aide III

BLC/glw

Noted:

Annie K. Montgomery
Annie K. Montgomery
CRS Director

RE: AGENDA ITEM NO. 7

SECRETARY'S REPORT CASE NO. BZA 21-85

APPLICANT: James L. Gardner, II, 2517 Porter, Wichita, Kansas.

AGENT: None

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required side yard setback from 4 feet to not less than 1 foot 6 inches for the installation of a window well and to reduce the side yard setback from 6 feet to 5.4 feet for the existing structure that was constructed in error.

GENERAL LOCATION: On the west side of Porter and south of 25th Street North.

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

LAND USE: Subject property is occupied by a one-family dwelling as are all adjacent properties.

JURISDICTION:

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the required side yard setback in order to construct a window well that will serve not only as light to the existing basement area, but will also be large enough to serve as an emergency exit. This will require a reduction in the required side yard setback down to 1-1/2 feet. In addition, the survey of the property indicates that an error was made in the construction of the original garage wall that is only 5.4 feet in lieu of the required 6 feet.

It should be noted that Section 28.04.188 of the zoning ordinance provides for exceptions to the area regulations as set forth in the ordinance. As indicated in this section, open outside stairways may project into a side yard not more than two feet. A window well as proposed here is no different than an open stairway to the basement, and as such must comply with a 4 foot setback. Since the structure will be below grade, for the most part, it should not interfere with the light and air of the adjoining property. In this case the proposed location of the window well is the only logical wall due to the small basement area and its location below the garage.

The Secretary advised the applicant that since the garage wall was discovered to be in violation, then it was only logical to consider the variance of that wall at this time. The structure has been in place for a number of years as only this wall fails to observe the required 6 foot side yard. The majority of the house maintains yards far in excess of the minimum and the reduction of this wall is insignificant.

UNIQUENESS:

It is the opinion of the Secretary that this property is unique inasmuch as a proposed window well will be essentially below grade and is to be located at the only exterior wall of the basement that is large enough to provide the desired utility for light and air and the emergency exit, and provided further, the existing wall has violated the side yard setback since the original construction.

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 inasmuch as the projection of the window well into the side yard should not interfere with the light and air of the adjacent property owner.

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 the existing conditions were not created by the present property owner, and the desire to provide more habitable living space in the basement requires a minimum amount of window area and for safety, the emergency exit is being provided.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as the construction will not interfere with any existing or needed utility easements.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the construction will not change the general openness between the two structures and the above grade construction will essentially be unchanged.

RECOMMENDATION:

Should the Board determine that all five conditions necessary to the granting of a variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted subject to the following conditions:

1. The window well shall not be constructed closer than 1.7 feet to the north property line.
 2. The side yard setback for the existing garage wall shall be reduced to 5.4 feet.
-

BZA CASE NO. 21-85

<u>1</u>	NOTICES SENT TO APPLICANT/AGENT
<u>10</u>	LEGAL ADVERTISEMENT SENT TO MAPC
<u>1</u>	NOTICES SENT TO CPO
<u>16</u>	NOTICES SENT TO ADJOINING PROPERTY OWNERS
<u>18</u>	TOTAL NOTICES SENT <u>4-3-85</u>

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

April 3, 1985

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 21-85

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by James L. Gardner Jr., requesting a variance.

Pursuant to Section 2.12.590.B, of the Code of the City of Wichita, the applicant is requesting a variance to reduce the required side yard setback from 4 feet to not less than 1 foot 6 inches for the installation of a window well and to reduce the required side yard setback from 6 feet to 5.4 feet for the existing structure that was constructed in error, on property zoned "AA" One-family Dwelling District. A legal description of the applicant's property is as follows:

Lot 9 and the north half of Lot 10, Block 5,
Builder's Fifth Addition to Wichita, Sedgwick
County, Kansas. Generally located on the west
side of Porter and south of 25th Street North
(2517 Porter).

This application has been assigned Case BZA 21-85. It will be considered by the Board of Zoning Appeals on April 23, 1985 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested variance, you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 768-4516.

If you have any questions about the application, please feel free to call the Wichita-Sedgwick County Metropolitan Area Planning Department at 268-4421.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. 21-85

CITY OF WICHITA, KANSAS

FILED 3-25-85

APPLICATION FOR VARIANCE

I. Name of Applicant James L. Gardner, II

Mailing Address 601 N. Broadway 672A Phone 264-9181

Name of Authorized Agent _____

Mailing Address _____ Phone _____

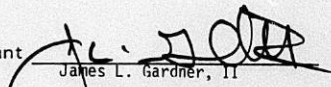
Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other)

II. The variance requested is a reduction in the required side yard to
approximately 1.5', to allow construction of a basement window well,
and to accomodate the currently non-compliant north garage wall.
for property located at 2517 Porter, Wichita, Kansas.

and legally described as: Lot 9 and the North 1/2 of lot 10, Block 5,
Builders Fifth Addition, Wichita, Kansas.

in the City of Wichita; and which is presently zoned "AA" Single Fam.

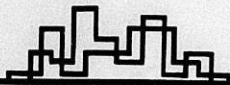
- III. The applicant herein, or his authorized agent, acknowledges:
- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
 - b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 36-596); and that the appropriate fee is herewith tendered;
 - c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
 - d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Applicant 
James L. Gardner, II

Authorized Agent _____

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals,
4:30 (~~3:00~~ p.m.), MAR 25, 1985, together with
appropriate fee of 75.00.

Signed 



L. E. GARDNER, INCORPORATED

601 N. BROADWAY WICHITA, KANSAS 67214 AREA CODE 316 264-9181

REAL ESTATE SERVICES

March 25, 1985

Mr. Glenn Lytle, Secretary
Board of Zoning Appeals
Metropolitan Area Planning Department
City Hall
455 N. Main
Wichita, Ks 67202

Re: Variance request justification

Dear Mr. Lytle:

Transmitted herewith, in accordance with the Application for Variance, Instructions to the Applicant, is the statement justifying the variance requested for the subject property, 2517 Porter, Wichita, Kansas.

The variance requested is a reduction in the required six foot side yard to approximately 1.5 feet, to allow construction of a basement daylight window well, and to accommodate the currently non-compliant north garage wall, which encroaches .6 feet into the required side yard.

We desire to add a basement window well approximately 12.5'x 3.7', to the basement to enhance its general utility and liveability. The improvement would be made in compliance with the applicable codes regarding use of the basement for living area or bedroom use. Because the basement is limited in size, approximately 14'x 22.8', and located under the westerly half of the garage, there is only one location where a window well could be constructed; the north wall. We believe the location of the basement and the limited possible locations for a window well to be unique to the subject property.

In the process of surveying the subject in the preparation of this request it was determined that the north garage wall encroaches .6' into the side yard, a condition which occurred prior to our purchase of the property, but which should be addressed at this time.

The adjacent owner to the north is not adversely affected by the reduction of the side yard for the window well, in that there is only a minor portion of the well which would protrude above grade, as well as the fact that the adjacent dwelling is more than 7' distant from the proposed construction, maintaining a full 6' side yard to the north of the property line.

The strict application of the provisions of Title 28, Chapter 28.04.040, which require a side yard of not less than six feet in width would constitute an unnecessary hardship on the applicant in preventing the construction of the basement daylight window well in adequate proportion to admit adequate light and provide for safe egress in the event of fire. The location of the basement is such that the location in the side yard is the only viable location to accomplish the improvement and safety upgrade.

The variance requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

The granting of the requested variance will not be opposed to the general spirit and intent of Title 28, Chapter 28.04.040, which seeks to regulate the intrusions of major buildings or additions to major buildings into the side yard, in that the proposed addition of a basement window well may be regarded as an accessory type structure in some instances, with an allowable intrusion into the side yard, where a three foot side yard would remain.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. L. Gardner, II", written over a large, stylized circular flourish.

James L. Gardner, II

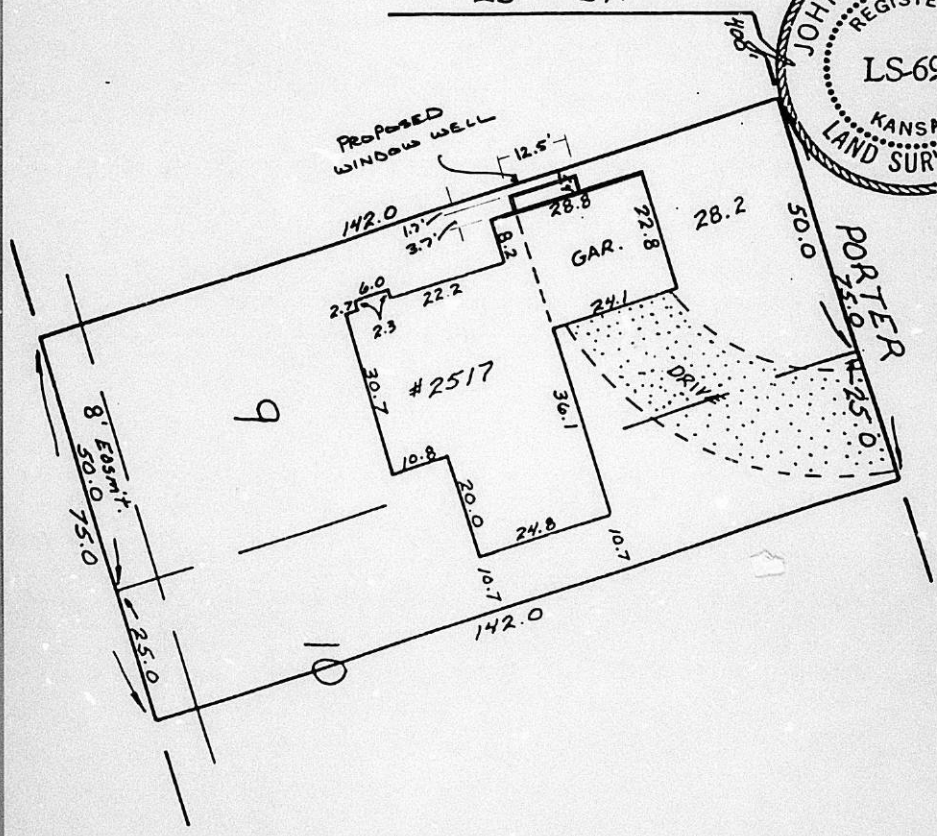
JG:s

On said lot is house No. 2517 with an attachment in the clear of all boundary lines. There are no encroachments by buildings on the adjacent lots.

The accompanying plat is a true and correct survey for mortgagee title insurance.

John E. Luidke
Surveyor

25th ST.



WILLIAM L. KORBER, L.S.
JOHN E. LUNDBLADE, L.S.
N. BRENT WOOTEN, P.E.



BAUGHMAN COMPANY, P.A.
SURVEYING & ENGINEERING
316 262-7271 • 330 LAURA • WICHITA, KANSAS 67211

State of Kansas)
) SS
County of Sedgwick)

March 12, 1985

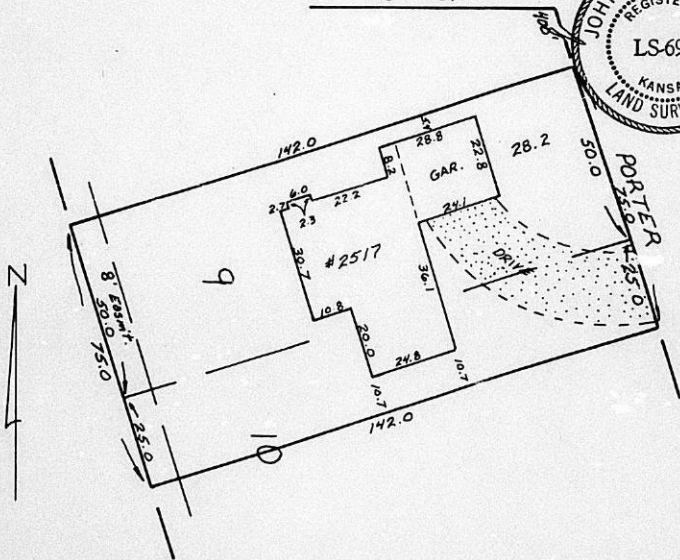
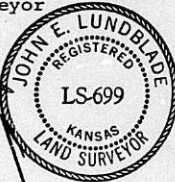
We, Baughman Company, P.A., Surveyors in aforesaid county and state do hereby certify that we did on this 12th day of March, 1985, survey Lot 9 and the N $\frac{1}{2}$ of Lot 10, Block 5, Builders Fifth Addition to Wichita, Kansas.

On said lot is house No. 2517 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

The accompanying plat is a true and correct exhibit of said survey for mortgage title insurance.

John E. Lundblade
Surveyor

25th ST.



OWNERSHIP LIST

Lot	Block	Addition	Property Owner
Lot 2	Block 4	Builders Fifth Addition	Mae Jean Mullen c/o Mae J. Odell 2532 Porter Wichita, KS 67204
Lot 3	Block 4	"	Paul H. Beard Atha L. Beard 2528 Porter Wichita, KS 67204
Lot 4	Block 4	"	Timothy E. Furry Rebecca M. Furry 1819 Woodland Wichita, KS 67213
Lot 5	Block 4	"	Raymond B. Trotter 730 N. Broadway Wichita, KS 67211
			Affidait of Notice: Morely E. Fackler 1729 Red Oaks Wichita, KS 67207 AND Polly A. Basham Address Unknown
Lot 6	Block 4	"	Nick E. Buck General Delivery Severy, KS 67137
Lot 7	Block 4	"	George V. White Martha White 2512 Porter Wichita, KS 67204
Lot 8	Block 4	"	Judy A. Castor 530 N. Meridian Valley Center, KS 67147
Lot 9	Block 4	"	Victor Vann King Cynthia Ann King 2502 Porter Wichita, KS 67204
North 35 feet of Lot 5	Block 5	"	Donald A. Wolfe Diana C. Wolfe 2535 Porter Wichita, KS 67204
South 15 feet of Lot 5, all of Lot 5 & the North 25 feet of Lot 7	Block 5	"	James C. Morrison Naomi J. Morrison 2531 Porter Wichita, KS 67204

<u>Lot</u>	<u>Block</u>	<u>Addition</u>	<u>Property Owner</u>
South 25 feet of Lot 7 & all Lot 8	Block 5	Builders Fifth	Gilbert P. Gutierrez Irene Gutierrez 2525 Porter Wichita, KS 67204
Lot 9 & the N½ Lot 10	Block 5	"	James L. Gardner II Les a R. Gardn er 2517 Porter Wichita, KS 67204
S½ Lot 10 & all Lot 11	Block 5	"	Mary Martinez 2509 Porter Wichita, KS 67204
Lot 12	Block 5	"	Phyllis B. Marchbank 2501 Porter Wichita, KS 67204
Lot 1	Block 5	Builders Seventh	David Toledo Lupe S. Toledo 2461 Porter Wichita, KS 67204
Lot 2	Block 5	"	Jerry B. Malone c/o E. L. Malone Box 1216 Hays, KS 67601

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described lots within a 200 foot radius of:

Lot 9 and the North Half of Lot 10,
Block 5, Builders Fifth Addition to
Wichita, Kansas, Sedgwick County,
Kansas

as shown by the last deed of record on file in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 25th day of March, 1985, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND
TITLE COMPANY, INC

By

Mary Noble
Sr. Vice-President

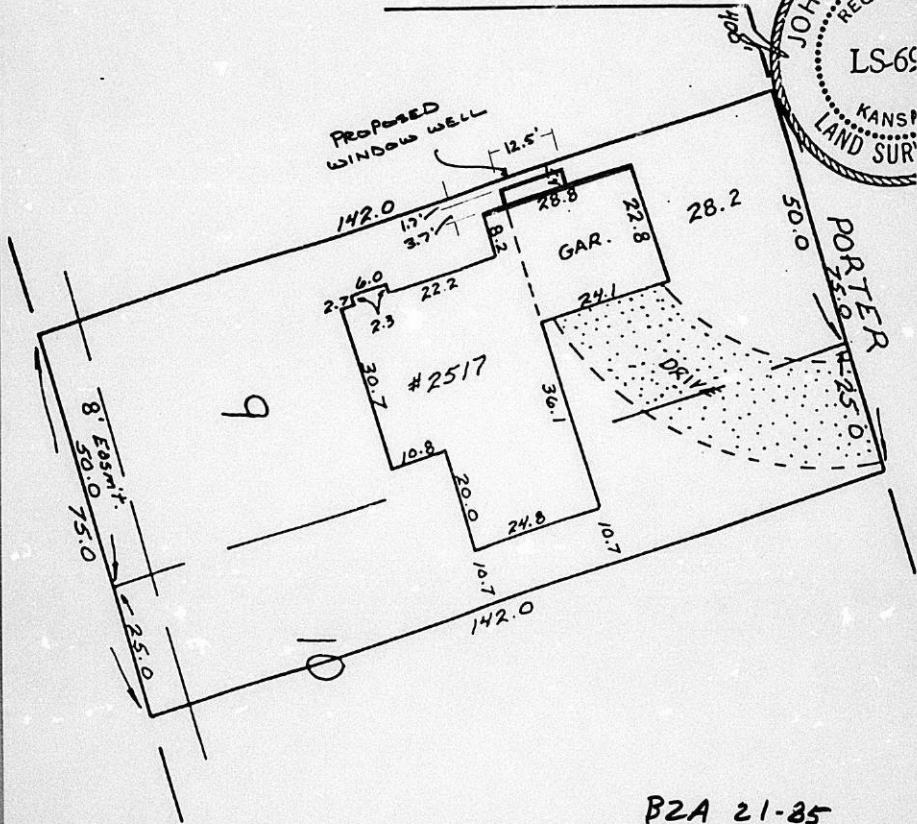
Order No: 344665
ns

On said lot is house No. 2517 with an attachment in the clear of all boundary lines. There are no encroachments by buildings on the adjacent lots.

The accompanying plat is a true and correct survey for mortgage title insurance.

John E. LUI
Surveyor

25th ST.



MICROFILMED
FROM THE BEST
AVAILABLE COPY

FORM 29-000

PAYMENT NOTICE
 City of Wichita

	Use of Str.	Code Bks	Copies
Eldg.			
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 BGA VAR.	\$ 75.00
NAME <u>JAMES L. BALDNER JR</u>	
ADDRESS <u>2519 PORTER</u>	
FUND <u>755-40710-003</u>	DUE DATE
COMMENTS	
DATE <u>MAR 25 1955</u>	BY <u>[Signature]</u>