

COMMITTEE approved 10-1-68
approved 10-1-68

M.A.P.C. _____

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

ezm

PZm

BZA 23-68 - Sylvester Heimerman requests Variance to reduce front and side yard setback on property located on West side of Martinson between

POSTED
9-9-68

ACTION

	DATE
BZA COMMITTEE	<u>deferred</u> 9-24-68 <u>approved</u> 10-1-68
M.A.P.C.	_____
B.C.C./B. CO. C.	_____

02 m ✓
P2 m ✓

BZA 23-68 - Sylvester Heimerman re-
quests Variance to reduce front and
side yard setback on property locat-
ed on West side of Martinson between

October 14, 1968

Mr. Leo Wetta
729 Beacon Bldg.
Wichita, Kansas 67202

Subject: BZA 23-68 - Request for a
Variance

Dear Mr. Wetta:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on October 1, 1968, in connection with your request for a variance to reduce the required front yard and side yard setbacks on property zoned "A", and generally located on the west side of Martinson between Second and Third Streets.

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

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

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Sylvester A. & Rosena Heimerman, 337 N. Martinson, Wichita, Kans.

RESOLUTION NO. BZA 23-68

WHEREAS, Sylvester A. and Rosena Heimerman, 337 North Martinson, Wichita, Kansas by Leo Wetta, 729 Beacon Building, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 25 feet to 20 feet and the sideyard setback on the north side of the property from 6 feet to 4.9 feet on property zoned "A" Two Family, and legally described as follows:

Lots 5 and 7 on Martinson Avenue in Walter Morris and Sons 3rd Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Martinson between Second and Third Streets.

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 September 24, 1968, defer said application because of a lack of quorum; and

WHEREAS, the Board of Zoning Appeals did, in an adjourned meeting of October 1, 1968, 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 existing house is located in an older part of town in which nonconforming setbacks are not uncommon due to construction of the buildings prior to existing setback requirements; 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 proposed addition will not extend nearer to the property line than the existing structure; and

WHEREAS, the Board of Zoning Appeals has found 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 inasmuch as the existing structure has been nonconforming for years and the applicant desires only to expand the facility so as to provide better living conditions for his family; 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 inasmuch as the house has been nonconforming for years; and

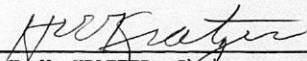
WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the same setbacks will be maintained that presently exist; and

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, have 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 of the front yard setback from 25 feet to 20 feet, and a variance of the north side yard setback from 6 feet to 4.9 feet for only that portion presently in violation and the west 17.5 feet adjacent thereto be approved on property zoned "A" Two Family District and legally described as follows:

Lots 5 and 7 on Martinson Avenue in Walter Morris and Sons 3rd Addition to Wichita, Sedgwick County, Kansas.

ADOPTED AT WICHITA, KANSAS, this 1st day of October, 1968.


H. W. KRATZER, Chairman

ATTEST:


JACK H. GALBRAITH, Secretary

October 2, 1968

Mr. Leo Wetta
729 Beacon Bldg.
Wichita, Kansas 67202

Subject: BZA 23-68 - Request for a
Variance

Dear Mr. Wetta:

At the regular meeting of the Board of Zoning Appeals on October 1, 1968, your request for a variance to reduce the required front yard and side yard setbacks on property zoned "A", and generally located on the west side of Martinson between Second and Third Streets, was considered.

The action of the Board was to approve the request for a variance to reduce the front yard setback from 25 feet to 20 feet, and the side yard setback from 6 feet to 4.9 feet for only that portion presently in violation and the west 17.5 feet adjacent thereto.

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,

Jack H. Galbraith
Secretary

JHG:js

cc: Sylvester A. &
Rosena Heimerman
337 North Martinson

*Copy also sent to
Robert Feldman +
Ralph Eberly*

WILLIAM L. KORBER

OFFICE OF
BAUGHMAN CO.
Surveyors

RONALD G. WAYMIRE

2522 EAST KELLOGG
WICHITA, KANSAS 67211
MURRAY 3-7431

State of Kansas }
County of Sedgwick }

SS

August 16, 1968

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 16th day of August, 1968 survey Lots 5 & 7 on Martinson, Walter Morris and Sons Third Addition to Wichita, Kansas.

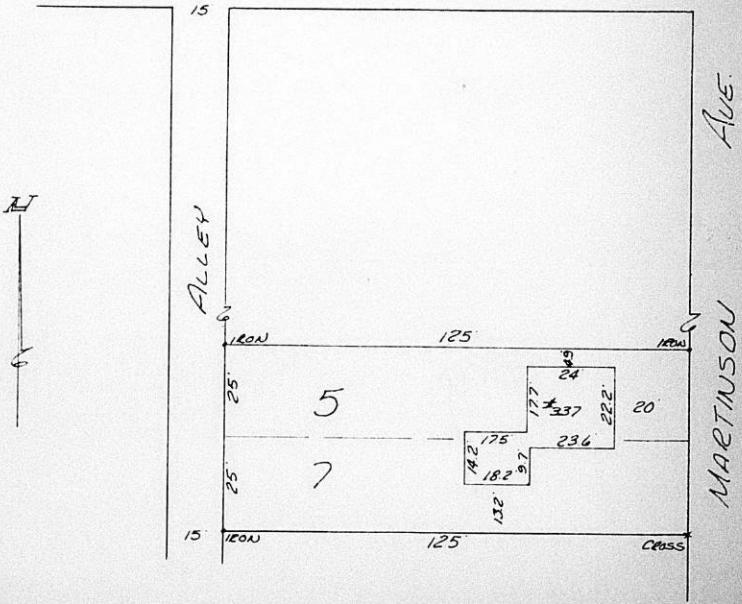
On said lot is house No. 337 with no garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

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

William L. Korber
Surveyor

3rd
PLAT

ST.



September 24, 1968

Mr. Leo Wetta
729 Beacon Bldg.
Wichita, Kansas 67202

Subject: BZA 23-68 - Request for a
Variance

Dear Mr. Wetta:

Due to the fact that a quorum was not in attendance for the Board of Zoning Appeals meeting of September 24, 1968, your request for a variance to reduce the required front yard and side yard setbacks was deferred.

This meeting was rescheduled for Tuesday, October 1, 1968, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you have any questions concerning this matter, please contact our office.

Sincerely,

Jack H. Galbraith
Secretary

JHG:js

cc: Sylvester A. &
Rosena Heimerman
337 N. Martinson
Wichita, Kansas 67203

SECRETARY'S REPORT
CASE NO. BZA 23-68

APPLICANT: Sylvester A. & Rosena Heimerman, 337 N. Martinson,
Wichita, Kansas

AGENT: Leo Wetta, 729 Beacon Building, Wichita, Kansas

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City
of Wichita, to reduce the required front yard setback from
25 feet to 20 feet and the sideyard setback on the north
side of property from 6 feet to 4.9 feet.

GENERAL LOCATION: West side of Martinson between Second and Third St.

ZONING: Subject property is zoned "A" Two-Family as are all
surrounding properties.

LAND USE: Subject property is occupied by a single family residence
as are the properties to the north, south, east and west.

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 follow-
ing 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 ad-
versely 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.)

Page 2 - Secretary's Report
Case No. BZA 23-68

Comments by the Secretary

The applicant is requesting a variance of the required front yard setback from 25 feet to 20 feet and the sideyard setback on the north from 6 feet to 4.9 feet. The existing residence which is non-conforming because of the front yard and side yard requirements, is in an older part of town and was constructed prior to the existing setback requirements.

The applicant, in his statement of justification, points out that he is requesting the variances in order to enlarge the existing kitchen which is insufficient in size and inadequate for his family. The applicant also points out that the residence of the neighbor to the north is 25 feet 7 inches from his north property line.

Uniqueness

It is the opinion of the Secretary that this is somewhat of a unique situation inasmuch as the existing house is located in an older part of town in which nonconforming setbacks are not uncommon due to construction of the buildings prior to existing setback requirements.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variances would not have an adverse effect on the adjacent property owners or residents inasmuch as the proposed addition will not extend nearer to the property line than the existing structure.

Hardship

It is the opinion of the Secretary that the applicant would be burdened with an unnecessary hardship if the variance is not granted inasmuch as the existing structure has been nonconforming for years and the applicant desires only to expand the facility so as to provide better living conditions for his family.

Public Interest

It is the opinion of the Secretary that the granting of the variance would not adversely affect the public interest.

Page 3 - Secretary's Report
Case No. BZA 23-68

Spirit and Intent

It is the opinion of the Secretary that the granting of this variance will not be opposed to the general spirit and intent of Title 28 in that the same setbacks will be maintained that presently exist.

Recommendation

It is the opinion of the Secretary that all five conditions necessary for the granting of the variances can be found to exist and, therefore, it is recommended that the variance be granted to reduce the front yard setback from 25 feet to 20 feet and that the variance to reduce the side yard setback from 6 feet to 4.9 feet be granted for only that portion presently in violation and the west 17.5 feet adjacent thereto.

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

September 3, 1968

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 23-68

An application has been filed by Sylvester A. and Rosena Heimerman, 337 North Martinson, Wichita, Kansas, by Leo R. Wetta, 729 Beacon Building, Wichita, Kansas, pursuant to Section 2.12. 590.B, Code of the City of Wichita, requesting a variance to reduce the required front yard setback from 25 feet to 20 feet; and the side yard setback on the north side of property from 6 feet to 4.9 feet, on property zoned "A" Two Family District, and legally described as follows:

Lots 5 and 7 on Martinson Avenue in Walter Morris and Sons 3rd Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Martinson between Second and Third Streets.

This application has been assigned Case No. BZA 23-68, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 24, 1968, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

JACK H. GALBRAITH
Secretary

*26 Notices
mailed 9-4-68*

BOARD OF ZONING APPEALS

CASE NO. 23-68

CITY OF WICHITA, KANSAS

FILED 8-26-68

APPLICATION FOR VARIANCE

I. Name of Applicant Sybilston A. and Rosena Heimerman
 Mailing Address 337 N. Martinson 03 Phone AM 7-1125
 Name of Authorized Agent Leo R. Wetta
 Mailing Address 729 Beacon Bldg. 02 Phone AM-75293
 Relationship of applicant to property is that of owner
 (owner, tenant, lessee, other)

II. The variance requested is reduction of front yard set back - 25 ft to 20 ft. and side yard set back on North 6 ft to 4.9 ft.
 for property located at 337 North Martinson

and legally described as: Lots 5+7 on Martinson Ave. in Walter Morris + Sons 3rd addition to Wichita
 in the City of Wichita; and which is presently zoned A.
 (Give metes and bounds description below if appropriate):

- III. The applicant herein, or his authorized agent, acknowledges:
- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
 - b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
 - c. That he has been advised of his right to appeal of the decision of the Board to the City Commission within ten (10) days of that decision;
 - d. That all documents are attached hereto as noted in paragraphs 3 and 4 of the instructions.

Rosena Heimerman
 Applicant
Leo R. Wetta
 Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals
 _____ (a.m. - p.m.), _____, 19____, together with
 appropriate fee of \$50.00.

Signed _____

Wichita County, Kansas

SMITH, SHAY, FARMER & WETTA

ATTORNEYS AT LAW
729 BEACON BUILDING

WICHITA, KANSAS 67202

PAUL V. SMITH
DOUGLAS E. SHAY
WILLIAM C. FARMER
LEO R. WETTA
JAMES R. SCHAEFER
THOMAS A. WOOD
LARRY L. WITHERSPOON

TELEPHONE
AMHERST 7-5293
AREA CODE 316

August 26, 1968

Board of Zoning Appeals
City of Wichita
104 South Main
Wichita, Kansas 67202

Gentlemen:

In connection with the Application For Variance filed by Sylvester and Rosena Heimerman for their residence at 337 North Martinson, Wichita, Kansas (67203), we wish to advise as follows insofar as the conditions under (a) through (f), paragraph 2. Variances of the Rules and Regulations of the Board of Zoning Appeals.

The variance requested, and more particularly set out in the formal application, is unique in that the residence improvement originally installed on the real estate, apparently, was not properly centered insofar as side lot lines. The existing improvement is 4.9 feet from the north line of Lot 5 and the improvement planned by the applicants will not extend beyond the existing improvement, thus narrowing the set back additionally. The applicants did not install the improvement and as far as applicants know, such condition does not exist otherwise in the zone or district.

The granting of the permit for variance should not adversely affect the adjacent property owner. The residence of the neighbor to the north is 25 feet 7 inches from the north property line, thus insuring that improvements will not be too closely located.

Should the Board of Zoning Appeals strictly apply the set back requirement on said lots, remodeling of the kitchen in the applicants' present residence cannot be accomplished. The kitchen, at present, is very tiny and due to the size of the applicants' family, denial for applicants to increase the size of the kitchen area would work a distinct hardship on the livability of the present residence.

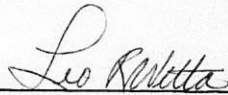
Board of Zoning Appeals

2.

August 26, 1968

Applicants are reasonably certain that the granting of the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare of the neighborhood.

Had the improvement been properly located on the lot, this application would not have been required. Applicants conclude that granting the variance would not be opposed to the general spirit and intent of the zoning ordinance, Title 28. If the variance is not granted the result will be undue hardship on the part of applicants.



Leo R. Wetta, authorized agent
for Sylvester and Rosena Heimerman

/c

OWNERSHIP LIST

Lot	Street	Addition	Property owner
2 & 4	Elizabeth	Walter Morris & Sons 3rd Addition	William L. Dougherty and Catherine M. Dougherty 336 N. Elizabeth 03
6 & 8	"	"	Charlie E. Drinkard and Laura J. Drinkard 334 N. Elizabeth 03
10 & 12	"	"	Reba E. Brittain and Margaret Brittain 330 N. Elizabeth 03
14 & 16	"	"	Charlie E. Drinkard and Laura J. Drinkard 334 N. Elizabeth 03
18 & 20	"	"	Harl C. Williams and Gertrude C. Williams 324 N. Elizabeth 03
22 & 24	"	"	C. H. Ramsey and Doris Ramsey 220 S. Martinson 13
1 & 3	Martinson	"	Roy E. Carlson Address unknown 869 N. Brittain 08 232 W. 17th 03
5 & 7	"	"	Sylvester A. Heimerman and Rosena Heimerman 337 N. Martinson
9 & 11	"	"	Charles W. Knight and Juanita F. Knight 331 N. Martinson 03
13 & 15	"	"	Thomas Englebort Polan 3712 Howe 15
17 & 19	"	"	Lena Lindenberger 1426 W. 2nd St 03
21 & 23	"	"	Loy A. Cherry and Janice V. Cherry 317 N. Martinson 03
2 & 4	"	"	Leon B. Rucker and Margaret M. Rucker 340 N. Martinson 03
6 & 8	"	"	Doyle Leon Robertson and Donah J. Robertson 338 N. Martinson 03
10 & 12	"	"	William E. Norris and Otha Mae Norris 336 N. Martinson 03

Continued page 2

Lot	Street	Addition	Property owner
14 & 16	Martinson	Walter Morris & Sons 3rd Addition	✓ Charles D. Pfeifer and Edna Mae Pfeifer 326 N. Martinson 03
18 & 20	"	"	✓ Wilbur F. Neal and Velma E. Neal 142 N. Meridian 03
22 & 24	"	"	X James V. Paxton and Vera Paxton <u>Address unknown</u>
124 & S. 20' of 126	Elizabeth	McCormick's 4th Addition	✓ George E. Harris 400 N. Elizabeth 03
N 5' of 126 all 128 & S 20' of 130	"	"	✓ Robert M. McGinnis and Zelva E. McGinnis Address unknown 09 <i>10211 maple</i>
N 5' of 130 all of 132 & 134	"	"	✓ Willie W. Lee and Mary M. Lee 356 N. Elizabeth 03
124, 126 & S ½ of 128	Martinson	"	✓ G. R. Trower and Grace V. Trower 348 N. Martinson 03
N ¾ of 128 all of 130 & 132	"	"	✓ Walter M. Kolker and Anna A. Kolker 827 S. St. Clair 13
134	"	"	X Genevieve Brown <u>Address unknown</u>
123, 125 & 127	"	"	✓ John E. Dexter and Zelpha A. Dexter 345 N. Martinson 03
129 & 131	"	"	✓ June Enegren 401 Howe Road 15
133	"	"	✓ William E. Norris and Otha Mae Norris 336 N. Martinson 03

We, The Security Abstract and Title Company, Inc., hereby certify the foregoing to be a true and correct list of property owners within a 200 foot Radius of Lots 5 and 7, on Martinson Ave., in Walter Morris & Sons 3rd Addition to Wichita, Sedgwick County, Kansas, as shown by the deeds on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on this 7th day of August, 1968 at 7:00 o'clock A. M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

By

Mary Gable
Vice-President *Asst Secy*

Order No. 156382

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAID AT TREASURER'S OFFICE - FIRST FLOOR

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

\$50.00

DESCRIPTION AMOUNT

Application for Variance

Name Sylvester Heimerman

Address 337 N. Martinson

Type R-71-C Due Date 8-26-68

Comments:

Date 8-26-68 By [Signature]