

**ACTION**

BZA 27-83 DEFER 5-31-83  
AT REQUEST OF AGENT DATE

BZA Deffered 6-28-83  
AT REQUEST OF AGENT

BZA APPROVED sub. to ends 7-26-83

POSTED  
5-17-83

Case No. BZA 27-83 - Glen Rupe, 434 Ohio, Wichita, Kansas, requests a variance of the required front yard setback from 20' to 10' on property zoned the "LC" Light Commercial District and generally located on the southwest corner of Kellogg and

5746 D-12

2004 Sec. 2-2-84

Checked

Shel 2-2-84

Record

by  
red 85

ACTION

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5-17-83

BZA. 27-83 DEFER 5-31-83  
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5746 D-2  
2004 Sec. 2-2-84  
Checked       
Shot 2-2-84  
Record     

Voided by  
BZA 71-85

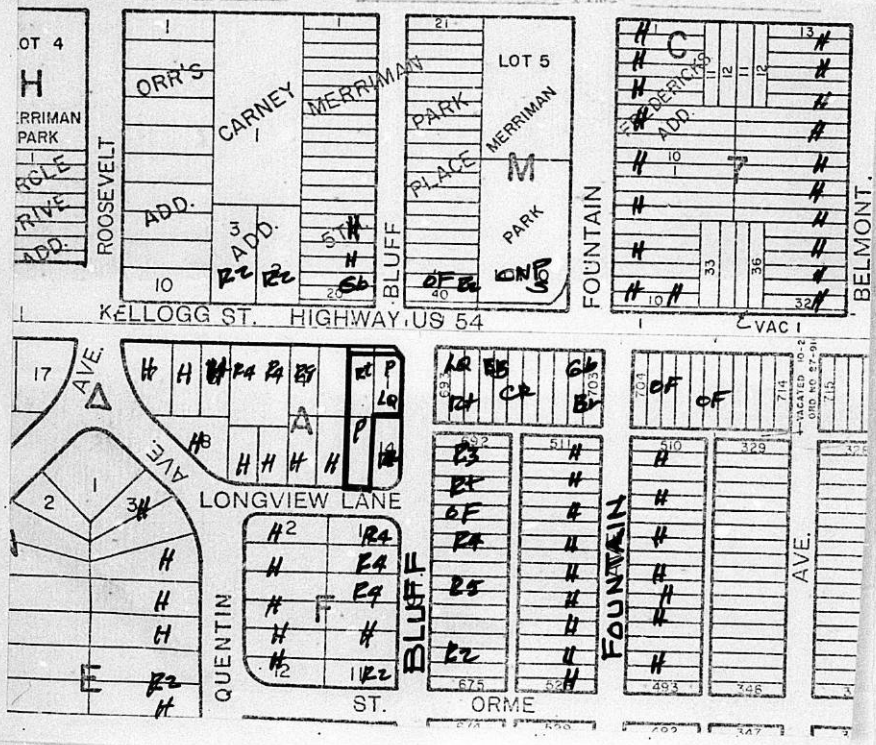
Case No. BZA 27-83 - Glen Rippe, 434  
Ohio, Wichita, Kansas, requests a  
variance of the required front yard  
setback from 20' to 10' on property  
zoned the "U<sub>1</sub>C<sub>1</sub>" Light Commercial  
District and generally located on  
the southwest corner of Kellogg and

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

BZA- B2A 27-83  
 SCZ- \_\_\_\_\_  
 CU- \_\_\_\_\_  
 Filed \_\_\_\_\_

AREA DATA: (IRREGULAR)  
 1. Acres: 0.4 (100 ft. by 242 ft.)  
 2. Adjoining Zoning: E \_\_\_\_\_ S \_\_\_\_\_ W \_\_\_\_\_ N \_\_\_\_\_  
 3. Land Use: East LIQUOR STORE MULTI FAMI RESTAURANT South FOUR FAM.  
 West SINGLE & MULTI FAMI North PAWN SHOP  
 4. Sketch Plan Land Use is for: \_\_\_\_\_  
 5. Present Land Use if for: RESTAURANT LIQUOR STORE  
 6. Area (is) (is not) platted.

PHOTO DATA:  
 Taken by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_



Smith  
 No. 2-153C  
 HASTINGS, MN  
 LOS ANGELES-CHICAGO-LOGAN, OH  
 MEMPHIS-TULSA-PORT GORE, GA  
 U.S.A.

RESOLUTION NO. BZA 27-83

WHEREAS, Glen Rupe, 434 Ohio, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the front yard setback adjacent to Kellogg from 20' to 10' on property zoned the "LC" Light Commercial District and legally described as follows:

Lots 1 and 2, except the north 8' for Highway right-of-way, and all of Lot 13, Block A, Long-view Terrace Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Kellogg and Bluff (3941 East Kellogg).

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 July 26, 1983, 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 adjacent structures to the east and west also violate the 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 property to the west presently extends beyond the proposed construction with an open porch; 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 permission to extend the building 10' into the required front yard will be compensated by cleaning up the site of violations; 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 public interest is not impeded any more than the development to the east; 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 Light Commercial property to the east is permitted to maintain a 10 foot front yard setback; 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.

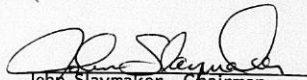
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required front yard setback from 20' to 10' (0' after street dedication) for the construction of a 32' by 12' addition on property zoned the "LC" Light Commercial District and legally described as:

Lots 1 and 2, except the north 8' for Highway right-of-way, and all of Lot 13, Block A, Long-view Terrace Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Kellogg and Bluff (3941 East Kellogg).

be approved subject to the following conditions:

1. The applicant shall dedicate an additional 10' of street right-of-way adjacent to Kellogg. The applicant shall also furnish a contingent dedication of two' of right-of-way to become effective at a time the building is removed. The applicant shall dedicate complete access control except for one opening from Kellogg and shall guarantee the removal of one approach and reconstruction of the curb on the existing west approach and the removal of a driveway approach and reconstruction of the curb adjacent to Bluff Street located north of the small building adjacent to the east property line.
2. The applicant shall furnish a new site plan in triplicate, showing all the required off-street parking spaces for all uses on the property in full compliance with all requirements as set forth in the zoning ordinance. The parking layout shall be approved by the Traffic Engineer and be in compliance with the off-street parking standards with only one access point permitted from Kellogg. All of the required off-street parking spaces and circulation shall be located on private property and only additional off-street parking shall be permitted by a minor street permit.
3. The applicant shall provide locations on the property within the "LC" Light Commercial District for the trash container and the refrigerator-freezer units.
4. Unless the applicant is successful in securing a minor street permit for any use other than for street purposes, then all structures or uses such as signs, parking etc. shall be removed from the street right-of-way.
5. The applicant shall comply with all conditions of the minor street permit and shall guarantee the removal of any construction or uses within the street right-of-way at no expense to the City or State.
6. The applicant shall remove all surfacing within the required front yard setback adjacent to Longview Lane except the driveway providing ingress and egress to the property. The setback shall be landscaped and provided with barriers to prevent illegal parking. All parking areas within the "B" zoning district shall be screened from adjacent residential properties as set forth in Section 28.04.070.13 of the zoning ordinance.
7. The parking lot shall be striped and maintained in conformance with the approved plan.
8. Prior to the release of the Resolution authorizing the issuance of any building permit for the construction of any structure closer than 20' to the right-of-way of Kellogg, the applicant shall comply with all conditions as set forth above.
9. All conditions as set forth herein shall be completed within 180 days or this resolution shall be declared null and void.

ADOPTED AT WICHITA, KANSAS, this 26th day of July, 1983.

  
John Slaymaker, Chairman

ATTEST:

  
Glen E. Lytle, Assistant Secretary

LAW OFFICES  
**KAPLAN, McMILLAN AND HARRIS**

ROBERT W. KAPLAN  
CALVIN McMILLAN  
CHARLES F. HARRIS  
JEFF DEWEY

LAW BUILDING  
430 NORTH MARKET  
WICHITA, KANSAS 67202  
316-262-5175

June 4, 1986

Mr. Glen Lytle  
City of Wichita  
Zoning - 10th Floor  
455 North Main  
Wichita, KS 67202

RE: Ernest H. Doyon, Sr.

Dear Mr. Lytle:

Mr. Kaplan asked that I forward to you the enclosed copy of  
Dedication executed by Glen Rupe.

Sincerely,

*Judy A. Summitt*  
(Mrs.) Judy A. Summitt  
Secretary to Robert W. Kaplan

Enclosure

**RECEIVED**  
JUN 05 1986  
METROPOLITAN PLANNING  
ROUTE  \_\_\_\_\_

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Glen Rupe

being the owner of the following described real estate in Sedgwick County, Kansas, to wit:

The south 10 feet of the north 18 feet of Lots 1 and 2, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas.

does hereby dedicate the above described real estate to the public for street purposes.

Executed this 20th day of December 1983.

*Glen Rupe*  
GLEN RUPE

STATE OF KANSAS )  
SEDGWICK COUNTY ) ss



BE IT REMEMBERED, that on this 20th day of December, 1983,  
I, the undersigned, Notary Public, do hereby certify that  
came GLEN RUPE

to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

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

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,  
this \_\_\_\_\_,  
\_\_\_\_\_  
City Clerk

*Jay M. Leach*  
Notary Public

My Commission Expires: \_\_\_\_\_  
September 30, 1985

January 25, 1984

Mr. Robert W. Kaplan, Attorney  
430 North Market  
Wichita, Ks. 67202

Re: Case No.'s. BZA 27-83  
and BZA 72-83

Dear Mr. Kaplan:

I have received this date verification by the City Engineer that a satisfactory guarantee has been deposited with the City Clerk for the improvements on public property and the closing of two driveway approaches. With the action of the Board on January 24, 1984, the release of the two resolutions applicable to the property at Kellogg and Bluff will authorize Central Inspection to issue the permit for the construction of the addition to the restaurant.

Your cooperation in the early completion of all conditions established by the Board will be appreciated. Should at some point in time the two buildings adjacent to Kellogg be removed, and the area used for off-street parking, I would appreciate a revised site plan being furnished this office to put in the file.

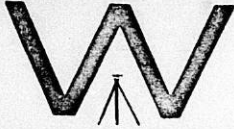
If I can be of any further assistance, please give me a call.

Sincerely,

Glen E. Lytle  
Assistant Secretary

cc: Ernie Doyan, Sr., 610 Fabrique, Wichita 67218  
Glen Rupe, 434 North Ohio, Wichita 67214  
Keith Parker, 239 Pattie, Suite 2, Wichita 67211  
Robert Feldner, Superintendent of Central Inspection (2)  
Don Gisick, City Clerk

THE CITY OF WICHITA



DEPARTMENT OF ENGINEERING  
CITY HALL - SEVENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
(316) 268-4501

RECEIVED

JAN 26 1984

METROPOLITAN PLANNING  
ROUTE  \_\_\_\_\_  
 \_\_\_\_\_

January 25, 1984

Mr. Ernie C. Doyan, Sr.  
c/o Mr. Robert Kaplan  
Kaplan & McMillan  
Attorneys-at-Law  
430 N. Market  
Wichita, KS 67202


Subject: Minor Street Privilege No. 1925  
Address: 3941 E. Kellogg  
Receipt No.: 679792

Dear Mr. Doyan:

Your request for a minor street privilege for a paved parking space on street-of-way adjacent to the property indicated by the above address has been approved in accordance with Chapter 10.08 of the Code of the City of Wichita. A copy of the above referenced permit is attached for your records. Please note that separate minor street privilege permits (MSP) are being issued for the sign (MSP No. 1924) and the paved parking space (MSP No. 1925). The continuation of this minor street privilege is subject to several conditions specified by the City Code and as further provided by the attached list of conditions.

If you should have any questions, please feel free to contact Tim R. Cain, Administrative Supervisor, at 268-4601.

Sincerely,

  
Mike Lindebak, P.E.  
City Engineer

GF/03/26

Attachment

cc: Don Gisick, City Clerk  
Glen Lytle, Special Assistant for Zoning ✓

MINOR STREET PRIVILEGE NO. 192  
CONDITIONS ATTACHMENT  
3941 E. Kellogg

1. The annual permit fee is waived in accordance with City Code Section 10.08.210. The administrative fee of ten dollars for the minor street privilege has been paid as recorded on the City Miscellaneous Receipt referenced in your letter.
2. City Code Section 10.08.070 Liability of permittee - To save and hold city harmless. It shall be a condition of the use or enjoyment of any minor street privilege that the permittee shall save and hold the city harmless of any and all liability claims or expenses of any kind caused by, or growing out of, the construction, maintenance, operation, relocation, discontinuance or abandonment of such minor street privileges.
3. Liability insurance covering the encroachment authorized by the minor street privilege is required to be maintained in continuous force during the construction and through the continued use of the encroachment. As a part of this coverage, a current certificate of insurance must be furnished and maintained with the City of Wichita in a form acceptable to the City Attorney. (The certificate of insurance that was submitted in conjunction with your request for this permit has been approved.)

In the event the liability insurance certificate expires or is terminated for any reason, this minor street privilege shall become null and void. You will then be responsible for removing the encroachment and restoring the property to its previous condition within 30 days following expiration or termination of the liability insurance certificate.

4. You are responsible for insuring that all permits required under City Ordinance(s) will be secured by you or the contractor(s) performing the work for you.
5. City Code Section 10.08.190 - In addition to inspection, construction and other permit fees. All permit fees established for the enjoyment of minor street privileges shall be separate from and in addition to inspection, construction and other permit fees.
6. By acceptance of the minor street privilege, the permittee is obligated to indemnify the City for any and all costs of removal of any unauthorized improvements not constructed according to the documents submitted and approved or not included in the minor street privilege.
7. The area must be maintained in a safe and suitable condition at all times. Repairs to the area must be made promptly by a contractor or person bonded for excavation work in the street right of way.
8. City Code Section 10.08.090 Restoration of streets, etc. - The cost of all restoration, all adjustments in connection with all utilities and all other adjustments made necessary by the construction, maintenance, operation, relocation, discontinuance or abandonment of any minor street privilege shall be paid by the permittee. All such restoration and other necessary work of adjustment shall be performed in accordance with the provisions of this Code and other ordinances, or in the absence of a regulatory ordinance, shall, at the option of the City Engineer, be performed by the permittee or by the City at the permittee's expense from funds deposited with the City by the permittee as provided for under the provisions of this chapter.

Minor Street Privilege 1925  
3941 E. Kellogg  
Page 2

9. Should it become necessary for the City of Wichita or any utility operating under a city franchise to excavate this location, it shall be your responsibility to remove any or all of the encroachment if necessary. Should damage occur to the encroachment during this excavation, the City of Wichita or utility operating under a city franchise will not be responsible for the repair or replacement thereof.
10. In the event you are requested to remove the encroachment and fail to do so promptly, the City Engineer is authorized to perform the necessary work by hiring a contractor to remove the encroachment and restore the property to its previous condition and charge the expense thereof to the permittee.
11. In the event you dispose of any or all of the property adjacent to the encroachment on city property, you are required to advise the new owner of this encroachment and of the requirements of the minor street privilege. Also, you are required to furnish the name and address of the new owner to the City of Wichita, City Clerk within 30 days.
12. All minor street privileges are revokable. The City reserves the right to cancel this minor street privilege at any time subject to 30 days written notice.

THE CITY OF WICHITA



DEPARTMENT OF ENGINEERING  
CITY HALL - SEVENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
(316) 268-4501

January 25, 1984

1-101  
**RECEIVED**

JAN 26 1984

METROPOLITAN PLANNING

ROUTE  \_\_\_\_\_  
 \_\_\_\_\_

Mr. Ernie C. Doyan, Sr.  
c/o Mr. Robert Kaplan  
Kaplan & McMillan  
Attorneys-at-Law  
430 N. Market  
Wichita, KS 67202

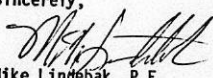
Subject: Minor Street Privilege No. 1924  
Address: 3941 E. Kellogg

Dear Mr. Doyan:

Your request for a minor street privilege to maintain a sign on street right-of-way adjacent to the property indicated by the above address has been approved in accordance with Chapter 10.08 of the Code of the City of Wichita. A copy of the above referenced permit is attached for your records. Please note that separate minor street privilege permits (MSP) are being issued for the sign (MSP No. 1924) and the paved parking space (MSP No. 1925). The continuation of this minor street privilege is subject to several conditions specified by the City Code and as further provided by the attached list of conditions.

If you should have any questions, please feel free to contact Tim R. Cain, Administrative Supervisor, at 268-4601.

Sincerely,

  
Mike Lindebak, P.E.  
City Engineer

GF/03/25

Attachment

cc: Don Gisick, City Clerk  
Glen Lytle, Special Assistant for Zoning ✓

MINOR STREET PRIVILEGE NO. 1924  
CONDITIONS ATTACHMENT  
3941 E. Kellogg

1. City Code Section 10.08.070 Liability of permittee - To save and hold city harmless. It shall be a condition of the use or enjoyment of any minor street privilege that the permittee shall save and hold the city harmless of any and all liability claims or expenses of any kind caused by, or growing out of, the construction, maintenance, operation, relocation, discontinuance or abandonment of such minor street privileges.
2. Liability insurance covering the encroachment authorized by the minor street privilege is required to be maintained in continuous force during the construction and through the continued use of the encroachment. As a part of this coverage, a current certificate of insurance must be furnished and maintained with the City of Wichita in a form acceptable to the City Attorney. (The certificate of insurance that was submitted in conjunction with your request for this permit has been approved.)  

In the event the liability insurance certificate expires or is terminated for any reason, this minor street privilege shall become null and void. You will then be responsible for removing the encroachment and restoring the property to its previous condition within 30 days following expiration or termination of the liability insurance certificate.
3. You are responsible for insuring that all permits required under City Ordinance(s) will be secured by you or the contractor(s) performing the work for you.
4. City Code Section 10.08.190 - In addition to inspection, construction and other permit fees. All permit fees established for the enjoyment of minor street privileges shall be separate from and in addition to inspection, construction and other permit fees.
5. By acceptance of the minor street privilege, the permittee is obligated to indemnify the City for any and all costs of removal of any unauthorized improvements not constructed according to the documents submitted and approved or not included in the minor street privilege.
6. The area must be maintained in a safe and suitable condition at all times.
7. City Code Section 10.08.090 Restoration of streets, etc. - The cost of all restoration, all adjustments in connection with all utilities and all other adjustments made necessary by the construction, maintenance, operation, relocation, discontinuance or abandonment of any minor street privilege shall be paid by the permittee. All such restoration and other necessary work of adjustment shall be performed in accordance with the provisions of this Code and other ordinances, or in the absence of a regulatory ordinance, shall, at the option of the City Engineer, be performed by the permittee or by the City at the permittee's expense from funds deposited with the City by the permittee as provided for under the provisions of this chapter.

Minor Street Privilege 1924  
3941 E. Kellogg  
Page 2

8. Should it become necessary for the City of Wichita or any utility operating under a city franchise to excavate this location, it shall be your responsibility to remove any or all of the encroachment if necessary. Should damage occur to the encroachment during this excavation, the City of Wichita or utility operating under a city franchise will not be responsible for the repair or replacement thereof.
9. In the event you are requested to remove the encroachment and fail to do so promptly, the City Engineer is authorized to perform the necessary work by hiring a contractor to remove the encroachment and restore the property to its previous condition and charge the expense thereof to the permittee.
10. In the event you dispose of any or all of the property adjacent to the encroachment on city property, you are required to advise the new owner of this encroachment and of the requirements of the minor street privilege. Also, you are required to furnish the name and address of the new owner to the City of Wichita, City Clerk within 30 days.
11. All minor street privileges are revokable. The City reserves the right to cancel this minor street privilege at any time subject to 30 days written notice.
12. The annual permit fee as provided by City Code Section 10.08.170 amounts to twenty-five dollars (\$25.00) and is due and payable to the City of Wichita. The City Treasurer will send you a billing for the annual permit fee.

THE CITY OF WICHITA

OFFICE OF City Engineer

DATE January 24, 1984

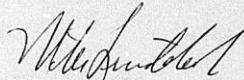
TO Glen E. Lytle, Special Assistant for Zoning

FROM Mike Lindebak, City Engineer

SUBJECT BZA Case 27-83: Scotch and  
Sirloin (3941 East Kellogg)

A cashier's check in the amount of \$2,160 has been received and deposited as a guarantee of certain improvements associated with the above-referenced BZA case. The improvements include closing drive approaches, constructing a new drive approach, and striping.

The guarantee will be refunded upon completion of the work. A copy of the receipt is attached.



Mike Lindebak  
City Engineer

ML:gr

Attachment

Check  Date 1-24-84  
Mo. Day Year

The City



No. 679792  
of Wichita

Fund No.	Account No.	Invoice No.	Amount
412	00 000	20680 100	000 000

Wichita, Kansas \_\_\_\_\_ 19\_\_

\$ 2,160.00


Received of E. Dayer

The Sum of Two thousand one hundred sixty DOLLARS

Being For deposit on closing drive

Department Design - MAPS

TOTAL 2160.00

CD

PROGRESS INC. WICHITA KS 67211 29-048

Collector

July 28, 1983

Robert Feldner, Superintendent of Central Inspection  
Glen E. Lytle, Special Assistant for Zoning

Case No. BZA 27-83 (3941 East Kellogg)

As indicated by the action letter to Robert Kaplan, agent for the owner, the conditions of approval by the Board of Zoning Appeals are quite specific. A number of the conditions will require dedications and the submission of a new site plan reflecting the dedications. It will also require a determination of the total off-street parking requirements of all uses on the property, including the existing 5-plex and the new addition to the club. It is my understanding that your office has been, and possibly still are, involved in a court case over violations of the parking lot. I would hope the requirements of this approval will eliminate the need for further prosecution by securing compliance prior to the issuance of any permits to expand.

If you have any questions, please give me a call.

GEL:sad

July 28, 1983

Mike Lindebak, City Engineer

Glen E. Lytle, Special Assistant for Zoning

Minor Street Permit - 3941 East Kellogg (BZA 27-83)

Attached is a copy of correspondence related to a variance request granted by the Board of Zoning Appeals. As you will note, approval is subject to a number of conditions, including dedications, amended site plan, guaranteeing the removal of two driveway approaches, and the possible securing of minor street permit for a sign and off-street parking that might remain on public right-of-way.

In order to eliminate the possibility of getting the cart before the horse on any of this, I would suggest that any requests for minor street permits be withheld until the applicant can furnish as approved site plan showing all requirements as set forth in the conditions of approval.

If you have any questions on this, give me a call.

Glen E. Lytle

GEL:sad

cc: William McKinley, Traffic Engineer

July 28, 1983

Mr. Robert Kaplan, Attorney  
430 North Market  
Wichita, Ks. 67202

Re: Case No. BZA 27-83  
Request for Variance

Dear Mr. Kaplan:

At the meeting of the Board of Zoning Appeals on July 28, 1983, it was the action of the Board to approve the requested variance to reduce the required front yard setback from 20' to 10' adjacent to Kellogg for the construction of a 32' by 12' addition to the building at 3941 East Kellogg.

The following conditions are those established by the Board in the approval:

1. The applicant shall dedicate an additional 10' of street right-of-way adjacent to Kellogg. The applicant shall also furnish a contingent dedication of two' of right-of-way to become effective at a time the building is removed. The applicant shall dedicate complete access control except for one opening from Kellogg and shall guarantee the removal of one approach and reconstruction of the curb on the existing west approach and the removal of a driveway approach and reconstruction of the curb adjacent to Bluff Street located north of the small building adjacent to the east property line.
2. The applicant shall furnish a new site plan in triplicate, showing all the required off-street parking spaces for all uses on the property in full compliance with all requirements as set forth in the zoning ordinance. The parking layout shall be approved by the Traffic Engineer and be in compliance with the off-street parking standards with only one access point permitted from Kellogg. All of the required off-street parking spaces and circulation shall be located on private property and only additional off-street parking shall be permitted by a minor street permit.
3. The applicant shall provide locations on the property within the "LC" Light Commercial District for the trash container and the refrigerator-freezer units.

4. Unless the applicant is successful in securing a minor street permit for any use other than for street purposes, then all structures or uses such as signs, parking etc. shall be removed from the street right-of-way.
5. The applicant shall comply with all conditions of the minor street permit and shall guarantee the removal of any construction or uses within the street right-of-way at no expense to the City or State.
6. The applicant shall remove all surfacing within the required front yard setback adjacent to Longview Lane except the driveway providing ingress and egress to the property. The setback shall be landscaped and provided with barriers to prevent illegal parking. All parking areas within the "B" zoning district shall be screened from adjacent residential properties as set forth in Section 28.04.070.13 of the zoning ordinance.
7. The parking lot shall be striped and maintained in conformance with the approved plan.
8. Prior to the release of the Resolution authorizing the issuance of any building permit for the construction of any structure closer than 20' to the right-of-way of Kellogg, the applicant shall comply with all conditions as set forth above.
9. All conditions as set forth herein shall be completed within 180 days or this resolution shall be declared null and void.

As you are aware, several of the conditions are for additional right-of-way dedication and for access control to Kellogg except for one opening. I have enclosed the forms for signature by the owner to be returned to this office for processing to complete the dedications. In addition other conditions are for the removal of one driveway approach from Kellogg and the ramp approach on the east side of the property near Kellogg.

The release of the Resolution authorizing the variance are subject to compliance with the conditions set forth herein. I will be available at your convenience to help in any way to move this along. As mentioned by you at the meeting, this might entail the filing of an additional variance request on the screening requirements adjacent to the parking lot.

In order that this can be best accomplished, I would request that the revised site plan be submitted to this office, showing compliance with all conditions, including street dedications, etc., prior to the filing for any minor street permit.

Robert Kaplan - 28-83  
BZA 27-83 - Page 3

If I can be of any help, please give me a call at 268-4421.

Sincerely,

Glen E. Lytle  
Assistant Secretary

GEL:sad

cc: Glen Rupe, 434 North Ohio, Wichita, Ks.  
Keith Parker, 239 Pattie, Wichita, Ks.  
Robert Feldner, Superintendent of Central Inspection  
Don Glick, City Clerk  
Mike Lindebak, City Engineer

**THE CITY OF WICHITA**  
**OFFICE OF CITIZEN PARTICIPATION**

**DATE July 19, 1983**

**TO** Glen Lytle, Special Assistant for Zoning

**FROM** Dean Kruthof, Administrative Aide III

**SUBJECT** BZA 27-83, 3941 East Kellogg

At its July 18th meeting, CPO Neighborhood Council Area "F" reconsidered the captioned required front yard setback from 20' to 10' on property zoned "LC" Light Commercial District. Robert Kaplan and Keith Parker were present representing the applicant. No area residents were present concerning the case.

The Council voted, 7-1, to recommend again that the variance be denied.

Please provide the Council's recommendation to the Board of Zoning Appeals when it considers the case at its July 26th meeting.

  
Dean Kruthof  
Administrative Aide III

DK:fr

CONTINGENT DEDICATION

WHEREAS, Glen Rupe is the owner of the following described real property, to-wit:

Lots 1 and 2, except the north 18 feet which has been dedicated for right-of-way, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas.

and has made application to the Board of Zoning Appeals for approval of a variance on the above-described real estate; and

WHEREAS, the City of Wichita anticipates the future need for additional street right-of-way for Kellogg adjacent to said property, which additional right-of-way will include a portion of the above-described real property; and

WHEREAS, said Glen Rupe desires to continue the use of said additional street right-of-way pending the effectiveness of the dedication as hereinafter stated:

NOW, THEREFORE, in consideration of the premises and contingent upon the approval of the application to the Board of Zoning Appeals for a variance on Lots 1 and 2, except the north 18 feet for highway right-of-way, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas, Glen Rupe does hereby dedicate to the public for street purposes the following described real property, to-wit:

The south 2 feet of the north 20 feet of Lots 1 and 2, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas,

PROVIDED, HOWEVER:

1. That neither the public nor the City of Wichita shall be privileged nor entitled to the use of the property hereinabove dedicated for street purposes until the existing building on the property being dedicated is removed.
2. That until such time as the existing building is removed, Glen Rupe and all persons claiming by, through or under him, shall be permitted the continued use of said additional right-of-way.

This dedication herein expressed and made, conditional as aforesaid, shall be accepted by the City of Wichita upon approval by the Board of Zoning Appeals of the variance application described above and upon the recording of this instrument. Upon the recording hereof, this instrument shall constitute a public dedication and a covenant running with the land binding upon Glen Rupe, his heirs, successors and assigns, and all persons claiming by through or under him, conditioned as aforesaid. Acceptance by the City of Wichita of this Contingent Dedication and the recording of same shall denote its acquiescence and agreement to all terms and provisions thereof.

IN WITNESS WHEREOF, \_\_\_\_\_  
has executed this instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 1983.

\_\_\_\_\_  
Glen Rupe

PARTIAL DEDICATION OF ABUTTER'S RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned Glen Rupe being the owner of the following described real estate in Sedgwick County, Kansas, to-wit:

Lots 1 and 2, except the north 18 feet dedicated for street right-of-way, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas.

do hereby transfer and convey to the City of Wichita, Kansas, all abutter's rights of access, ingress and egress to said property from or to Kellogg over and across the north line of the above described property; to have and to hold the same forever; provided, however, that said property shall have access to Kellogg at one location. It being understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Kellogg, except at the one permitted location.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

State of Kansas) ss.  
Sedgwick County)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me a notary public in and for the said County and State, came \_\_\_\_\_ to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Glen Rupe

being the owner of the following described real estate in Sedgwick County, Kansas, to wit:

The south 10 feet of the north 18 feet of Lots 1 and 2, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas.

do hereby dedicate the above described real estate to the public for street purposes.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

STATE OF KANSAS )  
SEDGWICK COUNTY )ss

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, came \_\_\_\_\_

to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

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

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,

this \_\_\_\_\_,

City Clerk

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 1983, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Glen Rupe, who is personally known to me to be the same person who executed the above foregoing instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my name and affixed my Notarial Seal on the day and year last above mentioned.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

THE CITY OF WICHITA

OFFICE OF Department of Law

DATE July 15, 1983

TO Glen E. Lytle, Special Ass't for Zoning

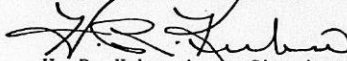
FROM H. R. Kuhn, Ass't City Attorney

SUBJECT Minor Street Privilege for  
Construction of a Building  
Addition

The Department of Law has reviewed your memo of July 14, 1983 concerning the above noted matter. It is the opinion of this Department that the suggested procedure (of the applicant) is very definitely inappropriate.

The subterfuge is obvious--he is asking the City, in effect, to be a party to a scheme whereby he can accomplish indirectly what he knows he cannot accomplish directly under the present ordinances. We can easily visualize all sorts of legal defenses that would probably be asserted if and when the City insisted upon the removal of the structure from the right-of-way. Furthermore, we do not believe that the granting of a minor street privilege was intended to permit construction of a permanent type structure or facility on city right-of-way.

Respectfully submitted,



H. R. Kuhn, Ass't City Attorney

HRK/mb

cc:  
Mr. John Dekker, Director of Law

RECEIVED

JUL 18 1983

METROPOLITAN PLANNING

ROUTE

July 14, 1983

H. R. Kuhn, Assistant City Attorney

Glen E. Lytle, Special Assistant for Zoning

Issuance of Minor Street Privilege for Construction of a Building Addition

Mr. Lakin has requested that I review with the Department of Law the legal problems that might be encountered with the issuance of a minor street privilege for a new addition to a building to be constructed in a street right-of-way and the eventual removal of the structure when the permit might be revoked.

We have on file a variance request to reduce the required front yard setback from 20 feet to 10 feet for the construction of an addition to a commercial building in the "LC" Light Commercial District. The building is located adjacent to an arterial street that is in the older part of the city and the city does not have the normal right-of-way generally needed for such a street. In this particular case, the street will no doubt eventually be improved to expressway standards which will require additional right-of-way for such improvements. The alignment has not been designed, so that is not the primary concern of the department.

It is a policy on all zoning change requests where additional right-of-way is needed to comply with the adopted subdivision regulations, zoning is contingent upon the dedication of the additional right-of-way. This is accomplished through the replatting process or dedication by separate instrument.

The applicant's agent has determined to his satisfaction that the Board of Zoning Appeals will deny the requested variance. He has indicated that he was to discuss the possibility of the owner dedicating whatever right-of-way is needed, provided a minor street privilege is granted for the construction of the proposed addition. He has not contacted me as to whether the owner would be agreeable to such a dedication.

Our concern on this procedure is whether this would be proper, as no determination has been made on the proposed alignment at this time. Also, if only 10 feet are needed to comply with the subdivision rules and regulations, it would still require the Board of Zoning Appeals approval to reduce the front yard setback to 0 feet and the applicant has gained nothing.

Memo - H. R. Kon - July 14, 1983  
Page 2

Your comments on whether this would be an appropriate procedure, and whether such an agreement would be binding and enforceable should the right-of-way be needed and the structure be removed at no compensation to the owner and at no cost to the city.

Glen E. Lytle

GEL:sad

cc: John Dekker, Director of Law  
Robert A. Lakin, Director of Planning

June 29, 1983

Mr. Robert Kaplan, Attorney  
434 North Market  
Wichita, Ks. 67202

Re: Case No. BZA 27-83  
Request for Variance

Dear Bob,

At your request, the Board of Zoning Appeals deferred action on the above case to the meeting of July 26, 1983. It was also the action of the Board to state that this would be the last deferral of the case.

As I stated to you in my letter on June 17, 1983, if you have any information beyond what was originally filed, please furnish to me by July 11, 1983.

Sincerely,

Glen E Lytle  
Special Assistant for Zoning

GEL:sad

cc: Glen Rupe, 434 North Ohio, Wichita, 67214  
Ernie Doyan, 610 Fabrique, Wichita 67218  
Keith Parker, 239 Pattie, Suite 2, Wichita 67211

**MICROFILMED**  
**FROM THE BEST**  
**AVAILABLE COPY**

FORM 29-021

PAYMENT NOTICE  
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Pibg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION	AMOUNT
27-83	
NAME	
ADDRESS	
FUND	DUE DATE
COMMENTS	
DATE	BY

June 17, 1983

Robert Kaplan, Attorney  
430 North Market  
Wichita, Ks. 67202

Re: BZA 27-83 - Request for Variance

Dear Mr. Kaplan:

In conformance with our phone conversation on June 15, 1983, it is agreed to defer the variance request for 3941 East Kellogg to the meeting of July 26, 1983. By copy of this letter I am advising the adjacent property owner, Mrs. Winne, of your request for deferral.

I do not feel that it is appropriate to continue this case over a number of months, so I am requesting that you meet with your client and owner as soon as possible on this matter. If for any reason the circumstances of the case have changed beyond the original request, please advise by July 11, 1983.

Sincerely,

Glen E. Lytle  
Special Assistant for Zoning

GEL:sad

cc: Mrs. Wanda Winne, 155 North Ridgewood, Wichita 67208  
Glen Rupe, 434 North Ohio, Wichita 67214  
Ernie Doyan, 610 Fabrique, Wichita 67218  
Keith Parker, 239 Pattie, Suite 2, Wichita 67211

LAW OFFICES  
KAPLAN AND McMILLAN  
ROBERT W. KAPLAN  
CALVIN McMILLAN  
CHARLES F. HARRIS

LAW BUILDING  
430 NORTH MARKET  
WICHITA, KANSAS 67202  
316-262-5175

June 7, 1983

Mr. Glen E. Lytle, Assistant Secretary  
Board of Zoning Appeals  
City Hall - Tenth Floor  
455 North Main Street  
Wichita, KS 67202

*Returned  
6-8-83  
[Signature]*

RE: BZA 27-83 - Request for Variance (Ernie Doyon)

Dear Mr. Lytle:

Pursuant to your letter to me of June 3, 1983, enclosed is our firm check in the amount of \$50.00 to cover the cost of additional notices in the above-referenced matter.

Very truly yours,

KAPLAN and McMILLAN

*Robert W. Kaplan*

By Robert W. Kaplan

RWK/jjs  
Enclosure

2707

40-54  
1011

June 7 1983

\$50.00

KAPLAN AND McMILLAN  
ATTORNEYS-AT-LAW 262-5175  
LAW BUILDING, 430 N. MARKET  
WICHITA, KANSAS 67202

PAY TO THE ORDER OF - City of Wichita

Fifty and no/100\* \*\*\*\*\* DOLLARS

For Additional Notices - BZA 27-83 - Request for Variance (Ernie Doyon)

*[Signature]*



⑆0000 2707⑆ ⑆101100540⑆

JUN 8 1983  
METROPOLITAN PLANNING  
ROUTE  *Lytle*

Architects • Planners • Commercial Consultants  
**Keith Parker Associates**



May 11, 1983

Mr. Glen Lytle  
Board of Zoning Appeals  
Metropolitan Area Planning Department  
455 North Main, City Hall  
Wichita, Kansas 67202

Re: 3941 East Kellogg  
Wichita, Kansas

Dear Mr. Lytle:

The owner of the above referenced property requests a variance of the front building set-back line from 20' to 10'.

The 20' set-back is required because of existing multi-family and single family zoning along the same block as this LC zoning. Light commercial zoning normally would require a 10' front yard set-back in a total LC zone.

The existing character of the neighborhood has light commercial and office uses adjacent to and across from this location. In some cases the buildings are built to within 10' of the property lines. This minor modification will not harm or detract from the existing character of this area.

We respectfully request your approval of this request.

Sincerely,

KEITH PARKER ASSOCIATES

Keith E. Parker, A.I.A.

KEP:ep

RECEIVED

MAY 11 1983

METROPOLITAN PLANNING

ROUTE

June 3, 1983

Mr. Robert Kaplan, Attorney  
430 North Market  
Wichita, Ks. 67202

Re: BZA 27-83 - Request for Variance

Dear Mr. Kaplan:

At the regular meeting of the Board of Zoning Appeals on May 31, 1983, it was the action of the Board to defer this case at your request. Since the deferral was requested, a fee of \$50.00 to cover the cost of additional notices is necessary. Please remit to this office as soon as possible.

In order for the staff to review any proposal that you might be presenting, it is requested that this be furnished by June 10, 1983 to this office. If additional property is to be included in the application area please notify us at once.

Sincerely,

Glen E. Lytle  
Assistant Secretary

GEL:sad

cc: Ernie Doyan, 610 Fabrique, Wichita 67218  
Keith Parker, 239 Pattie, Suite 2, Wichita 67211  
Glen Rupe, 434 Ohio, Wichita 67214  
Robert Feldner, Superintendent of Central Inspection (2)  
Donald Gisick, City Clerk

**THE CITY OF WICHITA**

**OFFICE OF** CITIZEN PARTICIPATION

**DATE** May 18, 1983

**TO** Glen Lytle, Special Assistant for Zoning

**FROM** Dean Kruthof, Administrative Aide III

**SUBJECT** BZA 27-83, 3941 East Kellogg

At its May 16th meeting, CPO Neighborhood Council Area "F" considered the captioned request for a variance of the required front yard setback from 20' to 10' on property zoned "LC" Light Commercial District. Keith Parker was present representing the applicant. Three area residents were present concerning the case.

The Council voted unanimously, 7-0, to recommend denial of the variance request.

Please provide the Board of Zoning Appeals with the Council's recommendation when the case is considered on May 31st.

  
Dean Kruthof  
Administrative Aide III

DK:dm

**RECEIVED**

MAY 23 1983

METROPOLITAN PLANNING

ROUTE  \_\_\_\_\_  
 \_\_\_\_\_

held  
in file

Ref to Bd. 7-26-83

Alternate Recommendation BZA 27-83

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 any approval will be subject to the following conditions:

16' outright ded.  
7' conveying.

1 access  
be allowed  
to Kellogg  
Remove 1 app. to Kellogg  
& the no. on Bluff

1. The applicant shall dedicate an additional 12 feet of right-of-way for Kellogg and dedicate complete access control adjacent to Kellogg. The applicant shall guarantee removal of the driveway approaches onto Kellogg and the reconstruction of the curbs.

2. The applicant shall furnish a new site plan in triplicate, showing all the required off-street parking spaces for all uses on the property in full compliance with all requirements as set forth in the zoning ordinance. The parking layout shall be approved by the Traffic Engineer and be in compliance with the off-street parking standards. No ingress or egress shall be permitted from Kellogg. The parking layout shall provide all the required spaces on private property and only additional off-street parking shall be permitted by a minor street permit.

3. The applicant shall provide locations on that portion of the <sup>property located in</sup> the "C" Light Commercial District for the trash container and the refrigeration-freezer units.

4. Unless the applicant is successful in securing a minor street privilege for all the property being used for any use other than street purposes, all construction of buildings, signs and parking shall be removed.

5. The applicant shall, by separate recorded document, guarantee the removal of all construction and uses within the street right-of-way and clear and level the right-of-way at no expense to the city.

6. The applicant shall remove all surfacing from the required front yard setback adjacent to Longview Lane, except the driveway providing ingress and egress. The remainder of the required setback shall be provided with landscape material. The parking area located in the "B" zoning district shall be secured in accordance with section 28.04.070.13 of the zoning ordinance.

7. Any parking spaces not provided on the applicant's property shall be subject to all requirements of the zoning ordinance, including the recording of the agreement with the Register of Deeds after having been approved by the Director of Law. All leased spaces are to be used to satisfy the number of required spaces, then a variance must be obtained unless the lease is made binding on the property owners as set forth above.

7. The parking lot shall be striped and maintained in conformance with an approved plan, and any deviation <sup>from the plan</sup> shall be subject to approval of the Traffic Engineer.

8. Prior to the release of the resolution authorizing the issuance of any building permit for the construction of any structure closer than 20 feet to the right-of-way of Kellogg, the applicant shall comply with all of the conditions as set forth above.

9. ~~Any~~ All conditions as set forth herein shall be completed within 180 days or this resolution shall be declared null and void.

SECRETARY'S REPORT  
CASE NO. BZA 27-83

APPLICANT: Glen Rupe, 434 Ohio, Wichita, Kansas.

AGENT: Keith E. Parker, 239 Pattie, 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 20' to 10'.

GENERAL LOCATION: On the southwest corner of Bluff and Kellogg (3941 East Kellogg).

ZONING: Subject property is zoned the "LC" Light Commercial and the "B" Multiple-family Dwelling District. Properties to the north and east are "LC". To the south is "B" and to the west is "B" Multiple-family and "A" Two-family Dwelling Districts.

LAND USE: Subject property is a restaurant and club. To the east and north are commercial developments. To the south and west are residential uses.

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 front yard setback adjacent to Kellogg in order to construct an addition to the restaurant and club. The front yard setback on this property is determined by the residential zoning to the west and is required to be 20' from the Kellogg street right-of-way line. This is 5' closer than the requirement for those properties in the block that are located in the "A" Two-family Dwelling District.

The applicant's tenant has begun construction, without benefit of a permit, for an addition to be located within 10' of the right-of-way. When this office was first contacted about this variance, the construction had not started. When the applicant's agent came in early the next morning, and the staff had a chance to review the requirement, he was advised that at that time the staff could not support the request. His agent stated that his applicant was excavating the project at that moment. At that point the agent was advised that the construction should be stopped until the Board had a chance to review the request as the Board had stated there are too many requests being made after the fact. On the way home that evening at 5:00 p.m. they were pouring and finishing the floor slab.

It should be noted that this property is located in the first block east of the area in which improvements have just been completed for the alteration of the curve at the beginning of the Kellogg freeway to the west. These improvements were made after considerable expense by the State to acquire a small amount of additional right-of-way.

In discussing the need for right-of-way with the Department of Engineering, they indicate that it is not known at this time what alignment future improvements of Kellogg will take. It is the policy, however, on all new plats for any commercial development, to establish a 35' setback when adjacent to an arterial or expressway in addition to the dedication of needed right-of-way. All along Kellogg in this area, a number of replats have occurred which have dedicated additional street right-of-way and established greater setbacks than this variance request. In this case, it is the Secretary's opinion, that the Board should not vary a setback along this highway where it is a policy to establish a greater setback than what is now required by the zoning ordinance.

In review of the applicant's site plan, and a field check of the property, a number of violations of city regulations are evident. The large sign located at the corner of Bluff and Kellogg has been erected on the street right-of-way and should be removed. The trash container located in the parking lot should be moved to a location that is not in the "B" Multiple-family Dwelling District and screened from view of the residences to the south. The freezer unit should be located in the "I.C." zoning and at a location not in a utility easement. The parking lot should be marked in accordance with an approved site plan and the surfacing located in the required front yard setback should be removed and barriers placed to prevent parking in the setback or on areas required to be landscaped. Also, all the required screening where adjacent to a residential zoning district has not been provided. If the applicant owns the adjacent property, and the four-family dwelling is to remain, a variance of the screening must be obtained from this Board.

The present restaurant and club has a maximum capacity of 105 persons and requires a minimum of 21 off-street parking spaces. Central Inspection staff indicates that no plans have been submitted for a determination on the addition for what increase might be permitted in the seating capacity. Prior to any consideration of a variance to add to the use, a determination of these parking requirements should be made. The applicant's site plan delineates 32 off-street parking spaces, however, only 19 are located on the applicant's property in conformance with the standards determined by the Traffic Engineer of the Department of Engineering. This would be reduced further when a freezer unit and trash container are relocated on the "LC" portion of the property which are not shown on the applicant's site plan.

The applicant's agent has indicated that the owner has been trying to acquire additional property in the neighborhood for parking. It would appear that, if additional property to the south could be acquired, the applicant could redesign the proposed addition and expand to the east in compliance with the setback adjacent to Kellogg.

It has also been suggested by the applicant's agent that any right-of-way for Kellogg be dedicated at this time to be available at no cost to the city or state at any time Kellogg is relocated or improved in this area. This would then require the applicant to secure a minor street privilege for any improvements that would be constructed in the street right-of-way. It is the staff's opinion that this is not a proper method of resolving the problem.

It is also the opinion of the Secretary that a restaurant or any other public assembly building should not be located that close to a highway. As other development along Kellogg has occurred further to the east, additional right-of-way has been dedicated as a condition of zoning and a setback from the new right-of-way has been established on "LC" property of at least 35 feet.

UNIQUENESS:

It is the opinion of the Secretary that this property is not unique inasmuch as there are many properties in the city that are restricted in the same manner as this by the zoning regulations.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance would probably not affect the adjacent property owner, but the affect of enlarging a use, in an area where other uses do not provide adequate parking, will tend to increase traffic congestion in the neighborhood unless additional property is acquired to provide parking.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the zoning ordinance will not constitute an unnecessary hardship upon the applicant as the hardship has been created by the tenant by starting construction without benefit of a permit.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would possibly affect the public interest inasmuch as to increase the capacity of a restaurant and extend it closer to a major trafficway would not be in the best interests of the public, and could create a possible safety hazard to the occupants.

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 ordinance is specific in this case to maintain a setback on the entire block that is greater than the applicant desires.

RECOMMENDATION:

*It is the opinion of the Secretary that*  
~~Should the Board determine that~~ all five conditions necessary to the granting of a variance cannot be found to exist, and it is recommended that the variance be denied.

SECRETARY'S REPORT  
CASE NO. BZA 27-83

APPLICANT: Glen Rupe, 434 Ohio, Wichita, Kansas.

AGENT: Keith E. Parker, 239 Pattie, 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 20' to 10'.

GENERAL LOCATION: On the southwest corner of Bluff and Kellogg (3941 East Kellogg).

ZONING: Subject property is zoned the "LC" Light Commercial and the "B" Multiple-family Dwelling District. Properties to the north and east are "LC". To the south is "B" and to the west is "B" Multiple-family and "A" Two-family Dwelling Districts.

LAND USE: Subject property is a restaurant and club. To the east and north are commercial developments. To the south and west are residential uses.

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 front yard setback adjacent to Kellogg in order to construct an addition to the restaurant and club. The front yard setback on this property is determined by the residential zoning to the west and is required to be 20' from the Kellogg street right-of-way line. This is 5' closer than the requirement for those properties in the block that are located in the "A" Two-family Dwelling District.

The applicant's tenant has begun construction, without benefit of a permit, for an addition to be located within 10' of the right-of-way. When this office was first contacted about this variance, the construction had not started. When the applicant's agent came in early the next morning, and the staff had a chance to review the requirement, he was advised at that time the staff could not support the request. His agent stated that his applicant was excavating the project at that moment. At that point the agent was advised that the construction should be stopped until the Board had a chance to review the request as the Board has stated there are too many requests being made after the fact. On the way home that evening at 5:00 p.m. they were pouring and finishing the floor slab.

It should be noted that this property is located in the first block east of the area in which improvements have just been completed for the alteration of the curve at the beginning of the Kellogg freeway to the west. These improvements were made after considerable expense by the State to acquire a small amount of additional right-of-way.

In discussing the need for right-of-way with the Department of Engineering, they indicate that it is not known at this time what alignment future improvements of Kellogg will take. It is the policy, however, on all new plats for any commercial development, to establish a 35' setback when adjacent to an arterial or expressway in addition to the dedication of needed right-of-way. All along Kellogg in this area, a number of replats have occurred which have dedicated additional street right-of-way and established greater setbacks than this variance request. In this case, it is the Secretary's opinion, that the Board should not vary a setback along this highway where it is a policy to establish a greater setback than what is now required by the zoning ordinance.

In review of the applicant's site plan, and a field check of the property, a number of violations of city regulations are evident. The large sign located at the corner of Bluff and Kellogg has been erected on the street right-of-way and should be removed. The trash container located in the parking lot adjacent to Longview Lane should be moved to a location that is not in the "B" Multiple-family Dwelling District and screened from view of the residences to the south. The parking lot should be marked in accordance with an approved site plan and the surfacing located in the required front yard setback should be removed and barriers placed to prevent parking in the setback or on areas required to be landscaped. Also, all the required screening where adjacent to a residential zoning district has not been provided. If the applicant owns the adjacent property, and the four-family dwelling is to remain, a variance of the screening must be obtained from this Board.

The present restaurant and club has a maximum capacity of 105 persons and requires a minimum of 21 off-street parking spaces. Central Inspection staff indicates that no plans have been submitted for a determination on the addition for what increase might be permitted in the seating capacity. Prior to any consideration of a variance to add to the use, a determination of these parking requirements should be made. The applicant's site plan delineates 32 off-street parking spaces, however, only 19 are located on the applicant's property in conformance with the standards determined by the Traffic Engineer of the Department of Engineering. This would be reduced further when the trash container is relocated on the "LC" portion of the property. The applicant's agent has indicated that additional property has been acquired and will be cleared for additional parking but has not submitted any plans to denote this proposal for the Board's consideration.

UNIQUENESS:

It is the opinion of the Secretary that the property is not unique inasmuch as there are many properties in the city that are restricted in the same manner as this by the zoning regulations.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the requested variance would probably not affect the adjacent property owner, but the effect of enlarging a use, in an area where other uses do not provide adequate parking, will tend to increase traffic congestion in the neighborhood.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the zoning ordinance will not constitute an unnecessary hardship upon the applicant as the hardship has been created by the tenant by starting construction without benefit of a permit.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would possibly affect the public interest inasmuch as an addition that would later need to be removed for public improvements would be an additional cost to cost of further improvements to Kellogg at the taxpayers expense.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would be opposed to the general spirit and intent of the zoning ordinance inasmuch as the ordinance is specific in this case to maintain a setback on the entire block that is greater than the applicant desires.

RECOMMENDATION:

It is the opinion of the Secretary that all five conditions necessary to the granting of a variance cannot be found to exist, and it is recommended that the variance be denied.

BOARD OF ZONING APPEALS

CASE NO. 27-83

CITY OF WICHITA, KANSAS

FILED 5-3-83

APPLICATION FOR VARIANCE

I. Name of Applicant Glen Rupe  
 Mailing Address 434 North Ohio  
Wichita, Kansas 67214 Phone 262-3748  
 Name of Authorized Agent Keith E. Parker  
239 Pattie, Suite 2  
 Mailing Address Wichita, Kansas 67211 Phone 263-8261  
 Relationship of applicant to property is that of owner  
 (Owner, Tenant, Lessee, Other)

II. The variance requested is reducing front yard set back  
from 20 to 10'.

for property located on the southeast corner of Kellogg Bluf?  
3941 East Kellogg, Wichita, Kansas.

and legally described as: Lots 1 and 2 except North 8' for  
Highway and all of Lot 13, Block A, Longview Terrace Addition.  
to Wichita, Sedgwick County, Kansas

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

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 \_\_\_\_\_

Authorized Agent Keith E. Parker

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals, 3:00 (p.m.), May 3, 1983, together with appropriate fee of \$150.00.

Signed L. Lytle

BZA CASE NO. 27-83

2 NOTICES SENT TO APPLICANT/AGENT

9 NOTICES SENT TO MAPC

1 NOTICES SENT TO CPO

29 NOTICES SENT TO ADJOINING PROPERTY OWNERS

41 TOTAL NOTICES SENT 5-11-83

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

May 11, 1983

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 27-83

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 Glen Rupe, 434 Ohio, Wichita, Kansas, requesting a variance.

Pursuant to Section 2.12.590.B, of the Code of the City of Wichita, the applicant is requesting a variance of the required front yard setback from 20' to 10' on property zoned "LC" Light Commercial District. A legal description of the applicant's property is as follows:

Lots 1 and 2, except the north 8' for Highway right-of-way, and all of Lot 13, Block A, Longview Terrace Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Kellogg and Bluff (3941 East Kellogg).

This application has been assigned Case BZA 27-83. It will be considered by the Board of Zoning Appeals on May 31, 1983 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, 268-4516.

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

## OWNERSHIP LIST

LOT	Block	Addition	Property Owner
Lot 1 except the North 8 feet and Lot 2 except the North 8 feet	A	Longview Terrace	✓ G. N. Rupe # 3 Lingwood 67206
Lot 3 Lot 4	A	"	Phillip Barnett 1441 N. Rock Road 67207 Mac Foley 4624 East Kellogg 67216 Ronald Drilling 5709 Rockhill 67208 Raymond C. Trimble 94710 Willcreek 67230
Lot 9 and the North 21 feet of Lots 11 and 12	A	"	Edward W. Sutherland (dec) Helen M. Sutherland Address Unknown (aff. of interest) filed by Joe A. Barnett Senate District 1402 Gidley 67216
Lot 10	A	"	Charles M. Walz Emily O. Walz Address Unknown
Lot 11 except the North 21 feet	A	"	Patricia G. Wilson 231 N. Dellrose 67208 ✓ P. Louise Wilson 3910 Longview Lane 67218
Lot 12 except the North 21 feet	A	"	✓ Wanda M. Waine 155 N. Ridgewood 67208

Lot	Block	Addition	Property Owner
Lot 13	A	Longview Terrace	Glen N. Rupe # 3 Linden 67206
Lot 14	A	"	Stan E. Wisdom # 51 Via Verde 67230
Lot 1	F	"	Paul M. McFarland Joan McFarland R.F.D. # 2 Rose Hill, Kansas 67133
Lot 2	F	"	Carl D. Keith Lyla Keith 532 Quentin 67218
Lot 3 and the North half of Lot 5	F	"	Charles A. Brooks (dec.) Verna B. Brooks Address Unknown
The South half of Lot 5	F	"	Henry Leben Nathan Leben (dec.) 1030 N. Market 67214
Lot 4 and the North half of Lot 16	F	"	Patrick C. Woodward Mahala S. Woodward 534 S. Quentin 67218
The South half of Lot 6	F	"	Kenyon J. Blunt Maribeth Blunt 538 South Quentin 67218
The North 150 feet of the West 100 feet of Lot 1		Fee's Subdivision of the North half of the East half of the Northwest 1/4 of 26-27-1 East	Z G Razook 3915 E. Kellogg 67218
Lot 2 except the West 25 1/2 feet		Carney Addition	Vann V. Jones Mary Lee Jones 3823 East Lewis 67218

<u>Lot</u>	<u>Block</u>	<u>Addition</u>	<u>Property Owner</u>
The West 25½ feet of Lot 2 and the East 26½ feet of Lot 3		Carney Addition	Vann V. Jones Mary Lee Jones 3823 East Lewis 67218
The West 52 feet of Lot 3 except the South 8 feet		"	Same as above
Lot 16	Bluff	Merriman Park Fifth Place	James Robert Bortz Nancy S. Bortz 437 S. Bluff 67218
Lot 17 except the East 5 feet and Lot 18 except the East 5 feet	"	"	Central Steel Products Inc. P.O. Box 1773 67201
Lot 19	"	"	Scotch and Siple 3941 East Hill 67218
Lot 29 and a 9.9 foot wide strip ad- joining Lot 20 on the South	"	"	Same as above
Lot 36 Lot 37 and the North 1 foot of Lot 38	"	"	Charles E. Demo B. Irene Demo 440 S. Bluff 67218
The East 50 feet of Lot 38 except the North 1 foot	"	"	Richard H. Wells Marilyn R. Wells 1201 N. Armour 67206 Robert E. Wells Cathie A. Wells Route 1 Benton 67017

Lot	Block	Addition	Property Owner
The East 50 feet of Lot 39 and the East 50 feet of Lot 40 and the vacated strip adjacent to Lot 40 on the South	Bluff	Merriman Park Fifth Place	Richard H. Wells Marilyn R. Wells 1201 N. Armour, 67206 Robert E. Wells Cathie A. Wells Route 1, Benton 67017
The West 82 feet of Lot 38 except a strip along the North side thereof, 1 foot wide; and the West 82 feet of Lots 39 and 40	"	"	Central Steel products Inc. P. O. Box 1773 67201
The West 82 feet adjoining Lot 40 along the South side thereof vacated off the North side of Kellogg Street, except that portion condemned for street	"	"	Same as above
The South 100 feet of Lot 10 Block M Together with that part of vacated Kellogg described as beginning at the SE corner of said Lot; thence West to the SW corner of said Lot; thence South 18.25 feet, more or less, to a point 30 feet North of the South line of Section 23, Township 27 South, Range 1 East of the 6th P.M., thence East parallel with said South line to a point directly South of the place of beginning; thence North 18.2 feet more or less, to the place of beginning, except the South 8 feet thereof condemned for street.		Merriman Park	Donald Gene McKasson Dana R. McKasson 160 S Battin 67218

Lot	Street	Addition	Property Owner
Lots 693, 694, 695, 696, 697, 698, except the North 8 feet taken for highway	Kellogg	Fairfax Addition	Stratford Place Partnership Paul W. Dugan Horst K. Hillert Stephen W. Casey Suite 1700 K.S.B. & T. Bldg. 125 N. Market 67202
Lot 692 Lot 691 Lot 690	Bluff	"	Horst K. Hiller Marc C. Hiller 707 N. Washington 67214
Lot 689 Lot 688 Lot 687 and the North 5 feet of Lot 686	"	"	C Lee Tade Violet M. Tade 641 S. Terrace 67218
The South 20 feet of Lot 686	"	"	Marvin E. Dick Emma L. Dick 536 S. Bluff 67218
Lot 685 Lot 684	"	"	Marvin E. Dick 536 S. Bluff 67218
Lot 683 Lot 682	"	"	Vera Good Williams 531 Crestline 67212

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

Lots 1 and 2 except the North 8 Feet for highway, and all of Lot 13, Block A, Longview Terrace Addition to Wichita, 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 4th day of May, 1983, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE CO. INC.

By

*Mary Stabile*  
Vice-President

Order No: 319662  
ap

FORM 29-02

PAYMENT NOTICE  
City of Wichita

Bldg.	Use of Scr.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Pibg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.

Planning

DESCRIPTION	AMOUNT
2) City BZA VAR.	\$ 375 <sup>00</sup>

NAME Keith PARKER & ASSOC.

ADDRESS 239 PATTIE

FUND 755-40071-003 DUE DATE

COMMENTS

DATE MAY 3, 1983 BY [Signature]

\*

This BZA. Case  
Has a Large Drawing  
On 35mm Microfilm

Roll # 2