

Case No. BZA 34-76 - Jim Nuhgesser requests a variance to reduce the required landscaping from 25'x50' to 25' on the west property line and 19' on the south property line in an area

POSTED
9-7-76
MAYED
C.I.
9-4-76

ACTION

BZA 34-76 COMMITTEE *Property advertised*
Approved

DATE

9-28-76
10-26-76

M.A.P.C. _____

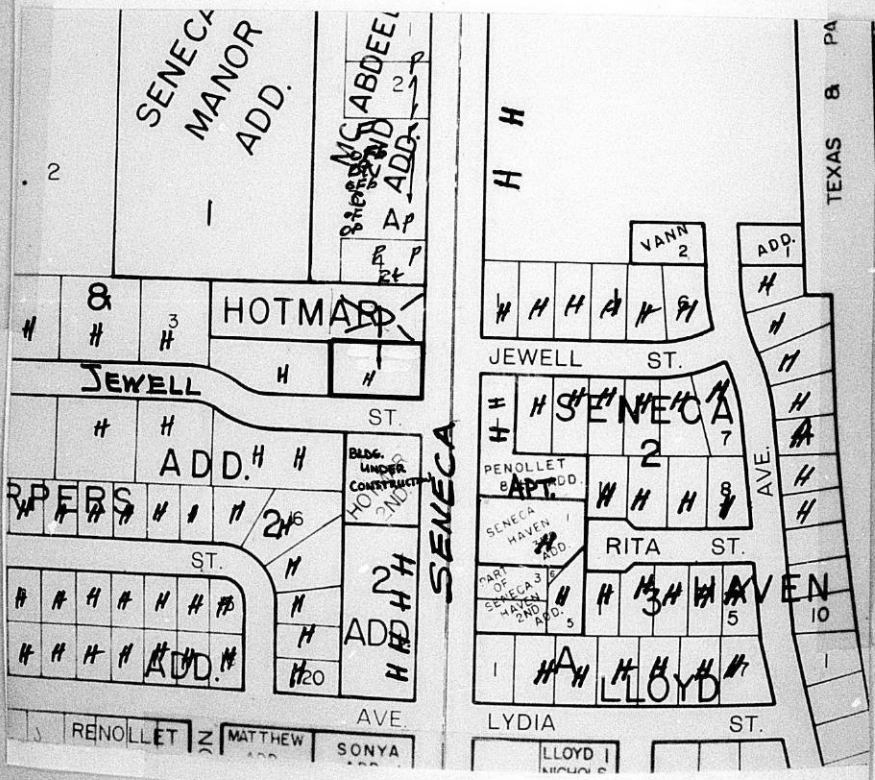
B.C.C./B. CO. C. _____

Map No. 5345
 Sec. 31
 Twp. 27
 Range 1E

BZA- 34-76
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:
 1. Acres: _____ (93 ft. by 162 ft.)
 2. Adjoining Zoning: E _____ S _____ W _____ N _____
 3. Land Use: East SINGLE FAM South UP DATE H/H IN BLDG
 West SINGLE FAM North UP DATE H/H IN BLDG
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use if for: SINGLE FAM
 6. Area (is) (is not) platted.

PHOTO DATA:
 Taken by _____ Date _____ Time _____



SHANNON
 No. 2-1536
 LUBBOCK, TEXAS
 LUBBOCK, TEXAS
 LUBBOCK, TEXAS

RESOLUTION NO. BZA 34-76

WHEREAS, Jim Nungesser, 6246 Jackson, Derby, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 1, except the north 100 feet thereof in Block 1, Hotmar Addition, Wichita, Sedgewick County, Kansas, (being replatted as Lot 1, Block 1, Foudray Addition). Generally located at the northwest corner of Seneca and Jewell 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 28, 1976, defer consideration of said application to the next regular meeting of October 26, 1976, so that the legal notification might be republished to correct an error therein; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of October 26, 1976, 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 applicant is attempting to provide more than the minimum required number of off-street parking spaces and to design an effective traffic circulation layout while still maintaining 19 feet of landscaping; 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 owner to the west is reportedly not opposed to the request, and a 19 foot landscaped area would provide a sufficient buffer area; 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 owner represented in the application inasmuch as the applicant could not position his building and otherwise design his layout in the manner deemed to provide the most effective traffic circulation; 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 adequate landscaping and screening will separate subject property from the residence to the west; 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 appropriate safeguards have been proposed to protect the rights of adjacent property owners; 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.

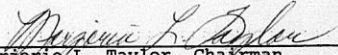
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular landscaped area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 1, except the north 100 feet thereof in Block 1, Hotmar Addition, Wichita, Sedgwick County, Kansas, (being replatted as Lot 1, Block 1, Foudray Addition). Generally located at the northwest corner of Seneca and Jewell Streets,

be approved subject to the following conditions:

1. The applicant shall comply with the screening requirements of the zoning ordinance as applies to the west property line.
2. The 25 x 19 foot landscaped area adjacent to the west property line shall be landscaped with grass and trees or shrubs and shall be maintained in good condition.

ADOPTED AT WICHITA, KANSAS, this 26th day of October, 1976.


Marjorie L. Taylor, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

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Tenth Floor, City Hall
455 N. Main Street

October 29, 1976

Mr. Jim Nungesser
6246 Jackson
Derby, Kansas 67037

Re: Case No. BZA 34-76
Request for Variance

Dear Mr. Nungesser:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on Tuesday, October 26, 1976, in connection with your request for a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and generally located at the northwest corner of Seneca and Jewell Streets.

This Resolution reflects the official action of the Board to approve your request and sets out the conditions of approval. It is forwarded to you for your information and files.

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

Very truly yours,

Larry Dobson
Assistant Secretary

LD:hbh
Encl.

cc: Allen E. Scott, R.1, Clearwater, Kansas 67037
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Central Inspection

Tenth Floor - City Hall
455 North Main Street

October 27, 1976

Mr. Jim Nungesser
6246 Jackson
Derby, Kansas 67037

Re: Case No. BZA 34-76 - Request
for Variance

Dear Mr. Nungesser:

At the regular meeting of the Board of Zoning Appeals on Tuesday, October 26, 1976, your request for a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and generally located at the northwest corner of Seneca and Jewell Streets was considered.

It was the action of the Board to approve the request subject to the following conditions:

1. The applicant shall comply with the screening requirements of the zoning ordinance as applies to the west property line.
2. The 25 x 19 foot landscaped area adjacent to the west property line shall be landscaped with grass and trees or shrubs and shall be maintained in good condition.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy

Mr. Jim Nungesser
October 27, 1976

as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Very truly yours,

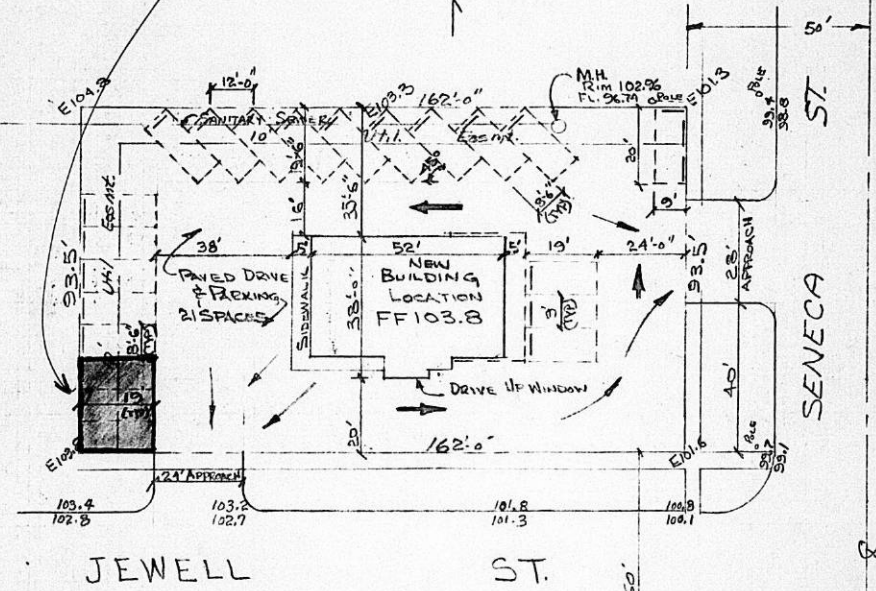


Larry Dobson
Assistant Secretary

LD:bh

cc: Allen E. Scott, R.1, Clearwater, Kansas 67037
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Central Inspection

Variance Requested
19x25'



~o PLOT PLAN ~o
SCALE: 1" = 30.0'

LOT 1, BLOCK 1 OF FOUFRAY ADDITION
TO WICHITA, SEDGWICK CO., KANSAS

BZA 34-76

RE: AGENDA ITEM NO. 2

SECRETARY'S REPORT
CASE NO. BEA 34-76

APPLICANT: Jim Mungesser, 6246 Jackson, Derby, Kansas.

AGENT: Allen E. Scott, R. R. #1, Clearweater, Kansas.

REQUFST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular landscaped area to a 25 x 19 foot landscaped area.

GENERAL LOCATION: Northwest corner of Seneca and Jewell Streets.

ZONING: Subject property and properties to the north and south are all zoned the "LC" Light Commercial District. Property to the west is zoned the "AA" Single Family Dwelling District. East is "BB" Office District.

LAND USE: Subject property is developed as a single family residence as are properties to the west and East. North is a parking lot; south is a Quick Shop building under construction.

JURISDICTION:

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

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

5. That granting the variance desired will not be opposed to the general spirit and intent of Title 23 (zoning ordinance).

COMMENTS BY THE SECRETARY:

The applicant, in connection with the proposed construction a restaurant, is requesting a variance to reduce the required landscaping adjacent to a residential zoning district from a 25 x 50 foot landscaped area to a 25 x 19 foot area.

Section 28.04.160(K) of the City Code requires commercially developed property to be landscaped a depth equal to the front yard required of an adjacent residential district (in this case 25 feet) and extended for a distance of 50 feet along the frontage, from the common property line. The applicant is requesting a variance of this provision for the purpose of utilizing the available space for maximum off-street parking space and effective traffic circulation on the site. The site plan submitted with this application indicates that a 25 x 19 foot landscaped area would be maintained adjacent to the west property line with a driveway located immediately east of the landscaped area.

It should be noted that the Planning Commission has recently reviewed the landscaping and screening provisions of the zoning ordinance and recommended changes to the City Commission. These changes would have the affect on this case of providing an option to the applicant of extending a 3 foot high fence along the west property line in this 25 foot front yard area in lieu of landscaping. Screening of the remainder of the west property line is a requirement that the applicant understands and will comply with. This item is scheduled for City Commission consideration on October 26, 1976, which is also the Board of Zoning Appeals meeting date.

The property owner to the west, is also the owner of subject property from whom the applicant is purchasing this property. The applicant states that he has discussed this variance with him and that he has no objections.

An existing single family residence located on subject property will be removed to make way for the construction of the restaurant.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness is difficult to justify, but if uniqueness exists it may be in the fact that the applicant is attempting to provide more than the minimum required number of off-street parking spaces and to design an effective traffic circulation layout while still maintaining 19 feet of landscaping.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the requested variance will not have an adverse affect on adjacent property owners inasmuch as the owner to the west is reportedly not opposed to the request, and a 19 foot landscaped area would provide a sufficient buffer area.

HARDSHIP:

It is the opinion of the Secretary that if hardship exists, it would be because the applicant could not position his building and otherwise design his site layout in the manner deemed to provide the most effective traffic circulation.

PUBLIC INTEREST:

It is the opinion of the Secretary that the desired variance would not adversely affect the public interest inasmuch as adequate landscaping and screening will separate subject property from the residence to the west.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of this variance would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as appropriate safeguards have been proposed to protect the rights of the adjacent property owner.

RECOMMENDATION:

If the Board finds the five conditions necessary to the granting of a variance to exist, it is suggested that the following conditions be considered as conditions of approval:

1. The applicant shall comply with the screening requirements of the zoning ordinance as applies to the west property line.
 2. The 25 x 19 foot landscaped area adjacent to the west property line shall be landscaped with grass and trees or shrubs and shall be maintained in good condition.
-

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE October 12, 1976



TO Larry Dobson, Metropolitan Area Planning Department

FROM David Furnas, Citizen Participation Coordinator

SUBJECT BZA 34-76

Area "B" CPO Council took no action on BZA 34-76.

David L. Furnas
David Furnas
Citizen Participation Coordinator

DF:KO sm



19 notices sent to adjoining property owners, agent and applicant
~~19~~ notices sent to MAPC members (MARGE TAYLOR)
20~~00~~ notices sent on September 21, 1976
1 notice sent to CPO - Turner

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

September 21, 1976

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 34-76

You previously received a notice of an application filed by Jim Nungesser, 6246 Jackson, Derby, Kansas, requesting a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular landscaped area to a 25 x 19 foot landscaped area on property zoned the "IC" Light Commercial District, and legally described as follows:

Lot 1, except the north 100 feet thereof in Block 1, Hotmar Addition, Wichita, Sedgwick County, Kansas, (being replatted as Lot 1, Block 1, Foudray Addition). Generally located at the northwest corner of Seneca and Jewell Streets.

Due to a published error in the legal advertising, the Board of Zoning Appeals will not consider this case at its September 28, 1976 meeting as originally scheduled. The case will now be advertised and scheduled for the Board's meeting of Tuesday, October 26, 1976, at 1:30 p.m., in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS
TENTH FLOOR, CITY HALL
455 North Main, Wichita, Kansas 67202

September 9, 1976

NOTICE TO ADJOINING PROPERTY OWNERS;

Case No. BZA 34-76

An application has been filed by Jim Nungesser, 6246 Jackson, Derby, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular landscaped area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 1, except the north 100 feet thereof in Block 1, Hotmar Addition, Wichita, Sedgwick County, Kansas, (being replatted as Lot 1, Block 1, Foudray Addition). Generally located at the Northwest corner of Seneca and Jewell Streets.

This application has been assigned Case No. BZA 34-76 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 28, 1976, at 1:30 p.m., in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS
TENTH FLOOR, CITY HALL
455 North Main, Wichita, Kansas 67202

September 9, 1976

NOTICE TO ADJOINING PROPERTY OWNERS;

Case No. BZA 34-76

An application has been filed by Jim Nungesser, 6246 Jackson, Derby, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required landscaping adjacent to the west property line from a 25 x 50 foot rectangular landscaped area to a 25 x 19 foot landscaped area on property zoned the "LC" Light Commercial District, and legally described as follows:

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This application has been assigned Case No. BZA 34-76 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 28, 1976, at 1:30 p.m., in the Board Room, First Floor, City Hall, 455 North Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

19 notices sent to adjoining property owners, agent and applicant
10 notices sent to MAPC members
29 notices sent on September 9, 1976

5345

5345

BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant Jim Nungesser ^{HAVE} (Contract to Purchase From William C. Foudray)
 Mailing Address 124 1/2 Jackson Derby Kansas Phone 788-1045
 Name of Authorized Agent Allen E. Scott
 Mailing Address RR 1 Clearwater Ks. 67026 Phone 545 7313

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

II. The variance requested is to reduce the required landscaping to
25 feet on West Property
line & 19 feet on South Property line
instead of Required 25'x50'
 for property located 1114 Jewell Wichita Kansas

and legally described as: lot 1 Block 1 Foudray Addition
which is a parcel of the South 935 feet
of lot 1 Block 1 Hotchkiss Addition
 in the City of Wichita; and which is presently zoned L.C.

- III. The applicant herein, or his authorized agent, acknowledges:
- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
 - b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
 - c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
 - d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Jim Nungesser
Applicant
Allen E. Scott
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 4:00 (a.m. - P.M.), 8-27 1976
 together with appropriate fee of \$50.00.

Larry Dobson
Signed

Variance Request

It is necessary for the variance to be changed in order for the traffic circulation to work properly and make use of the 24 foot approach exit on Jewell Street. It would create traffic problems if the approach on Jewell Street were to be moved closer to Seneca Street.

The granting of this variance will not cause any adverse effects to adjacent property owners in that the variance change is located at the southwest corner of the lot. The only property owner this variance could effect is the residents to the west. The resident to the west is William C. Foudry who is the person which I am buying the property. I have discussed the variance with Mr. Foudry and there will be no problems. I plan to put a 6 foot high fence across the west property line which is totally satisfactory with Mr. Foudry.

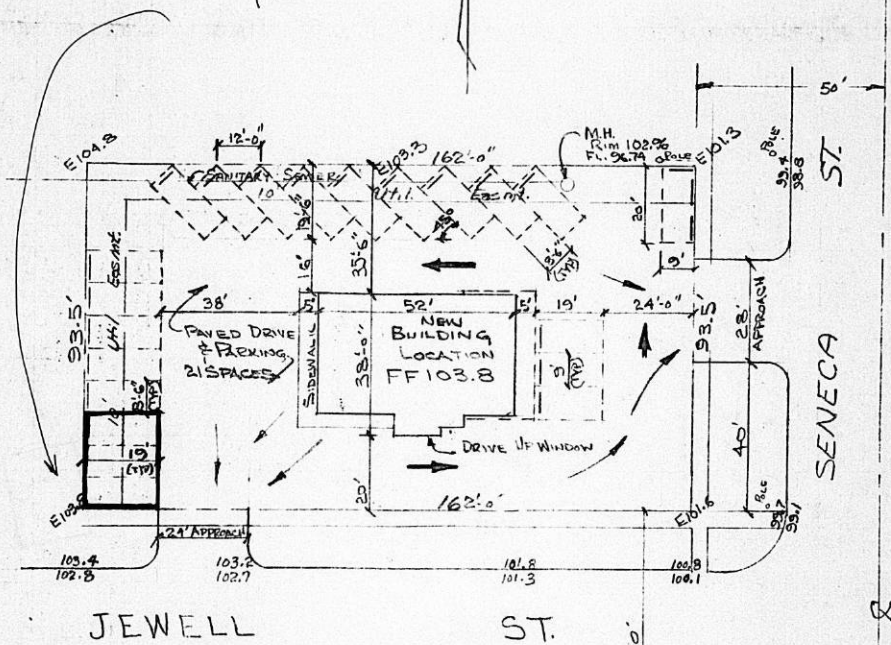
If I can not get this variance changed it will create unnecessary problems and hardship in that I will not be able to have this building constructed due to traffic circulation and an approach not meeting city requirements.

The variance desired will not have any adverse affect on general welfare because the proposed variance of 19 X 25 feet should be sufficeint for this property. Since this will be a restaurant buisness this property and building will be kept clean and meet all public health and order standards.

The variance desired will not oppose the general spirit and intent of Title 28 because as I said before it is on a corner lot and will not affect any adjoining properties because I have discussed this matter with Mr. Foudry.

Jim Hengesser

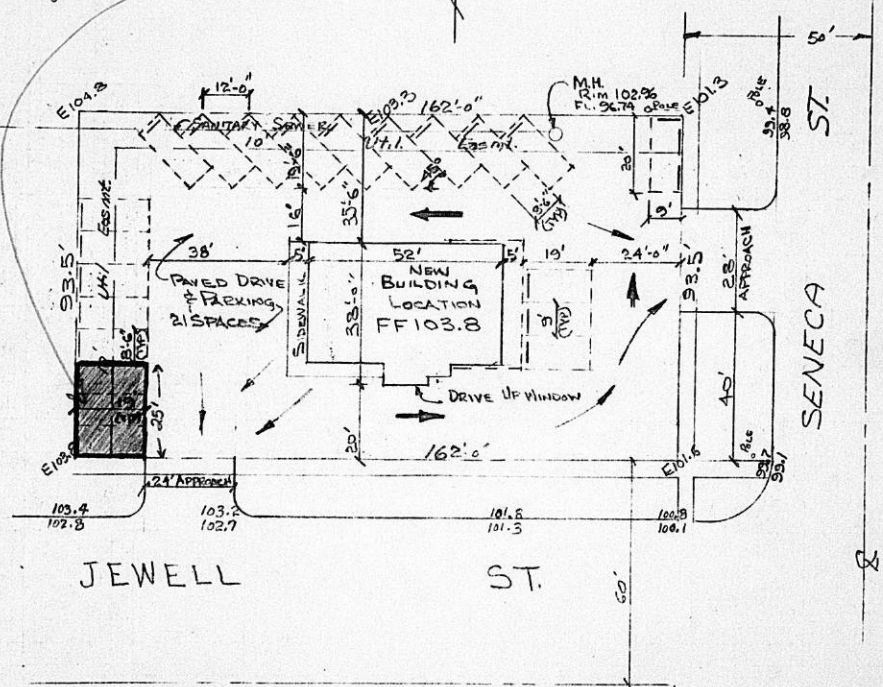
Variance Requested
19X25



~o PLOT PLAN ~o
SCALE: 1" = 30.0'

LOT 1, BLOCK 1 OF FOUFRAY ADDITION
TO WICHITA, SEDGWICK CO, KANSAS

VARIANCE Requested
19' x 25'



~ PLOT PLAN ~

SCALE: 1" = 30.0'

LOT 1, BLOCK 1 OF FOUDRAY ADDITION
TO WICHITA, SEDGWICK CO, KANSAS

CERTIFICATE OF OWNERSHIP

REALTY TITLE CO., INC., hereby certifies the following to be a true and correct list of the property owners as shown by the last deeds of record in the office of the Register of Deeds, Sedgwick County, Kansas, of:

Lot 1 except the north 100 feet thereof, in Block 1, in Hotmar Addition, Wichita, Sedgwick County, Kansas,

together with all real estate lying within a 200 foot radius thereof.

DESCRIPTION

OWNERS AND ADDRESSES

Hotmar Addition, Wichita:

Block 1

N 100' of Lot 1

✓ Taco Tico, Inc.
150 North Oliver
Wichita, Kansas 67208

Lot 1 except N 100'

✓ William C. Foudray and
Eleanor J. Foudray
1130 Jewell
Wichita, Kansas 67213

McAbdeel Second Addition to Wichita:

Lot 3

✓ McClellan-Fallon, Inc.
1302 Iroquois Road
Wichita, Kansas 67203

Lot 4

D Taco Tico, Inc.
150 North Oliver
Wichita, Kansas 67208

Seneca Manor Addition to Wichita:

Lot 1

✓ Seneca Manor, Inc.
1319 May Street
Wichita, Kansas 67213

Beatty and Johnson Addition:

Lot 2 except the E 30' thereof

D William C. Foudray and
Eleanor Foudray
1130 Jewell
Wichita, Kansas 67213

Lot 15 except the east 130' thereof

✓ June Evelyn Moore
1125 Jewell
Wichita, Kansas 67213

West 70' of E 130' of Lot 15

✓ Paul Duke and Elaine Duke
(No address available) 4120 E 45th rd

E 60' of Lot 15

✓ Oliver J. Hotmar and
Mellie Hotmar
1115 Jewell
Wichita, Kansas 67213

DESCRIPTION

In SW $\frac{1}{4}$ Section 32, Township 27 South, Range 1 East: Beginning on W line of Government Lot 7 417' S of NW corner of said Lot 7; thence S 71.7'; thence E 610.44' to W line of RR right of way; thence NWly along said W right of way line to a point 417' S of N line of said Lot 7; thence W 606.12' to beginning.

OWNERS AND ADDRESSES

L. J. VanValkenberg and
Vera W. VanValkenberg
(No address available)

*Not in
phone book
not in
city Dir
not in
Sully*

Seneca Haven, an Addition to Wichita:

Block 1

Lot 1

✓ Daniel J. Meechan and
Peggy J. Meechan
2046 South Seneca
Wichita, Kansas 67213

Lot 2

✓ Robert Joe Taylor and
Goldie L. Taylor
922 Jewell
Wichita, Kansas 67213

Block 2

Lot 2

✓ William G. Clement and
Eva M. Clement
921 Jewell
Wichita, Kansas 67213

Renollet 8th Addition, Wichita:

Lot 1 except the S 75' thereof

✓ John E. Shepherd and
Gladys B. Shepherd
1133 West 29th St. South
Wichita, Kansas 67217

S 75' of Lot 1

✓ Jack D. Rahm and
Agnes Irene Rahm
254 North Yale
Wichita, Kansas 67208

Seneca Haven Third Addition, Wichita:

Lot 1

✓ Harold A. Kingsley
2444 Bedford
Wichita, Kansas 67210

Hotmar Second Addition, Wichita:

Lot 1

✓ Quik-Trip Corporation
2778 South Seneca
Wichita, Kansas 67217

Harpers 2nd Addition to Wichita:

Block 2

Lot 15

✓ William Marris Curtis and
Doris Marie Curtis
1302 Rita
Wichita, Kansas 67213

DESCRIPTION

(Harpers 2nd Addition, Block 2 continued)

Lot 16

OWNERS AND ADDRESSES

Albert H. Payne, Jr., and
✓ Alda Marie Payne
1258 Rita
Wichita, Kansas 67213

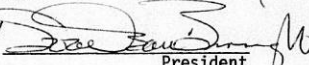
Lot 17

Ivan T. Hopkins and
✓ Freeda Laquita Hopkins
1252 Rita
Wichita, Kansas 67213

WITNESS our hand and seal at Wichita, Kansas, this 24th day
of August, 1976, at 7:00 o'clock A. M.

REALTY TITLE CO., INC.

By


President

No. H26876

Mailout

FORM 2-021

PAYMENT NOTICE
City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

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

DESCRIPTION AMOUNT

Name _____

Address _____

Type _____ Due Date _____

Comments: _____

Date _____ By _____
