

POSTED
6-26-85 RBL

Case No. BZA 39-85 - Bates-DeHart Real Estate Partnership, Wichita, Kansas, requests a variance to eliminate the required screening fence adjacent to the residential zoning on the south of property zoned the "LC" Light Commercial District and generally located on the

ACTION

B.Z.A. 39-85 Approved 7-23-85
DATE
withhold. cond.

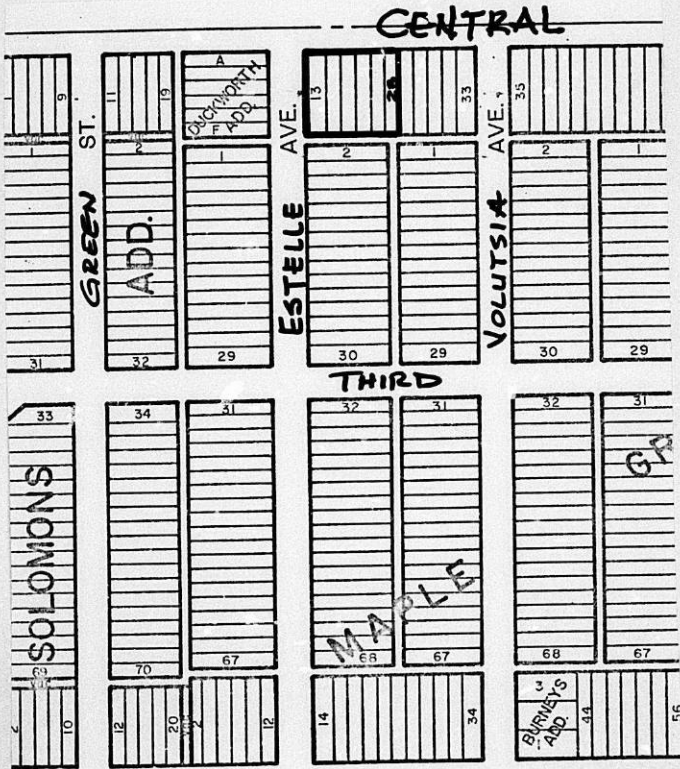
200 1/4 8-2-85
SHOT 9-5-85
RECORD _____

Map No. 5647A

BZA 39-85
Filed _____

AREA DATA:

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



July 26, 1985

Bates-DeHart Real Estate Partnership
2703 East Central
Wichita, Kansas 67214

Re: BZA 39-85 - Request for Variance

Gentlemen:

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

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

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

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL:sad
Encl.

cc: Gossen Livingston Associates, P.A., 420 S. Emporia, Wichita
Monty Robson, Superintendent of Central Inspection (2)
Don Gisick, City Clerk

RESOLUTION NO. BZA 39-85

WHEREAS, Bates-DeHart Real Estate Partnership, 2703 East Central, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening fence adjacent to residential zoning on the south on property zoned the "LC" Light commercial District and legally described as follows:

Lots 13, 15, 17, 19, 21 and 23, Maple Grove
Addition to Wichita, Sedgwick County, Kansas.
Generally located on the southeast corner of
Central and Estelle (2703 East Central).

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 23, 1985, consider said application; and

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

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as the alley is paved and provides ingress and egress to parking areas for the commercial development to the east and the application area has been developed for a number of years without screening; 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 location of the alley prevents the effectiveness of the screening fence that is required to be located on the north side of the alley; 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 installation of 160 feet of fence that would be located on the opposite side of the alley to provide protection to the residential property would be an undue expense; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the elimination of a screening fence would not interfere with any needed right-of-way or easements; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the lot has been existing for a number of years without screening and the intensity of use has not changed to create any additional affect on the residential property to the south; 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 as provided in Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening fence adjacent to residential zoning on the south on property zoned the "LC" Light commercial District and legally described as follows:

Lots 13, 15, 17, 19, 21 and 23, Maple Grove
Addition to Wichita, Sedgwick County, Kansas.
Generally located on the southeast corner of
Central and Estelle (2703 East Central).

be approved subject to the following conditions:

1. The screening fence along the south property line may be omitted as long as appropriate barriers are maintained to limit the access to the alley.
2. Screening shall be required around the trash container as set forth in Section 28.404.160-K.3 of the Zoning Ordinance.

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


William J. Goebel, President

ATTEST:


Glen E. Lytle, Assistant Secretary

RE: AGENDA ITEM NO. 4

SECRETARY'S REPORT CASE NO. BZA 39-85

APPLICANT: Bates-DeHart Real Estate Partnership, 2703 East Central, Wichita, Kansas.

AGENT: Gossen Livingston Associates, P.A., 420 South Emporia, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening of a commercial development adjacent to the south property line.

GENERAL LOCATION: On the southeast corner of Central and Estelle.

ZONING: Subject property is zoned the "LC" Light Commercial District as are the properties to the east, west and north. To the south is "A" Two-family Dwelling District.

LAND USE: Subject property is developed as medical offices. Properties to the north, east and west are developed commercially. A one-family dwelling is to the south across the alley.

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 to eliminate the required screening fence along the south property line that is adjacent to a paved alley that separates the applicant's property from the residence to the south. The site plan submitted with the application is apparently a copy of the site plan that was submitted to Central Inspection for the securing of the building permit in 1984 for the expansion of the office building. This site plan indicated the erection of the screening fence along the south property line. The parking layout does not require access to the alley.

There have been cases in the past where the screening has been requested to be eliminated. In most instances the variance has been granted due to the uniqueness of the property being located adjacent to properties that were developed other than residential i.e. (nonconforming uses) or were undeveloped tracts that the screening has been eliminated until the property is developed residential. In this case, the adjacent property is a residence that will be provided some protection by the installation of the screening fence. It appears that only one residence would be directly affected by the installation of or the deletion of the fence. The Secretary has not been provided with any statement that the adjacent property owner is in agreement or disagreement with the requested variance.

UNIQUENESS:

It is the opinion of the Secretary that this property is possibly unique inasmuch as the alley is paved and provides ingress and egress to parking areas for the commercial development to the east and the application area has been developed for a number of years without screening.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the location of the alley prevents the effectiveness of the screening fence that is required to be located on the north side of the alley.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as the installation of 160 feet of fence that would be located on the opposite side of the alley to provide protection to the residential property would be an undue expense.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as the elimination of a screening fence would not interfere with any needed right-of-way or easements.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the lot has been existing for a number of years without screening and the intensity of use has not changed to create any additional affect on the residential property to the south.

RECOMMENDATION:

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

1. The screening fence along the south property line may be omitted as long as appropriate barriers are maintained to limit the access to the alley.
-

BZA CASE NO. 39-85

<u>2</u>	NOTICES SENT TO APPLICANT/AGENT
<u>10</u>	LEGAL ADVERTISEMENT SENT TO MAPC
<u>1</u>	NOTICES SENT TO CPO
<u>20</u>	NOTICES SENT TO ADJOINING PROPERTY OWNERS
<u>23</u>	TOTAL NOTICES SENT <u>7-3-85</u>

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

July 3, 1985

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 39-85

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by Bates-DeHart Real Estate Partnership, 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 to eliminate the required screening fence adjacent to the residential zoning on the south on property zoned "LC" Light Commercial District. A legal description of the applicant's property is as follows:

Lots 13, 15, 17, 19, 21 and 23, Maple Grove
Addition to Wichita, Sedgwick County, Kansas.
Generally located on the southeast corner of
Central and Estelle (2703 East Central).

This application has been assigned Case BZA 39-85. It will be considered by the Board of Zoning Appeals on July 23, 1985 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested variance, you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, either in person or by agent or attorney.

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

BOARD OF ZONING APPEALS

CASE NO. 39-85

CITY OF WICHITA, KANSAS

FILED 6-24-85

APPLICATION FOR VARIANCE

I. Name of Applicant Bates-DeHart Real Estate Partnership
 Mailing Address 2703 E. Central Phone 685-2149
 Name of Authorized Agent Gossen Livingston Associates, P.A.
 Mailing Address 420 S. Emporia Phone 265-9367
 Relationship of applicant to property is that of owner
 (Owner, Tenant, Lessee, Other)

II. The variance requested is elimination of screening fence on the
south property line (see attached plan)

on the southeast corner of Central & Estelle
 for property located (2703 E. Central)

and legally described as: Lots 13, 15, 17, 19, 21, 23
Maple Grove Addition to Wichita, Sedg. Co., Ks.

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 William Bligh

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals,
4:30 (~~from~~ p.m.), JUNE 24, 1985 together with
 appropriate fee of 15.00.

Signed [Signature]

GOSSEN LIVINGSTON ASSOCIATES, P.A.

420 S. EMPORIA □ WICHITA, KANSAS 67202 □ 316-265-9367

June 24, 1985

Board of Zoning Appeals
City of Wichita
10th Floor, City Hall
455 N. Main
Wichita KS 67202

Re: Statement of Justification

Gentlemen:

The Bates-DeHart Real Estate Partnership hereby requests that the requirement to erect a screening fence along the south property line of the subject property located at 2703 E. Central and shown on the attached site plan be eliminated. It is felt that the fence serves no useful purpose in protecting adjacent land owners and, in this specific instance, is not warranted. Traffic flow in the alley for service vehicles (i.e., trash trucks) would be inhibited and cause a problem by creating an obstruction along one side rather than enhancing the condition.

The fence would further create a security problem for the property by creating a potential hiding place in the alley. The owners strongly oppose the erection of the fence on the basis that it does not serve the intended purpose and that it will be a public hazard.

It is respectfully requested that this requirement be eliminated.

We will be happy to meet representatives from the City at the site to review the conditions. When standing on the site, the inappropriateness of the fence becomes apparent.

Sincerely,



William B. Livingston, AIA

WBL/cw

Enclosure

497/1.6



ARCHITECTURE □ ENGINEERING □ PLANNING □ INTERIOR DESIGN

OWNERSHIP LIST

<u>Lot</u>	<u>Addition</u>	<u>Property Owner</u>
Lots 13, 15, 17, 19, 21 & 23	Maple Grove, on Central	Bates-DeHart Real Estate Partnership 2703 E. Central Wichita, KS 67214
Lots 25 & 27	"	Kenneth D. Powers, MD 2703 E. Central Wichita, KS 67214
Lots 29, 31 & 33	"	Notice of Interest: Michael D. Bates 2703 E. Central Wichita, KS 67214
Lot 35	"	Charles V. Lambertz 812 N. Waco Wichita, KS 67203
Lots 1 & 3	Maple Grove, on Volutsia	Wilbur B. Miller Mary B. Miller 1602 Womer Dr. Wichita, KS 67203
Lots 5 & 7	"	Sidney Lee Garrison Terry Lynn Garrison 443 N. Volutsia Wichita, KS 67214
Lots 9, 11 & 13	"	Mayme Holmes <u>Address Unknown</u>
Lots 2 & 4	"	Eugene R. Scheffe Helen M. Scheffe 1406 Louis Dr. Mulvane, KS 67110
Lots 6 & 8	"	Paul H. Snider Hazel M. Snider 211 S. Parkwood Wichita, KS 67218 <i>returned 7-12-85</i>
Lots 10 & 12	"	Ruth Freegard Schnarr Karne F. Barber 432 N. Estelle Wichita, KS 67214
Lots 14 & 16	"	Phyllis Huntington Fred Huntington Rt. 1 Eureka, KS 67045
Lots 1 & 3	"	Veterans Administration 901 George Washington Blvd. Wichita, KS 67211
Lots 1 & 3	"	David W. Kratz Pepper A. Kratz 435 N. Estelle Wichita, KS 67214

Lot	Addition	Property Owner
Lots 5 & 7	Maple Grove, on Estelle	Charles D. Smith Grace M. Smith 431 N. Estelle Wichita, KS 67214 <i>Returned 7-25-85</i>
Lots 9 & 11	"	Arthur O. Mooney Thelma E. Mooney 1530 S. Topeka Wichita, KS 67211
Lot 13	"	Goldie M. Cruise Noble C. Cruise 425 N. Estelle Wichita, KS 67214
Lots A, B, C & D	Duckworth's Addition	L & R Land Partnership 2627 E. Central Wichita, KS 67214
Lots E & F	"	Bill D. Capps Helen L. Capps 8725 Overbrook Ln. Wichita, KS 67206
Lots 46, 48 & 50	Mossman's Second, on Central	Cecil M. Cole Ophelius M. Cole 3314 Riverdale Wichita, KS 67204
Lots 52, 54, 56, 58, 60 & 62	"	Blue-Cross of Kansas, Inc. & Blue Sheild of Kansas, Inc. 2620 E. Central Wichita, KS 67214
Lots 64 & 66	"	Toke, Inc. c/o John Woodhams 63 Mission Rd. Wichita, KS 67207
Lots 68, 70, 72 & 74	"	Ashlin Properties Partnership 4720 E. 24th Wichita, KS 67220
Lots 76, 78, 80 & 82	"	Noble Properties, Inc. c/o Max Noble 1401 W. River Blvd. Wichita, KS 67203

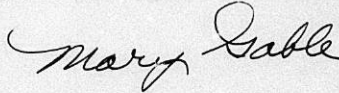
Page 3

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

Lots 13, 15, 17, 19, 21 and 23, on Central,
Maple Grove 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 21st day of June, 1985, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.



By
Sr. Vice-President

Order No: 347984
nj

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

July 3, 1985

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 39-85

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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

WICHITA - SEDGWICK COUNTY

W SC

BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

ATTEMPTED
NOT KNOWN
RETURN TO SENDER

RECEIVED

JUL 25 1985

METROPOLITAN PLANNING
ROUTE 22

Not at this address

Charles D. & Grace M. Smith
431 North Estelle
Wichita, Ks. 67214

WICHITA, KS
PM
JUL 24
1985
*722A
39-85*



Returned for
Carrier Endorsement

SMT 31 11050681 07/05/85
NOTIFY SENDER OF NEW ADDRESS
SMITH
4330 WILSON
WICHITA, KS 67218-3140

WICHITA - SEDGWICK COUNTY

W SC

BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

FILED
ORDER EXPIRED
RETURN TO SENDER

RECEIVED

JUL 12 1985

METROPOLITAN PLANNING
ROUTE Shirley

Paul H. & Hazel M. Snider
211 South Parkwood
Wichita, Ks. 67218

*722A
39-85*



SMT 11 040511N1 07/05/85

RETURN TO SENDER
NO FORWARDING ORDER ON FILE
UNABLE TO FORWARD

MICROFILMED
FROM THE BEST
AVAILABLE COPY

FORM 2 21 PAYMENT NOTICE
 City of Wichita

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

DESCRIPTION		AMOUNT
<i>Comptrol #1222</i>		
NAME		
ADDRESS		
FUND	DUE DATE	
COMMENTS		
DATE	BY	

*

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

Roll # 2