

Case No. BZA 40-80 - Dennis
R. Niedens requests a variance
to reduce the required front
yard setback from 20 feet to
7.65 feet for off-street
parking purposes only on
the "B" Multiple

See 11/28/80
for
10-23-80
10-27-80
Approved

POSTED
9-5-80
21

BZA
40-80

ACTION

COMMITTEE APPEALED DATE 9-23-80

M.A.P.C. _____

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

2nd 1/4 Sec 10-22-80
Shot 10-23-80
Recorded 10-27-80

Case No. BZA 40-80 - Dennis
R. Niedens requests a variance
to reduce the required front
yard setback from 20 feet to
7.65 feet for off-street
parking purposes only on
the "B" Multifamily

Map No. 5446
 Sec. 29
 Twp. 27
 Range 1E

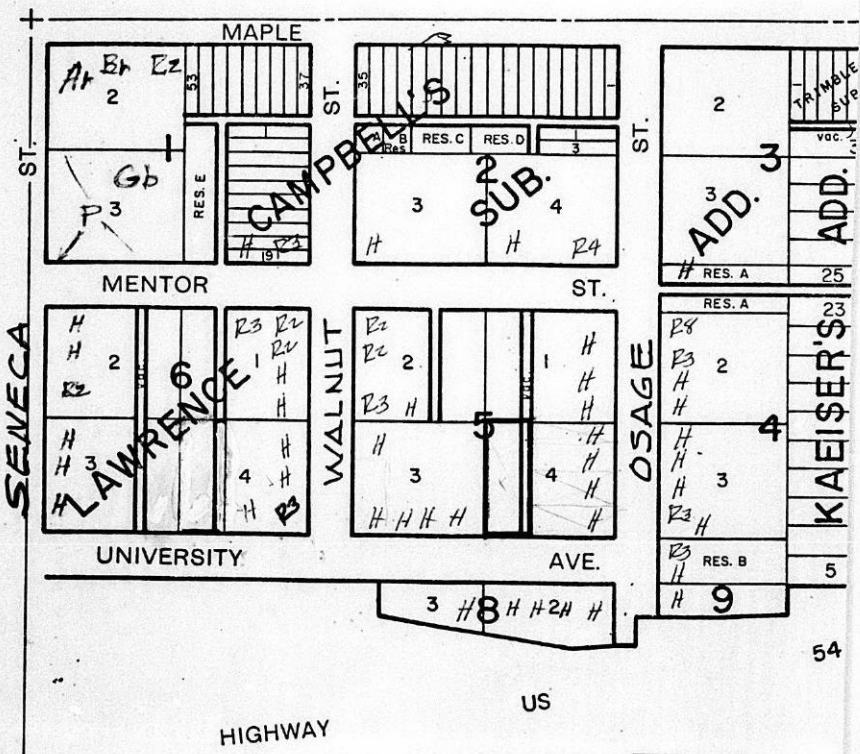
BZA- 40-80
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: _____ (76 ft. by 200 ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East SINGLE FARM South US-59 HI-WAY
 West UNDEVELOPED North UNDEVELOPED
4. Sketch Plan Land Use is for: _____
5. Present Land Use if for: _____
6. Area (is) (is not) platted. UNDEVELOPED

PHOTO DATA:

Taken by _____ Date 11 "B" 1977 Time _____



BZA 40-

RESOLUTION NO. BZA 49-78

WHEREAS, University Partnership, 1861 S. Hydraulic, Suite 1, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District, and legally described as:

West 76 ft. of lot 4, Block 5, Lawrence's Addition to Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

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 November 28, 1978, 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 long, narrow configuration of the lot makes locating the units on the back of the property; with parking in front the most logical site arrangement; 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 amenities such as low screening and intensive landscaping will be provided to lessen the impact of a parking lot extending into the front yard setback; 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 they would have to redesign their project to one aesthetically less pleasing; 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 parking area would be 7.65 feet from the sidewalk and 27.65 feet from the street; 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 apartment units will set back over 100 feet from the front property line and the use of screening and landscaping can lessen the impact of the parking lot on the neighborhood; 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.

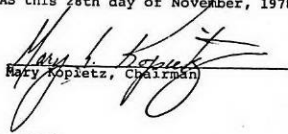
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District, and legally described as:

West 76 ft. of lot 4, Block 5, Lawrence's Addition to Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

be approved subject to the following conditions:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. An 8 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 12 foot area south of the buildings, the 8 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

ADOPTED AT WICHITA, KANSAS this 28th day of November, 1978.


Mary Kopletz, Chairman

ATTEST:


Jack H. Galbraith, Secretary

HARRY W. SAUMS
PATRICK L. DOUGHERTY

HARRY W. SAUMS
ATTORNEY AT LAW
SUITE 730
FOURTH FINANCIAL CENTER
100 NORTH BROADWAY
WICHITA, KANSAS 67202

29 July 1980

Office Of The City Manager	
<input type="checkbox"/> Mr. []	<input type="checkbox"/> Mr. []
<input type="checkbox"/> Mr. []	<input type="checkbox"/> Mr. []
<input type="checkbox"/> Mr. []	<input type="checkbox"/> Mr. []
JUL 30 1980	
<input type="checkbox"/> Copy To	
<input type="checkbox"/> Send To	
<input type="checkbox"/> File	

294-0336
AREA CODE 310

TO: The Honorable Mayor and Commissioners
of the City of Wichita, Kansas

I, Harry W. Saums, Attorney at Law, with offices at Room 730, Fourth Financial Center, Wichita, Kansas 67202, telephone 264-0336, advise that I represent Prairie Homes, Inc., a Kansas (for profit) corporation, Mr. Dennis Needens, President, with offices at 900 Tyler Road, Wichita, Kansas.

Prairie Homes, Inc. is the owner of the real property legally described as the West 76 feet of Lot Four (4), Block Five (5) Lawrence's Addition to West Wichita, Sedgwick County, Kansas. The specifically described property is zoned "B" Multiple-Family Dwelling, and Prairie Homes, Inc. has heretofore submitted its plans to the Central Inspection Division of the City of Wichita for approval of a multiple family housing project and subsequent issuance of a building permit.

Because of certain non-conforming conditions of the building site, it was necessary for Prairie Homes to seek a permissible variance of the non-conforming conditions. The requested and required variances were approved by the Board of Zoning Appeals on the 28th day of November, 1978.

Some time after the granting of the variance, the issuance of the building permit was halted, and it is believed that this was done because City of Wichita officials thought there was some question as to whether Prairie Homes owned the West 76 feet of Lot 4, Block 5, or the West 68 feet of Lot 4, Block 5.

Prairie Homes, Inc. requests that the building permit be issued and that this matter be placed on the "Public Agenda" portion of the matters to be considered by the City Commission at its August 5, 1980, meeting and that, after hearing

REFERENCE FROM St. Pierre
AUG 5 1980
AGENDA FOR: _____

29 July 1980
Page Two

the matter, the City Commission order that the building permit be issued forthwith.

Prairie Homes, Inc. contends that there is no question as to the quantity of land it owns, and Prairie Homes, Inc. contends that it, in fact, owns the West 76 feet of Lot 4, Block 5, as aforesaid. It is believed that the question of the quantity of land owned by Prairie Homes, Inc. arises because of the following sequence of events:

1. On December 4, 1916, City of Wichita Ordinance Number 5539 was passed, and the following described real property was condemned and appropriated for alley purposes:

"Beginning at a point 150 feet West of the Northeast corner of Lot 1, Block 5, Lawrence's Addition to Wichita, Kansas, thence South parallel with and 150 West of Osage Street to the North line of University Avenue, thence West 16 feet, to a point 16 feet West of beginning, thence East 16 feet to point of beginning."

See machine copy of Ordinance Number 5539 that is attached hereto and marked Exhibit "A."

2. The land for the 16-foot alley just described is the East 16 feet of the West 76 feet of Lot 4, Block 5, Lawrence's Addition; and, on December 4, 1916, the entire West 76 feet of Lot 4, Block 5 was owned by C. W. Brown. In other words, the land for the 16-foot alley was all taken from one owner, Mr. C. W. Brown. See statement of ownership issued by Columbian National Title Insurance of Wichita, Inc. dated July 28, 1980, certifying that record title to subject property was in C. W. Brown. Said statement is marked Exhibit "B."

3. The chain of title to the West 76 feet of Lot 4, Block 5 has come down from C. W. Brown to the present title holder, Prairie Homes, Inc., by a series of mesne conveyances, all using the legal description of the West 76 feet of Lot 4, Block 5.

29 July 1980
Page Three

4. On September 29, 1930, by City Ordinance Number 10-871, the alley in question was vacated, and there is a recital in the Ordinance as follows: "All title thereto relinquished to the abutting property in equal proportion." See copy of Ordinance Number 10-871, which is attached hereto and marked Exhibit "C."

5. Sometime within the past years, three of the remaining four owners of Lot 4 in Block 5 put fences up and located their fences eight feet to the rear of their lots, thus fencing in one-half of the vacated alley. The three property owners who did this had tracts deeded to them that were 50 feet by 150 feet; but, with their fence action, they actually fenced in an area 158 feet by 50 feet. It is our contention that this was an unlawful act for the following reason.

6. When the Ordinance of September 29, 1930, was passed, the law on where the title to the vacated alley passed was found in the General Statutes of Kansas, 1923, Section 14-443, which states as follows:

13-443. (43) Vacation and reopening of streets. To vacate and close any street or alley or portion thereof; and when any street or alley is vacated it shall revert to the owners of land thereto adjoining on each side, in proportion to the frontage of such land, except in cases where such street or alley may have been taken for public use in a difference proportion, in which case it shall revert to the adjoining land in the same proportion as it was taken from it: . . .

The exception portion of the quoted statute requires that title to the vacated land be returned from whence it came; and, as the entire 16 feet was taken from the West 76 feet, and the West 76 feet, at the time of taking, was all owned by C. W. Brown and is now all owned by Prairie Homes, Inc., then the law dictates that the entire 16 feet reverts to C. W. Brown's successor in title, who is Prairie Homes, Inc.

29 July 1980

Page Four

7. We next direct your attention to B2A Resolution Number 49-78, dated November 28, 1978, a copy of which is attached hereto. The alleged controversy described in the preceding six paragraphs does not really have any effect on the building plans or the improvements nor does it affect the parking; it only affects the beautification or planting area and it is our opinion that the adjoining property owners would still be effectively screened from Prairie Homes' project.

8. Prairie Homes is incurring daily damages. They have a rather substantial construction loan at a healthy rate of interest and have also expended substantial sums for planning and development of the project.

In conclusion, it is respectfully requested that the Commissioners of the City of Wichita order and instruct its proper agencies to issue the building permit so that Prairie Homes, Inc. may proceed with its project.

Respectfully submitted,

PRAIRIE HOMES, INC.

BY: 

HARRY W. SAUMS, its attorney

kat

attachments as indicated

EXHIBIT "B"

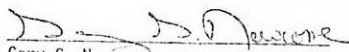
July 28, 1980

Columbian National
Title Insurance
of Wichita, Inc.

Columbian National Title Insurance of Wichita, Inc., a duly licensed and bonded abstractor in and for Sedgwick County, Kansas, hereby certifies as to the following facts concerning The West 76 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas, as of December 4, 1916; Fee title as of the above referenced date was in the name of C. W. Brown. Title was obtained from Oliver Mulvey et ux by two separate deeds both dated April 8, 1905 and recorded January 17, 1907.

Deed recorded in Deed Book 233, Page 414, conveyed the West 60 feet of subject property and Deed recorded in Deed Book 234, Page 77, Quit Claim Deeds convey the remaining 16 feet.

Columbian National Title Insurance
of Wichita, Inc.


Gary G. Newcome

AN ORDINANCE VACATING THE NORTH AND SOUTH ALLEY ACROSS LOTS ONE (1) AND FOUR (4), IN BLOCK FIVE (5), LAWRENCE'S ADDITION TO THE CITY OF WICHITA, DESCRIBED AS FOLLOWS: BEGINNING ONE HUNDRED FIFTY (150) FEET WEST OF THE NORTHEAST CORNER OF LOT ONE (1), IN BLOCK FIVE (5) IN LAWRENCE'S ADDITION TO THE CITY OF WICHITA, THENCE SOUTH PARALLEL WITH AND ONE HUNDRED FIFTY (150) FEET WEST OF OSAGE STREET TO THE NORTH LINE OF UNIVERSITY AVENUE, THENCE WEST SIXTEEN (16) FEET, THENCE NORTH TO A POINT SIXTEEN (16) FEET WEST OF THE PLACE OF BEGINNING, THENCE EAST SIXTEEN (16) FEET TO THE PLACE OF BEGINNING, ALL IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, SUBJECT TO CERTAIN RESTRICTIONS.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the north and south alley across lots one (1) and four (4) in block five (5), Lawrence's Addition to the City of Wichita, described as follows: Beginning one hundred fifty (150) feet west of the northeast corner of lot one (1) in block five (5) in Lawrence's Addition to the City of Wichita, thence south parallel with and one hundred fifty (150) feet west of Osage Street to the north line of University Avenue, thence west sixteen (16) feet, thence north to a point sixteen (16) feet west of the place of beginning, thence east sixteen (16) feet to the place of beginning, all in the City of Wichita, Sedgwick County, Kansas, be, and the same is hereby vacated and title thereto relinquished to the abutting property in equal proportion, subject only to the right of the City and Public Utility Corporations for use in the laying of all underground conduits of every kind and character, and for the maintenance of the same which are there now or may be installed, and for the use above ground of poles and wires and any other necessary instrumentalities used in Public Utility work, and for the use of said City; and any use of said alley-way by abutting owners must be at all times subject to the above described uses; and further provided that no improvements shall be erected on said property by the abutting property owners.

SECTION 2. This Ordinance shall be in force and effect from and after the passage and publication once in the official city paper.

Adopted, at Wichita, Kansas, this 29th day of September, 1930.

ATTEST:

City Clerk

Mayor

*This copy obtained by
Mable H. Kennedy, Jan. 13, 1975
Herman A. Bill*

RESOLUTION NO. BZA 49-78

WHEREAS, University Partnership, 1861 S. Hydraulic, Suite 1, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District, and legally described as:

West 76 ft. of lot 4, Block 5, Lawrence's Addition to Wichita, Sedgwick County, Kansas.
Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

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 November 28, 1978, 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 long, narrow configuration of the lot makes locating the units on the back of the property, with parking in front the most logical site arrangement; 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 amenities such as low screening and intensive landscaping will be provided to lessen the impact of a parking lot extending into the front yard setback; 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 they would have to redesign their project to one aesthetically less pleasing; 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 parking area would be 7.65 feet from the sidewalk and 27.65 feet from the street; 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 apartment units will set back over 100 feet from the front property line and the use of screening and landscaping can lessen the impact of the parking lot on the neighborhood; 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.

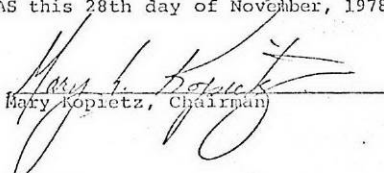
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District, and legally described as:

West 76 ft. of lot 4, Block 5, Lawrence's Addition to Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

be approved subject to the following conditions:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. An 8 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 12 foot area south of the buildings, the 8 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

ADOPTED AT WICHITA, KANSAS this 28th day of November, 1978.


Mary Kopietz, Chairman

ATTEST:


Jack H. Galbraith, Secretary

JACK:

Re: BZA 40-80, please note that there is no Page 15.

I believe that the pages were misnumbered.

EDIE

5. Case No. BZA 40-80 - Dennis R. Niedens, Prairie Homes, Inc. 900 North Tyler Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned "B" Multiple-family Dwelling District and legally described as follows:

The west 76 feet of Lot 4, Block 5, Lawrence Addition to west Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

LYTLE showed slides of the application area and reviewed the following comments from the Secretary's Report.

5. Case No. BZA 40-80 - Dennis R. Niedens, Prairie Homes, Inc.
900 North Tyler Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned "B" Multiple-family Dwelling District and legally described as follows:

The west 76 feet of Lot 4, Block 5, Lawrence Addition to west Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

LYTLE showed slides of the application area and reviewed the following comments from the Secretary's Report.

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 and 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 reduction of the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only. It should be noted that the same request has been previously approved by the Board of Zoning Appeals as Case No. BZA 49-78, however, since that time there is a dispute of ownership of the east 8 feet of the applicant's property. This apparently is a matter that will eventually have to be decided by the courts.

Due to the amount of time that it may take to resolve the dispute of ownership, the applicant has resubmitted this variance request. This is necessitated by the fact, that with only 68 feet of property, it is impossible to comply with one of the original conditions of approval of BZA 49-78 which stated that - "an 8 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area." The applicant has submitted a site plan which will provide only a 4 foot landscaped area adjacent to the east and west edge of the parking area.

The applicant has indicated that action is being filed in Sedgwick County District Court to quiet title against all property owner's to the east, but the applicant is wishing to proceed with the project pending such determination by the court. Only in the event that an adverse determination is received, will it be necessary to reduce the landscaped area to 4 feet adjacent to the east and west sides of the parking area.

It is the opinion of the Secretary that the application to be considered at this time is essentially the same as considered in Case BZA 49-78 and that the same criteria can be used to justify the 5 conditions necessary for the granting of the variance.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness can be found due to the long, narrow configuration of the lot that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance desired may not adversely affect the rights of adjacent property owners or residents if amenities such as low screening and intensive landscaping are provided to lessen the impact of a parking lot extending into the front yard setback.

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 applicants inasmuch as they would have to redesign their project to one aesthetically less pleasing.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired would not adversely affect the public interest inasmuch as the parking area would be 7.65 feet from the sidewalk and 27.65 feet from the curb.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested may not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the apartment units will set back over 100 feet from the front property line and the use of screening and landscaping can lessen the impact of the parking lot on the neighborhood.

RECOMMENDATION:

If the Board determines that the above five conditions can be found to exist, it is recommended that the following conditions be considered as conditions of approval:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.

4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

LYTLE stated the CPO Council recommended 3-0 to deny the request primarily because of the neighborhood objection to the project.

SQUIRES asked LYTLE if the objections were the same as the last time.

LYTLE said they were not valid objections, in his opinion, of the requested variance, but were objections of the location of apartments on the property.

JACOB asked LYTLE how many units are planned. LYTLE replied 16.

GOEBEL stated what do they mean by the landscaping being located over the existing sewer line.

LYTLE replied it's the same that in occurs over 90% of the residential property that the property owners put trees and shrubs in utility easements.

SQUIRES replied, if she remembered correctly the sewer line was at the back of the property.

LYTLE replied, the sewer is located on the old alley along the east property line.

SQUIRES asked if there was any more discussion from the board, if the board wished to question the applicant.

Stanley Sweeny, 521 South Osage, spoke in opposition stating that he lives near another apartment complex at Osage & University. and reflected upon the problems related to the neighborhood as the result of the occupants of the apartments and other rental units. Someway we would like to restrain the number of apartment residents in this area. People in the neighborhood want to maintain the walk for their children. We don't want to restrict the man from building on the property, but we want to provide restriction on adding apartment complexes in the area.

KOPIETZ stated the problems to which he was addressing does not fall within the jurisdiction of this board. She asked him do you think this would help you any if we did not grant the variance? Would it solve all your problems?

Sweeny stated they haven't provided enough parking for the number of units they propose. We are the ones who will have to pay for their upkeep.

GOEBEL stated he wanted to make a statement in reply to Sweeny's response. I don't think its our place to judge on the people who rent. I think they are trying to hold the building to a residential type atmosphere. 55' is the basic height limit in "B" family zoning which is basically a 5 level structure.

SQUIRES stated I know there are quite a few homes converted into apartment homes and the cost is cheaper.

Jennifer Fagan, 824 University, stated she understood that studio apartments are to be built there which means more people are transient. They are allowing for 16 parking spaces right now. You know there will be more friends, room mates, more cars. Where are they going to park, out in the street right where the children play? It seemed to her like they are trying to build too many units for the amount of space. First, it was 20 and now it is 16 units. I do not feel that the utilities are adequate now.

LYTLE stated based on the lot area, they would be permitted to build 23 dwelling units on the property. University street in this particular location is a much wider street than other residential streets. It is 80' where most are 60'.

Fagan commented is is going to be a violation of my company's rights to have to park 1 to 2 blocks away.

SQUIRES commented that is a particular problem throughout the older sections of the city.

KOPIETZ stated I think you are contradicting yourself. They are asking for more parking so they won't be taking up some of your space in your neighborhood.

SQUIRES asked what can the applicant do if we deny this request.

LYTLE stated that the applicant could redesign and build 23 dwelling units on this site.

Fagan asked how was this land acquired by the applicant.

Harry Saums, Attorney representing the owner, stated they acquired the property by purchasing and paying for it. The legal description is 76' and that is the way it has been for years and years.

The 16' alley that was vacated in 1930. The land goes back from where it comes. We have filed a suit in District Court to quiet the title.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

Page 18
BZA Minutes
9-23-80

Sweeny stated they haven't provided enough parking for the number of units they propose. We are the ones who will have to pay for their upkeep.

GOEBEL stated he wanted to make a statement in reply to Sweeny's response. I don't think it's our place to judge on the people who rent. I think they are trying to hold the building to a residential type atmosphere. 55' is the basic height limit in "B" family zoning which is basically a 5 level structure.

SQUIRES stated I know there are quite a few homes converted into apartment homes and the cost is cheaper.

Jennifer Fagan, 824 University, stated she understood that studio apartments are to be built there which means more people are transient. They are allowing for 16 parking spaces right now. You know there will be more friends, room mates, more cars. Where are they going to park, out in the street right where the children play? It seemed to her like they are trying to build too many units for the amount of space. First, it was 20 and now it is 16 units. I do not feel that the utilities are adequate now.

LYTLE stated based on the lot area, they would be permitted to build 23 dwelling units on the property. University street in this particular location is a much wider street than other residential streets. It is 80' where most are 60'.

Fagan commented it is going to be a violation of my company's rights to have to park 1 to 2 blocks away.

SQUIRES commented that is a particular problem throughout the older sections of the city.

KOPIETZ stated I think you are contradicting yourself. They are asking for more parking so they won't be taking up some of your space in your neighborhood.

SQUIRES asked what can the applicant do if we deny this request.

LYTLE stated that the applicant could redesign and build 23 dwelling units on this site.

Fagan asked how was this land acquired by the applicant.

Harry Saums, Attorney representing the owner, stated they acquired the property by purchasing and paying for it. The legal description is 76' and that is the way it has been for years and years.

The 16' alley that was vacated in 1930. The land goes back from where it comes. We have filed a suit in District Court to quiet the title.

SQUIRES asked if there was any more discussion.

GOEBEL stated am I right, that at the time this ground was platted, Wichita didn't have a parking ordinance.

LYTLE replied, parking regulations were first introduced in the mid 1940's. GOEBEL then replied, so the first 20-25 years they could have developed up to 23 dwelling units with just one parking stall. LYTLE replied yes.

SQUIRES asked if there was any more discussion.

MOTION: KOPIETZ moved, GOEBEL seconded that the five conditions set out in Section 2.12.590.B, of the Code as necessary for the granting of the variance has been found to exist and that the variance be granted subject to the conditions set forth in the Secretary's Report. Motion passed unanimously.

The official action of the Board is reflected in the adoption of the following resolution:

RESOLUTION NO. BZA 40-80

WHEREAS, Dennis R. Niedens, 900 North Tyler Road, Suite #7, Wichita, Kansas, requests a variance as provided in the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as follows:

The west 68 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

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 23, 1980, 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 property is of a long, narrow configuration that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south; 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 additional amenities such as low screening and intensive landscaping are provided to lessen the impact of the parking extending into the front yard setback; 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 applicant would have to redesign their project due to the conflict of ownership of the east 8 feet of the vacated alley; 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 parking area would still be 27.65 feet from the curb along University; 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 apartment units will set back over 100 feet from the front property line and the use of landscaping will lessen the impact of the parking in the 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 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as:

The west 68 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

be approved subject to the following conditions:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

ADOPTED AT WICHITA, KANSAS, this 23rd day of September, 1980.

Angela Squires, Vice-Chairman

ATTEST:

Glen E. Lytle, Assistant Secretary

6. Other Matters.

There being no other matters of business, the meeting was adjourned at 3:00 p.m.

Jack H. Galbraith
Secretary

5. Case No. BZA 40-80 - Dennis R. Niedens, Prairie Homes, Inc. 900 North Tyler Road, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned "B" Multiple-family Dwelling District and legally described as follows:

The west 76 feet of Lot 4, Block 5, Lawrence Addition to west Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

LYTLE showed slides of the application area and reviewed the following comments from the Secretary's Report.

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 and 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 reduction of the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only. It should be noted that the same request has been previously approved by the Board of Zoning Appeals as Case No. BZA 49-78, however, since that time there is a dispute of ownership of the east 8 feet of the applicant's property. This apparently is a matter that will eventually have to be decided by the courts.

Due to the amount of time that it may take to resolve the dispute of ownership, the applicant has resubmitted this variance request. This is necessitated by the fact, that with only 68 feet of property, it is impossible to comply with one of the original conditions of approval of BZA 49-78 which stated that - "an 8 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area." The applicant has submitted a site plan which will provide only a 4 foot landscaped area adjacent to the east and west edge of the parking area.

The applicant has indicated that action is being filed in Sedgwick County District Court to quiet title against all property owner's to the east, but the applicant is wishing to proceed with the project pending such determination by the court. Only in the event that an adverse determination is received, will it be necessary to reduce the landscaped area to 4 feet adjacent to the east and west sides of the parking area.

It is the opinion of the Secretary that the application to be considered at this time is essentially the same as considered in Case BZA 49-78 and that the same criteria can be used to justify the 5 conditions necessary for the granting of the variance.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness can be found due to the long, narrow configuration of the lot that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance desired may not adversely affect the rights of adjacent property owners or residents if amenities such as low screening and intensive landscaping are provided to lessen the impact of a parking lot extending into the front yard setback.

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 applicants inasmuch as they would have to redesign their project to one aesthetically less pleasing.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired would not adversely affect the public interest inasmuch as the parking area would be 7.65 feet from the sidewalk and 27.65 feet from the curb.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested may not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the apartment units will set back over 100 feet from the front property line and the use of screening and landscaping can lessen the impact of the parking lot on the neighborhood.

RECOMMENDATION:

If the Board determines that the above five conditions can be found to exist, it is recommended that the following conditions be considered as conditions of approval:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.

4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

LYTLE stated the CPO Council recommended 3-0 to deny the request primarily because of the neighborhood objection to the project.

SQUIRES asked LYTLE if the objections were the same as the last time.

LYTLE said they were not valid objections, in his opinion, of the requested variance, but were objections of the location of apartments on the property.

JACOB asked LYTLE how many units are planned. LYTLE replied 16.

GOEBEL stated what do they mean by the landscaping being located over the existing sewer line.

LYTLE replied it's the same that in occurs over 90% of the residential property that the property owners put trees and shrubs in utility easements.

SQUIRES replied, if she remembered correctly the sewer line was at the back of the property.

LYTLE replied, the sewer is located on the old alley along the east property line.

SQUIRES asked if there was any more discussion from the board, if the board wished to question the applicant.

Stanley Sweeny, 521 South Osage, spoke in opposition stating that he lives near another apartment complex at Osage & University. and reflected upon the problems related to the neighborhood as the result of the occupants of the apartments and other rental units. Someway we would like to restrain the number of apartment residents in this area. People in the neighborhood want to maintain the walk for their children. We don't want to restrict the man from building on the property, but we want to provide restriction on adding apartment complexes in the area.

KOPIETZ stated the problems to which he was addressing does not fall within the jurisdiction of this board. She asked him do you think this would help you any if we did not grant the variance? Would it solve all your problems?

Sweeny stated they haven't provided enough parking for the number of units they propose. We are the ones who will have to pay for their upkeeping.

GOEBEL stated he wanted to make a statement in reply to Sweeny's response. I don't think its our place to judge on the people who rent. I think they are trying to hold the building to a residential type atmosphere. 55' is the basic height limit in "B" family zoning which is basically a 5 level structure.

SQUIRES stated I know there are quite a few homes converted into apartment homes and the cost is cheaper.

Jennifer Fagan, 824 University, stated she understood that studio apartments are to be built there which means more people are transient. They are allowing for 16 parking spaces right now. You know there will be more friends, room mates, more cars. Where are they going to park, out in the street right where the children play? It seemed to her like they are trying to build too many units for the amount of space. First, it was 20 and now it is 16 units. I do not feel that the utilities are adequate now.

LYTLE stated based on the lot area, they would be permitted to build 23 dwelling units on the property. University street in this particular location is a much wider street than other residential streets. It is 80' where most are 60'.

Fagan commented is is going to be a violation of my company's rights to have to park 1 to 2 blocks away.

SQUIRES commented that is a particular problem throughout the older sections of the city.

KOPIETZ stated I think you are contradicting yourself. They are asking for more parking so they won't be taking up some of your space in your neighborhood.

SQUIRES asked what can the applicant do if we deny this request.

LYTLE stated that the applicant could redesign and build 23 dwelling units on this site.

Fagan asked how was this land acquired by the applicant.

Harry Saums, Attorney representing the owner, stated they acquired the property by purchasing and paying for it. The legal description is 76' and that is the way it has been for years and years.

The 16' alley that was vacated in 1930. The land goes back from where it comes. We have filed a suit in District Court to quiet the title.

SQUIRES asked if there was any more discussion.

GOEBEL stated am I right, that at the time this ground was platted, Wichita didn't have a parking ordinance.

LYTLE replied, parking regulations were first introduced in the mid 1940's. GOEBEL then replied, so the first 20-25 years they could have developed up to 23 dwelling units with just one parking stall. LYTLE replied yes.

SQUIRES asked if there was any more discussion.

MOTION: KOPIETZ moved, GOEBEL seconded that the five conditions set out in Section 2.12.590.B, of the Code as necessary for the granting of the variance has been found to exist and that the variance be granted subject to the conditions set forth in the Secretary's Report. Motion passed unanimously.

The official action of the Board is reflected in the adoption of the following resolution:

RESOLUTION NO. BZA 40-80

WHEREAS, Dennis R. Niedens, 900 North Tyler Road, Suite #7, Wichita, Kansas, requests a variance as provided in the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as follows:

The west 68 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

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 23, 1980, 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 property is of a long, narrow configuration that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south; 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 additional amenities such as low screening and intensive landscaping are provided to lessen the impact of the parking extending into the front yard setback; 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 applicant would have to redesign their project due to the conflict of ownership of the east 8 feet of the vacated alley; 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 parking area would still be 27.65 feet from the curb along University; 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 apartment units will set back over 100 feet from the front property line and the use of landscaping will lessen the impact of the parking in the 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 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as:

The west 68 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

be approved subject to the following conditions:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

ADOPTED AT WICHITA, KANSAS, this 23rd day of September, 1980.

Angela Squires, Vice-Chairman

ATTEST:

Glen E. Lytle, Assistant Secretary

6. Other Matters.

There being no other matters of business, the meeting was adjourned at 3:00 p.m.

Jack H. Galbraith
Secretary

April 29, 1981

George E. Grist, P.A.
107 South Market, Suite 408
Wichita, Kansas 67202

Re: Subpoena Case No. 80 C 2384
Prairie Homes v. Sweney

Dear Mr. Grist:

Enclosed are the checks received by Mr. Shirkey and me this morning. It has been customary for our department to return these to the Deputy delivering the subpoena. Today, however, he did not want to take them back.

As I discussed with you by phone this afternoon, we had to assume from the subpoena that you were interested in two BZA case files on University although the instructions were to bring all our records regarding properties at the 500 block of South Osage. We have no records for the descriptions you gave. Also, because of prior scheduled appointments, I was inconvenienced all morning after receiving a subpoena without having ever been contacted or alerted by you that we might be requested to introduce evidence. Also, without having been contacted, I have no idea as to what information from our files you wish to introduce. As the subpoena stated, I called your office approximately fifteen minutes after receiving it (approximately 8:30 a.m.) and was not advised until after lunch that no court had been assigned.

I have no idea why two people from my division have been subpoenaed; both Shirkey and me. Shirkey is not reflected in either of the files as being involved in either of the cases. He did not make either of the presentations, nor is he assigned to do so. I am elected as Secretary of the Board of Zoning Appeals and in both cases there were different elected Assistant Secretaries.

I would appreciate having you contact me by phone several days in advance of an expected hearing so that we can set a time to go over the materials in the file that you want to introduce as evidence. We will Xerox copies of any materials you want,

Page Two
George E. Grist
April 29, 1981

at cost. There is only one copy of several different maps in the files that, if you want copies, they need either to be Xeroxed and spliced together, or sent out for the copies you need. Copies of our materials have been acceptable in the past so that our files are not removed from the office as they are public records and must be available to all.

I am certainly available to assist you but do expect some advanced warning.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:el

(Enclosures (2))

cc: H. R. Kuhn, Assistant City Attorney
300 West Douglas, Suite 330, Wichita 67202

In The Eighteenth Judicial District
District Court, Sedgwick County, Kansas

DUCES TECUM
SUBPOENA

The State of Kansas
Sedgwick County

} stc

Case No. 80 C 2384

THE STATE OF KANSAS

JACK H. GALBRAITH

Board of Zoning Appeals

City Hall, 10th floor

Wichita, Kansas

*\$500.00 witness fees attached for Shirkey
\$500.00 witness fees attached for Van Braeth*

LYNN SHIRKEY

Board of Zoning Appeals

City Hall, 10th floor

Wichita, Kansas

PLEASE CALL ON RECEIPT
OF THIS SUBPOENA TO BE
ADVISED OF COURT AND
TIME.

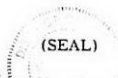
GEORGE E. GRIST, 262-7479

\$5.00 witness fees attached

Please bring with you all records regarding properties at 500 block
of South Osage (west side of street) and alley and easements behind
said properties.

WE COMMAND YOU to be and appear in your own proper person before the Judge of Division No. 2,
of the District Court of the County of Sedgwick, at the Court House in Wichita, County of Sedgwick, on the
29th day of April, 19 81, at 9:00 o'clock A.M., of that day, then and there to testify on
behalf of the defendants in a certain controversy now pending and undetermined in said court,
wherein Prairie Homes, Inc. is plaintiff and Miles W. Sweeney, et al defendant,
and this do you in nowise omit under the penalty of the law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my
office in Wichita, this 28 day of April, A. D. 19 81.



(SEAL)

DOROTHY I. VAN ARSDALE
Clerk

George E. Grist
GEORGE E. GRIST, P.A. Atty. for defendants

Salvatore Steward
Deputy Clerk.

SHERIFF'S (MARSHAL'S) RETURN

Received this writ _____, 19____. Served the same by delivering a certified copy
to each person named personally, at the times following, to-wit:

_____	19	_____	19
_____	19	_____	19
_____	19	_____	19
_____	19	_____	19

Served the same by leaving a copy thereof at the usual place of residence, at the times following, to-wit:

_____	19	_____	19
_____	19	_____	19
_____	19	_____	19

The following persons not found in Sedgwick County:

_____	19	_____	19
_____	19	_____	19

PLAINTIFF'S ATTORNEY (Name and Address):
GEORGE E. GRIST, P.A.
408 Bitting Building
Wichita, KS 67202

Sheriff (Marshal)

DEPUTY

In The Eighteenth Judicial District
District Court, Sedgwick County, Kansas

DUCES TECUM
SUBPOENA

The State of Kansas
Sedgwick County

} etc

Case No. 80 C 2384

THE STATE OF KANSAS

JACK H. GALBRAITH

Board of Zoning Appeals

City Hall, 10th floor

Wichita, Kansas

*\$500 mit fee attached for Galbraith
\$500 mit fee attached for Shurkey*

LYNN SHIRKEY

Board of Zoning Appeals

City Hall, 10th floor

Wichita, Kansas

PLEASE CALL ON RECEIPT
OF THIS SUBPOENA TO BE
ADVISED OF COURT AND
TIME.

GEORGE E. GRIST, 262-7479

\$5.00 witness fees attached

Please bring with you all records regarding properties at 300 bibck
of South Osage (west side of street) and alley and easements behind
said properties.

WE COMMAND YOU to be and appear in your own proper person before the Judge of Division No. _____, of the District Court of the County of Sedgwick, at the Court House in Wichita, County of Sedgwick, on the 29th day of April, 19 81, at 9:00 o'clock A.M., of that day, then and there to testify on behalf of the defendants in a certain controversy now pending and undetermined in said court, wherein Prairie Homes, Inc. is plaintiff and Miles W. Sweeney, et al defendant, and this do you in nowise omit under the penalty of the law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Wichita, this 28 day of April, A. D. 19 81.



DOROTHY I. VAN ARSDALE
Clerk

George E. Grist
Atty. for defendants
GEORGE E. GRIST, P.A.

Dorothy I. Van Arsdale
Deputy Clerk.

SHERIFF'S (MARSHAL'S) RETURN

Received this writ _____, 19____. Served the same by delivering a certified copy to each person named personally, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

Served the same by leaving a copy thereof at the usual place of residence, at the times following, to-wit:

_____	19____	_____	19____
_____	19____	_____	19____
_____	19____	_____	19____

The following persons not found in Sedgwick County:

_____	19____	_____	19____
_____	19____	_____	19____

PLAINTIFF'S ATTORNEY (Name and Address):
GEORGE E. GRIST, P.A.
408 Bitting Building
Wichita, KS 67202

Sheriff (Marshal)

DEPUTY

THE CITY OF WICHITA



BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4421

October 1, 1980

Dennis R. Niedens, President
Prairie Homes, Inc.
900 North Tyler Road, Suite #7
Wichita, Kansas

Re: Case No. BZA 40-80
Request for Variance

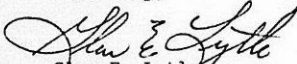
Dear Mr. Niedens:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on September 23, 1980, in connection with your request for a variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned "B" Multiple-family Dwelling District and generally located on the north side of University between Osage and Walnut Streets (818 University).

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
Enclosure

cc: Columbian National Title Insurance Co., 216 W. Murdock, Wichita
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk

RESOLUTION NO. BZA 40-80

WHEREAS, Dennis R. Niedens, 900 North Tyler Road, Suite #7, Wichita, Kansas, requests a variance as provided in the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as follows:

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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 23, 1980, 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 property is of a long, narrow configuration that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south; 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 additional amenities such as low screening and intensive landscaping are provided to lessen the impact of the parking extending into the front yard setback; 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 applicant would have to redesign their project due to the conflict of ownership of the east 8 feet of the vacated alley; 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 parking area would still be 27.65 feet from the curb along University; 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 apartment units will set back over 100 feet from the front property line and the use of landscaping will lessen the impact of the parking in the 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 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as:

The west 68 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

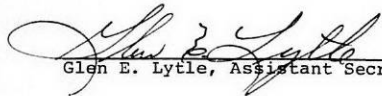
be approved subject to the following conditions:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

ADOPTED AT WICHITA, KANSAS, this 23rd day of September, 1980.


Angela Squires, Vice-Chairman

ATTEST:


Glen E. Lytle, Assistant Secretary

September 26, 1980

Dennis R. Niedens, President
Prairie Homes, Inc.
900 North Tyler Road, Suite 47
Wichita, Kansas

Re: Case No. BEA 40-80
Request for Variance

Dear Mr. Niedens:

At the regular meeting of the Board of Zoning Appeals on September 23, 1980, your request for a variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned "B" Multiple-family Dwelling District and generally located on the north side of University between Osage and Walnut Streets (818 University) was considered.

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

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4-foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4-foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.

4. A 3-1/2 to 4-foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3-feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3-feet in the front 20-foot setback area. The 3-foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Sincerely yours,

Glen E. Lytle
Assistant Secretary

GEL:sad

cc: Columbian National Title Insurance Co., 216 W. Murdock, Wichita
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE September 22, 1980

TO Glen Lytle, Special Assistant for Zoning
FROM Shirley Mast, CPO Administrative Aide

SUBJECT BZA 40-80: North side of University
between Osage and Walnut (818 University)

At their meeting of September 18, 1980, CPO Council "0" considered the captioned case.

Eleven adjoining property owners were present and spoke in opposition to the variance request. Concerns cited by the property owners were, increased traffic related problems in the area, and possible sewer system problems because part of the designed landscape is located over an existing sewer line.

No representative was present to speak in support of the application.

CPO Council "0" voted 3-0 to recommend denial of the variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes for the following reasons:

- (a) overwhelming neighborhood opposition to the variance request and
- (b) increased traffic related problems in the area.

Please provide the Council's recommendation to the Board of Zoning Appeals when the case is considered at the September 23 meeting.

Shirley Mast
Shirley Mast
CPO Administrative Aide

SM:m1

Noted:

Sarah Gilbert
Sarah Gilbert
Assistant CP Coordinator

RECEIVED

SEP 23 1980

METROPOLITAN PLANNING

ROUTE _____

SECRETARY'S REPORT
CASE NO. BZA 40-80

APPLICANT: Dennis R. Niedens, Prairie Homes, Inc.,
900 North Tyler Road, Wichita, Kansas

AGENT: Columbia National Title Insurance, Co.,
216 West Murdock, 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 feet
to 7.65 feet for off-street parking
purposes only.

GENERAL LOCATION: On the north side of University between
Osage and Walnut Streets (S18 University).

ZONING: Subject property is zoned "B" Multiple-family
Dwelling District as are all adjacent
properties.

LAND USE: Subject property is vacant. Properties to
the east, west and south are developed as
single-family, however in the general
vicinity there are numerous two, three and
four-family dwellings.

COMMENTS BY THE SECRETARY:

The applicant is requesting a reduction of the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only. It should be noted that the same request has been previously approved by the Board of Zoning Appeals as Case No. BZA 49-78, however, since that time there is a dispute of ownership of the east 8 feet of the applicant's property. This apparently is a matter that will eventually have to be decided by the courts.

Due to the amount of time that it may take to resolve the dispute of ownership, the applicant has resubmitted this variance request. This is necessitated by the fact, that with only 68 feet of property, it is impossible to comply with one of the original conditions of approval of BZA 49-78 which stated that - "an 8 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area." The applicant has submitted a site plan which will provide only a 4 foot landscaped area adjacent to the east and west edge of the parking area.

Page 2
BZA 40-80
BZA AGENDA
9-23-80

The applicant has indicated that action is being filed in Sedgwick County District Court to quiet title against all property owner's to the east, but the applicant is wishing to proceed with the project pending such determination by the court. Only in the event that an adverse determination is received, will it be necessary to reduce the landscaped area to 4 feet adjacent to the east and west sides of the parking area.

It is the opinion of the Secretary that the application to be considered at this time is essentially the same as considered in Case BZA 49-78 and that the same criteria can be used to justify the 5 conditions necessary for the granting of the variance.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness can be found due to the long, narrow configuration of the lot that makes locating the units on the back of the property, with parking in front the most logical site arrangement and that the excess width of University provides adequate separation from properties to the south.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance desired may not adversely affect the rights of adjacent property owners or residents if amenities such as low screening and intensive landscaping are provided to lessen the impact of a parking lot extending into the front yard setback.

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 applicants inasmuch as they would have to redesign their project to one aesthetically less pleasing.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance desired would not adversely affect the public interest inasmuch as the parking area would be 7.65 feet from the sidewalk and 27.65 feet from the curb.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested may not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the apartment units will set back over 100 feet from the front property line and the use of screening and landscaping can lessen the impact of the parking lot on the neighborhood.

RECOMMENDATION:

If the Board determines that the above five conditions can be found to exist, it is recommended that the following conditions be considered as conditions of approval:

1. The front yard setback shall be reduced to 7.65 feet for off-street parking purposes only, with no permanent structures permitted to be erected thereon.
2. A 4 foot side yard setback adjacent to both the east and west sides of the parking lot shall remain unpaved for use as a landscaped area.
3. The applicants shall submit two copies of a detailed landscape plan, for the 4 foot side yard areas adjacent to the parking lot and the 7.65 foot front yard setback, to the Secretary of the Board for his approval. The plan should indicate the size, type and location of plantings designed to afford maximum buffering to the surrounding residential neighborhood.
4. A 3-1/2 to 4 foot high solid masonry wall or fence constructed of cedar or redwood shall be erected adjacent to and within 3 feet of the east and west edges of the paved parking area, except the height of the fence shall be reduced to 3 foot in the front 20 foot setback area. The 3 foot high fence shall be continued along the front 7.65 foot setback except for the point of access.

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

September 1, 1980

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 40-80

An application has been filed by Dennis R. Niedens, 900 North Tyler Road, Suite #7, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple-family Dwelling District and legally described as follows:

The west 76 feet of Lot 4, Block 5, Lawrence Addition to West Wichita, Sedgwick County, Kansas. Generally located on the north side of University in an area between Osage and Walnut Streets (818 University).

This application has been assigned case No. BZA 40-80, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, September 23, 1980, 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. If you have any questions about this application, please call 268-4390 and ask for Lynn Shirkey or 268-4394 and ask for Glen Lytle.

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.

Jack H. Galbraith
Secretary

BZA CASE NO. 40-80

2 NOTICES SENT TO APPLICANT/AGENT

10 NOTICES SENT TO MAPC

1 NOTICES SENT TO CPO

31 NOTICES SENT TO ADJOINING PROPERTY OWNERS

44 TOTAL NOTICES SENT 9-1-80

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. 40-80
FILED 8-25-80

APPLICATION FOR VARIANCE

I. Name of Applicant Dennis R. Niedens as President of Prairie Homes, Inc.
Mailing Address 900 N. Tyler Road, Suite #7 Phone 722-8541
Name of Authorized Agent Columbian National Title Insurance Co.
Mailing Address 216 West Murdock Phone 262-8231
Relationship of applicant to property is that of Owner
(Owner, Tenant, Lessee, Other)

II. The variance requested is See Attached to reduce the required front yard setback from 20 feet to 7.65 feet for off-street parking purposes only on property zoned the "B" Multiple Dwelling for property located (818 University) Wichita, Kansas Swelling District
North side of University from an area between Cottage and Walnut Streets
and legally described as: The West 76 feet of Lot 4, Block 5, LAWRENCE ADDITION to West Wichita, Sedgwick County, Kansas.

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

III. The applicant herein, or his authorized agent, acknowledges:

- That he has received an instruction sheet concerning the filing and hearing of this matter;
- 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;
- 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.
- That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Applicant Dennis R. Niedens

Dennis R. Niedens

Authorized Agent Pat O'Rourke

Columbian National Title Insurance Co.
By: Pat O'Rourke, Vice President

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals, 4:30 (a.m.-p.m.), Aug 25, 1980 together with appropriate fee of _____

Signed John H. Albert

The variance requested herein is exactly the same as the variance on this property previously granted in Board of Zoning Appeals Case No. 49-78, except the condition requiring screening on a seventy-six foot lot should be amended down to a sixty-eight foot lot on the parking area only, PROVIDED THAT it is judicially determined that Applicant does not have legal title to the easterly eight foot of Applicant's seventy-six foot lot which was the subject matter of the original variance request.

In support hereof, Applicant states as follows:

1. Some of the adjacent property owners contest Applicant's ownership of the easterly eight foot strip of Applicant's lot which has caused a revocation of Applicant's original building permit upon said property.
2. Applicant contends it has absolute ownership of said eight foot strip and Applicant has a Title Insurance Commitment showing fee title to all seventy-six feet vested in Applicant covering the property in question. (See copy of Title Insurance Commitment attached hereto and marked Exhibit "A".)
3. Applicant's attorney has further researched the question of ownership of this eight foot easterly strip and supports the Applicant's absolute ownership thereof. (See copy of letter from attorney Harry W. Saums dated July 23, 1980, attached hereto and marked Exhibit "B".)
4. Applicant is filing forthwith in the Sedgwick County District Court a quiet title action against all easterly adjacent owners contesting Applicant's ownership to said eight foot strip to quiet title the contested portion, but Applicant cannot wait for a final determination before commencing construction on the proposed project without incurring severe financial losses.
5. Applicant's attorney has presented facts to the Wichita City Commission requesting the re-issuance of the building permit which was reviewed by John Dekker, City Attorney, and the City Attorney recommended that this contingent variance application be made and approved before any building permit could be re-issued.
6. Applicant has obtained a construction loan and is currently being charged interest on said loan, thereby causing Applicant considerable financial hardship each day the building permit is withheld.
7. In the event of an adverse determination by the Sedgwick County District Court against Applicant as to Applicant's ownership of the eight foot easterly strip of land on the property in question, attached hereto and marked Exhibit "C" is the alternate landscaping plan for a sixty-eight foot lot which decreases the area of screening on the parking area only, and would not materially affect or change the original variance granted in Board of Zoning Appeals Case No. 49-78 except as hereinbefore stated.

COMMITMENT FOR TITLE INSURANCE

Issued by

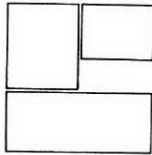


Exhibit "A"

COLUMBIAN NATIONAL TITLE INSURANCE COMPANY

820 QUINCY STREET

TOPEKA, KANSAS 66612

(913) 232-0548

Columbian National Title Insurance Company, a Kansas corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor: all subject to the provisions of Schedule A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate one hundred eighty (180) days after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Columbian National Title Insurance Company has caused its corporate name and seal to be hereunto affixed on the date shown in Schedule A to become effective when countersigned by either a Vice President, Assistant Vice President, Treasurer, Assistant Secretary or Validating Agent.

COLUMBIAN NATIONAL TITLE INSURANCE COMPANY



Sam M. Coffey
President

COUNTERSIGNED:

By *[Signature]*
Authorized Signatory

Attest:

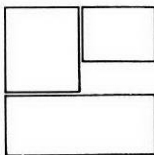
John W. Dajani, Jr.
Secretary

EXHIBIT "B"

CONDITIONS AND STIPULATIONS

1. The term mortgage, when used herein, shall include deed of trust, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose actual knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage hereon covered by his Commitment must be based on and are subject to the provisions of this Commitment.
5. In mortgage and/or purchaser under contract policies, Company will not insure against any loss or damage by reason of the following:
 - a. Usury or claims of usury.
 - b. Any "consumer credit protection" "truth-in-lending", or similar law.

Since it is intended by this exclusion to afford no policy protection against loss arising from this source, no responsibility will be assumed for non-compliance with closing or escrow instructions which require the closer acting in behalf of the Company to determine whether the performance of, or failure to perform, any given act constitutes compliance with, or a breach of, the provisions of any such law.



COLUMBIAN
NATIONAL TITLE
INSURANCE COMPANY

COMMITMENT
for
TITLE
INSURANCE

COLUMBIAN
NATIONAL TITLE
INSURANCE COMPANY

820 Quincey Street
Topeka, Kansas
66612

COMMITMENT FORM

SCHEDULE A

Custom Const.
Commitment No.: 4539-80

- 1. Effective date: June 25, 1980 @ 7:00 A.M.
- 2. Policy or Policies to be issued. Amount
 - (a) Owner's Policy (ALTA, Standard Owner's form) \$270,000.00
Proposed Insured: Prairie Homes, Inc., a Kansas Corporation
 - (b) Loan Policy (ALTA, Standard Loan form) \$216,000.00
Proposed Insured: Mid Kansas Federal Savings and Loan Association
- 3. The estate or interest in the land described or referred to in this commitment and covered herein is fee simple _____ and as of the effective date hereof vested in: Prairie Homes, Inc., a Kansas Corporation
- 4. The land referred to in this Commitment is described as follows:

The West 76 feet of lot 4, Block 5
LAWRENCE ADDITION to West
Wichita, Sedgwick County, Kansas

10-36

Returned	Del	to	MR	on	7/11	0
Forward	mtg	to	"	on	"	"
		to				
		to				
		to				

● COMMITMENT FORM ●

SCHEDULE B

I. The following are the requirements to be complied with:

- 1. *Filed 7/2* Record Mortgage executed by the duly authorized officer(s) of Prairie Homes, Inc., a Kansas Corporation in favor of Mid Kansas Federal Savings and Loan Association to secure the loan. 425-1347
- 2. Lien Affidavit and Statement executed by sellers/and/or contractors, if any, stating that all bills are paid for labor and/or material which might form the basis for a materialman's or mechanic's lien.
- 3. Furnish title company a certificate from a licensed surveyor, dated subsequent to the recording of required mortgage, showing no improvements to subject property prior to recording date of required mortgage.
- 4. *Filed 7/2* Record release of mortgage dated April 16, 1980, executed by Prairie Homes, Inc., in favor of Cherokee Properties, Inc., in the original amount of \$9,750.00, recorded April 24, 1980, on Film 416, Page 937. 425-1355

NOTE: Taxes for the year 1979, in the original amount of \$83.21, and prior years are paid. Tax key number: D-429

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- 1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof, but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- 2. General Taxes for due or payable therewith. the year 1980... and all subsequent years, and special assessments
- 3. Rights of parties in possession not shown of record, and questions of boundary, location of improvements or any state of facts dependent on actual survey for determination.
- 4. Mechanic's Liens if any not shown of record.

HARRY W. SAUMS
ATTORNEY AT LAW
SUITE 730
FOURTH FINANCIAL CENTER
100 NORTH BROADWAY
WICHITA, KANSAS 67202

HARRY W. SAUMS
PATRICK L. DOUGHERTY

23 July 1980

284-0336
AREA CODE 316

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Ethel L. Sweney
521 South Osage
Wichita, Kansas 67213

Mr. and Mrs. Edwin L. Easley
527 South Osage
Wichita, Kansas 67213

Mr. and Mrs. Frank T. Frase
528 South Osage
Wichita, Kansas 67213

Mr. and Mrs. Clarence E. Nutter
802 University
Wichita, Kansas 67213

Dear Ms. Sweney, Mr. and Mrs. Easley, Mr. and Mrs. Frase, and
Mr. and Mrs. Nutter:

I want to call your attention to a matter that concerns
a problem that you all have in common with my client, Prairie
Homes, Inc.

My client owns the west 76 feet of Lot 4, Block 5,
Lawrence Addition to the City of Wichita, Sedgwick County,
Kansas. According to the deeds to your properties, you each
own a parcel of land 50 feet wide by 150 feet deep, and your
150 feet is the east 150 feet of Lot 4 in Block 5. Lot 4 in
Block 5 is 200 feet north and south by 226 feet east and
west.

You can see that my client's 76 feet plus your respec-
tive 150 feet adds up to 226 feet of ground running east and
west. It has come to our attention that each of you is claim-
ing to own an additional 8 feet of ground on your respective
east-west dimension, so that you each appear to claim that
you own a piece of ground that runs 158 feet east and west
and 50 feet north and south.

Exhibit "B"

Ms. Ethel L. Sweney, et al.

23 July 1980
Page Two

An examination of the public records shows that you received record title to lots 50 feet by 150 feet, and there is an unbroken chain of title going back for many, many years that, by successive conveyances, the west 76 feet was conveyed until as now title to the west 76 feet rests in my client.

I assume that you are basing your claim to the vacation of a purported 16 foot alley and your assumption that the vacated alley then went 8 feet to each of the abutting property owners.

Our search of the public records discloses that a 16-foot strip of land was deeded out of the west 76 feet of Lot 4 in Block 5 on 13 January 1917 to the City of Wichita. We have been unable to find that the persons who made that conveyance had any title to said 16-foot strip; and, if they had no title to convey, then the City could not have received any better title than the grantor held, which was none.

In spite of that fact, you may, if you wish, assume that the grantors in the 1917 deed had title to the 16-foot strip that was conveyed to the City of Wichita. On 29 September 1930, the City of Wichita, by Ordinance Number 10-871, vacated the alley. The Kansas Statute that was in effect at the time of the vacation proceeding may be found in General Statutes of Kansas of 1923, 13-443, which we quote for you in its entirety:

13-443 (43) Vacation and reopening of streets.

To vacate and close any street or alley or portion thereof; and when any street or alley is vacated it shall revert to the owners of land thereto adjoining on each side, in proportion to the frontage of such land, except in cases where such street or alley may have been taken for public use in a difference proportion, in which case it shall revert to the adjoining land in the same proportion as it was taken from it: Provided, That when in the opinion of the mayor and council it is necessary to reopen such street or alley, it shall be reopened without expense to the city, except in cases where permanent improvements may have been erected thereon, and in such cases the city shall

Ms. Ethel L. Sweney, et al.

23 July 1980
Page Three

pay to the owner of such improvements the value thereof, which value shall be ascertained by three disinterested appraisers, one of whom shall be selected by the city and one by the owner of the improvements, and the two thus selected shall select the third, and the award of said appraisers shall be binding on both parties, and the city shall pay to the owner of such improvements the value thereof before such street or alley shall be reopened (L. 1903, ch. 122, §64; March 18).

As you can see, the law says that the property goes back to the property from which it was taken.

You can, of course, check the contents of this letter with your own attorneys, and I would be happy to discuss this with each and all of you or with your attorneys.

On behalf of my client, it is respectfully requested and demanded that you forthwith remove your fences eight feet east to your original boundary lines so that your fenced tracts will be 50 feet by 150 feet as deeded and my client will have his west 76 feet as deeded.

Please understand the importance of this matter. My client's building permit has been suspended pending the resolution of the 8-foot strip; and, as you know, my client plans to build a multiple housing unit on the west 76 feet and has incurred substantial expenses including a heavy rate of interest on a rather large construction loan, and every day that my client is unable to start construction means that his damages are increasing.

Based on the facts as I know them, you are actually trespassing on my client's property and, if we are unable to resolve the matter quickly, we will have to file suit to quiet title and seek recovery of our client's damages.

If we could obtain your cooperation quickly, I would ask my client to cooperate with you in some helpful way. I thank you kindly for your attention to this matter. If we

Ms. Ethel L. Sweney, et al.

23 July 1980
Page Four

have not heard from you within five (5) days, we will have to proceed with the necessary steps to protect our client in this matter.

Very truly yours,

[Handwritten signature]
HARRY W. SAUMS

kat

OWNERSHIP LIST

All property herein is in Lawrence's Addition to West Wichita, Sedgwick County, Kansas.

<u>LOT & BLOCK</u>	<u>PROPERTY OWNERS</u>
The S50' of the N60' of the West 136' of Lot 3, Block 5	Neal E. & Bettie J. Welty & Elnora A. Welty 518 S. Walnut, Wichita, Ks 67213
The East 50' of the West 100' of the South 140' of Lot 3, Block 5	Raymon E. Jr. & Tamara F. Pannell 832 University Wichita, Ks 67213
The West 51' of the East 126' of the South 140' of Lot 3, Block 5	Robert W. & Marilyn Ledora Bledsoe 554 N. All Hallows Wichita, Ks 67213
The S200' of the East 75' of Lot 3, Block 5	John Douglas & Jennifer A. Fagan 824 University Wichita, Ks 67213
The West 50' of the South 140' of Lot 3, Block 5, and the North 50' of the East 150' of Lot 4, Block 5	Randy O. & Alisa K. Phillips 836 University Wichita, Ks 67213
The West 76' of Lot 4, Block 5	Prairie Homes, Inc. 900 N. Tyler Wichita, Ks 67212
The North 50' of the South 100' of the East 150' of Lot 4, Block 5	Edwin L. & Anna Easley 427 S. Osage Wichita, Ks 67213
The South 50' of the East 150' of Lot 4, Block 5	Clarence E. & Florence Nutter 802 University Wichita, Ks 67213
The South 50' of the North 100' of the East 150' of Lot 4, Block 5	Ada Alexander, Frank T. & Maxine Frase 525 S. Osage Wichita, Ks 67213
The South 50' of the North 57.5' of Block 9	Joseph J. & Florence J. Oglesby 16171 W. Highway 54 Goddard, Ks 67052
The North 7.5' of Block 9 and the South 42.5' of Reserve "B"	Leland E. McKenzie 550 S. Osage Wichita, Ks 67213
The North 37.5' of Reserve "B" and the South 50' of Lot 3, Block 4	Armando & Linda Ayala 535 S. Fern Wichita, Ks 67213
The North half of the South half of Lot 3, Block 4	Jack Leland & Mary Alice Johnson 526 S. Osage Wichita, Ks 67213
The South half of the North half of Lot 3, Block 4	Steven Saott & Sandra A. Johnson Address Unknown
The North 50' of Lot 3, Block 4	Lawrence E. & Carol L. Newby 520 S. Osage Wichita, Ks 67213
The South half of the South half of Lot 2, Block 4	Albert L. Mathews 518 S. Osage Wichita, Ks 67213

OWNERSHIP LIST (Cont.)

LOT & BLOCK

The North half of the South half and the South 2' of the North half of Lot 2, Block 4

The South 48' of the North 98' of Lot 2, Block 4

The North 50' of Lot 2, Block 4

Lot 3, Block 8, Except condemned portion

East 75' of Lot 2, Block 8, Except condemned portion

The West 47' of the East 122' of Lot 2, Block 8, Except condemned portion

The West 47' of the East 169' of Lot 2, Block 8, Except condemned portion

Lot 2, Block 8, Except the East 169' and Except condemned portion

South 50' of the North 150' of Lot 1, Block 5

The North 100' of Lot 1, Block 5

The South 50' of the East 150' of Lot 1, Block 5

The West 60' of Lot 1, Block 5, and the East 75' of Lot 2, Block 5

The North 50' of the West 136' of Lot 2, Block 5

The South 50' of the North 100' of the West 136' of Lot 2, Block 5

The South 50' of the North 150' of the West 136' of Lot 2, Block 5

The South 50' of the West 136' of Lot 2, Block 5, and the North 10' of the West 136' of Lot 3, Block 5

All streets and alleys within the scope of this list

The Columbian National Title Insurance of Wichita, Inc., hereby certifies the foregoing to be a true and correct list of property owners of all lots within a 200 foot radius of The West 76 feet of Lot 4, Block 5, Lawrence's Addition to West Wichita, Sedgwick County, Kansas, as shown by the last deeds of record in the Office of the Register of Deeds of Sedgwick County, Kansas, on this 21st day of August, 1980 @ 7:00A.M.

COLUMBIAN NATIONAL TITLE INSURANCE OF WICHITA, INC.

PROPERTY OWNERS

Jerome L. & Agnes E. Kessler
6715 Interurban
Wichita, Ks 67204

Ideal Homes of Wichita
1725 N. Clarence
Wichita, Ks 67203

Les Jr. & Audrey P. Cullers
10624 Lynndale Drive
Wichita, Ks 67209

Elmer E. & Shirley M. Hunt
1248 S. Wichita
Wichita, Ks 67213

Charlie Henry
1467 Woodrow Court
Wichita, Ks 67203

Henry M. & Ruby L. Camien
~~Address Unknown~~
1037 S. Olive 67213

Philip E. & Karen L. Wohlford
817 University
Wichita, Ks 67213

Harold Ralph & Evelyn Virginia Morris
819 University
Wichita, Ks 67213

William L. & Cindra L. McNeil &
Rick D. McNeil--R. R. #1,
Derby, Ks 67037

Mary E. Webb
507 S. Osage
Wichita, Ks 67213

Clarence O. Wiegand
517 S. Osage
Wichita, Ks 67213

Basil C. Overstreet
1811 S. Topeka
Wichita, Ks 67211

Barton G. Bates & Deborah S. Carnahan
P. O. Box 1069
Wichita, Ks 67201

Leon S. Hines
506 S. Walnut
Wichita, Ks 67213

Juanita B. Powell a/k/a Juanita B. Dougherty, Wilbur C. Powell & Russell Lee Dougherty, as their interests may appear--510 S. Walnut
Wichita, Ks 67213

Loren A. & Truman E. Dyson
514 & 516 S. Walnut
Wichita, Ks 67213

The City of Wichita, Kansas,
as Trustee for the Public

By: Pat O'Rourke Vice President

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 FROM THE BEST
 AVAILABLE COPY

FORM 20-21

PAYMENT NOTICE
 City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Has 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
	\$75-

NAME _____

ADDRESS _____

FUND _____	DUE DATE _____
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COMMENTS _____

DATE _____	BY <i>Lutkin</i>
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This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 2