

Case No. BZA 43-77 - NIES CONST. CO., INC., requests a variance to reduce the required front yard setback from 25' to 23' on property generally located on the East side of White Oak Circle in an

*Pos Top*  
*9-26-77*  
*o. iv*  
*MMV*  
*11-13-77*

ACTION

DATE

*10-25-77*

*Approved*

BZA 43-77 COMMITTEE

M.A.P.C.

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

HP

Map No. 6045  
Sec. 32  
Twp. 27  
Range 2E

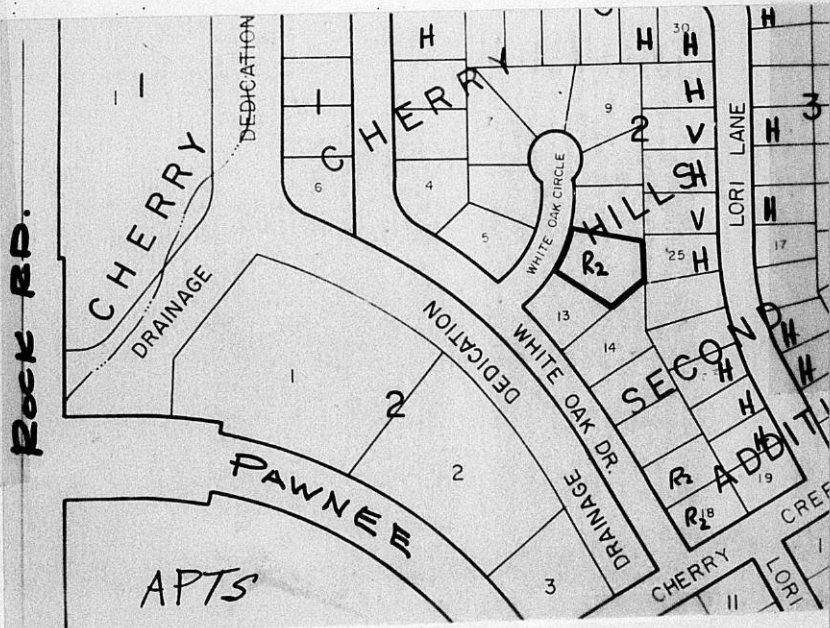
BZA- 43-77  
SCZ- \_\_\_\_\_  
CU- \_\_\_\_\_  
Filed \_\_\_\_\_

AREA DATA:

1. Acres: 0.31 ( 72 (IRREGULAR) ft. by 138 ft.)
2. Adjoining Zoning: E \_\_\_\_\_ S \_\_\_\_\_ W \_\_\_\_\_ N \_\_\_\_\_
3. Land Use: East \_\_\_\_\_ South \_\_\_\_\_  
West \_\_\_\_\_ North \_\_\_\_\_
4. Sketch Plan Land Use is for: \_\_\_\_\_
5. Present Land Use if for: \_\_\_\_\_
5. Area (is) (is not) platted.

PHOTO DATA:

Taken by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_



**Smith**  
No. 2,153C  
HASTINGS, SAN LOS ANGELES  
LODAN ON - HOUSTON, TX U. S. A.

RESOLUTION NO. BZA 43-77

WHEREAS, Nies Construction Company, Inc., P. O. Box 18315, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 25 feet to 23 feet on property zoned the "A" Two Family Dwelling District and legally described as follows:

Lot 12, Block 2, Second Addition to Cherry Creek Hills, Sedgwick County, Kansas. Generally located on the east side of White Oak Circle (2134-36 White Oak Circle).

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 October 25, 1977, 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 or district; and is not created by an action or actions of the property owner or the applicant due to the inward curvature of the front lot line; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the minimal amount of variance requested would not be noticeable on this curved street; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as the house was virtually complete when the error was discovered. To now require compliance with the setback would be prohibitive in cost. Without the granting of the variance or the compliance with the setback requirement, the house would be difficult to market; 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 an adequate front yard setback would still exist; 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 adequate open space would exist to permit the passage of light and air; 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 25 feet to 23 feet on property zoned the "A" Two Family Dwelling District and legally described as follows:

Lot 12, Block 2, Second Addition to Cherry Creek Hills, Sedgwick County, Kansas. Generally located on the east side of White Oak Circle (2134-36 White Oak Circle).

RESOLUTION NO. BZA 43-77  
Page 2

be approved for only that portion of the structure presently in violation.

ADOPTED AT WICHITA, KANSAS, this 25th day of October, 1977.

  
James Richardson, Chairman

ATTEST:

  
Larry Dobson, Assistant Secretary

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Tenth Floor, City Hall  
455 North Main

October 28, 1977

Mr. Clifford A. Nies  
c/o Nies Construction Company, Inc.  
P.O. Box 18315  
Wichita, Kansas 67201

Re: Case No. BZA43-77  
Request for Variance

Dear Mr. Nies:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on Tuesday, October 25, 1977, in connection with your request for a variance to reduce the required front yard setback from 25 feet to 23 feet on property zoned the "A" Two Family Dwelling District and generally located on the east side of White Oak Circle (2134-36 White Oak Circle).

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

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

Sincerely,

Larry Dobson  
Assistant Secretary

LD:bh

cc: Don Gisick, City Clerk  
Robert Feldner, Supt., Central Inspection  
Joe Donnelly, Housing and Zoning Administrator

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

City Hall, 10th Floor  
455 North Main Street

October 26, 1977

Mr. Clifford A. Nies  
c/o Nies Construction Company, Inc.  
P.O. Box 18315  
Wichita, Kansas 67201

Re: Case No. BZA 43-77  
Request for Variance

Dear Mr. Nies:

At the regular meeting of the Board of Zoning Appeals on Tuesday, October 25, 1977, your request for a variance to reduce the required front yard setback from 25 feet to 23 feet on property zoned the "A" Two Family Dwelling District and generally located on the east side of White Oak Circle (2134-36 White Oak Circle) was considered.

It was the action of the Board to approve the request.

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.

Very truly yours,

Larry Dobson  
Assistant Secretary

LD:hh

cc: Don Gisick, City Clerk  
Robert Feldner, Supt., Central Inspection  
Joe Donnelly, Housing and Zoning Administrator

THE CITY OF WICHITA  
OFFICE OF CITIZEN PARTICIPATION

DATE October 20, 1977



TO Larry Dobson, Secretariat, BZA

FROM Bill Morris, CPO Administrative Aide

SUBJECT BZA 43-77 (2134-36 White Oak Circle)

On October 17, 1977, CPO Council Area "H" considered the captioned case.

It was the Council's recommendation that the variance be approved.

Please provide this information to the BZA when the case is considered.

*Bill Morris*

Bill Morris  
CPO Administrative Aide

BM:rh

NOTED:

*DF*

David Furnas  
CPO Coordinator



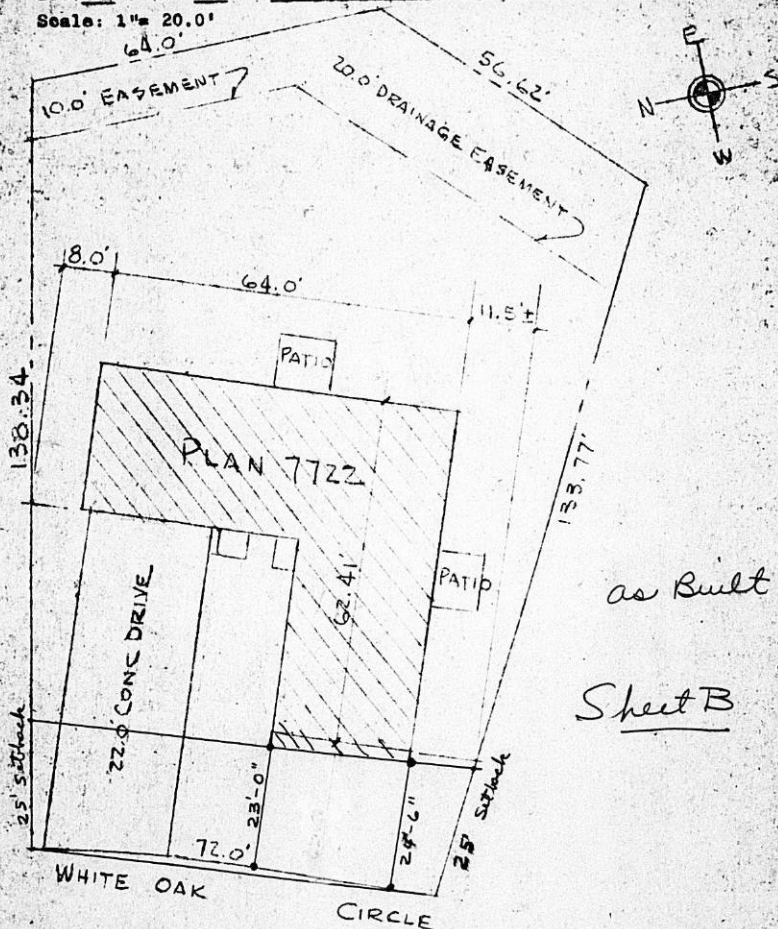
RESIDENTIAL PLOT PLAN

Address: 2134 & 2136 WHITE OAK CIRCLE

Permit No: \_\_\_\_\_

Lot: 12 Block: 2 of 2ND ADDITION TO CHERRY CREEK HILLS Zoning: B

Scale: 1" = 20.0'



as Built  
Sheet B

I certify that the above plat complies with applicable zoning setbacks and subdivision covenants and restrictions.

Garage  Carport  Open Parking  Signed: Clifford A. Vries  
Applicant

SECRETARY'S REPORT  
CASE NO. BZA 43-77

APPLICANT: Nies Construction Company, Inc., P.O. Box 18315, Wichita, Kansas.

AGENT: Clifford A. Nies, P.O. Box 18315, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 25 feet to 23 feet.

GENERAL LOCATION: East side of White Oak Circle in an area north of White Oak Drive (2134-36 White Oak Circle).

ZONING: Subject property is zoned the "A" Two Family Dwelling District as are properties to the north, south and west. East is the "AA" Single Family Dwelling District.

LAND USE: Subject property is developed with a duplex. Properties to the north, south, and west are vacant. East is a single family residence.

JURISDICTION:

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

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

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance of the required front yard setback from 25 feet to 23 feet for a newly constructed two-family dwelling.

The general area and circumstances of this case are the same as two cases on the Board's last agenda, where due to an inward curvature of the front property line an error was made by the same basement subcontractor in the measurement of the required setback line.

The subcontractor measured in from the front corner stakes a distance of 25 feet and then drew a straight line between these points and lined the house along this line. Due to the inward curvature of the front lot line, any point between the extreme points would be closer than the required 25 foot setback.

The applicant states that a two foot variance in the front yard setback will not be noticeable inasmuch as this house is located on a short curved street which terminates in a cul-de-sac, where none of the houses will be in a straight line with one another. He also says that due to the "L" shape of the house, the normal parking which occurs on driveways will be behind the setback line and screened from one direction by the house itself, giving a greater feeling of open space in the front yard. The applicant reports that the house was 98 percent complete when the error was discovered. This house is the first house to be constructed on this street.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness may be found to exist due to the inward curvature of the front lot line.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested should not adversely affect the rights of adjacent property owners inasmuch as the minimal amount of variance requested would not be noticeable on this curved street.

HARDSHIP:

It is the opinion of the Secretary that an unnecessary hardship may be placed upon the applicant without the granting of this variance inasmuch as the house was virtually complete when the error was discovered. To now require compliance with the setback would be prohibitive in cost. Without the granting of the variance or the compliance with the setback requirement, the house would be difficult to market.

SECRETARY'S REPORT  
Case No. B2A 43-77  
Page 3

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the requested variance would not adversely affect the public interest inasmuch as an adequate front yard setback would still exist.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of this variance may not be opposed to the general spirit and intent of the zoning ordinance inasmuch as adequate open space would exist to permit the passage of light and air.

RECOMMENDATION:

If the Board determines that the five conditions necessary for the granting of a variance can be found to exist, it is recommended that the variance be approved to reduce the required front yard setback from 25 feet to 23 feet for only that portion of the structure presently in violation.

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

September 30, 1977

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 43-77

An application has been filed by Hies Construction Company, Inc., P. O. Box 18315, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required front yard setback from 25 feet to 23 feet on property zoned the "A" Two Family Dwelling District and legally described as follows:

Lot 12, Block 2, Second Addition to Cherry Creek Hills, Sedgwick County, Kansas. Generally located on the east side of White Oak Circle (2134-36 White Oak Circle).

This application has been assigned Case No. BZA 43-77 and will be considered by the Board of Zoning Appeals at its meeting of October 25, 1977, 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.

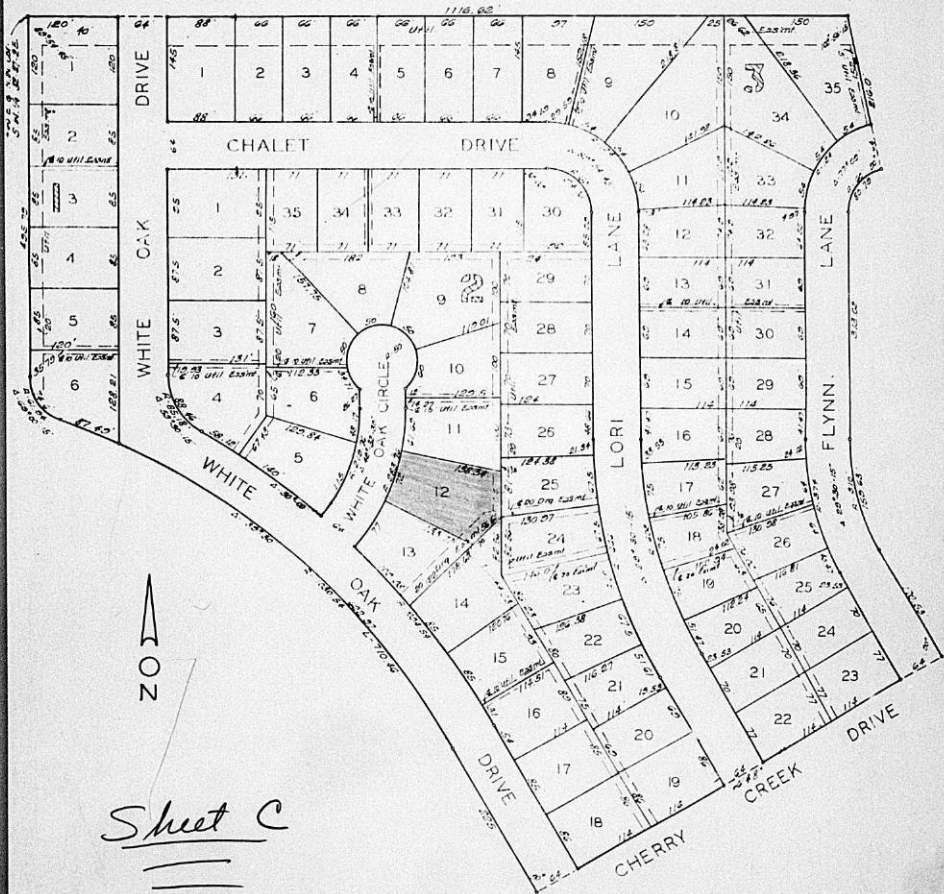
It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

Jack H. Galbraith  
Secretary

4 notices sent to adjoining property owners and applicant  
10- notices sent to MAPC members  
1 notice sent to CPO  
15 total notices sent on BZA 43-77, 9-30-77

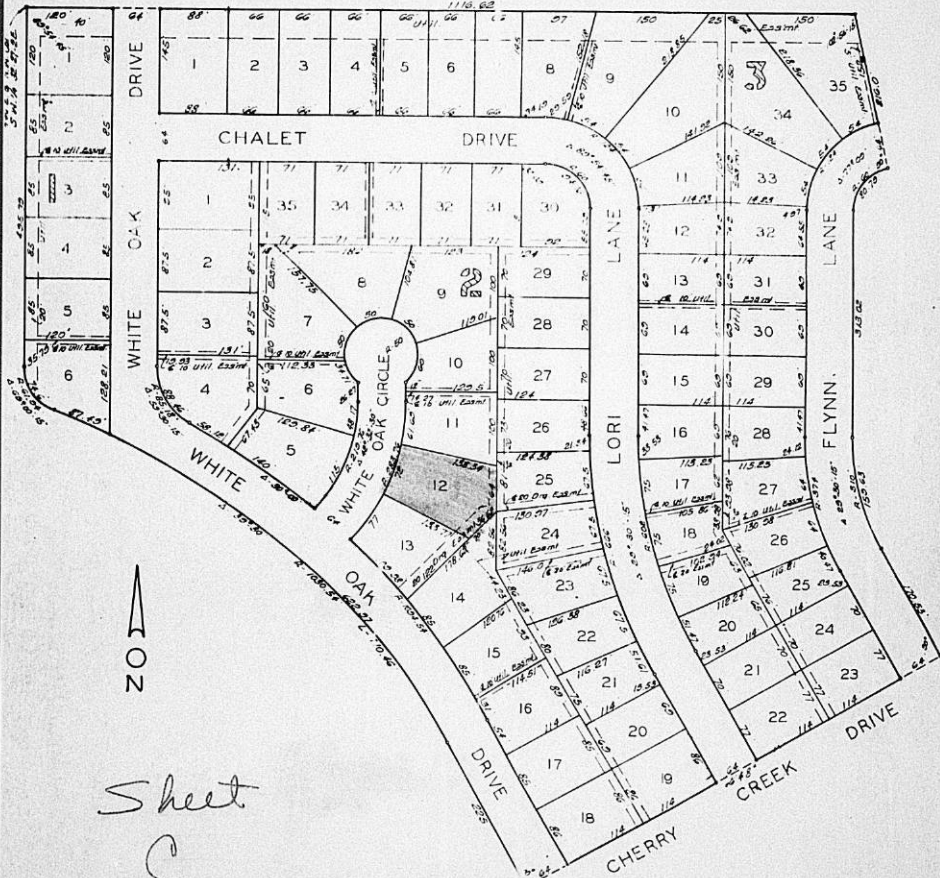
# SECOND ADDITION TO CHERRY CREEK HILLS

WICHITA KANSAS



# SECOND ADDITION TO CHERRY CREEK HILLS

WICHITA KANSAS



BOARD OF ZONING APPEALS

CASE NO. \_\_\_\_\_

CITY OF WICHITA, KANSAS

FILED \_\_\_\_\_

APPLICATION FOR VARIANCE

I. Name of Applicant Nies Construction Co., Inc.  
 Mailing Address P.O. Box 18315 Phone 684-0161  
 Name of Authorized Agent Clifford A. Nies  
 Mailing Address P.O. Box 18315 Phone 684-0161  
 Relationship of applicant to property is that of Owner (President)  
 (Owner, Tenant, Lessee, Other)

II. The variance requested is 23'-0" Front yard setback  
(reduce front yard setback from 25' to 23')

for property located 2134-36 White Oak Circle

and legally described as: Lot 12, Block 2  
Second Addition to Cherry Creek Hills  
Wichita Kansas

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

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

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

Nies Construction, Inc.  
Applicant

Clifford A. Nies (President)  
Authorized Agent

map 6045

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 3:00 (a.m. (p.m.)), 9-20 19 77 together with appropriate fee of \$50.00.

E side of White Oak Circle in an area n. of White Oak Drive  
T9-402

Larry Robson  
Signed

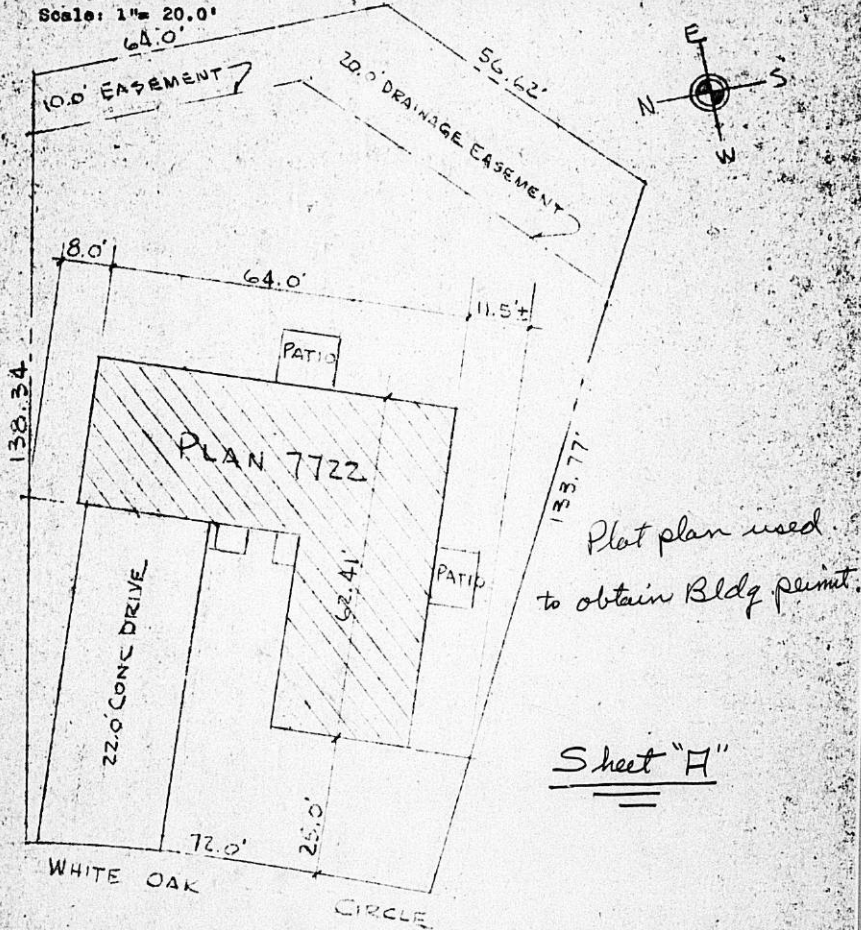
1. The setback variance requested has been necessitated because of human error of the slight radius in the curb line which was not taken into consideration when the foundation was laid out on the lot. Neal Foundations Inc. who is a sub-contractor presently working in Wichita, Kansas performed this work and erred in his calculations. He has installed 15 basements for me this past year and has done excellent work. Due to the slight curve in the curb line he overlooked this laid the foundation out by measuring back 25 feet on each property line and stretched a string between these 2 setback points and lined the house along this string. See attached sheet A how it should have been done and sheet B how it was done.
2. This requested set back variance of 2 feet on the front corner of the building will not be noticed as no house on this cut-de-sac will be in line with each other. see attached sheet C.
3. This error was not detected until the house was about 98% complete. There is no way to move the building except to completely demolish it and start anew.
4. This variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of any person, whether they would be adjoining property owner or a neighbor or any citizen of the city.
5. The intent to have adagut front yard and open space. This lot and side yard are ample to provide this requirement, the driveway is so positioned as to park behind set back line in addition to the garage parking which gives an open feeling in the front set back area.

**RESIDENTIAL PLOT PLAN**

Address: 2134 & 2136 WHITE OAK CIRCLE Permit No: \_\_\_\_\_

Lot: 12 Block: 2 of 2<sup>ND</sup> ADDITION TO CHERRY CREEK HILLS ZONING: H

Scale: 1" = 20.0'



*Plot plan used to obtain Bldg permit.*

Sheet "H"

I certify that the above plat complies with applicable zoning setbacks and subdivision covenants and restrictions.

Garage  Carport  Open Parking  Signed: Clifford A. Nres  
Applicant

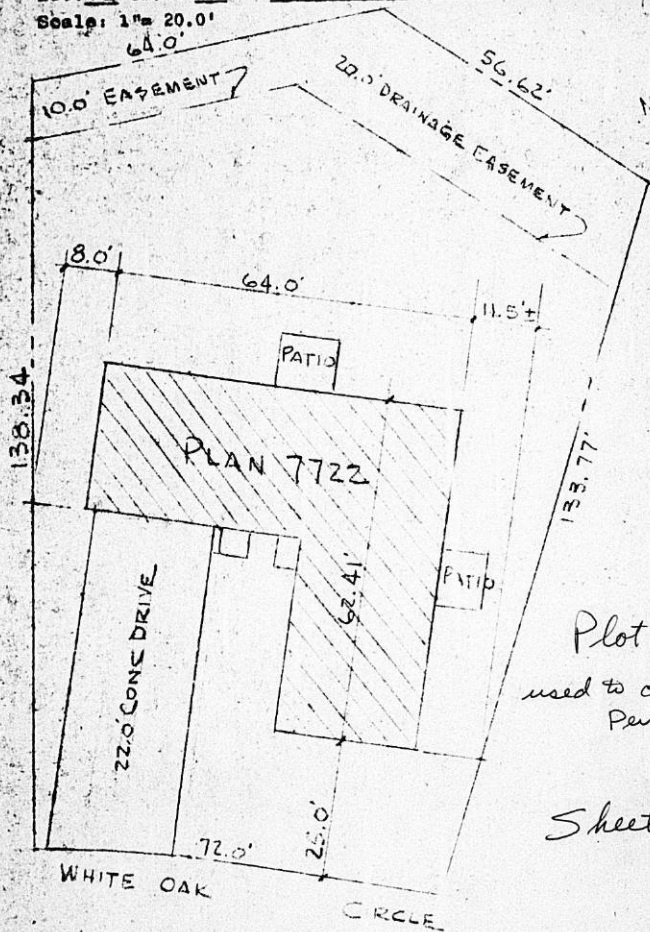
**RESIDENTIAL PLOT PLAN**

Address: 2134 & 2136 WHITE OAK CIRCLE

Permit No: \_\_\_\_\_

Lot: 12 Block: 2 of 2ND ADDITION TO CHERRY CREEK HILLS ZONING

Scale: 1" = 20.0'



Plot plan  
used to obtain Bldg  
Permit.

Sheet "A"

I certify that the above plat complies with applicable zoning, setbacks and subdivision covenants and restrictions.

Garage  Carport  Open Parking

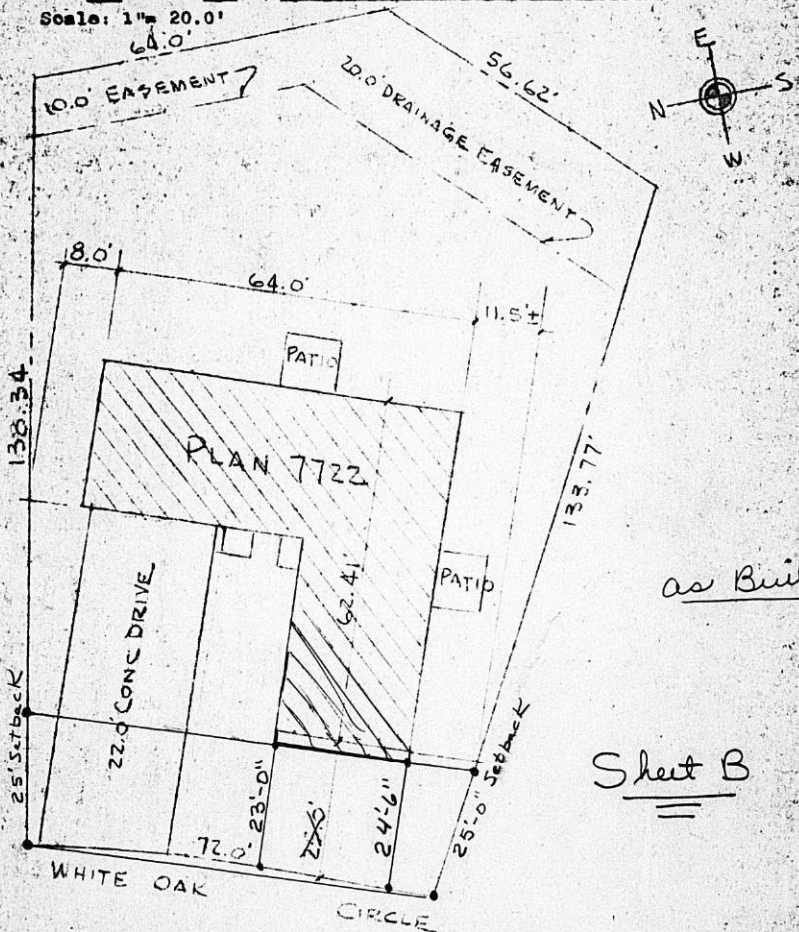
Signer: Clifford A. Vries  
Applicant

RESIDENTIAL PLOT PLAN

Address: 2134 & 2136 WHITE OAK CIRCLE Permit No: \_\_\_\_\_

Lot: 12 Block: 2 of 2<sup>ND</sup> ADDITION TO CHERRY CREEK HILLS ZONING: H

Scale: 1" = 20.0'



as Built.

Sheet B

I certify that the above plat complies with applicable zoning setbacks and subdivision covenants and restrictions.

Garage  Carport  Open Parking  Signed: Clifford A. Nres  
Applicant



434 NORTH MAIN  
WICHITA, KANSAS 67202  
267-8371

OWNERSHIP LIST

Lot	Addition	Property Owner
4,5,6,7,8, 9,10,11,13 14,15,16,23, 24,25,27 Block 2	Second Addition to Cherry Creek Hills	Levitt Development Inc. ✓ 7930 East Harry 67207
lots 12,26, 28, Blk 2	Same	D Nies Construction Co., Inc. 8521 Cherry Creek 67207
lot 22, Block 2	Same	✓ Stuart Bonesteel & Luella 2150 Lori Lane 67207
lots 15,17,18 Block 3	Same	D Levitt Development Inc. 7930 East Harry 67207
lot 16, Block 3	Same	✓ William T. Haisch & Shirley K. 1741 Drollinger Road 67218

We hereby certify the foregoing to be a true and correct list of the property owners of:

A 200 foot radius of: Lot 12,  
Block 2, Second Addition to  
Cherry Creek Hills, Sedgwick  
County, Kansas

as shown by the records on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 14th day of September, 1977 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE COMPANY, INC.

By

*Mary Hable*  
Vice President

Order No. 255620  
wh

Form 223-01

**PAYMENT NOTICE**

City of Wichita *2nd*

**PAY AT TREASURER'S OFFICE - FIRST FLOOR**

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

DESCRIPTION	AMOUNT
BZA Variance	\$ 5000

*Application*

Name *Clifford Nies*

Address *P.O. Box 18315 Wichita*

Type *AA 407103* Due Date

Comments:

Date *9-20-77* By