



Wichita-Sedgwick County Metropolitan Area Planning Department

4/28/2010

Randall Windhorst
745 S Glenn
Wichita KS 67213

Chad Bryan
134 N Elizabeth
Wichita KS 67203

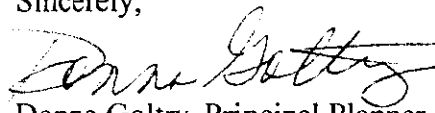
RE: BZA2010-13

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on **April 27, 2010**. This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,


Donna Goltry, Principal Planner
Current Plans Division

DG/yja

Cc: Kurt Schroeder, Office of Central Inspections
Paul Hays, Office of Central Inspections
J R Cox Office of Central Inspection
Paul Gray, WCC IV

BZA RESOLUTION NO. 2010-00013

WHEREAS, Randall and Bernadette Windhorst (owners), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance of the Zoning Code to reduce the street side setback from 20 feet to six feet and the rear setback for an accessory structure from five feet to three feet, generally located on the northwest corner of Glenn Avenue and Munnell Avenue (745 South Glenn Avenue).

The South 75 feet of Lot 8 EXCEPT beginning at the Southwest corner; thence East 83 feet; thence North 28 feet; thence West 22 feet; thence North to the North line of the South 75 feet of Lot 8; thence West 61 feet to the West line; thence South to beginning, on Glenn Avenue, in Lawnfield Addition to Wichita, Sedgwick County, Kansas.

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 April 27, 2010, 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 conditions that are unique. The property was platted in its current configuration in 1886 and the residence and garage on the lot were constructed in 1920. The zoning regulations that established the 15-foot side yard setback requirements were not established until 1996, long after the property had already been developed. Until that time, the setback along Munnell Avenue would have been six feet as a street side setback. In 1950 the second dwelling (the duplex) was constructed on the west part of the lot fronting Munnell Avenue. At the time of this construction, the duplex conformed to lot area and setback requirements, but it caused the rear setback for the accessory garage on the subject property to become nonconforming (three feet rather than five feet).

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance would not adversely affect the rights of adjacent property owners. Many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments. In this case, the construction of the second dwelling on the lot in 1950 created a nonconforming rear yard setback for the accessory structure; this variance would not change the pattern established with the construction of the duplex in 1950. The requested accessory setback of three feet for the subject property abuts the side setback for the duplex and its carport, which already has a three-foot setback like being requested.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the code could constitute a hardship upon the applicant. Requiring the applicant to comply with the street

side yard setback requirements and rear yard accessory structure requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

WHEREAS, the Board of Zoning Appeals has found that the variance request for a front setback reduction does not adversely affect the public interest. The public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where nonconformities with the current zoning regulations are common.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance for a front setback reduction does not oppose the general spirit and intent of the Zoning Code. The primary intent of the street side yard setback requirements is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent but follows the pattern of the other five structures (two single-family residences, the duplex, a garage and a carport) along this block of Munnell Avenue. The purpose of rear yard setbacks is to provide adequate separation between structures and to confine structures with narrower setbacks to the rear half of the yards to reduce the visual impact. The reduced rear yard setback is perhaps less clearly supported since it reduces the separation between the garage and the abutting carport. However, it does not encroach closer to the common property line than the adjacent carport of the duplex, which was surveyed as being 2.4 feet from the property corner.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, are found to be present for a variance to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, a variance to reduce the street side setback from 20 feet to six feet and the rear setback for an accessory structure from five feet to three feet, generally located on the northwest corner of Glenn Avenue and Munnell Avenue (745 South Glenn Avenue).

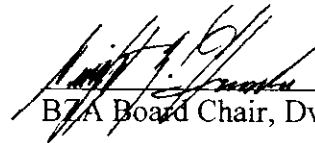
The South 75 feet of Lot 8 EXCEPT beginning at the Southwest corner; thence East 83 feet; thence North 28 feet; thence West 22 feet; thence North to the North line of the South 75 feet of Lot 8; thence West 61 feet to the West line; thence South to beginning, on Glenn Avenue, in Lawnfield Addition to Wichita, Sedgwick County, Kansas.

The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.

2. The setback reduction shall apply only to the “detached garage” as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 27th Day of April, 2010.



BZA Board Chair, Dwight Greenlee

ATTEST:

Dale Miller
BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2010-00013

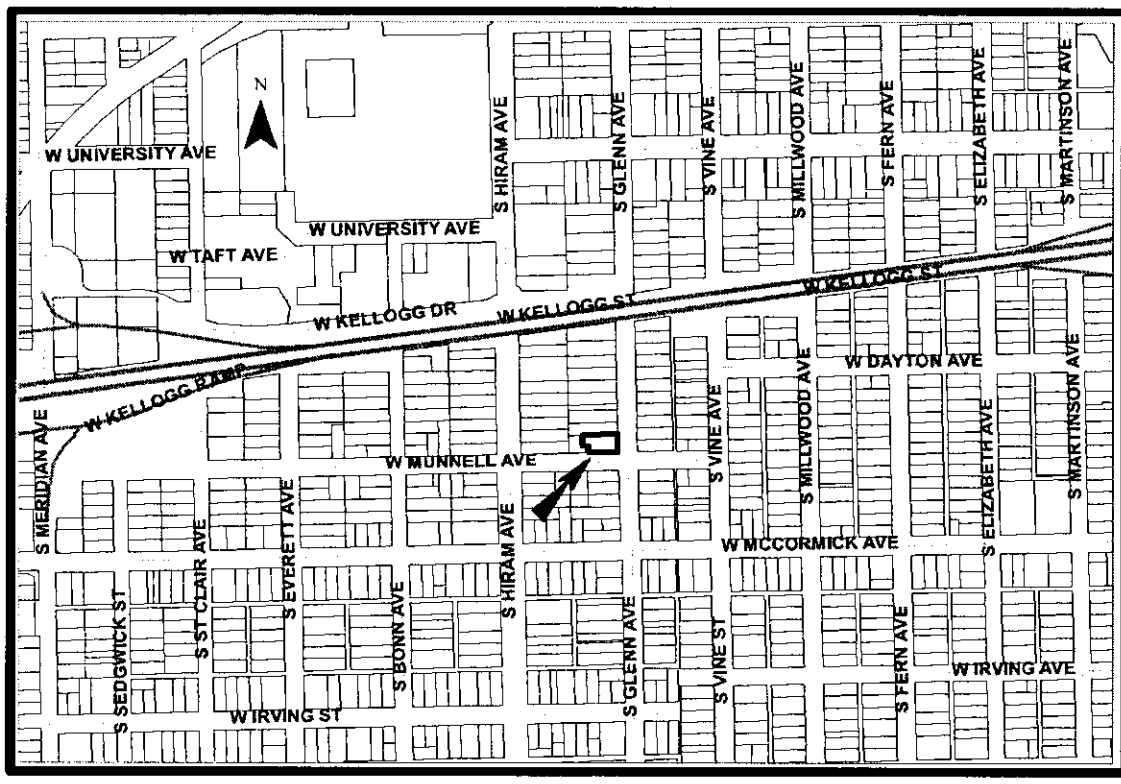
APPLICANT/AGENT: Randall and Bernadette Windhorst (owners); Southwestern Remodeling c/o Chad Bryan (agent)

REQUEST: Variance of the Zoning Code to reduce the street side setback from 20 feet to six feet and the rear setback for an accessory structure from five feet to three feet

CURRENT ZONING: MF-29 Multi-Family Residential ("MF-29")

SITE SIZE: 0.23 acres

LOCATION: Generally located on the northwest corner of Glenn Avenue and Munnell Avenue (745 South Glenn Avenue).



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

BACKGROUND: The applicant requests a variance to reduce the Unified Zoning Code required street side building setback from 20 feet to six feet on Munnell Avenue and to reduce the rear setback for an accessory structure from five feet to three feet. The property is zoned MF-29 Multi-Family Residential (“MF-29”). The Unified Zoning Code requires a 20-foot street side building setback in MF zoning for all structures (principal and accessory); it requires a five-foot setback for the rear property line for accessory structures. If the variance is granted, the property owner intends to replace the existing garage with a new garage in essentially the same location.

The application area is developed with a single-family airplane bungalow residence and detached garage. All surrounding properties are zoned MF-29 but are developed mostly with single-family residences except to the west and south. To the west, a duplex fronting onto Munnell Avenue adjoins the property line of the applicant. To the south, a church is located south of Munnell Avenue, west of Glenn Avenue and north of McCormick Avenue, with LC Limited Commercial zoning along McCormick Avenue.

The applicant’s corner site and the abutting and adjacent properties are all in the Lawnfield Addition, which was recorded October 15, 1886. GIS shows the applicants’ residence to have been constructed in 1920, while a search of the building dates of 21 single-family residences and one duplex abutting and adjacent to the applicants’ residence, reveal building dates from 1910-1950, with most (17) being built between 1919-1927. The lots originally were 100 feet by 203 feet, but most lots were further divided into widths of 50 feet or 75 feet, and the corner lots often were further divided to construct another dwelling fronting onto the side street, as is the pattern of this site requesting the variance. A visual and aerial survey of the area shows a repeated pattern of encroachment into the Munnell Avenue street side yard setback by either single-family residences or accessory structures, most commonly garages. A similar variance was granted by BZA2007-00040 to allow an accessory structure (garage) to within six feet of the street side setback on the property located 83 feet to the west of this site. Prior to 1996, street side yard setbacks, for single-family residential zoning were not less than six feet for unplatted property or the lot was recorded before October 1, 1928, not less than 3-feet.

ADJACENT ZONING AND LAND USE:

NORTH	MF-29	Single-family residences
SOUTH	MF-29, LC	Church
EAST	MF-29	Single-family residences
WEST	MF-29	Duplex, single-family residences

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property was platted in its current configuration in 1886 and the residence and garage on the lot were constructed in 1920. The zoning regulations that established the 15-foot side yard setback requirements were not established until 1996, long after the property had already been developed. Until that time, the setback along Munnell Avenue would have been six feet as a street side setback. In 1950 the second dwelling (the duplex) was constructed on the west part of the lot fronting Munnell Avenue. At the time of this construction, the duplex conformed to lot area and setback requirements, but it caused the rear setback for the accessory garage on the subject property to become nonconforming (three feet rather than five feet).

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments. In this case, the construction of the second dwelling on the lot in 1950 created a nonconforming rear yard setback for the accessory structure; this variance would not change the pattern established with the construction of the duplex in 1950. The requested accessory setback of three feet for the subject property abuts the side setback for the duplex and its carport, which already has a three-foot setback like being requested.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the street side yard setback requirements and rear yard accessory structure requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where nonconformities with the current zoning regulations are common.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. The primary intent of the street side yard setback requirements is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent but follows the pattern of the other five structures (two single-family residences, the duplex, a garage and a carport) along this block of Munnell Avenue. The purpose of rear yard setbacks is to provide adequate separation between structures and to confine structures with narrower setbacks to the rear half of the yards to reduce the visual impact. The reduced rear yard setback is perhaps less clearly supported since it reduces the separation between the garage and the abutting carport. However, it does not encroach closer to the common property line than the adjacent carport of the duplex, which was surveyed as being 2.4 feet from the property corner.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the street side setback from 20 feet to six feet and the rear setback for an accessory structure from five feet to three feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the “detached garage” as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.

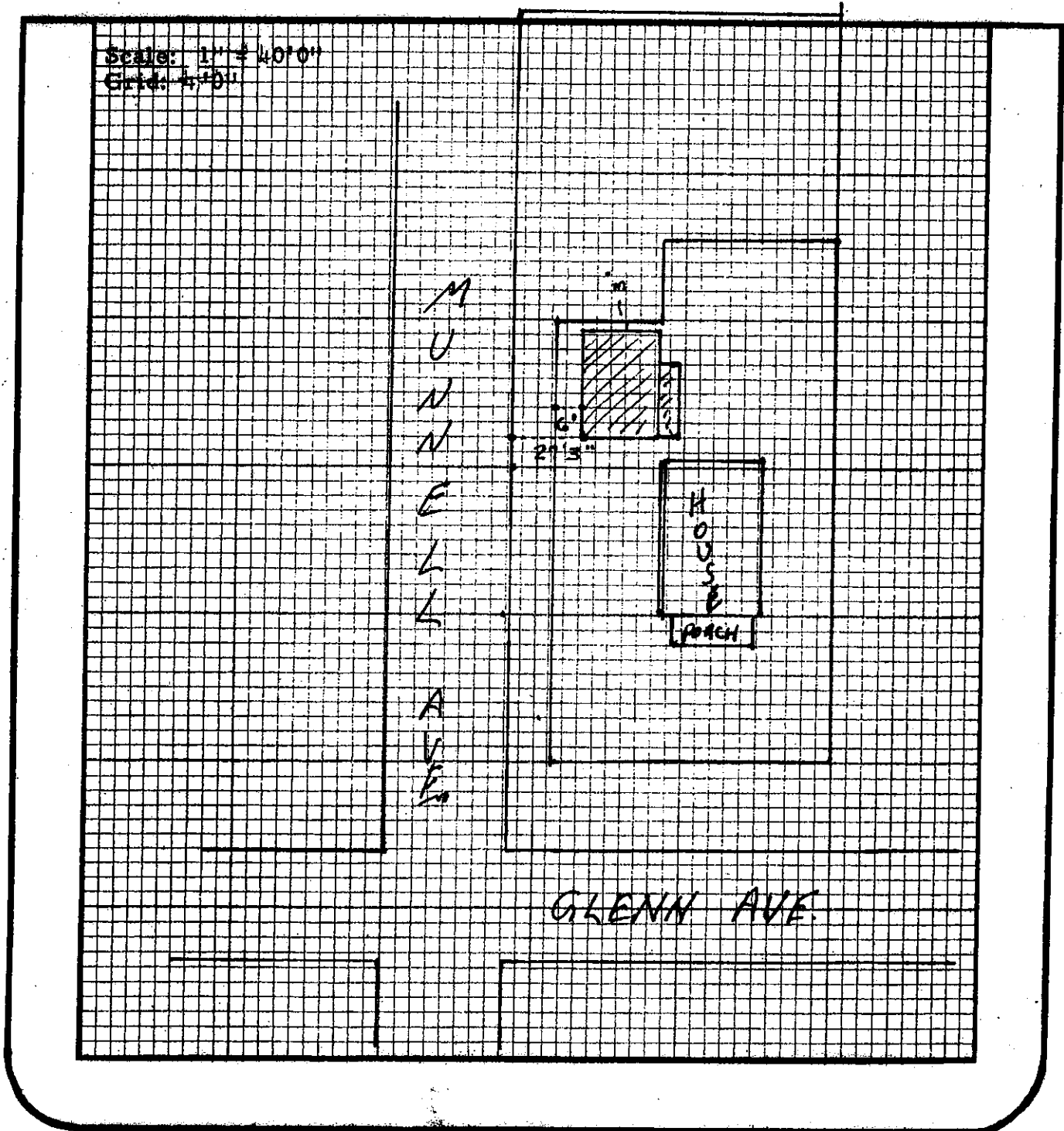
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RESIDENTIAL PLOT PL.

ADDRESS: 745 S. GLENN AVE. PERMIT NO. _____

LOT(S): 8 BLK. _____ OF LAWNFIELD ADD. ZONING _____

REQUIRED SETBACKS: FRONT _____ SIDE _____ SIDE _____ REAR _____



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

Signed: _____
(Applicant)

White Copy - File Yellow Copy - Applicant