



Wichita-Sedgwick County Metropolitan Area Planning Department

February 28, 2012

Lowell Kemp
PO Box 133
Haysville, KS 67060

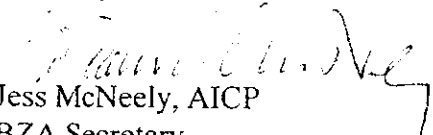
RE: BZA2012-01 – City variance request to permit a Tattoo and Piercing Facility on property within 200 feet of residential zoning (1227/29 S. Seneca).

Dear Applicant:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on **February 28, 2012**. This resolution reflects the official action of the Board. It is forwarded to you for your information and files. Please note the conditions in the attached resolution; the variance does not become effective until the property is zoned for a district that permits a Tattoo and Piercing Facility.

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

Sincerely,


Jess McNeely, AICP
BZA Secretary
Current Plans Division

cc: Rick Stubbs, Office of Central Inspections, 1-72
J R Cox Office of Central Inspection, 1-72
Michael O'Donnell, WCC IV Mailstop 1-13
Kelli Geier, WCC IV NA, Mailstop 1-135

BZA RESOLUTION NO. BZA2012-01

WHEREAS, Lowell Kemp (owner), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Sec. III.D.6.ee of the Unified Zoning Code to permit a tattooing/piercing facility on property located within 200 feet of residential zoning; generally located west of Seneca and north of Walker (1227/29 S. Seneca).

11-12-13 EXC ST BLOCK 15 REPLAT PART JOHN MC CORMICK'S Addition, 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 February 28, 2012, 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 this property is unique. The small building on the subject site is on the far eastern portion of the site, with a parking area and a platted alley separating the commercial building from the residential zoned area to the west. Also, the residential zoned lot to the west is developed on the far western portion of that lot, with 175 feet between the commercial building and the nearest residentially zoned house. The site is further unique in that it is developed with a small commercial building with a restaurant in half of the building; the remaining commercial space is too small for most commercial uses.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance will not adversely affect the rights of adjacent property owners. The proposed Tattooing and Body Piercing Facility building would be 175 feet from the nearest residentially zoned house, and would be separated by parking, trees and code required screening. The immediate area is characterized by commercial and industrial zoning and uses to include maintenance facilities, a bar/tavern, warehousing, and a wrecking and salvage business; the proposed Tattooing and Body Piercing Facility would not be out of character with the existing uses in the immediate area.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the Code could constitute an unnecessary hardship upon the applicant. The proposed commercial building space on the subject site could be too small to rent for most typical commercial uses. The property owner wishes to use the property for a Tattooing and Body Piercing Facility; the subject site could remain vacant without the requested variance.

WHEREAS, the Board of Zoning Appeals has found that the requested variance of the 200-foot separation between Tattooing and Body Piercing Facilities and residential zoning will not adversely affect the public interest, as viable commercial businesses fronting Seneca is in the public interest.

SECRETARY'S REPORT

CASE NUMBER: BZA2012-01

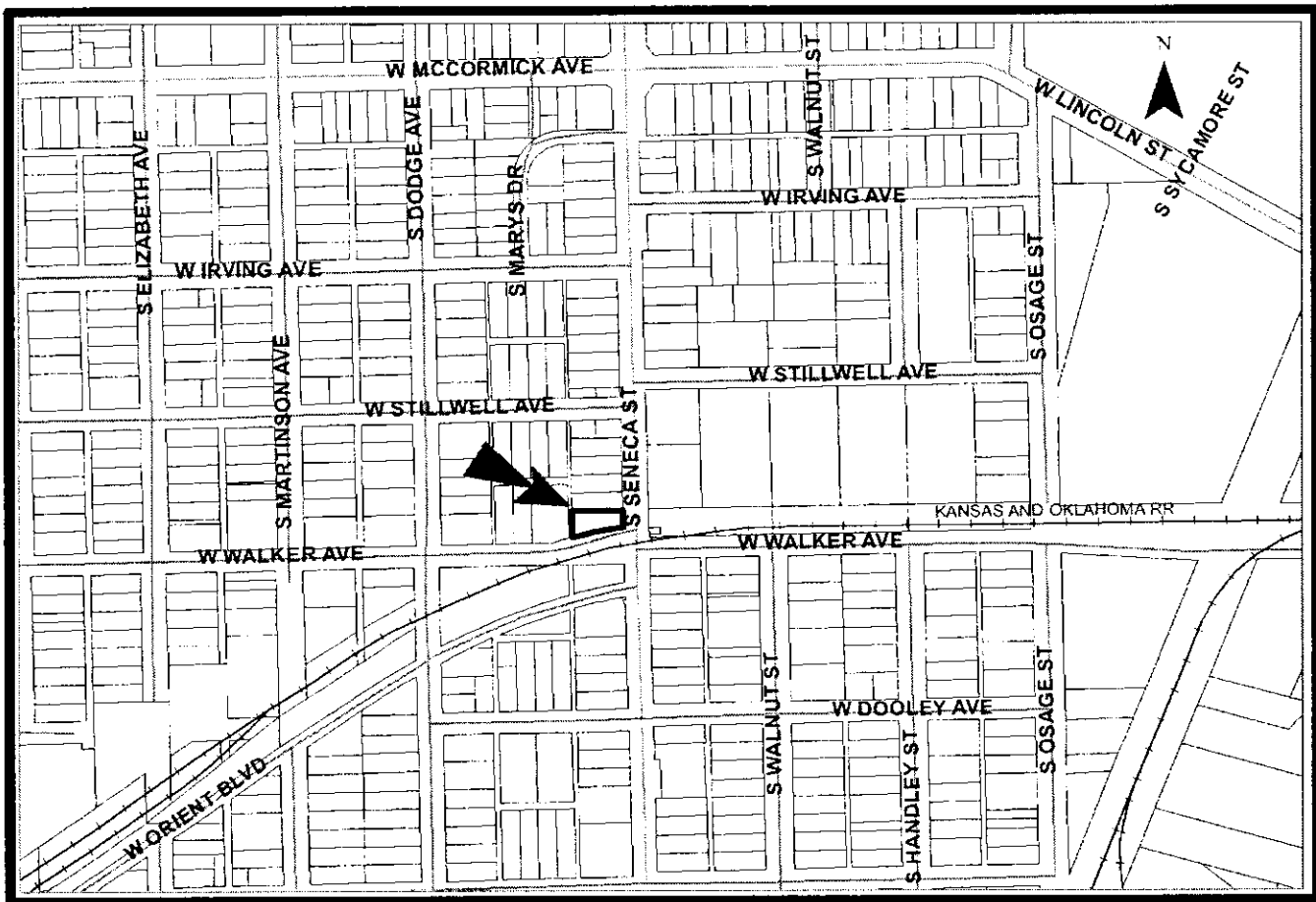
APPLICANT/AGENT: Lowell Kemp (owner)

REQUEST: City variance to permit a tattooing/piercing facility on property located within 200 feet of residential zoning.

CURRENT ZONING: LC Limited Commercial ("LC")

SITE SIZE: .18 acres

LOCATION: Generally located west of Seneca and north of Walker (1227/29 S. Seneca).



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 Unified Zoning Code (UZC) requires that Tattooing and Body Piercing Facilities within the City be located in the OW Office Warehouse ("OW") or more intense zoning district. And, the UZC requires that all Tattooing and Body Piercing Facilities be located a minimum of 200 feet from a school, park or residential zoning district. This distance is measured from the nearest lot line of the school, park or residential zoning district to the nearest lot line of the premises on which the Tattooing and Body Piercing Facility is located or of any parking area designated to be used by the patrons of such businesses, whichever is closest.

The subject property is located at the northwest corner of Seneca and Walker; the site is developed with a building on the eastern portion of the site, adjacent to Seneca, with parking on the remainder of the site to the west. The property owner wishes to use a portion of the building on this site for a Tattooing and Body Piercing Facility, the remainder of the building is used for a restaurant. However, property west of the site, across an alley, is zoned MF-29 Multi-Family Residential ("MF-29"). The distance between the subject lot and MF-29 zoned land is less than 200 feet; therefore the applicant requests a variance of the 200-foot separation between Tattooing and Body Piercing Facilities and residential zoning. The lot west of the application area fronts Walker Avenue, it is 100 feet wide, and is developed with a single-family residence on the western 50-feet of the lot. The separation between this single-family residence and the applicant's building is approximately 175 feet.

This portion of Seneca is developed primarily with commercial and industrial uses. Property north of the site is zoned LC Limited Commercial ("LC"). The lot abutting the application area to the north is developed with a single-family residence; further north is a warehouse use. South of the site, across Walker, is an active rail line. South of the rail line is GI General Industrial ("GI") zoned property developed with a wrecking and salvage use. East of the site, across Seneca and north of Walker, is LI Limited Industrial ("LI") zoned property developed with a railroad company facility and a County maintenance facility. East of Seneca and south of Walker is an LC zoned bar/tavern. West of the application area, across a platted alley, is MF-29 zoned land developed with single-family residences. Seneca is a four-lane arterial street at this location; Walker is a paved, local, two-lane street.

ADJACENT ZONING AND LAND USE:

NORTH	LC	Single-family residence, warehousing
SOUTH	GI	Rail line, wrecking and salvage
EAST	LI, LC	Maintenance facilities, bar/tavern
WEST	MF-29	Single-family residences

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

UNIQUENESS: It is staff's opinion that this property is unique. The small building on the subject site is on the far eastern portion of the site, with a parking area and an alley separating the commercial building from the residential zoned area to the west. Also, the residential zoned lot to the west is developed on the far western portion of that lot, with 175

feet between the commercial building and the nearest residentially zoned house. The site is further unique in that it is developed with a small commercial building with a restaurant in half of the building; the remaining commercial space is too small for most commercial uses.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance of the 200-foot separation between Tattooing and Body Piercing Facilities and residential zoning would not adversely affect the rights of adjacent property owners. The proposed Tattooing and Body Piercing Facility building would be 175 feet from the nearest residentially zoned house, and would be separated by parking, an alley, trees, and code required screening. The immediate area is characterized by commercial and industrial zoning and uses to include maintenance facilities, a bar/tavern, warehousing, and a wrecking and salvage business; the proposed Tattooing and Body Piercing Facility would not be out of character with the existing uses in the immediate area.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant. The proposed commercial building space on the subject site could be too small to rent for most typical commercial uses. The property owner wishes to use the property for his own Tattooing and Body Piercing Facility. The subject site could remain vacant without the requested variance.

PUBLIC INTEREST: It is staff's opinion that the requested variance of the 200-foot separation between Tattooing and Body Piercing Facilities and residential zoning will not adversely affect the public interest, as viable commercial businesses fronting Seneca is in the public interest. Adequate separation between a Tattooing and Body Piercing Facility and residentially zoned houses will be maintained, and the character of the immediate area will not be adversely impacted.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance of the 200-foot separation between Tattooing and Body Piercing Facilities and residential zoning does not oppose the general spirit and intent of the Zoning Code. The intent of the Zoning Code is to ensure the adequate separation of land uses and the prevention of adverse impacts on the character of residentially zoned areas. The subject site will maintain adequate separation between the Tattooing and Body Piercing Facility and residentially zoned houses, and the character of the immediate area will not be adversely impacted.

RECOMMENDATION: It is staff's opinion that the requested variance would be appropriate at this location with the proposed conditions. Should the Board determine that the conditions necessary to grant a variance exist, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

1. The site shall properly zoned for a Tattooing and Body Piercing Facility and shall be developed in conformance with Zoning Code required screening along the west property line.
2. The Tattooing and Body Piercing Facility shall not expand beyond the existing building on the site.
3. The site shall have no signs facing west.
4. The applicant shall obtain all permits and licenses necessary to operate the site.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.