



Wichita-Sedgwick County Metropolitan Area Planning Department

September 15, 2011

Norman and Leatha Hein
8118 W 73rd Street North
Valley Center, KS 67205

Patrick B. Hughes
Adams Jones Law Firm, PA
1635 North Waterfront Parkway, Suite 200
Wichita, KS 67206

RE: BZA2010-00023 – County Variances to allow continuation of Rural Home Occupation (Co-BZA16-90) with additional employees, not to exceed 20 total on site or any 15 on site in excess of one hour per day, AND per Site Plan attached to application, using multiple existing accessory structures with a gross floor in excess of 3,000 square feet AND outdoor storage that is located closer to the street than the front of the building(s) within which the home occupation is conducted and closer than 200 feet from property lines or right-of-way lines, on property zoned RR Rural Residential (“RR”), as a continuation of Rural Home Occupation (CoBZA15-90 and CoBZA16-90), generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Sedgwick County Board of Zoning Appeals on September 14, 2011. 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,

A handwritten signature in black ink, appearing to read 'Derrick Slocum'.

Derrick Slocum
County BZA Assistant Secretary
Current Plans Division

City Hall • 10th Floor • 455 North Main • Wichita, Kansas 67202-1688

T 316.268.4421 F 316.268.4390

www.wichita.gov

cc: Paula D. Langworthy, Triplett, Woolf & Garretson, LLC, 2959 N. Rock Road, Suite 300,
Wichita, KS 67226
Steve M. Stark, Fleeson, Gooing, Coulson & Kitch, L.L.C., 1900 Epic Center, 301 N.
Main St., Wichita, KS 67202
Richard Ranzau, County Commissioner
Bob Parnacott, County Counselor
Bill Raymond, County Counselor
Kelly Dixon, Sedgwick County Code Enforcement
Glen Wiltse, Sedgwick County Code Enforcement
Jim Weber, Sedgwick County Public Works
Bud Gates, 638 Preston Trail, Wichita KS 67230
Larry Hacker, P. O. Box 4204, Wichita KS 67204
Richard Groniger, 9264 N Hoover, Valley Center KS 67147
Terry Hacker, P.O. Box 4204, Wichita KS 67204
Doug Ulbrich, 7425 N. Tyler, Valley Center KS 67147
Robert Ulbrich & Valerie Ulbrich, 7401 N. Tyler, Valley Center KS 67147
CoBZA members

RESOLUTION

**A RESOLUTION BY THE SEDGWICK COUNTY BOARD OF ZONING APPEALS (SCBZA)
STATING WRITTEN FINDINGS MADE BY THE SCBZA AS DIRECTED BY THE DISTRICT
COURT THAT THE HARDSHIP WAS NOT SELF-CREATED IN THE MATTER OF THE
VARIANCE REQUEST SUBMITTED BY NORMAN AND LETHA HEIN, SCBZA CASE NO. 2010-
00023 FOR A RURAL HOME OCCUPATION**

WHEREAS, the SCBZA held a public hearing on October 12, 2010, to consider the application for three variances by Norman and Letha Hein; and

WHEREAS, after the close of the public hearing the SCBZA granted the three variance requests; and

WHEREAS, on November 10, 2010, a petition appealing the SCBZA decision was filed in Sedgwick County District Court, and assigned Case No, 10 CV 4493; and

WHEREAS, on April 14, 2011, a bench trial was held by the Honorable Joseph Bribiesca, who, after hearing argument of counsel, directed the matter be remanded back to the SCBZA for the "crucial, and in the Court's opinion, dispositive issue" of whether the hardships in this case were self-created; and

WHEREAS, the SCBZA has now met as directed by Judge Bribiesca, and having reconsidered the matter:

**NOW, THEREFORE, BE IT RESOLVED BY THE SEDGWICK COUNTY BOARD OF
ZONING APPEALS that:**

- 1) In the case *City of Olathe v. Board of Zoning Appeals*, 10 Kan.App.2d 218 (1985), an existing business had nonconforming free-standing pole signs. The city code provided that any change in the name on the sign would be considered a "new" sign subject to height limitations. The franchisor of the business changed its name nationwide, and required the franchisee to change its sign. If the franchisee would not change its name, then it would lose the franchise. The Kansas Court of Appeal found the change was "forced upon" the franchisee by the franchisor, and therefore not self-created. This case involved an existing business that was seeking the variance in order to continue its operations.
- 2) In the case of *City of Merriam v. Board of Zoning Appeals*, 242 Kan. 532 (1988), the district court found the applicant took title to the property knowing that the city code limited the height of the tower, and that the variance granted from the height limitation was being appealed to the district court. The Kansas Supreme Court noted the general rule is that a variance cannot be granted where the hardship is self-created and that where someone takes title with knowledge of the zoning restrictions, the hardship may be self-created.
- 3) In the case of *Cooper v. City of Kansas City*, 1988 Kan. App. Lexis 757, a building had been constructed nine inches into a setback area, and the landowner, after the fact, sought a variance to avoid having to move the building. The Kansas Court of Appeals found this was "clearly" a self-created hardship, even if the mistake was unintentional and not done in bad faith, and consequently the variance should not have been granted.

4) Therefore, the only situation that has been clearly and specifically identified as resulting in a self-created hardship is where a use or building has been placed within a setback area, without any other basis for building within the setback. The architect in that case simply made a calculation error.

5) The Kansas Supreme Court has held that taking title to property with knowledge of the zoning limitations, as a general rule, may be considered a self-created hardship. Despite that being the general rule, the use of the word "may" by the Kansas Supreme Court indicates that there can be situations where, although the landowner took title subject to the zoning regulations, due to certain circumstances any hardship may not necessarily be self-created.

6) Having reviewed the record in the matter and considering all testimony and other information presented, the SCBZA hereby makes the following findings regarding whether the hardships were self-created.

A) To allow up to 20 employees with not more than 15 on site in excess of one hour in a day.

The Heins, in 1990, were granted a variance from the zoning code limitation of no more than two employees, other than persons occupying the residence could be employed in the rural home occupation. The Heins were granted a variance that allowed up to 4 employees, other than the persons occupying the residence, and in particular the 1990 SCBZA noted:

[This condition] is not created by an action or actions of the property owner or the applicant inasmuch as the business is not actually conducted on the premises, but approximately one day a week, for a portion of the day, up to 4 employees would be on the premises to maintain the equipment which is used in the business and which is stored on the premises.

Although the literal language of the variance referred to allowing up to 4 employees, other than the persons occupying the residence, it was apparently understood that the limitation applied only to non-resident employees at the residential site; at the time of the 1990 variance, the Heins issued 19 W-2s, and that most of the employees met at jobsites rather than coming to the residential site.

The Heins need to increase the number of employees allowed on site at any one time to no more than 15 results from a change in business operations, including the growth of customer base, the need for six drivers of company equipment instead of the previous four drivers, and that now the high school student employees come to the residential site to catch a ride to the jobsite.

Mr. Hein has indicated that characterizing the request for this variance as due to an increase in the business size may be a "misconception." Instead, the need to allow up to 15 employees on site is to allow the Heins to keep their employees working during inclement weather, or to allow them to assist the Heins with personal property needs at the residential site.

Staff's report indicates that they see this as a situation like the *City of Merriam* case, where the Heins had previously known the code limited the number of employees, other than those living at the site, to two employees; and that the existing variance increased that only to 4 employees. Staff opines the hardship was due to a change in operation and was self-created by actions of the Heins.

Staff's reliance on the general rule stated in the *Merriam* case fails to recognize the court in that case left some room for exceptions to the general rule. We would also note that *Merriam* involved a situation of a proposed use, where here we have a continuing business. The Heins have a vested private property right in their business, and we believe a right to adapt their business to changing conditions including reasonable growth.

B) To allow, per Site Plan attached to the application, using multiple existing accessory structures with a gross floor area in excess of 3,000 square feet in association with the Rural Home Occupation.

The Heins have several accessory structures on the residential site that combined total 6,856 square feet in floor area. The Heins are allowed the use of accessory structures for the rural home occupation up to the floor area of the principal residence, which in their case is 4,499 square feet. However, the Heins do not require the use of all 6,856 square feet.

The Heins have the right to use all of the buildings for any uses not associated with the rural home occupation; and the right to use up to 4,499 square feet of the building floor space for the rural home occupation. Any need for the accessory structure area in excess of the allowed 4,499 square feet is simply a result of the previously mentioned growth in their business, and adaptation to the changing needs for the existing business. Under these circumstances, the nature of the hardship does not arise out of circumstances similar to either the *City of Merriam* or the *Cooper* case, and does not appear to be self-created as that term has been described by Kansas courts.

C) To allow outdoor storage that is located closer to the street than the front of the building(s) within which the Rural Home Occupation is conducted and closer than 200 feet from the property lines or right-of-way lines in association with the Rural Home Occupation.

The outdoor storage is relatively small, somewhere between one and two thousand square feet. Along with the outdoor storage, there is a wood composting area, which is actually more visible than the outdoor storage. The wood composting is an ancillary agricultural use, and not part of the rural home occupation. Staff notes that allowing both of these activities in the area they are located minimizes the amount of the site that needs to be used for private drives to access the uses.

The site is adjacent to a wing levee. The location of the outdoor storage also takes into account the existing natural screening of a tree row on the east side of the property. Not all of the materials in the outdoor storage are associated with the rural home occupation.

The placement of the outdoor storage within the setback areas is not simply an error or miscalculation like the *Cooper* case. The allowed use of composting, as well as the existing tree row all support this location for the placement of the material as arising out of the unique characteristics of this site. This hardship is not self-created as the term has been described by Kansas courts.

ON BEHALF OF:
SEDGWICK COUNTY BOARD OF ZONING
APPEALS


GRANT TIDEMANN, CHAIRMAN

BOARD OF ZONING APPEALS
Sedgwick County, Kansas

AGENDA ITEM NO. _____
First Meeting: October 12, 2010
Second Meeting: September 14, 2011

SECRETARY'S REPORT

CASE NUMBER: BZA2010-00023

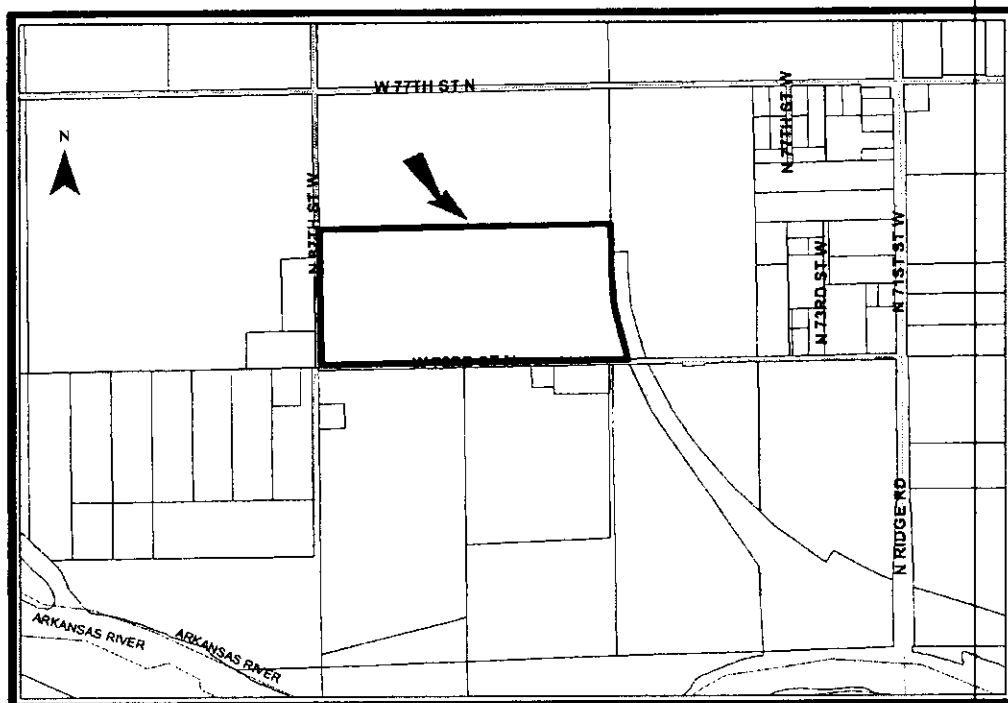
APPLICANT/AGENT: Norman and Leatha Hein (owner); Patrick B. Hughes, Adams Jones Law Firm, PA (agent)

REQUEST: County Variances to allow continuation of Rural Home Occupation (CoBZA16-90) with additional employees, not to exceed 20 total on site or any 15 on site in excess of one hour per day, AND per Site Plan attached to application, using multiple existing accessory structures with a gross floor in excess of 3,000 square feet AND outdoor storage that is located closer to the street than the front of the building(s) within which the home occupation is conducted and closer than 200 feet from property lines or right-of-way lines, on property zoned RR Rural Residential ("RR"), as a continuation of Rural Home Occupation (CoBZA15-90 and CoBZA16-90)

CURRENT ZONING: RR Rural Residential

SITE SIZE: 75 acres

LOCATION: Generally located on the north side of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road).



JURISDICTION: The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicants, Norman and Leatha Hein, requests three variances. The first variance would be to allow up to 20 employees with not more than 15 on site in excess of one hour in a day. The applicant has stated that they now have employees coming to the site to pick up lawn care equipment and take it to the job site, then return to pick up the employees' vehicles in the evening. On inclement weather days, the employees are given work tasks on site such as tree trimming and maintenance work. The second variance would be to allow an increase in the amount of accessory structures used in conjunction with the rural home occupation. The third variance would be to allow outdoor storage to be located closer to the street than the front of the building(s) within which the home occupation is conducted and closer than 200 feet from property lines in order to keep an outdoor storage area in the southeast corner of the site. All three variances are requested as a continuation of the existing rural home occupation (CoBZA15-90 and 16-90) operated on a 75-acre tract of land located north of 73rd Street North and approximately 3,140 feet west of North 71st Street West (Ridge Road), or midway between Ridge Road and 87th Street West (Tyler Road).

The property is zoned RR Rural Residential ("RR"). The rural home occupation is located on the south half of the northwest quarter, Section 4, Range 1 West, Township 26 South, plus approximately one acre in a triangular tract extending to the wing levee. The rural home occupation was established originally on the small triangular tract in the 1970s. By 1990, the applicants had acquired the south half of the northwest quarter and were building their home on this tract. CoBZA 15-90 granted the Heins a variance to allow the rural home occupation within 220 feet of another residence and CoBZA 16-90 granted a variance to increase the number of persons employed in the rural home occupation from two to four. At the time of these variance requests, the applicants stated that they conducted a lawn care business, that they met other employees at the job sites in Wichita where the lawn care was provided, that the need for four employees was to do maintenance work on their premises on Mondays, and that they did not intend to expand the business beyond these amounts. The site plan approved as part of CoBZA 15-90 showed the house and two additional storage buildings for the lawn care business (a wood shop for personal use was on the plan but not part of the lawn care home occupation).

The current site plan shows the house and the two buildings from the original site plan plus two additional buildings. Building permits issued for these buildings in 2005 labeled them as not for commercial purposes. These buildings now are being added to the request for the lawn care business. Article IV-E.6.c of the Unified Zoning Code ("UZC") states that a rural home occupation may be conducted in an accessory structure having a floor area equal to the floor area of the principal residence or up to 3,000 square feet, whichever is greater. The combined square footage of the accessory buildings is approximately 7,500 square feet. Some of the space in the accessory buildings would be for personal or farming use, but the applicant has indicated that some of each building is used in conjunction with the home occupation.

The site plan also shows a wood composting service area near the southeast corner of the site, with an outdoor storage area between the compost area and the property line to the east. The outdoor storage area is relatively small, perhaps 1,000 to 2,000 square feet. However, it is located nearer to the front property line than the buildings within which the home occupation is conducted and is not 200 feet from all property lines, which are the requirements for location of outdoor storage of Article IV-E.6.d

of the UZC. The outdoor storage is shown on the Site Plan as being approximately 40 feet from the 73rd Street North property line and ranges from 100 to 120 feet from the east property line.

All surrounding property is zoned RR. A residence is located within 250 feet of the operation of the rural home occupation, the same residence as generating the original CoBZA 15-90 variance. To the southwest is an agricultural field with a sand pit operation (CON2003-00032 and CON2009-00036, expiring in 2012). To the east is a dense tree row on the applicants' property bordering the wing levee, then an agricultural field. East of this is a property previously approved for rural home occupation for vehicle repair on a five-acre tract (CON2009-00020) but no home occupation has been established on it to date. Several residences are clustered at the corner of 73rd Street North with a private drive labeled "73rd Street West." To the west of the applicants' property and beyond 87th Street West, the area has more agricultural use associated with farmsteads. Also a campground is located at the terminus of 73rd Street North at the Arkansas River. Farmland is located to the north of the applicants' property.

ADJACENT ZONING AND LAND USE:

NORTH	RR	Agriculture
SOUTH	RR	Single-family residence, sand pit, agriculture
EAST	RR	Levee, agriculture, residences
WEST	RR	Agriculture

VARIANCE 1: To allow up to 20 employees with not more than 15 on site in excess of one hour in a day, as a continuation of a Rural Home Occupation (CoBZA 16-90).

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

UNIQUENESS: It is the opinion of staff that this property itself is not unique, but the use is unique, as it has operated as a landscape contractors business for 30 years, initially on the small triangular tract prior to the establishment of County zoning and expanded to the larger acreage around 1990. This was associated with the two variances: (1) to allow up to four employees onsite (CoBZA 16-90), and (2) to reduce the required distance separation from 600 to 220 feet between the rural home occupation and the nearest residence where no rural home occupation is operated (CoBZA 15-90). This allowed the home occupation to be operated in a more intensive manner than permitted by the Sedgwick County Zoning Code standards in effect in 1990. Today the UZC allows the increase from two to four employees by Conditional Use, the level granted by CoBZA 16-90.

ADJACENT PROPERTY: It is the opinion of staff that granting the requested variance for increased employment allowed onsite adversely affects the rights of adjacent property owners by changing the scale and character of the operation from a home occupation as approved by CoBZA 16-90 to a business. It would be tantamount to rezoning the property. All surrounding property is zoned RR. A residence is located within 220 feet of the operation of the rural home occupation, the same residence as generating the original CoBZA 15-90 variance. To the southwest is an agricultural field with a sand pit operation (CON2003-00032 and CON2009-00036), scheduled to expire in 2012. To the east is a dense tree row on the applicants' property bordering the wing levee, then a agricultural field. East of this site is a property approved for rural home occupation for vehicle repair on a five-acre tract (CON2009-00020) but no home occupation has been established on it to date. Several residences are located at the corner of 73rd Street North with a private drive labeled "73rd Street West." To the west

of the applicants' property and beyond 87th Street West, the area has more agricultural use associated with farmsteads. Also a campground is located at the terminus of 73rd Street North at the Arkansas River. Farmland is located to the north of the applicants' property. The vicinity is agricultural, with a scattering of typical rural-type uses like the campground and sand pit, but is not commercial in character.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations does not constitute an unnecessary hardship upon the applicant, and that the hardship is created by self-imposed conditions arising from the applicants expanding the scale of the use beyond that allowed by the UZC for rural home occupations and as allowed by conditions of approval of the previous variances.

PUBLIC INTEREST: It is the opinion of staff that the requested variance adversely affects the public health, safety and general welfare inasmuch as the scale is more than anticipated and, if allowed on all rural home occupations by similarly situated properties, would result in a significant increase in traffic, activity and order within this rural area. Already, the volume of traffic from the use is more than expected from customary rural use. Traffic counts show that roughly from 30 to 35 percent of the car and small truck traffic along 73rd Street North is going to this particular site. Currently, the Conditional Use for the sand pit operation was required to treat the road with dust retardant in order to minimize the impact of the sand trucks on the other property owners' use of the property since the large trucks associated with the sand pit exert a much greater impact on the road than typical cars or small trucks. However, once this use expires, the sand pit operator will no longer have road maintenance responsibility and the extra traffic could impact township road's ability to maintain the road.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance does not conform to the general spirit and intent of the UZC. As requested, it would not conform to the character and scale of a rural home occupation. The expansion of employment to 20 is five times the level allowed by the UZC for a rural home occupation as a Conditional Use. The applicant has stated they would restrict on site employment to no more than 15 in excess of one hour per day. This still represents nearly four times the level of employees allowed. The BZA cannot intrude upon the authority of the BOCC to the extent that the variance would amount to a substantial departure from the established zoning.

RECOMMENDATION: It is staff's opinion that the requested variance does not meet the five criteria necessary to grant a variance. Therefore, staff recommends that the variance, as requested, be **DENIED**.

Should the Board determine that the necessary conditions exist to grant a variance, the Secretary recommends that the scale of the variance be reduced to confine employment to a level of four employees on site and up to 15 employees who are allowed to come to the site, park their vehicles, then return at the end of the day to remove their vehicles, and further that the vehicles shall not be parked any closer to the street than the street wall line of the existing residence, and further that at the end of a time period not to exceed 15 years from the granting of a variance hereto, this use be restricted only those levels of activity allowed as a rural home occupation by the Unified Zoning Code (effective at this time).

VARIANCE 2: To allow, per Site Plan attached to the application, using multiple existing accessory structures with a gross floor area in excess of 3,000 square feet in association with the Rural Home Occupation.

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

UNIQUENESS: It is the opinion of staff that this property itself is not unique, but the use is unique, as it has operated as a landscape contractors business for 30 years, initially on the small triangular tract prior to the establishment of County zoning and expanded to the larger acreage around 1990. Standards in the UZC allow 3,000 square feet in accessory structure(s) by-right, with the ability to increase this level if deemed appropriate by Conditional Use, but this maximum also can be varied as a deviation to the specific regulations through a variance, so long as it meets the variance criteria. The site plan for the original variance indicated two accessory structures for a total of 1,416 square feet devoted to the rural home occupation (all of the storage building on the site plan and part of the garage but none of the wood shop). Since then, two additional buildings have been constructed and the operation of the home occupation has expanded to portions or all of the accessory structures. From a Code Enforcement standpoint, it is difficult to separate the portions of particular buildings used personally from those used for home occupation.

ADJACENT PROPERTY: It is the opinion of staff that granting the requested variance for additional storage space, as shown on the attached site plan, would not adversely affects the rights of adjacent property owners, inasmuch as the buildings are similar in type and number to outbuildings found on agricultural operations on property zoned RR used strictly for agricultural purposes. The surrounding property includes a residence located within 220 feet of the operation of the rural home occupation and an agricultural field with a sand pit operation (CON2003-00032 and CON2009-00036), set to expire in 2012. Otherwise, the land in the surrounding area is used as agricultural fields and farmsteads that typically have several outbuildings. Some smaller residential tracts are located about one-fourth mile to the east, but the visibility of this operation is blocked by the levee and tree row. The storage buildings are in character with the rural landscape of the vicinity.

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 it only would be preventing the storage of the materials and equipment for the rural home occupation that could otherwise be occupied by farm equipment and supplies, which are quite similar to the lawn maintenance equipment and supplies.

PUBLIC INTEREST: It is the opinion of staff that the requested variance to increase the amount of indoor storage does not adversely affect the public health, safety and general welfare, inasmuch as the scale of the outbuildings is within the normal range of farm use and could be developed on agricultural properties. The only negative public impact would be if large numbers of employees were making frequent trips on the road to take the vehicles and supplies from the home occupation to the worksites. By restricting the number of onsite employees, this effect should be minimized.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance conforms to the general spirit and intent of the UZC, inasmuch as the outbuildings do not change the character and appearance from that of a typical farmstead.

RECOMMENDATION: It is the opinion of staff that the requested variance to allow, per the Site Plan attached to the application, using multiple existing accessory structures with a gross floor area in excess of 3,000 square feet in association with the Rural Home Occupation (CoBZA 15-90) meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance be GRANTED, subject to the following conditions.

1. The site shall be developed in substantial conformance with the approved site plan.
2. The use of accessory structures for the Rural Home Occupation shall be limited to those structures shown on the approved site plan.
3. 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.

VARIANCE 3: To allow outdoor storage that is located closer to the street than the front of the building(s) within which the Rural Home Occupation is conducted and closer than 200 feet from property lines or right-of-way lines in association with the Rural Home Occupation.

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

UNIQUENESS: It is the opinion of staff that this property itself is not unique, but the use is unique, as it has operated as a landscape contractors business for 30 years, initially on the small triangular tract prior to the establishment of County zoning and expanded to the larger acreage around 1990. The outdoor storage was placed on the narrow triangular strip because it afforded the best natural screening for the outdoor storage.

ADJACENT PROPERTY: It is the opinion of staff granting the requested variance for the location of the outdoor storage would not adversely affect the rights of adjacent property owners due to the natural screening by the tree row on the east, and the proposed additional landscape screening to buffer the storage area from the visibility of the nearby residence and those traveling on 73rd Street North.

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 it would require creating a separate area for outdoor storage isolated from the area used for wood composting, with the wood composting being the most visible part of the outdoor storage activities along 73rd Street North and being considered an ancillary agricultural use permitted by right; the composting could continue in its present location regardless of the disposition of this variance request. Allowing the Rural Home Occupation outdoor storage to be placed in the same vicinity, with appropriate screening and buffering, affords easier operation of the lawn maintenance home occupation and the use of private drives to serve both areas, thus minimizing private drives on the agricultural land, plus consolidating the composting/outdoor storage into one place.

PUBLIC INTEREST: It is the opinion of staff that the requested variance for the location of the outdoor storage does not adversely affects the public health, safety and general welfare, inasmuch as it does not encroach onto the public right-of-way or obstruct road visibility.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance conforms to the general spirit and intent of the UZC, inasmuch as the location of the outdoor storage area is

sandwiched between the wood composting operation and the tree row and will be well-buffered from the road.

RECOMMENDATION: It is the opinion of staff that the requested variance for outdoor storage as shown on the site plan meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance for the outdoor storage, as requested and shown on the site plan, be **GRANTED**, subject to the following conditions.

1. The site shall be developed in substantial conformance with the approved site plan.
2. The outdoor storage shall be screened and buffered as shown on the approved site plan; consisting of solid evergreen screening along the south property line and solid screening along the east property line of the area devoted to outdoor storage.
3. The resolution authorizing the 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.

SITE PLAN

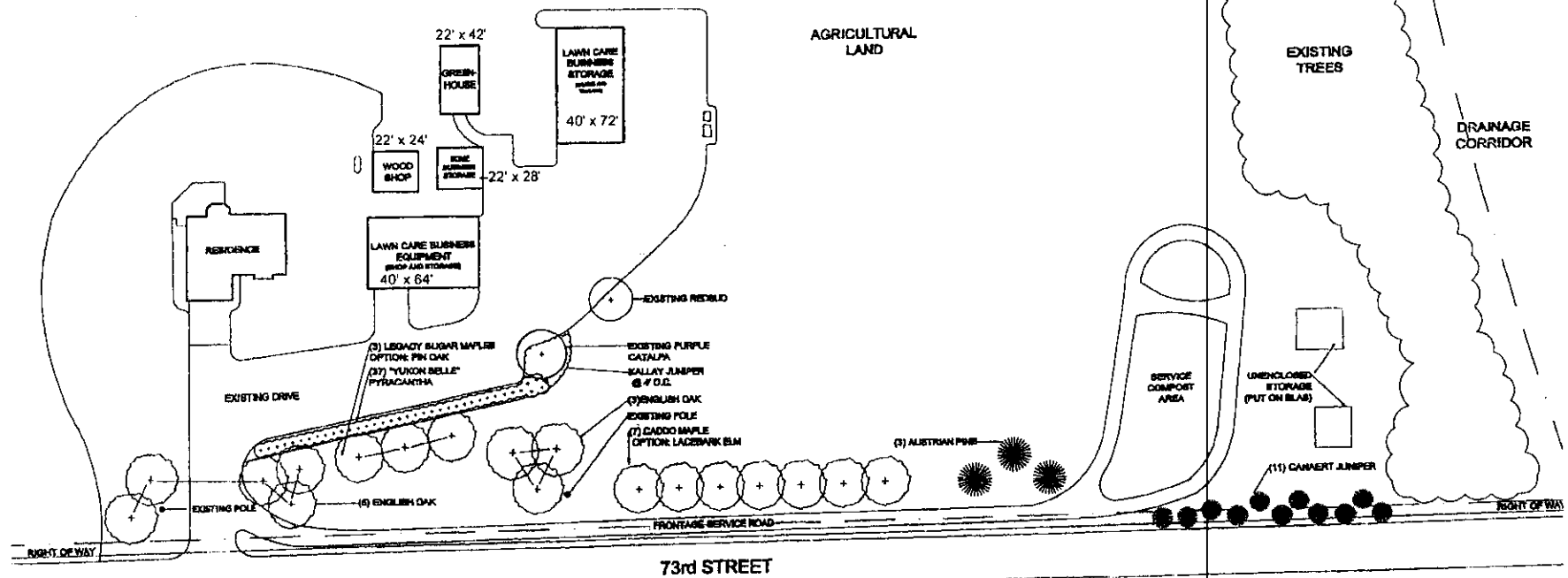
NORMAN AND LEATHA HEIN

8118 W. 73rd ST.

VALLEY CENTER, KS 67147

SCALE: 1"=60'

6-09-10



000049