



Wichita-Sedgwick County Metropolitan Area Planning Department

August 3, 2015

Bernadine Lumbreras
3303 N. Lake Ridge Court
Wichita, KS 67220

RE: BZA2015-00030 – City variance request to reduce the side yard setback from 6 feet to 1 foot for a carport. Southwest of the intersection of West 21st Street North and North Wellington Place (2137 N. Wellington Pl.)

Dear Applicants:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **July 23, 2015**. This resolution reflects the official action of the Board, it is forwarded for your information and files.

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

Sincerely,

Derrick Slocum
Asst. BZA Secretary

cc: Tom Stolz, MABCD
Mike Gable, MABCD
JR Cox, MABCD
Janet Miller, WCC VI CM
Martha Sanchez, CL VI

BZA RESOLUTION NO. BZA2015-00030

WHEREAS, Martiniano and Bernadine Lumbreras (Owner, Applicant) pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, request to reduce the Zoning Code required minimum interior side setback from 6 feet to 1 foot for a carport; generally located south and west of the intersection of 21st Street North and North Wellington Place (2137 Wellington Pl.)

Legal Description: Lots 25 and 27, on Water Street, now Wellington Place, in Gossard's Subdivision of Gossard's 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 July 23, 2015, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759 *et. seq.*; and

WHEREAS, the Board of Zoning Appeals has found that this property is unique inasmuch as the existing carport has been in place for many years with no issues. The applicants just want to keep the carport as is with no modifications.

WHEREAS, the Board of Zoning Appeals has found that the requested variance would not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of 6 feet between buildings.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the applicant would have to remove a structure that has caused no issues and does keep more than 6 feet of separation between the subject structure and the residential structure to the south.

WHEREAS, the Board of Zoning Appeals has found that the requested variances for a side setback reduction from six to one foot will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reductions, and provided that building and fire codes are followed.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance for a side setback reduction from six to one foot does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

WHEREAS, each of the five conditions required by Kansas Statutes Annotated 12-759 *et. seq.*, are found to be present for a variance to be granted.

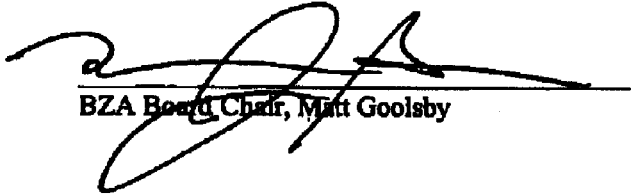
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, request to reduce the Zoning Code required minimum interior side setback from 6 feet to 1 foot for a carport; generally located south and west of the intersection of 21st Street North and North Wellington Place (2137 Wellington Pl.)

Legal Description: Lots 25 and 27, on Water Street, now Wellington Place, in Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas.

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

1. The site shall be developed in conformance with the approved site plan.
2. The applicant shall obtain all permits necessary for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

ADOPTED AT WICHITA, KANSAS, this 23th Day of July, 2015.



BZA Board Chair, Matt Goolsby

ATTEST:



Derrick Slocum
Asst. BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2015-00030

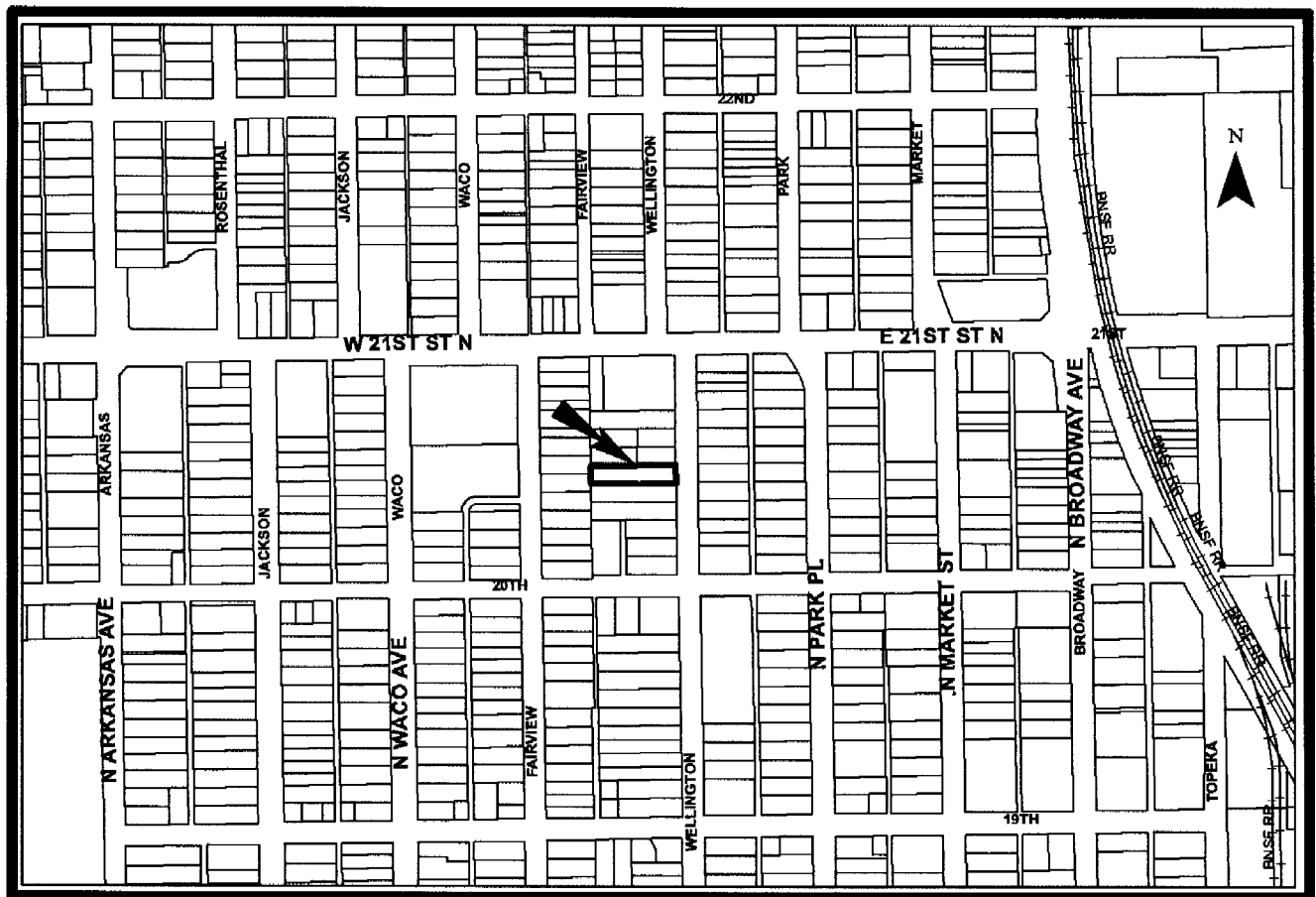
APPLICANT/AGENT: Martiniano and Bernadine Lumbreras (Owner, Applicant)

REQUEST: Variance to reduce the interior side setback from 6 feet to 1 foot.

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

SITE SIZE: 0.26 acres

LOCATION: Generally located at the south and west of the intersection of 21st Street North and North Wellington Place (2137 Wellington Pl.)



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 Zoning Code required interior side building setback from six feet to one foot in order to keep an existing carport on the site. The zoning code requires a six foot interior side yard building setback in the MF-29 Multi-family Residential (“MF-29”) zoning district. The application area is developed with a home, an attached carport along the south side of the house and two accessory structures in the rear part of the property. According to the applicant, the carport was built in November 2014. No one reported the carport, but the house directly across the street located at 2132 Wellington Place was having major remodeling done, and a compliance officer was over at that house. That officer noticed the carport and started asking the applicant questions. It was during this time that the officer notified the applicant that they would need to apply for a variance for the carports setback encroachment.

Currently, separation between the existing attached carport and the residential structure to the south is 7’-3”. Building and fire code would require a minimum 6-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the property owner to the north, ensuring that any future improvements on either property would maintain a minimum of 6 feet between buildings. All surrounding properties are also zoned MF-29 and developed with single-family residences.

ADJACENT ZONING AND LAND USE:

NORTH	MF-29	Single-family Residence
SOUTH	MF-29	Single-family Residences
EAST	MF-29	Single-family Residences
WEST	MF-29	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 existing carport has been in place for many years with no issues. The applicants just want to keep the carport as is with no modifications.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for an interior side setback reduction may not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of 6 feet between buildings.

HARDSHIP: It is staff’s opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the applicant would have to remove a structure that has caused no issues and does keep more than 6 feet of separation between the subject structure and the residential structure to the south.

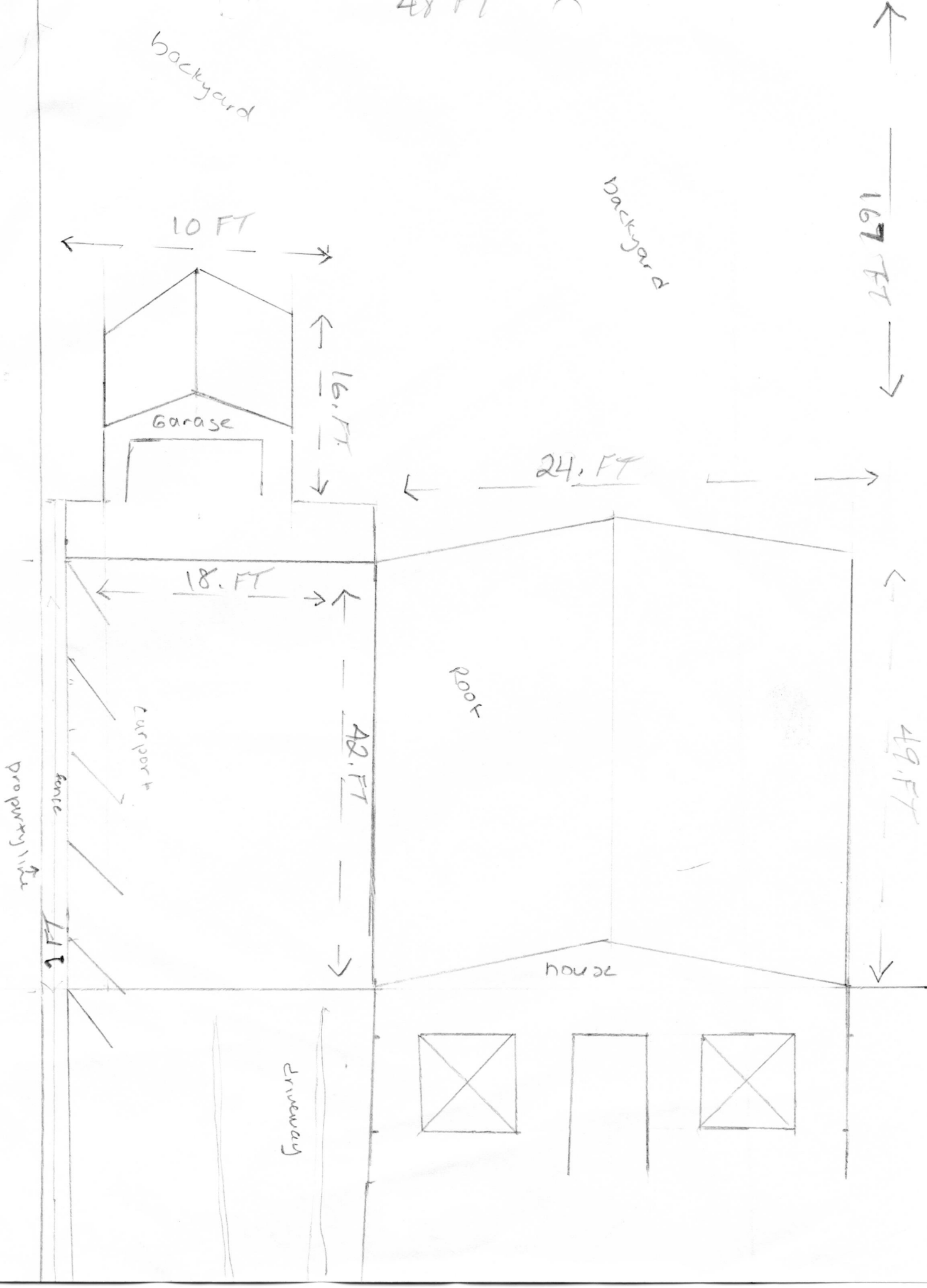
PUBLIC INTEREST: It is staff’s opinion that the requested variance for a side setback reduction from six to one foot will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reductions, and provided that building and fire codes are followed.

SPIRIT AND INTENT: It is staff’s opinion that granting the requested variance for a side setback

reduction from six to one foot does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary then recommends that the variance for an interior side setback reduction from six to one foot be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The applicant shall obtain all permits necessary for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots (south property), and prior to receiving a building permit or certificate of occupancy for the proposed structure.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.



N WELLINGTON PL

driveway

house

space

2137