



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

September 23, 2005

Tod A. and Donna L. Ford
255 S Rutan
Wichita KS 67218

**RE: BZA2005-00045—Variance to reduce the street side setback from 15 feet to 6 feet.
Generally located at the Northwest corner of Rutan Avenue and Waterman Street.**

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on September 20, 2005. 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 cursive script that reads 'Dale Miller'.

Dale Miller, Manager
Current Plans Division

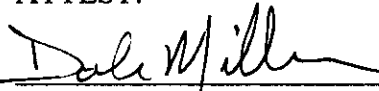
DLM/ya

Cc: Susan Schlapp, WCC II, Mail Stop 1-13
Sharon Dickgrafe, Law Department, Mail Stop 1-132
Herb Shaner, OCI, Mail Stop, 1-72

ADOPTED AT WICHITA, KANSAS, this 20th DAY of SEPTEMBER 2005.


BZA Board Chair

ATTEST:


Dale Miller, BZA Secretary

BZA RESOLUTION NO. 2005-00045

WHEREAS, Todd & Donna Ford (Owner/Applicant); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests Variance to reduce the street side setback from 15-feet to 6-feet on property zoned "SF-5" Single-family Residential legally described as follows:

Lot 18, on Rutan Avenue, B. D. Allen's Addition to Wichita, Sedgwick County, Kansas.
Generally located at northwest corner of Rutan Avenue & Waterman Street (255 S. Rutan).

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 September 20, 2005, 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. It is the opinion of the Board that this property is somewhat unique, inasmuch as the property was platted in its current configuration in 1910 (Lot 18, B.D. Allen's Addition) and the residence on the lot was constructed in the 1920s, with the existing garage appearing to be constructed closer to the 1920s than today; however, 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.

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. It is the opinion of the Board that the granting of the variance requested will 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.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that inasmuch as requiring the applicant to comply with the street side yard setback 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 desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variances 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 non-conformities with the current zoning regulations are common.

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 the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the street sideyard 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. Waterman Street is a short residential street that dead-ends at College Hill Park. It basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area, thus the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Waterman Street.

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, pursuant to Section 2.12.590.B, Code of the City of Wichita, variance be granted to reduce the street side setback from 15-feet to 6-feet on property zoned "SF-5" Single-family Residential legally described as follows:

Lot 18, on Rutan Avenue, B. D. Allen's Addition to Wichita, Sedgwick County, Kansas.
Generally located at northwest corner of Rutan Avenue & Waterman Street (255 S. Rutan).

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. The existing garage must be removed prior to construction of a new garage. Retain the eastern 25 feet of drive on to Rutan for off-street parking.
2. The setback reduction shall apply to an area located eight feet behind the property line for a maximum distance of 32 feet located no closer than ten feet west of the rear of the residence. 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.

2. The setback reduction shall apply only to the "22-foot (x) 32-foot 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.

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. 3
SEPTEMBER 20, 2005

SECRETARY'S REPORT

CASE NUMBER: BZA2005-00045

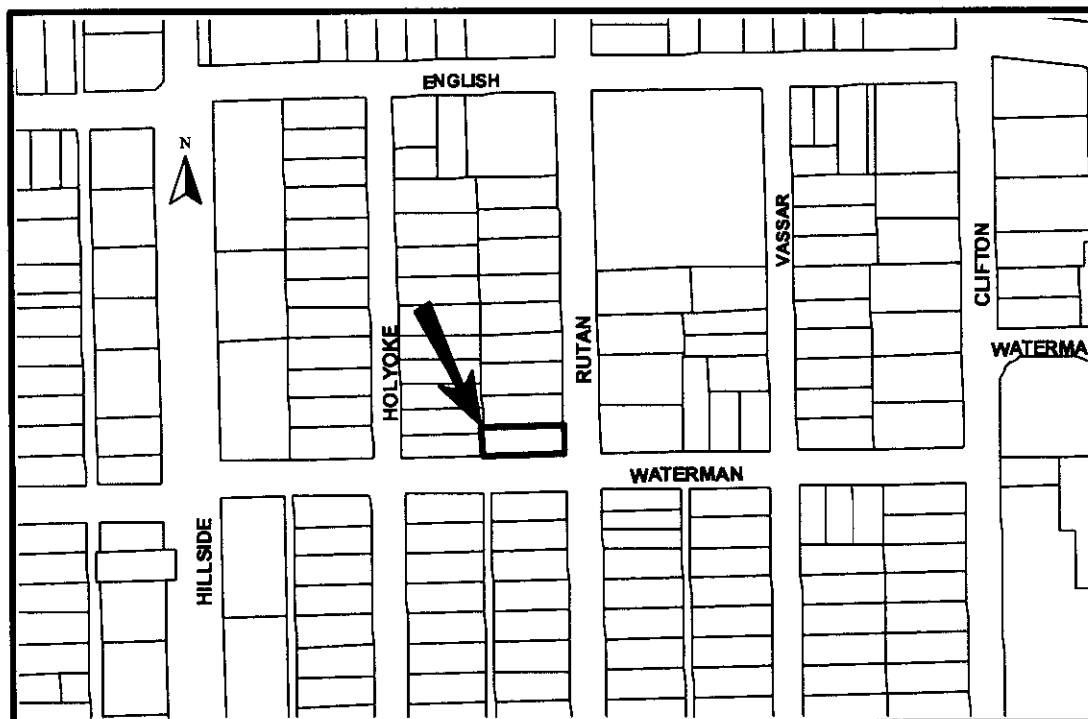
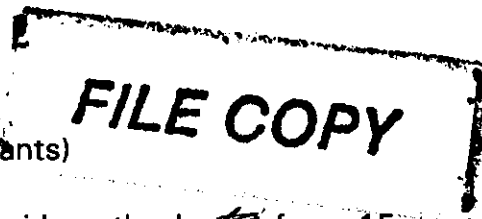
APPLICANT/AGENT: Todd & Donna (Owners/Applicants)

REQUEST: Variance to reduce the street side setback ~~and~~ from 15-feet to 6-feet

CURRENT ZONING: "SF-5" Single-family Residential

SITE SIZE: 0.166 acres (7,245-square feet)

LOCATION: Northwest corner of Rutan Avenue & Waterman Street
(255 S. Rutan)



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Kansas Statutes Annotated 12-759 *et. seq.* The Board may grant the request when all five conditions, as required by the statutes, are found to exist.

BACKGROUND: The applicant proposes to replace an existing 20-foot (x) 15-foot detached garage on the subject corner lot with a 22-foot (x) 32-foot detached garage. The existing garage is located approximately 3-feet from the Waterman Street right-of-way (ROW). The applicant is requesting that the proposed garage be located 6-feet off of the Waterman ROW (see attached site plan). Per the Unified Zoning Code (UZC), the "SF-5" Single-family Residential zoning district requires a 15-foot street side yard setback along the subject corner lot's Waterman Street frontage; See UZC, Art.II, Sec.II-B-7g., corner lot, and Art.III, Sec.III-E.6, setbacks on corner lots. The applicant has requested a variance to reduce the current UZC's 15-foot street side yard setback to 6-feet in order to replace the existing detached garage. A variance is required to reduce building setbacks by more than 20 percent.

The applicant proposes to have access to the new garage off of Waterman rather than the existing garage's access off of Rutan Avenue. The applicant has torn out the west portion of the drive off of Rutan to the existing garage, keeping the eastern portion of the drive, onto Rutan, for off street parking. The proposed orientation of the new garage, with its drive onto Waterman will allow the applicant to preserve more of his south street side yard and back yard as open space. In the three short blocks between Hillside Avenue and Vassar Avenue there are, not including the applicant's existing garage, four other detached garages with access onto Waterman and one attached garage with access to Waterman. All are 6-feet or closer from the Waterman ROW. All are on platted lots that were recorded before 1920. All of the lots' single-family residences were developed prior to 1926. Prior to 1996, street side yard setbacks, if not platted, for single-family residential zoning were not less than 6-feet or if the lot was recorded before October 1, 1928, not less than 3-feet. The applicant's corner site, Lot 18, BD Allen's Addition, was recorded with the Register Deeds November 5, 1910.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-5"	Single-family residences
SOUTH	"SF-5"	Single-family residences
	"TF-3"	
EAST	"TF-3"	Tri-plex & Single-family residences
WEST	"SF-5"	Single-family residences

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property was platted in its current configuration in 1910 (Lot 18, B.D. Allen's Addition) and the residence on the lot was constructed in the 1920s, with the existing garage appearing to be constructed closer to the 1920s than today; however, 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.

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.

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 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 non-conformities 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 primary intent of the street sideyard 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. Waterman Street is a short residential street that dead-ends at College Hill Park. It basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area, thus the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Waterman Street.

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 15-feet to 6-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.