

Residence District and legally described as follows:

Lot 2, High Point East Addition, Wichita, Sedgwick County, Kansas.
Generally located on the north side of Lincoln in an area west of Webb Road.

subject to the following condition:

1. This variance shall apply only to that portion of the east side yard setback adjacent to the existing structures which currently encroach into the 25-foot side yard setback as indicated on the site plan. The current encroachments are beginning in the east side yard setback 330 feet north of the south property line and continuing for 95 feet and beginning 583 feet north of the south property line and continuing for 23 feet.

ADOPTED AT WICHITA, KANSAS, this 23rd day of August, 1994.


Susan Osborne-Howes, President

ATTEST:


Lawrence Mitchell, Assistant Secretary

BZA RESOLUTION NO. 23-94

WHEREAS, T G M High Point Inc., pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variance to reduce the east side yard setback from 25 feet to 13.9 feet on property zoned the "R-6" General Residence District and legally described as follows:

Lot 2, High Point East Addition, Wichita, Sedgwick County, Kansas.
Generally located on the north side of Lincoln in an area west of Webb Road.

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 August 23, 1994, 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 to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant inasmuch as it was developed with structures under a single ownership with an approved plan which provided for proper separation of structures as required by city code but a subsequent sale of portions of the property to two different owners created this minor "nonconformity"; and

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 inasmuch as there exists an access road along the common boundary and at least 90 feet of separation between structures which will provide adequate protection of adjacent properties; and

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 inasmuch as it would be a considerable economic burden to remove the portion of the two buildings which are currently encroaching into the setback as well as jeopardizing the structural integrity of the buildings and the loss of dwelling space if they are altered; and

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, inasmuch as there will be no encroachment into public utility easements or street right-of-way as a result of this side yard reduction and therefore, there will be no effect on the general public; and

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 inasmuch as there will be ample distance maintained between structures which will provide for the protection of the adjacent properties and the general public; and

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 of the City of Wichita that this request be approved for variance to reduce the east side yard setback from 25 feet to 13.9 feet on property zoned the "R-6" General

SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4421

August 24, 1994

TGM High Point, Inc.
C/O TGM Associates, L.P.
767 Fifth Ave., 44th Floor
New York, NY 10153

RE: BZA 23-94 Variance to reduce the east yard setback from 25 feet to 13 .9 feet.

Dear TGM Associates:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on August 23, 1994. This resolution reflects the official action of the Board to grant your request and sets out the conditions of approval. It is forwarded to you for your information and files.

This is a reminder that the zoning adjustment signs should now be removed from the property. If you have any questions concerning this matter, please call our office.

Sincerely yours,



Lawrence P. Mitchell
Assistant Secretary
Board of Zoning Appeals

Enclosure
LPM/le

cc: Matthew G. Haney, 1010 Walnut, Suite 500, Kansas City, MO., 64106
Don C. Moehring, 433 S. Hydraulic, Wichita, KS., 67211
Randy Sparkman, OCI
Paul Hays, OCI
Ray Sledge, OCI
Pat Burnett, Deputy City Clerk
Yolanda Anderson, MAPD

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as it would be a considerable economic burden to remove the portion of the two buildings which are currently encroaching into the setback as well as jeopardizing the structural integrity of the buildings and the loss of dwelling space if they are altered.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as there will be no encroachment into public utility easements or street right-of-way as a result of this side yard reduction and therefore, there will be no effect on the general public.

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 ordinance inasmuch as there will be ample distance maintained between structures which will provide for the protection of the adjacent properties and the general public.

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 be granted, subject to the following conditions:

1. This variance shall apply only to that portion of the east side yard setback adjacent to the existing structures which currently encroach into the 25-foot side yard setback as indicated on the site plan. The current encroachments are beginning in the east side yard setback 330 feet north of the south property line and continuing for 95 feet and beginning 583 feet north of the south property line and continuing for 23 feet.

SECRETARY'S REPORT

CASE NUMBER: BZA 23-94

OWNER/APPLICANT: T G M High Point Inc.

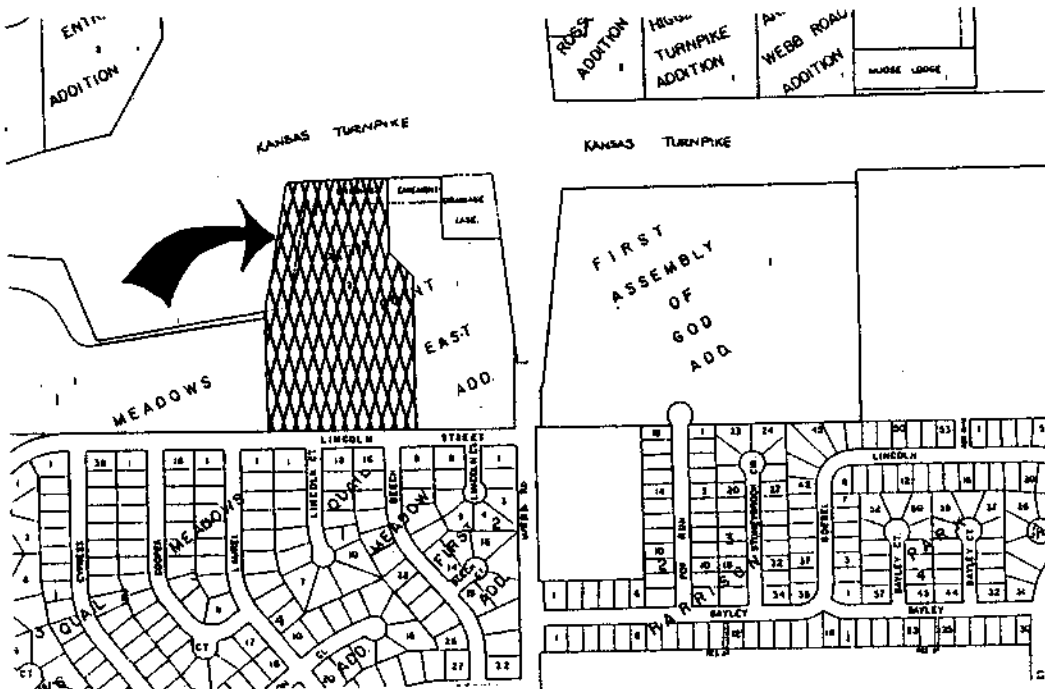
AGENT: Matthew G. Haney & Don C. Moehring

REQUEST: Variance to reduce the east side yard setback from 25 feet to 13 feet 9 inches

CURRENT ZONING: "R-6" General Residence District

SITE SIZE: 12.7 Acres

LOCATION: The north side of Lincoln in an area west of Webb Road



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: T G M High Point Inc., the applicant, is requesting a variance to reduce the east side yard setback from 25 feet to 13 feet 9 inches on property which is the site of the High Point East Apartments at 9400 E. Lincoln. The lot for which the side yard variance is being requested was platted along with the lot adjacent to the east in August 1973, as High Point East Addition. At that time there was one owner, Gunnison County Development Corporation. Gunnison County Development Corp. submitted plans to the City of Wichita to construct apartment buildings on each of the lots; these plans were approved and buildings were constructed on Lots 1 and 2. Portions of the apartment buildings on Lot 2 were constructed, per approved plans, within 25 feet of the lot line between Lots 1 and 2. Side yard setbacks are not required when adjacent lots are under one ownership and developed as one project. After developing the lots, Gunnison Development sold Lots 1 and 2 and improvements to separate parties. Upon the sale of the lots, a property line was established between Lots 1 and 2 and the current zoning ordinance requires that a 25-foot side yard setback be observed for both lots. The new ownership pattern gives a perception that a "required" side yard setback is not being observed. The new owners of the property want to clear up this perceived encroachment problem, but no violation notice or concern has been issued by the Office of Central Inspection.

The east side yard of Lot 2 is the back yard of three apartment buildings which generally face west and the west side yard of Lot 1 is the access road which leads to the parking and apartments developed on Lot 1. The closest structure on Lot 1 to the requested variance is approximately 90 feet. The two buildings which encroach into the east side yard setback, do so in varying amounts. The structure 901-924 is located 11.1 feet into the setback while structure 801-824 is 8.1 feet into the setback.

ADJACENT ZONING AND LAND USE:

NORTH	"AA" Turnpike
SOUTH	"A" Single Family Dwellings
EAST	"R-6" Trailridge Apartments
WEST	"R-6" Lincoln Meadows Apartments

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as it was developed with structures under a single ownership with an approved plan which provided for proper separation of structures as required by city code but a subsequent sale of portions of the property to two different owners created this minor "nonconformity."

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as there exists an access road along the common boundary and at least 90 feet of separation between structures which will provide adequate protection of adjacent properties.