

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 light, air and pedestrian circulation between structures on adjacent properties will be adequate, due to the unenclosed character of the structure for which this variance is granted.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of a 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 side yard setback variance from 6 feet to as little as 4 inches shall apply to only the east side yard adjacent to the existing carport, which is approximately 42 feet in length, beginning at a point 25 feet north of the south property line, as shown on the site plan submitted with this application.
2. This variance is for an unenclosed carport only and any other structures shall comply with all applicable setback requirements.
3. The newly constructed portion of this carport shall comply with all building codes, unless varied by the Board of Code Standards and Appeals upon application by this property owner.
4. The carport roof shall not direct runoff onto the adjacent property, but shall be sloped or guttered to direct runoff onto this applicant's own property.
5. The newly constructed portion of this carport shall be brought into compliance with all building and zoning codes (as adjusted or varied by the appropriate boards) within six months following approval of this BZA case, or the resolution authorizing the setback variance shall become null and void.

April 23, 1991

SECRETARY'S REPORT

CASE NUMBER: BZA 5-91

APPLICANT: Shane Michael

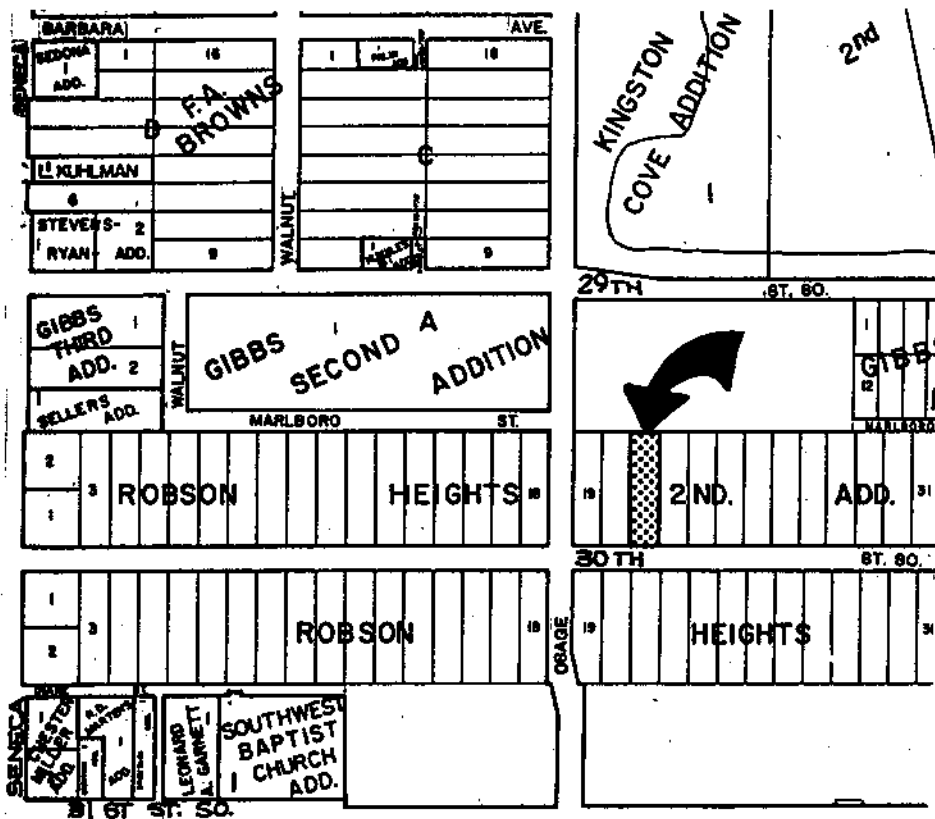
REQUEST: Variance to reduce the east side yard setback from 6 feet to 4 inches.

CURRENT ZONING: "AA" One-Family Dwelling District

SITE SIZE: 68 ft. x 277.5 ft.

LOCATION: North side of 30th St. South in an area east of Osage (722 W. 30th St. South)

PROPOSED USE: Carport



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 the State Statutes, are found to exist.

**BACKGROUND:** The applicant is requesting a reduction of his east side yard setback from 6 feet to 4 inches to accommodate an attached carport. Approximately three-fourths of the total length of this structure (32 of 42 feet) has existed for 25 to 30 years, according to the applicant. The additional 10-foot length was added within the past few months. The addition encroaches 5 feet into the platted 30-foot front yard setback also, but that encroachment is not a violation of the zoning code because a maximum 8-foot encroachment is permitted in the front yard for open, unenclosed porches and carports.

Although the applicant had a building permit from the City, the permit was for re-roofing a one-family dwelling and made no mention of a carport extension. The construction was not noticed by an area inspector until it was essentially completed. Central Inspection has told the applicant that although the old carport can remain without being considered a violation, the new portion must meet all current building and zoning codes and is a violation until brought into compliance or until appropriate variances are obtained.

A significant problem with this side yard reduction request is that for structures closer than 3 feet to the side property line, a firewall is required by the building code. To construct a firewall would entail enclosing the carport (or at least the new portion of it), which would make the encroachment much more noticeable and have more effect on the property to the east. The applicant has been advised of this building code requirement. Several options have also been discussed with him. The applicant could move the support posts so that they are a minimum of 6 feet from the side property line and he could have a 2½-foot roof overhang. This would require no variance. Or, upon approval of a side yard variance to 3 feet, the posts with no roof overhang could be placed at that location without a firewall requirement. Neither of these options was satisfactory to the applicant and he chose to file for this side yard variance from 6 feet to 4 inches.

A similar case was reviewed by the Board about 15 months ago. In that situation (BZA 50-89) the BZA approved the construction of a proposed carport at a zero side yard setback, provided there would be no firewall. The property owner then went to the building code appeals board and obtained permission to construct a metal carport without a firewall. The carport which Mr. Michael has already built is constructed mostly of wood. Any variance of the zoning code requirements which the BZA may determine to be appropriate would have no effect on building code requirements.

All of the homes in this immediate neighborhood were built at about the same time (1950s) and most have or had one-car attached garages, although a number of the garages have been converted to living space. All of the lots are approximately the same shape and size (68 feet by 277 feet). The only uniqueness relates to the fact that the old carport has been located within inches of the side property line for many

years. This house was constructed in 1950 and, assuming the original carport was constructed about the same time, these structures would have been built prior to annexation into the City in 1953 and therefore prior to any zoning and building controls.

From a visual standpoint, the 10-foot extension on the front of the carport does not block the view of (and probably not from) the house to the east and is a relatively small expansion of an existing encroachment which has existed for many years with no apparent ill effects. However, a requirement for a firewall to be constructed would definitely have an adverse visual effect on the house to the east, as well as the visual quality of this immediate neighborhood. A firewall would also make the carport an enclosed structure which would then violate the front yard platted setback and require the vacation of a portion of that platted 30-foot setback.

ADJACENT ZONING AND LAND USE:

NORTH	"AA"	Public school staff development center
SOUTH	"AA"	One-family dwelling
EAST	"AA"	One-family dwelling
WEST	"AA"	One-family dwelling

UNIQUENESS: It is the opinion of staff that this property is somewhat unique inasmuch as an existing 32-foot-long carport has encroached this same side yard setback by the same amount as this variance request for many years without any apparent problems and the new 10-foot carport extension is a relatively small additional encroachment.

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 the structure necessitating the variance is unenclosed and will not block the view of or from the property adjacent to the east any more by being at this location than it would if it were 6 feet further west, nor will it block pedestrian access or light and air because of its open construction.

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 the carport extension has already been constructed and would have to be removed or significantly altered, which would not only be an economic burden but would affect the appearance of the residence, as well as the owner's ability to provide protected parking for his vehicles.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as no public right-of-way or utility easements are being affected by the reduction in this side yard setback.



subject to the following conditions:

1. This side yard setback variance from 6 feet to as little as 4 inches shall apply to only the east side yard adjacent to the existing carport, which is approximately 42 feet in length, beginning at a point 25 feet north of the south property line, as shown on the site plan submitted with this application.
2. This variance is for an unenclosed carport only and any other structures shall comply with all applicable setback requirements.
3. The newly constructed portion of this carport shall comply with all building codes, unless varied by the Board of Code Standards and Appeals upon application by this property owner.
4. The carport roof shall not direct runoff onto the adjacent property, but shall be sloped or guttered to direct runoff onto this applicant's own property.
5. The newly constructed portion of this carport shall be brought into compliance with all building and zoning codes (as adjusted or varied by the appropriate boards) within six months following approval of this BZA case, or the resolution authorizing the setback variance shall become null and void.

ADOPTED AT WICHITA, KANSAS, this 23rd day of April, 1991.

  
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Keith A. Alter, President

ATTEST:

  
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Louise Olivarez, Secretary

WHEREAS, Shane Michael, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the east side yard setback from 6 feet to 4 inches on property zoned the "AA" One-Family Dwelling District and legally described as follows:

Lot 21, Robson Heights Second Addition, Wichita, Kansas. Generally located on the north side of 30th St. S. in an area east of Osage (722 W. 30th St. S.).

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 April 23, 1991, 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 owner or the applicant inasmuch as an existing 32-foot-long carport has encroached this same side yard setback by the same amount as this variance request for many years without any apparent problems and the new 10-foot carport extension is a relatively small additional encroachment; 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 the structure necessitating the variance is unenclosed and will not block the view of or from the property adjacent to the east any more by being at this location than it would if it were 6 feet further west, nor will it block pedestrian access or light and air because of its open construction; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as the carport extension has already been constructed and would have to be removed or significantly altered, which would not only be an economic burden but would affect the appearance of the residence, as well as the owner's ability to provide protected parking for his vehicles; 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, due to the fact that no public right-of-way or utility easements are being affected by the reduction in this side yard setback; 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 Title 28 (Zoning Ordinance) inasmuch as light, air and pedestrian circulation between structures on adjacent properties will be adequate, due to the unenclosed character of the structure for which this variance is granted; 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 a variance to reduce the east side yard setback from 6 feet to 4 inches on property zoned the "AA" One-Family Dwelling District and legally described as follows:

Lot 21, Robson Heights Second Addition, Wichita, Kansas. Generally located on the north side of 30th St. S. in an area east of Osage (722 W. 30th St. S.).