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Mary Kopietz, Chairman

ATTEST:

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Larry Dobson, Assistant Secretary

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6. Case No. BZA 44-78 - Othello H. Curry, Jr., 2201 E. 13th Street, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required number of off-street parking spaces from 100 spaces to 58 spaces, on property zoned the "A" Two Family Dwelling District, "BB" Office District and "LC" Light Commercial District (all approved for "B" Multiple Family Dwelling District subject to replatting), and legally described as follows:

Odd numbered Lots 157 through 179 on Spruce Avenue and even numbered lots 168 through 180 on Madison Avenue, all in Logan Addition to Wichita, Sedgwick County, Kansas (being replatted as Lot 1, Curry Addition to Wichita, Sedgwick County, Kansas). Generally located in an area north of 13th Street between Spruce and Madison Avenue.

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DOBSON showed slides of the application area and reviewed the following comments from the Secretary's Report.

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 of the following conditions are found to exist:

1. That the variance requested 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.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

3. That the strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to reduce the number of required off-street parking spaces from 100 spaces to 58 spaces in connection with the proposed construction of a 100 unit apartment building for the elderly.

Subject property is one of the Wichita sites selected by HUD for Section 8 housing for the elderly. The applicants state that HUD requires them to provide 50 off-street parking spaces for the 100 unit project, based on their experience that less than 50% of the occupants of this type of housing have vehicles requiring parking space. Further, Investment Resources Corporation, the agent for the applicant, manages seven elderly housing projects in Kansas, four of which are in the Wichita area, and state that none of the seven have a need for more than one parking space for each two units. Based on this experience, they feel that 58 parking spaces should be more than enough to meet the needs of this project.

Another consideration in requesting this variance is the fact that subject property contains a number of mature trees which can be saved if the parking is reduced. The site plan submitted with this application indicates ten mature trees that could be preserved by the granting of the variance. In addition to the trees, a substantial open space or park area could be retained for use by the residents of the units. The applicant has also submitted a site plan that shows how the total required parking could be located on the site should the need ever arise.

Two similar requests have recently been approved by the Board of Zoning Appeals. In both of those cases the Board determined that a 50% parking ratio was probably adequate to meet the parking needs of the occupants of this type of housing project and then added spaces equivalent to 10% of the total number of units proposed, to meet other parking needs such as visitor, delivery, service parking. Applying that same reasoning to this situation would result in 60 parking spaces, whereas the applicant is requesting a variance to 58 spaces.

UNIQUENESS:

It is the opinion of the Secretary that this may be a unique situation inasmuch as occupancy of the apartment building would be restricted to the elderly, many of whom do not own or drive cars.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of a variance of off-street parking requirements will not adversely affect the rights of adjacent property owners or residents as long as the reduction adequately meets loading/unloading and guest parking needs in addition to occupant parking; and also if the use ever reverts to a conventional apartment building, there is space to provide the total required parking.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicants inasmuch as experience has shown that the parking requirements for an housing project for the elderly are less than those normally required, and to require the total parking deprives the area of existing mature trees and additional green space.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of a variance would not adversely affect the public interest inasmuch as less than required parking would adequately serve the needs of an apartment building restricted to elderly residents.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of a variance would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the parking requirements do not distinguish between a conventional apartment complex and one where elderly residents occupy 100 percent of the units.

RECOMMENDATIONS:

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to exist for a reduction in the number of off-street parking spaces. To be consistent with two recent similar cases a variance to 60 spaces, rather than the 58 requested, is recommended. However, the developers of this project also reportedly manage seven elderly housing projects in Kansas and feel that the requested 58 spaces will adequately meet the needs of this project. The following condition of approval is recommended as a provision of a variance to either number:

1. In the event the apartment project for the elderly (HUD Section 8) is not developed or in the event such use later changes, this variance shall become null and void.

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DOBSON stated that either the staff recommended 60 spaces or the applicant's requested 58 spaces should be adequate to meet the needs of this project and if the addition of the two spaces from 58 to 60 would necessitate the removal of any of the existing mature trees, staff felt the trees to be more important than the addition of two spaces. He further stated CPO Council "K" took no action as they did not have a quorum the night this request was to be considered.

TAYLOR inquired as to the height of the building. DOBSON replied he believed it to be 6 stories. TAYLOR then inquired if the differential between 60 and 58 spaces was the matter of one tree. DOBSON said he did not know where the other two spaces would be established and felt the applicant could speak to the issue. DOBSON then clarified the recommended 60 spaces as being predicated upon the basis of a 50% reduction in parking spaces plus 10% of the total number of units, to cover the parking needs of visitors, deliverymen, unloading, etc.

OTHELLO H. CURRY, 2201 E. 13th Street, Wichita, Kansas, appeared before the Board stating that the 58 parking spaces were fitted to this site, allowing for larger than required stall space and driveway width, which would allow for easier maneuvering of vehicles on the site. He indicated that if the Board wished the 60 spaces the architects had checked to determine how this could be accomplished, and that it could be done by cutting some of the open area. CURRY added that his feelings were that with older people operating automobiles, the maximum space was the best way to handle the parking. He brought out the fact to the Board that the main reason for the variance request was to permit the saving of the mature trees, creating a parklike atmosphere and that this was a feature they wished to retain as a compliment both to the building and the general area.

No one else appeared in favor of the application. No one appeared in opposition.

JACOB commented he liked the wide stall parking, that this type of usage was good. He said he felt there would be other ways of accommodating the 60 spaces than tree cutting, such as reduction of the front yard setback should the Board decide on the 60. He added that he did not believe the addition of the two parking spaces to be that important to this project.

MOTION: TAYLOR moved, RICHARDSON seconded and it carried unanimously that the five conditions necessary for the granting of a variance had been found to exist and that a variance be granted to reduce the required number of off-street parking spaces from 100 spaces to 58 spaces, subject to the conditions in the Secretary's Report.

This variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 44-78

WHEREAS, Othello H. Curry, Jr., 2201 E. 13th Street, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required number of off-street parking spaces from 100 parking spaces to 58 parking spaces on property zoned the "A" Two Family Dwelling District, "BB" Office District and "LC" Light Commercial District (all approved for a change of zoning to the "B" Multiple Family Dwelling District, subject to replatting) and legally described as:

Odd numbered Lots 157 through 179 on Spruce Avenue and even numbered Lots 168 through 180 on Madison Avenue, all in Logan Addition to Wichita, Sedgwick County, Kansas (being replatted as Lot 1, Curry Addition to Wichita, Sedgwick County, Kansas). Generally located in an area north of 13th Street between Spruce and Madison Avenue.

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 November 28, 1978, 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 occupancy of the apartment building would be restricted to the elderly, many of whom do not own or drive cars; 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 if the use ever reverts to a conventional apartment building, there is space to provide the total required parking; 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 experience has shown that the parking requirements for a housing project for the elderly are less than those normally required, and to require the total parking deprives the area of existing mature trees and additional green space; 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 less than required parking would adequately serve the needs of an apartment building restricted to elderly residents; 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 the parking requirements do not distinguish between a conventional apartment complex and one where elderly residents occupy 100 percent of the units; 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 for a variance to reduce the required number of off-street parking spaces from 100 parking spaces to 58 parking spaces on property zoned the "A" Two Family Dwelling District, "BB" Office District and "LC" Light Commercial District (all approved for a change of zoning to the "B" Multiple Family Dwelling District, subject to replatting) and legally described as:

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be approved subject to the following condition:

1. In the event the apartment project for the elderly (HUD Section 8) is not developed or in the event such use later changes, this variance shall become null and void.

ADOPTED AT WICHITA, KANSAS this 28th day of November, 1978.

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Mary Kopietz, Chairman

ATTEST:

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Larry Dobson, Assistant Secretary

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