

M.A.P.C.

Property: M.M. 2-26-74

(See BZA 3-73)

B.C.C./B.C.C.

Original request (BZA 3-73)

Approved per journal entry
from District Court dated
May 10, 1974.

BZA 3-74 - Patrick Sinclair re-
quests Variance to reduce side
yard setback from 6' to 5' on the
No. side of Birch in area between
Wood Ave. & Tyler Rd.

POSTED
MAPP ✓
C.I. ✓
2-22-74
C.A.

ACTION

Case not considered as DATE
BZA COMMITTEE Board denied request 2-26-74
to allow new application to
be considered on the
property. M.M. 2-26-74
M.A.P.C. (see BZA 82-73)

B.C.C./B. CO. C. _____

Original request (BZA 82-73)
approved per journal entry
from District Court dated
May 10, 1974.

BZA 3-7-74 - Patrick Sinclair re-
quests variance to reduce side
yard setback from 6' to 5' on the
North side of R. 10th in area between
Wood Ave. & Tyler Rd.

Board of Zoning Appeals

February 20, 1974

Board of Zoning Appeals

Jack H. Galbraith, Secretary

Request to Allow an Application to be filed on property previously considered in Case No. BZA 32-73

On January 22, 1974, the Board of Zoning Appeals considered the above-captioned request from William A. Wells, attorney, on behalf of Patrick B. Sinclair and Ladonna M. Sinclair. Inasmuch as a fifth member had not yet been appointed to the Board, it was the action of the Board to defer this request to the meeting of February 26, 1974, so that the matter could be considered by a full Board.

Inasmuch as it was the decision of the Board to allow the associated cases (BZA 33-73 and BZA 34-73) to be advertised for public hearing at the Board's February meeting, if the requests for rehearing are granted, Case No. BZA 3-74, which represents the new application filed by Mr. Wells, was also advertised for consideration on February 26. This is dependent, however, on the Board first deciding to allow a new application to be filed on the property previously considered in Case No. BZA 32-73. Copies of the statement requesting a new hearing (Attachment 1) and the Secretary's January 16 memo to the Board (Attachment 2) are attached. Excerpts from the minutes of October 23, 1973, involving Case No. BZA 32-73 are attached to the memo concerning requests for rehearing for all three cases involving houses constructed by Clewal Construction, Inc.

After reviewing the attachments and associated minutes, if the Board determines that sufficient new facts have been presented to justify allowing another variance application to be considered on subject property, your action should be to grant the consideration of the new application.

If the Board concurs with the Secretary that the evidence presented is not sufficient to materially alter the aspects of the case or justify reconsideration of a new application, the request should be denied, and any further action involving this property should consist of an appeal to the District Court of Sedgwick County.

JHG:ber

Attachments

cc: William A. Wells, Attorney, 923 1st National Bank Bldg.
67202, w/a
Mr. and Mrs. Patrick B. Sinclair, 8902 Birch Lane 67212, w/a
Joe Bogle, Legal Counsel, Board of Zoning Appeals, w/a

February 28, 1974

Mr. William A. Wells
Attorney at Law
923 First National Bank Bldg.
Wichita, Kansas 67202

Subject: Case No. BZA 32-73 and
BZA 3-74 - Request for
Variance

Dear Mr. Wells:

At the regular meeting of the Board of Zoning Appeals on February 26, 1974, your request to allow an application for a variance to be filed on property previously involved in Case BZA 32-73, was considered.

It was the action of the Board to deny the request, and therefore, Case No. BZA 3-74 was not considered.

Sincerely,

Jack H. Galbraith
Secretary

JHG:MM:js

cc: Mr. and Mrs. Patrick B. Sinclair, 8902 Birch Lane, 67212
Robert Feldner, Superintendent of Central Inspection
Ralph Eberly, City Clerk
Joe Donnelly, Central Inspection

SECRETARY'S REPORT

CASE NO. BZA 3-74

APPLICANT: Patrick B. Sinclair, 8202 Birch Lane, Wichita, Kansas.

AGENT: William A. Wells, 923 First Nat'l Bank Bldg.,
Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City
of Wichita, to reduce the required side yard setback adjacent to
the east line of Lot 13 from 6 feet to 5 feet.

GENERAL LOCATION: North side of Birch Lane in an area
between Wood Avenue and Tyler Road.

ZONING: Subject property is zoned the "AA" Single Family Dwelling
District, as are those properties to the east, west, south,
and north.

LAND USE: Subject property contains a single family home, as do
those properties to the east, west, and south. The property to the
north is undeveloped.

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 fol-
lowing 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 hard-
ship 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

On January 16, 1973, an application for a residential building permit and certificate of occupancy was filed, and building permit No. C66438 was issued to the contractor, ~~Lee~~ Clewal Constuction, Inc., for construction of a single family house on subject property (Lot 13). The site plan accompanying the application indicated that Lot 13 is 80 feet in width and that the house would be 68 feet in width and would be located on the lot in such a manner as to observe the required 6 foot side yards. The Secretary has been advised that the contractor, or his agents, were orally warned by the Division of Central Inspection that the side yard setbacks for one or both houses being built on Lots 13 and 14 were inadequate. The construction company was notified by the attached letter dated April 11, 1973, of the violation. The letter further stated that proper steps must be taken to correct the violation(s) and that occupancy would not be permitted unless a variance was granted or the proper setback obtained.

The contractor continued construction, and on September 5, 1973, Central Inspection issued a notice stating that variances must be obtained or the structures must be altered to obtain the required 6-foot side yard on or before September 12, 1973, and that failure to comply with this notice would be followed by prosecution. The contractor subsequently filed requests for variances from the Board of Zoning Appeals.

It should be pointed out that although an application for a building permit is also an application for a certificate of occupancy, when an inspector notifies a builder/owner that the dwelling under construction is in violation of the zoning ordinance or building code, the structure cannot legally be occupied until such violation is corrected. All three houses for which the contractor has had to file variance requests now have families living in them despite notification that they were not to be occupied.

On October 23, 1973, the Board of Zoning Appeals considered an application for variance (BZA 32-73) on subject property filed by Clewal Construction, Inc. as the contractor and listing Patrick B. and LeDonna M. Sinclair as owners. It was the action of the Board to find that all five conditions necessary to the granting of a variance did not exist, and the request for variance of the required side yard setback was denied. The Board is to first consider whether or not a request for filing a new application is to be granted to Mr. Sinclair.

Uniqueness:

The failure to meet side yard requirements arises from failure to position the house correctly on the lot, not from a condition 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 applicant, as required by the provisions of KSA 12-715 (State statutes) and Section 2.12.590.B, Code of the City

of Wichita. The problem was created by Clewal Construction, Inc. (or its agents), which owned the property at the time of construction, and the Division of Central Inspection notified the company and/or its agents, both orally and in writing, that the structure was not to be occupied until the violation was corrected or a variance obtained. Neither can it be justified that "the problem is not created by an action or actions of the property owner or the applicant", since Clewal Construction was the property owner at the time the violation occurred. (It is difficult to see how clear title could have been furnished by the contractor to the Sinclairs in the presence of this violation, since a copy of the plat furnished by the surveyor as a "true and correct exhibit of said survey for mortgage title insurance" clearly indicates the required 6-foot side yard is not observed adjacent to the east property line.) It does not appear that a change in ownership would allow the justification of uniqueness since uniqueness must arise from a condition related to the actual property in question, not an error by the contractor.

It is, therefore, the opinion of the Secretary that the variance requested does not arise from such condition which is unique to the property in question, and was in fact created by actions of the former property owner, since it is impossible to construct a 68.2 foot house on an 80-foot lot and observe the required 6-foot side yards; in addition, the contractor was given adequate notice and instructed to correct the violation prior to occupancy.

Adjacent Property:

It is the opinion of the Secretary that it is difficult to find that the granting of the permit for variance would not have an adverse affect on adjacent property owners inasmuch as side yard requirements are established to provide structures with adequate air, light and space, and the side yard of Lot 13 which is in violation adjoins the side yard of Lot 14 which is also in violation, reducing the distance between dwellings to approximately 10 feet, and the roofs of both structures extend into the side yards.

Hardship:

KSA 12-715 and Section 2.12.590.B, Code of the City of Wichita, provide that the Board must find 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." In other words, the hardship must be created by the provisions of the ordinance, not the actions of the owner, applicant or some other person, in order for relief by means of a variance to be granted. It has been the policy of the Board, based on legal interpretations and court decisions from many jurisdictions, that the hardship must not be economic, but must relate to a specific piece of property, and be caused by the provisions of the ordinance which, if strictly enforced, would prevent any reasonable use of the property.

Page 4 - Secretary's Report
Case No. BZA 3-74

Although recognizing the problem created for the occupant, it is difficult for the Secretary to find that the strict application of the provisions of Title 28 would constitute unnecessary hardship upon the applicant/owner inasmuch as the previous owner (the contractor) was informed that the structure was in violation of the required side yard setback, and it was not to be occupied until the violation was corrected or a variance obtained.

Public Interest:

It is the opinion of the Secretary that it is difficult to determine whether or not the requested variance would adversely affect the public health, safety, or general welfare; however, the requested variance is for a side yard that is interiorly located.

Spirit and Intent:

In the opinion of the Secretary, the variance desired will be opposed to the general spirit and intent of Title 28 due to the fact that the zoning ordinance requires a minimum side yard of 6 feet for single family dwellings and it is not possible to construct a 68.2-foot house on an 80-foot lot and observe these requirements.

RECOMMENDATION

Inasmuch as all five conditions necessary to the granting of the variance cannot be found to exist, it is the recommendation of the Secretary that the application for variance not be approved.

W. L. KORBER R. G. WAYMIRE
BAUGHMAN CO.
SURVEYORS

PHONE 316/262-7271

330 LAURA

WICHITA KANSAS 67211

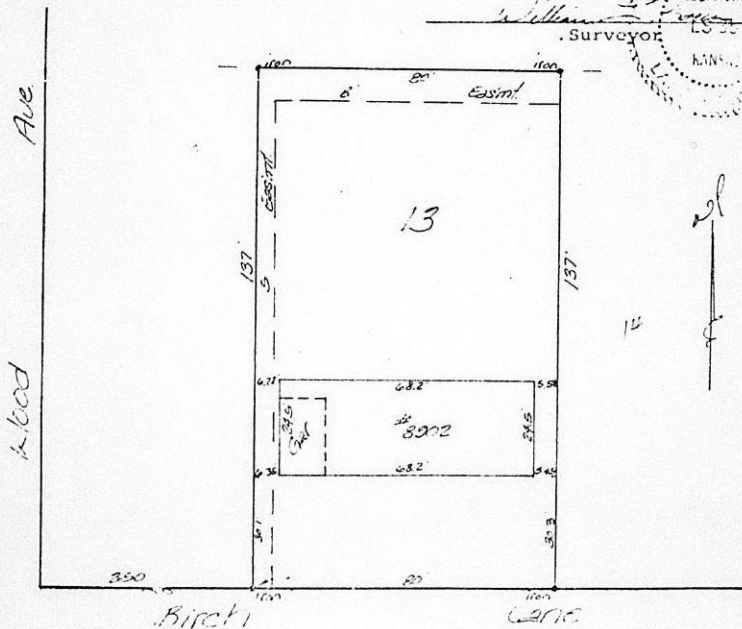
State of Kansas)
) SS
County of Sedgwick)

September 14, 1973

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 14th day of September, 1973 survey Lot 13, Block 3, Western Gardens, Wichita, Sedgwick County, Kansas.

On said lot is house No. 8902 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

The accompanying plat is a true and correct exhibit of said survey for mortgagee title insurance.



BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main Street
Wichita, Kansas 67202

February 5, 1974

NOTICE TO ADJOINING PROPERTY OWNERS:

AS AUTHORIZED BY ARTICLE III.D OF THE RULES AND REGULATIONS OF THE BOARD OF ZONING APPEALS, consideration of a request to allow an application to be considered on property previously considered in Case No. BZA 32-73 is scheduled for the meeting of February 26, 1974. If the Board allows a new application to be considered, the following case will be heard on that date:

1. Case No. 3-74 - Patrick B. Sinclair (owner) 8902 Birch Lane, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required side yard setback adjacent to the east line of Lot 13 from six feet to five feet on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 13, Block 3, Western Gardens Addition to Wichita, Sedgwick County, Kansas. Generally located on the north side of Birch Lane in an area between Wood Avenue and Tyler Road.

The Board of Zoning Appeals meets at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas. If you desire, you may write to the Board of Zoning Appeals at 104 South Main to express your opinion on this matter. You are also welcome to speak or be represented by a spokesman at the Board of Zoning Appeals meeting when this matter will be considered.

If additional information is desired so that you may be fully informed on this matter, please call the Metropolitan Area Planning Department at 262-0611, Extension 205.

Jack H. Galbraith
Secretary

17 notices mailed to adjoining property owners, Feb. 5, 1974
10 notices mailed to MAPC members, 2-5-74

BOARD OF ZONING APPEALS

CASE NO. 2-74

CITY OF WICHITA, KANSAS

FILED 2-1-74

APPLICATION FOR VARIANCE

I. Name of Applicant Patrick B. Sinclair (Owner)

Mailing Address 8902 Birch Lane, Wichita, Ks. 67212 Phone 722-4587

Name of Authorized Agent William A. Wells, Attorney

Mailing Address 923 First National Bank Building Phone 263-8218
Wichita, Kansas 67202

Relationship of applicant to property is that of owner
(Owner, Tenant, Lessee, Other)

II. The variance requested is a sideyard variance setback from
6 feet to 5 feet from the East property line.

for property located 8902 Birch Lane

and legally described as: Lot 13, Block 3, Western Gardens

in the City of Wichita; and which is presently zoned AA.

III. The applicant herein, or his authorized agent, acknowledges:

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Patrick B. Sinclair
Applicant, Patrick B. Sinclair

William A. Wells
Authorized Agent, William A. Wells

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals _____ (a.m. - p.m.), _____ 19 _____ together with appropriate fee of \$50.00.

W L KORBER R G WAYMIRE
BAUGHMAN CO.
SURVEYORS

PHONE 316/262-7271

330 LAURA

WICHITA, KANSAS 67211

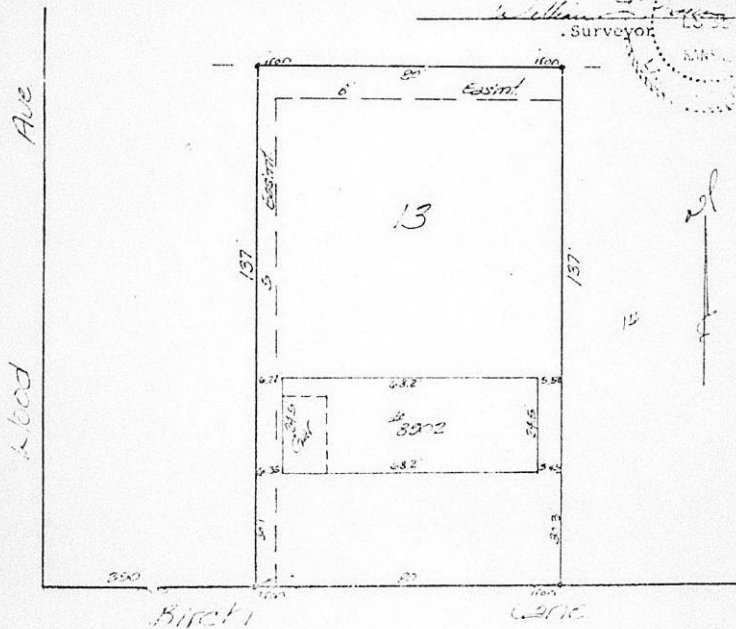
State of Kansas)
) SS
County of Sedgwick)

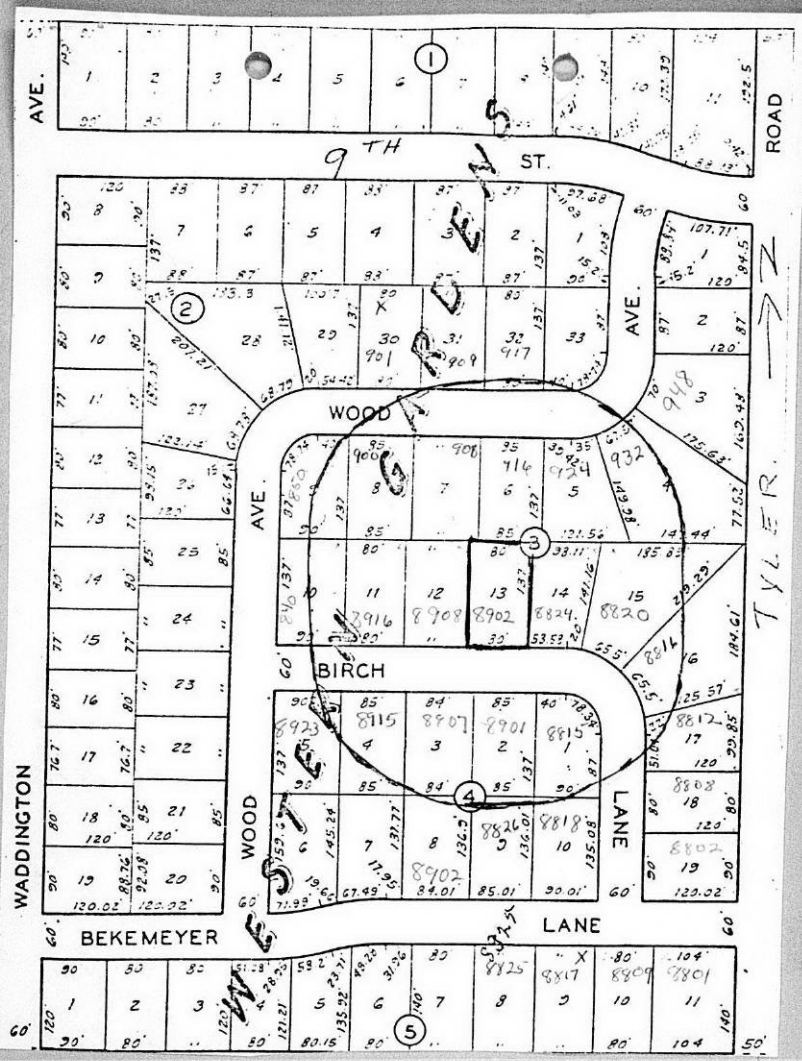
September 14, 1973

We, Baughman Company, Surveyors in aforesaid county and state do hereby certify that we did on this 14th day of September, 1973 survey Lot 13, Block 3, Western Gardens, Wichita, Sedgwick County, Kansas.

On said lot is house No. 8902 with an attached garage which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjacent lots.

The accompanying plat is a true and correct exhibit of said survey for mortgage title insurance.





STATEMENT OF OWNERSHIP

STATE OF KANSAS)
) SS
 SEDGWICK COUNTY)

The undersigned duly bonded and qualified abstractor within and for the County and State aforesaid, does hereby certify:

That we have examined the records in the office of the Register of Deeds of Sedgwick County, Kansas, with reference to the ownership of the following property in Sedgwick County, Kansas, viz:

Property lying within a radius of 200 ft. of:
 Lot 13, Block 3, Western Gardens, Wichita, Sedgwick County, Kansas.


Fidelity
Title
Company,
inc.

And from such examination find that the owners thereof are as set opposite the description of the property below, viz: (Addresses as given are furnished as a service and not certified.)

LOT	BLK	ADDITION	OWNER
30,	2	WESTERN GARDENS	✓ Kenneth Wayne Bender Dixie J. Bender, ux No Address Available <i>701 Wood Ave</i>
31,	2		✓ Clewal Construction, Inc 962 N. Wood 67212
32,	2		✓ Ronald G. Ogden Virginia J. Ogden, ux 2720 S. Mosley 67216
33,	2		✓ Clewal Construction, Inc 962 N. Wood 67212
4, 5, 6, 7, 8, 9,	3		✓ Clewal Construction, Inc 962 N. Wood 67212
10,	3		✓ Charles L. Mundy Jane A. Mundy, ux No Address Available <i>840 Wood Ave</i>
11,	3		✓ Ray L. Coleman Lucille Coleman, ux No Address Available <i>8916 Birch Lane</i>
12,	3		✓ Harrison Mathew Moore, 8908 Birch Lane 67212 ^{sgl}



LOT	BLK	ADDITION	OWNER
13,	3	<u>WESTERN GARDENS</u>	✓ Patrick B. Sinclair LaDonna M. Sinclair, ux 8902 Birch Lane 67212
14,	3		Clewal Construction, Inc. 962 N. Wood 67212
15,	3		Clewal Construction, Inc. 962 N. Wood 67212
16,	3		✓ Searle L. Rosen Mary M. Rosen, ux No Address Available <i>8816 Birch Lane</i>
17,	3		✓ Daniel M. Root, Jr. Esther F. Root, ux No Address Available <i>8812 Birch Lane</i>
1,	4		✓ Richard B. Anderson Marilyn J. Anderson, ux 8815 Birch Lane 67212
2,	4		✓ Richard A. Florence Joanne I. Florence, ux No Address Available <i>8901 Birch Ln</i>
3,	4		✓ Jimmie L. Weigand Janet R. Weigand, ux 8907 Birch Lane 67212
4,	4		✓ Richard G. Helf Loretta B. Helf, ux No Address Available <i>8915 Birch Ln</i>
5,	4		Thelma L. Ray, sgle Oneida C. Ray, sgle. No Address Available <i>1438 N. Volutsia Av.</i>
8,	4		✓ Warren Lee Jackson Mary Lynne Jackson, ux 8902 Bekemeyer 67212
9,	4		✓ Morris G. Desilet Carolyn N. Desilet, ux 8826 Bekemeyer 67212
10,	4		✓ Harold Keith Kuhlman Carol Jean Kuhlman, ux 8818 Bekemeyer 67212

Dated at Wichita, Kansas this 1st day of February, 1974 at 7:00 A. M.

FIDELITY TITLE COMPANY, INC.

By *Asita Shay*
Asst. Sec. SEM

Tracer # 22617

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
BZA Variance	

Name Mr. William Wells

Address 122 First St

Type AA 40712 Due Date

Comments:

Date 2-1-74 By Mr. Murray

THE CITY OF WICHITA



BOARD OF ZONING APPEALS
CITY BUILDING ANNEX
104 S. MAIN ST.
WICHITA, KANSAS 67202



Kenneth Wayne Bender
Dixie J. Bender
901 Wood Avenue
Wichita, Kansas 67212



B243-74



NOT DELIVERED TO ADDRESSEE
NO FORWARDING CHECKS BY FILE