

BZA 7-63 - Franklin G. & Frances M. Adams requests variance from setback requirements to allow construction of garage at NE corner of Pawnee & Terrace Drive.

ACTION

BZA COMMITTEE approve DATE 4-23-63

M.A.P.C. _____

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

RESOLUTION NO. 7-63

WHEREAS, Franklin G. Adams and Frances M. Adams, 2359 South Terrace Drive, Wichita, Kansas, have requested a variance to allow an attached garage to be built closer than 20 feet to the rear property line, which is located on property legally described as:

The South 152.4 feet of the east 75 feet of the Reserve of Sturm's Addition, in the City of Wichita, Sedgwick County, Kansas,

generally located at the northwest corner of Pawnee and Terrace Drive; and

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 in regular meeting consider said application for variance on April 23, 1963; and

WHEREAS, the Board of Zoning Appeals has determined that it has jurisdiction to consider said request for a variance under the provisions of Section 2.12.590, Code of the City of Wichita; and

WHEREAS, the property is zoned "AA" Single Family Dwelling D strict; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique and not ordinarily found in the same zoning district in that this lot is one of seven non-uniform portions into which Sturm's Reserve has been subdivided by metes and bounds description, and that the house faces east although the lot fronts to the south as determined by the Central Inspection Department; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance will not adversely affect the rights of adjacent property owners in that allowing the applicant to build an attached garage would be of benefit to the adjoining property owners in that an attached garage will provide more space between structures than the construction of a detached garage; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the Zoning Ordinance will constitute an unnecessary hardship upon the applicant and property owner inasmuch as a detached garage would reduce usable yard space, level of aesthetic appeal, utility and further the required design change for a detached garage would reduce usable garage attic storage space from 30 to 50 per cent.

WHEREAS, the Board of Zoning Appeals has found that this variance desired will not adversely affect the public health, safety, morals or convenience, prosperity or general welfare; and

WHEREAS, as shown above, each of the four conditions required by Section 2.12.590 of the Code of the City of Wichita to be present before a variance may be granted, have been found to exist;

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, Kansas, that the request for a variance from the strict enforcement provisions of the Zoning Ordinance relative to the rear yard setback requirement of property legally described as:

The south 152.4 feet of the east 75 feet of the Reserve of Sturm's Addition, in the City of Wichita, Sedgwick County, Kansas,

be and the same is hereby approved and the Superintendent of Central Inspection is hereby authorized to issue a permit and allow an attached garage to be built within eleven (11) feet of the rear property line, subject to the following conditions:

1. Construction of the garage in general conformance to the plot plan on file with the Secretary of the Board of Zoning Appeals, provided that any major revision thereof shall require the reapproval of the Board of Zoning Appeals.
2. Completion of construction within 12 months of the effective date of this resolution.

ADOPTED at Wichita, Kansas, this 23rd day of April, 1963.

E. B. Law

E. B. Law, Chairman

ATTEST:

Robert A. Lakin
Robert A. Lakin, Secretary

May 6, 1963

Mr. and Mrs. Franklin G. Adams
2359 South Terrace Drive
Wichita, Kansas

Subject: BEA 7-63

Dear Mr. and Mrs. Adams:

On April 25, 1963, we advised you that the Board of Zoning Appeals had approved subject application for a variance to the Zoning Ordinance to permit construction of an attached garage to within 11 feet of the property line rather than 20 feet as required in an "AA" district, on property generally located at the northwest corner of Pawnee and Terrace Drive, and legally described as the south 152.4 feet of the east 75 feet of Reserve of Sturm's Addition. We also advised that the Board's decision might be appealed to the City Commission, provided that such appeal was filed on or before May 3, 1963.

The City Clerk has advised that no appeal was filed on or before the date indicated, and the decision of the Board of Zoning Appeals is, therefore, final.

A copy of the resolution setting forth action of the Board is attached for your information and files.

Very truly yours,

Robert A. Lakin
Secretary

RAL:ber

cc: Glen Lytle, Superintendent
Central Inspection

Board of Zoning Appeals

April 29, 1963

C. H. Funk, City Clerk

Robert A. Lakin, Secretary

Case BZA 7-63

Attached is a copy of BZA Resolution 7-63, covering action taken by the Board of Zoning Appeals on the above case.

This case was heard on April 23, 1963, and an appeal may be filed in your office on or before May 3, 1963.

If an appeal is filed, please advise.

Robert A. Lakin
Secretary

RAL:ber

Attachment

April 25, 1963

Mr. and Mrs. Franklin G. Adams
2359 South Terrace Drive
Wichita, Kansas

Dear Mr. and Mrs. Adams:

Subject. BEA 7-63

This is to advise you that at its regular meeting of April 23, 1963, the Board of Zoning Appeals of the City of Wichita, considered your request for a variance to the Zoning Ordinance to permit construction of an attached garage within 11 feet of the property line rather than 20 feet as required in an "AA" district, on property generally located at the northwest corner of Pawnee and Terrace Drive, and legally described as the south 152.4 feet of the east 75 feet of Reserve of Sturm's Addition.

After discussion, it was the action of the Board of Zoning Appeals to approve your request, subject to the following conditions:

1. Construction of the garage in general conformance with the plot plan on file with the Secretary of the Board of Zoning Appeals and Superintendent of Central Inspection, provided that any major revision thereof shall require the re-approval of the Board of Zoning Appeals.
2. Completion of construction within 12 months from the effective date of the resolution.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the Board of City Commissioners within ten days of the date of the Board's action. Accordingly, an appeal could be filed in this case on or before May 3, 1963.

Page 2 - Mr. and Mrs. Franklin G. Adams
April 25, 1963

Subsequent to the expiration of the appeal period, you will be advised whether or not an appeal has been filed. If no appeal has been filed on or before May 3, 1963, the decision of the Board will be final and the Superintendent of Central Inspection will be in a position to issue the appropriate permit.

Very truly yours,

Robert A. Ikin
Secretary

RAL:ber

cc: C. H. Funk
City Clerk

Glen Lytle, Superintendent
Central Inspection

SECRETARY'S REPORT

BZA CASE 7-63

GENERAL DESCRIPTION

This case involves a tract of land located on the northwest corner of Pawnee and Terrace Drive. In the adjoining area on the north side of Pawnee are single family homes. The property to the south of Pawnee is vacant. All of the property in the surrounding area is zoned "AA" Single family.

REQUEST

The request is for a variance (as provided in Section 2.12.560 of the Code of the City of Wichita), to allow an attached garage to be built within 11 feet of the rear (north) property line rather than 20 feet which is the requirement in an "AA" district.

The variance is within the jurisdiction of the Board of Zoning Appeals to grant, providing that four conditions set forth below are found to exist.

- A. The variance desired arises from some condition which is not ordinarily found in the same zoning district;
- B. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
- C. That the strict application of the enforcement provisions of this zoning ordinance would constitute an unnecessary hardship upon the property owner represented in the appeal.
- D. That the variance desired is not against the public interest.

The applicant has submitted justification for the above items and is included as Attachment #1.

UNIQUENESS

The applicant maintains that his particular situation is unique and not normally found in the same zoning district because the non-uniform lots found in this reserve are a result of subdivision by metes and bounds descriptions rather than subdivision by an actual plat approved by the Planning Commission.

Selling off these lot as metes and bounds tracts has resulted in non-uniform lots within the reserve; however, the lot in question is somewhat larger (11,250 square feet) than most conventional lots found in "A1" districts (See Attachment #2).

The applicant is also of the opinion that since the Central Inspection assumes usage of the lot to front south on Pawnee, it would be impossible to construct an attached garage and still maintain 20 feet of clearance between the rear of the garage and the rear property line. He also points out that without the variance request he could construct a detached garage five feet from the rear property line which would put the rear of the garage only 11 feet from his neighbor's bedroom window. If the variance were granted an attached garage would be 17 feet from his neighbor's house.

The applicant has made a good showing under the "uniqueness" clause that the granting of the variance makes more sense than

denying it in that the new structure would be better located. However, the fact that this tract has been created by "metes and bounds" sales, appears not to be an unusual situation in Wichita. There are no physical features, either as to shape of the lot, topography, or ground characteristics which make this land unique and different from others in this same general area or in this same zoning district. The matter of uniqueness could be found to exist in this case except that the reasons submitted by the applicant are not firm or free from attack if the matter were appealed.

ADJOINING PROPERTY

The Secretary concurs with the applicant in that the granting of this permit should in no way adversely effect the rights of adjoining property owners and would in fact be of benefit to them over allowing the construction of a detached garage.

HARDSHIP

It is suggested that "existence of hardship" exists if the property cannot be used for the purpose for which zoned; and which would be a right of use not accessible to him which is normally enjoyed by the rest of the property owners in the same district or area under similar circumstances.

The applicant admits he could build his garage without the granting of this permit. The proposed garage could be built as a detached rather than attached garage.

The applicant points out that a detached garage would provide less utility than would an attached garage. It is the opinion of the Secretary that the absence of a mere convenience is not sufficient reason to make a finding of "hardship".

The Secretary is in general agreement with the statements made by the applicant for the term hardship, however, is of the opinion that the applicant has not adequately shown that hardship exists.

PUBLIC INTEREST

It appears that the granting of the variance would in no way adversely affect the public interest.

It is doubtful that the applicant has met the first and third requirements (uniqueness and hardship) necessary to be present before the Board can grant the requested variance. On the other hand, that which is requested is a better solution (if this much house is to be built on this size of lot) as to the development of the property. If the Board concurs with the Secretary as to the meaning of the terms unique and hardship, then the application should be denied in that an adequate showing has not been made. However, if the Board feels that the reasons given by the applicant are sufficient or that the general criteria area being used for definitions are too strict, then the case should be approved.

CONDITIONS IN EVENT OF APPROVAL

In the event the Board finds all four conditions as outlined above to be present, then it is recommended the following conditions be attached as a part of the approval of the variance:

Page 5 - Secretary's Report
Case BZA 7-63

1. Construction of the garage in general conformance with the plot plan on file with the Secretary of the Board of Zoning Appeals and Superintendent of Central Inspection, provided that any major revision thereof shall require the re-approval of the Board of Zoning Appeals.
2. Completion of construction within 6 months from the effective date of the Resolution.

Justification for Variance

1. Uniqueness arised from

- (a) This lot being one of (7) non-uniform portions into which Sturm's reserve has been divided by meets and bounds descriptions. (Note: Lots have never been platted on city maps).
- (b) Lot is the only one of its size in Sturm's reserve.
- (c) While the City Building Inspection Department assumes usage of the lot to indicate that the lot fronts south on Pawnee the house which occupies the lot fronts east on S. Terrace Drive.
- (d) Assuming the north end to be the back of the lot (as does the Inspection Department) the provisions of Section 2.12.560 requiring 20' clearance of an attached garage with the rear property line will in this case prove non-beneficial to adjacent property owner (on north side) in that my inability to comply with this regulation, due to lack of space, will force me to build a detached garage only 5' from my neighbor's property line which will put the garage 11' from his bedroom windows. (See Sketch #2). It is believed this would defeat one of the prime purposes of the building code which is to assure the most equitable use of property for all concerned.

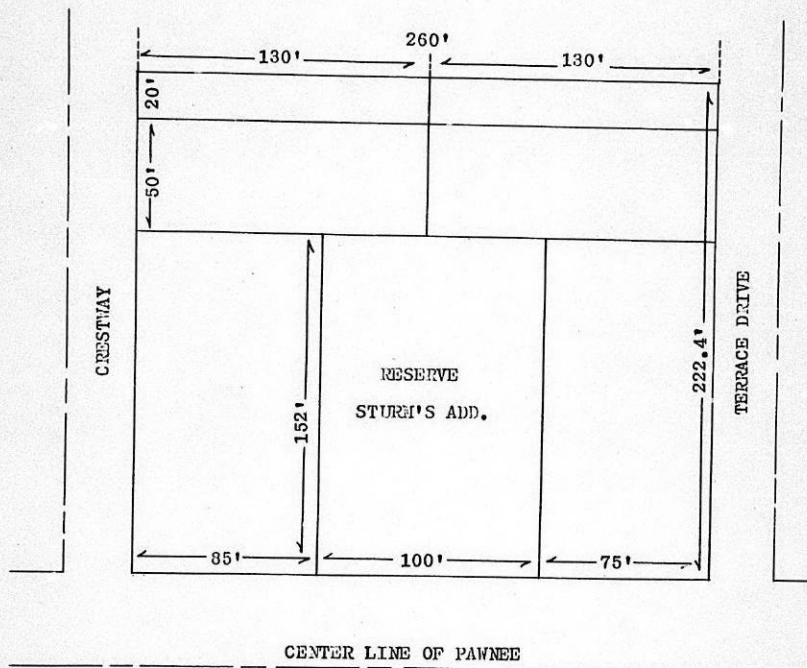
2. Granting of permit for variance will in no way adversely affect the rights of adjacent property owners or residents. On the contrary, granting of variance will enhance adjacent property in that

- (a) An attached garage will be 17'-2 $\frac{1}{2}$ " from adjacent house on S. Terrace Drive while a detached garage, if variance is not granted, will of necessity be 11' from adjacent house thus increasing proximity of automobile engine noises, exhaust fumes, and traffic, to bedrooms of adjacent house.
- (b) A detached garage will have less aesthetic appeal and will, therefore, detract from the general appearance of the neighborhood, thereby reducing sales appeal of adjacent property.

3. Denial of variance will cause unnecessary hardship on property owner in that

- (a) A detached garage will provide less utility to owner than an attached garage.

- (b) A detached garage will cause owner approximately \$750.00 additional expenses on pending construction of an addition to this property by requiring for a detached garage an extra wall and foundation, an extra hip roof, an extra side walk to garage, a porch on the house proper, and siding on the house where the garage would have attached.
 - (c) The decreased utility and aesthetic quality of a detached garage will reduce sales appeal and resultant sales price of property approximately \$1,000.00. (Note: Section 2.12.560 of city code would forbid building of a breeze way to connect detached garage).
 - (d) The close proximity of a detached garage to the main structure would make house definitely unattractive and would be constant irritation to owner (See Sketch #2).
 - (e) A detached garage would reduce useable yard space (See Sketch #2).
 - (f) Required design change for a detached garage would reduce useable garage attic storage space 30 - 50%, because of reduced garage width and head room (See Sketch #2).
4. Variance desired will not adversely affect the public health, safety, morals order, convenience, prosperity or general welfare. On the contrary, the items following, conceivably, will be improved.
- (a) Health - Increased space between garage and structure on adjacent lot north, will
 - (1) Reduce neighbor irritation due to auto engine noises and exhaust fumes, and traffic by bedroom window.
 - (2) Increase sunlight and view.
 - (b) Safety - Increased space between garage and structure on adjacent lot will reduce fire hazard to both structures.
 - (c) Prosperity and General Welfare will be sustained by a more valuable piece of property in the neighborhood.



BZA 7-63
 GENERALLY LOCATED AT THE NORTHWEST CORNER OF PAWNEE AND TERRACE
 SCALE 1/10" = 5'

Attachment #2

BZA 7-63

NOTICES MAILED TO THE FOLLOWING ON APRIL 4, 1963:

Franklin G. and Frances M. Adams
2359 South Terrace Drive

J. Thomas Burlingame
Betty J. Burlingame
2324 South Crestway

Byron W. Lindsey
R. Madelyn Lindsey
2330 South Crestway

Samuel Earl Wagner
Ruth Wagner
2333 South Terrace

Hugh D. Jenkins
Mary J. Jenkins
2339 South Terrace

Paul E. McManis
Esther McManis
2324 South Terrace

James H. Mack
Isabell M. Mack
2334 South Terrace

Everett A. Anderson
Dorothy N. Anderson
2340 South Terrace

N. S. Farha
2230 Maple

James P. Jordan
Estella I. Jordan
2563 Burns

Federal Housing Commissioner
Washington, D. C.

David W. Sturm
May Sturm
406 North Battin

Claude K. Brazill
Geraldine W. Brazill
4430 East Pawnee

First Federal Savings and
Loan Association
123 South Market

George R. McLellan
Winnie R. McLellan
4510 East Pawnee

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

April 4 1963

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 7-63

An application has been filed by Franklin G. and Frances M. Adams, 2359 South Terrace Drive, Wichita, Kansas, wherein they request a variance from Section 2.12.560, Code of the City of Wichita, in that the requirement for 20 feet minimum clearance from an attached garage to the rear lot line be excepted to allow 11 feet minimum clearance, on property legally described as:

The south 152.4 feet of the east 75 feet of Reserve of Sturm's Addition, in the City of Wichita, Sedgwick County, Kansas, and generally located at the northwest corner of Pawnee and Terrace Drive.

This application has been assigned Case No. BZA 7-63. A hearing will be held by the Board of Zoning Appeals on Tuesday, April 23, 1963, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. BZA 7-43
FILED 4-2-63

APPLICATION FOR VARIANCE

I. NAME OF APPLICANT Franklin G. Adams Frances M. Adams
MAILING ADDRESS 2359 S. Terrace Dr. Wichita, Ks. PHONE MU4-4145
NAME OF AUTHORIZED AGENT NA
MAILING ADDRESS NA PHONE NA
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owners
(OWNER, TENANT, LESBEE, OTHER)

II. THE VARIANCE REQUESTED IS from Section 2.12.560, code of the
City of Wichita in that the requirement for 20 feet minimum
clearance from an attached garage to the rear lot line be ex-
cepted to allow 11 feet minimum clearance.
FOR PROPERTY LOCATED AT 2359 S. Terrace Dr. Wichita, Ks.
AND LEGALLY DESCRIBED AS: "The south 152. ' of the east 75 feet
of reserve of Sturm's addition, Sedgwick County, Kansas
IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED AA.
(GIVE METES AND BOUNDS DESCRIPTION BELOW IF APPROPRIATE):

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 APPEAL OF THE DECISION OF THE BOARD TO THE CITY COMMISSION WITHIN TEN (10) DAYS OF THAT DECISION;
- D. THAT ALL DOCUMENTS ARE ATTACHED HERETO AS NOTED IN PARAGRAPHS 3 AND 4 OF THE INSTRUCTIONS.

Franklin G. Adams
Frances M. Adams
APPLICANT
NA
AUTHORIZED AGENT

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING APPEALS, 11:00 (A.M.), April 2, 1963, TOGETHER WITH APPROPRIATE FEE OF \$50.00.

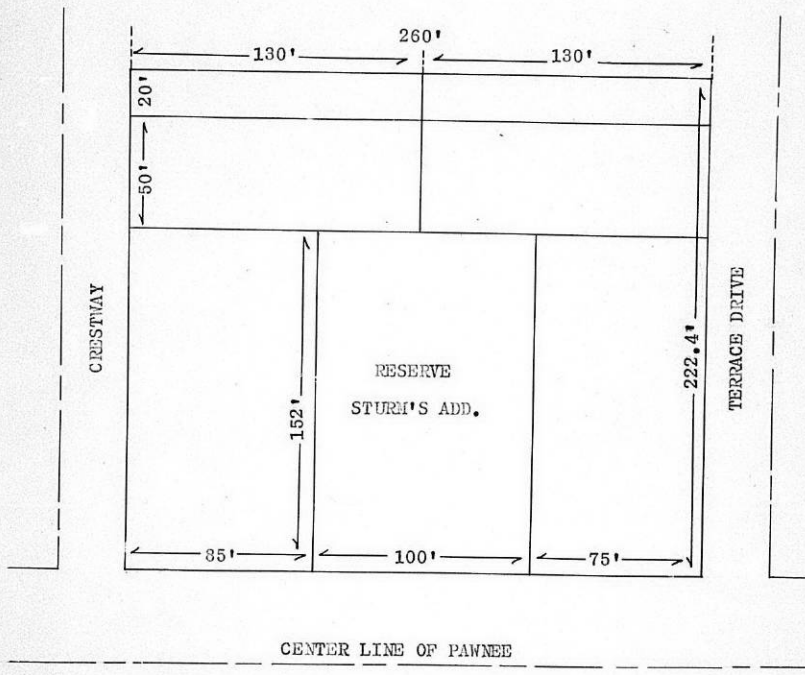


M. Martin
SIGNED

Justification for Variance

1. Uniqueness arised from
 - (a) This lot being one of (7) non-uniform portions into which Sturm's reserve has been divided by meets and bounds descriptions. (Note: Lots have never been platted on city maps).
 - (b) Lot is the only one of its size in Sturm's reserve.
 - (c) While the City Building Inspection Department assumes usage of the lot to indicate that the lot fronts south on Pawnee the house which occupies the lot fronts east on S. Terrace Drive.
 - (d) Assuming the north end to be the back of the lot (as does the Inspection Department) the provisions of Section 2.12.560 requiring 20' clearance of an attached garage with the rear property line will in this case prove non-beneficial to adjacent property owner (on north side) in that my inability to comply with this regulation, due to lack of space, will force me to build a detached garage only 5' from my neighbor's property line which will put the garage 11' from his bedroom windows. (See Sketch #2). It is believed this would defeat one of the prime purposes of the building code which is to assure the most equitable use of property for all concerned.
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3. Denial of variance will cause unnecessary hardship on property owner in that
 - (a) A detached garage will provide less utility to cwner than an attached garage.

- (b) A detached garage will cause owner approximately \$750.00 additional expenses on pending construction of an addition to this property by requiring for a detached garage an extra wall and foundation, an extra hip roof, an extra side walk to garage, a porch on the house proper, and siding on the house where the garage would have attached.
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 - (c) Prosperity and General Welfare will be sustained by a more valuable piece of property in the neighborhood.



BZA 7-63

GENERALLY LOCATED AT THE NORTHWEST CORNER OF PAWNEE AND TERRACE

SCALE 1/10" = 5'

Attachment #2

OWNERSHIP LIST

Lot	Addition	Property Owner
N 90' of 5	Sturm's Addition	J. Thomas Burlingame Betty J. Burlingame 2324 S. Crestway
Lot 5, exc. N 90'	"	Byron W. Lindsey R. Madelyn Lindsey 2330 S. Crestway
N 69½' of 6	"	Samuel Earl Wagner Ruth Wagner 2333 S. Terrace
S 69½' of N 139' of 6	"	Hugh D. Jenkins Mary J. Jenkins 2339 S. Terrace
6 exc. N. 139'	"	James P. Jordan Estella I. Jordan X Address unknown
N 68' of 15	"	Paul E. McManis Esther McManis 2324 S. Terrace
S 62' of N 130' of 15	"	James H. Mack Isabell M. Mack 2334 S. Terrace
15 exc. N 130'	"	Everett A. Anderson Dorothy N. Anderson 2340 S. Terrace
N 20' of W. 130' of Reserve	"	N. S. Farha 2230 Maple
N 20' of E. 130' of Reserve	"	James P. Jordan Estella I. Jordan X Address unknown
S. 50' of N 70' of E 130' of Reserve	"	Federal Housing Commissioner Washington, D. C.
S 50' of N 70' of W. 130' of Reserve	"	Frank P. Wilson Lucille M. Wilson X Address unknown
Reserve exc. the N 70' and exc. W. 100' of E 175' of S. 152' and exc. E 75' of S. 152.4'	"	David W. Sturm Mav Sturm 406 N. Battin
W 100' of E. 175' of S. 152' of Reserve	"	Claude K. Brazill Geraldine W. Brazill 4430 E. Pawnee
S 152.4' of E. 75' of Reserve	"	Franklin G. Adams Frances M. Adams 2359 S. Terrace

2563 Burned



Continued page 2

Lot	Addition	Property Owner
1	Harper's Addition	Tom M. Bulkley X Janet Bulkley Address unknown
2	"	Donald W. Becker X Ruth Lee Becker Address unknown
3	"	First Federal Savings & Loan Association of Wichita 123 S. Market
4	"	George R. McLellan Winnie R. McLellan 4510 E. Pawnee
	That part of the NE $\frac{1}{4}$ of Sec. 2, Tp. 28 S., Rg. 1 E., lying North and East of the Easterly right of way line of George Washington Blvd.	James P. Love X Address unknown

We, The Security Abstract and Title Company, Inc,
hereby certify the foregoing to be a true and correct list of property
owners within a 200 foot radius of the S 152.4' of the E. 75' of the
Reserve in Sturm's Addition to Wichita, Sedgwick County, Kansas, as shown
by the deeds on file in the Office of the Register of Deeds of Sedgwick
County, Kansas, on this 25th day of March, 1963 at 7:00 A. M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

By

J. R. M...
Vice-President

Order No. 102065

PAYMENT NOTICE

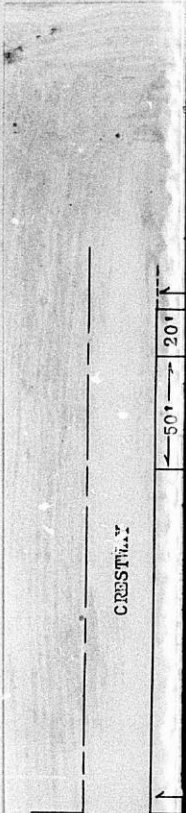
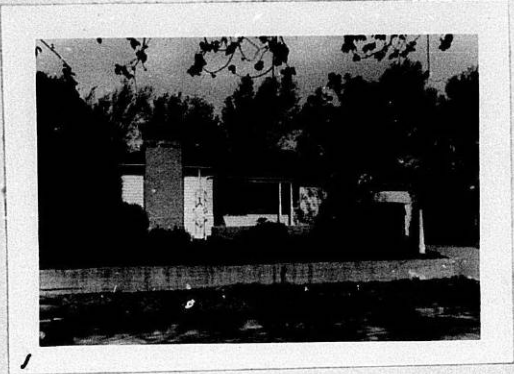
City of Wichita

PAY AT TREASURER'S OFFICE -- FIRST FLOOR

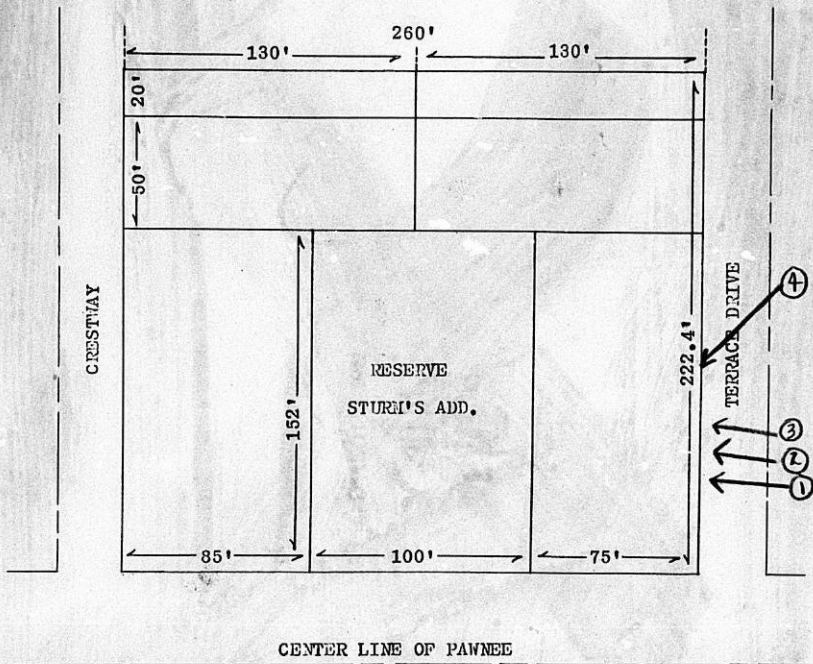
Bld'g & Elev. _____ Elec. _____ Elev. Insp. _____
Exam Fees _____ Hse. Mvr. _____ Hse. Moving _____
Licse. _____ Mech. _____ Oil Well _____ Pav. Cuts _____
Plan. Pib'g _____ Pib'g Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

DESCRIPTION	AMOUNT
Imp 1002	50.00
1002	

Name Wm. J. Adams
Address 1002
Type _____ Due Date 1/1/60
Comments _____
Date 1/1/60 By WJAD



N
BZA
GEN
SCA



BZA 7-63

GENERALLY LOCATED AT THE NORTHWEST CORNER OF PAWNEE AND TERRACE
 SCALE 1/10" = 5'

Attachment #2

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm

Roll # 1