

BZA 11-77 - E. SEVERIN SCHMIDT
requests a variance to eliminate
fencing requirement on the south
border of property located at
the southwest corner of 21st St.
and McComas

*POSTED
4-1-77
[Signature]*

ACTION

BZA 11-77 COMMITTEE *Denied* DATE *4-26*

M.A.P.C. _____

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

Map No. 5249
 Sec. 12
 Twp. 27
 Range 1W

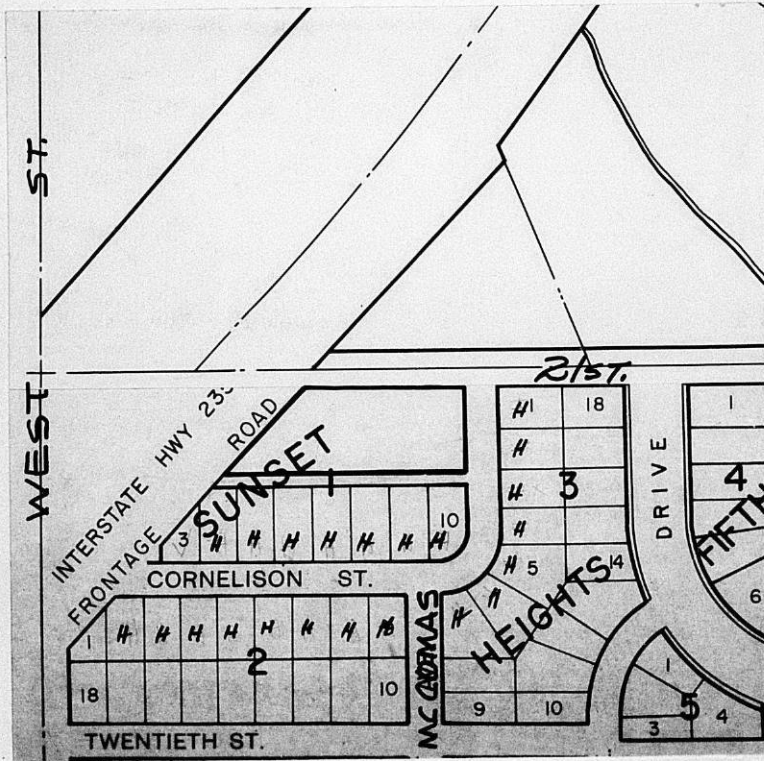
BZA- 11-77
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: 7.41 (176 (irregular) ft. by 350 ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East SINGLE FAM South SINGLE FAM
 West I-235 HI-WAY North I-235 & UNDEVELOP
4. Sketch Plan Land Use is for: _____
5. Present Land Use if for: UNDEVELOPED
6. Area (is) (is not) platted.

PHOTO DATA:

Taken by _____ Date _____ Time _____



No. 2153C
 Sinead
 HASTING, INC. - LOS ANGELES
 LOCAL OFFICE - HOUSTON, TX U.S.A.

October 5, 1977

Robert G. Finch, Deputy City Manager

Jack H. Galbraith, Chief Planner

Use of Property at 21st and McComas Streets.

The attorney representing the owner of property located south of 21st Street and west of McComas Street has contacted our office regarding his client's proposed use of the property.

As you may recall, this property was involved in an unsuccessful Board of Zoning Appeals case (No. BZA 11-77) requesting a variance to the provisions of the City Zoning Ordinance which would have eliminated the screening requirement along the south property line.

At the time the BZA case was filed, the property owner indicated that the property was to be used as the site for a "Grampies" chain restaurant. Sometime during or subsequent to the review proceedings on the BZA case, the "Grampies" officials decided against using the site.

The property owner's attorney now indicates that a new contract has been drawn on the site and it will be used as the new location for Tommy's Oil Company, a service station previously located on North Meridian and acquired by the State as part of the right of way for the new K-96 Highway improvements. The new station on 21st and McComas will be named the Highway Oil Company.

The proposed service station is a permitted use under the provisions of the "LC" light commercial zoning classification existing on the property subject to screening adjacent residential districts.

Jack H. Galbraith
Chief Planner

JHG:RLY:el

cc: Richard A. Loyd, Attorney-at-Law
Farmers & Bankers Bldg., 67202

File BZA 11-77

July 19, 1977

Robert G. Finch, Deputy City Manager

Robert A. Lakin, Director of Planning

Contact concerning use of property at 21st Street
and McComas

As you directed, the Planning Department staff has contacted the attorney representing the owner of property located at 21st and McComas. This property was recently involved in an unsuccessful Board of Zoning Appeals Case (No. BZA 11-77) requesting a variance to the provisions of the City Zoning Ordinance which would have eliminated the screening requirement along the south line of the property.

The property owner's attorney indicates that he is in the process of reviewing the status of the "Grampies" Restaurant chain prospect with his client and the subject of alternate uses or the possible selective restriction of uses for the light commercially zoned site in question has not been considered. The property owner's attorney has, furthermore, stated his willingness to inform his client of the City Commission's concerns and to keep the Planning Department advised on the future disposition of the site. We will re-ly to you any information that becomes available.

Robert A. Lakin
Director of Planning

RAL:RLY:el

cc: Richard A. Loyd, Attorney at Law
Farmers & Bankers Bldg., Wichita, Ks. 67202

WICHITA-SEDGWICK COUNTY

DATE July 12, 1977

METROPOLITAN AREA PLANNING DEPARTMENT

TO Jack Galbraith, Chief Planner
FROM Robert A. Lakin, Director of Planning
SUBJECT Use of Property at 21st and McComas

Attached is an assignment from the Manager's Office concerning the property at 21st and McComas. Please assign Young or Dobson to contact the property owner and/or his attorney concerning reuse of the property. Make sure all oral communication is followed up by written correspondence for the record.

Based on previous reports made to the governing bodies I do not see any way any compensation could be made to the property owner in exchange for limiting the uses on the property. Anything that would result in a commitment as to other uses of the property would have to be made on a voluntary basis. I would think, however, that based on the responses from the neighborhood and what could be a very positive public relations item for any future business that goes into the area, the property owner might be willing to restrict the use of the property relative to high traffic volume items, such as restaurants, fast food and sit down, banks, savings and loans, taverns, private clubs, etc. Please see what you can do relative to having a response to the City Commission not later than July 26.


Robert A. Lakin, Director of Planning

Attachment
Memo Finch to RAL 7-6-77
RAL:ew

THE CITY OF WICHITA
OFFICE OF CITY MANAGER

DATE July 6, 1977



TO Robert A. Lakin, Director of Planning

FROM Robert G. Finch, Assistant City Manager

SUBJECT Use of Property at 21st and
McComas

On June 28, 1977, the City Commission was advised that the "Grampies" Restaurant chain had abandoned its plan to construct a restaurant at 21st and McComas.

The City Commission then asked that the administrative staff contact the owner of that property as to other possible uses of the property.

Please accept responsibility for this assignment and advise this office of the results of the contact with the property owner.

Robert G. Finch
Assistant City Manager

RGF/pd

RESOLUTION NO. BZA 11-77

WHEREAS, E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 11, Block 1, Sunset Heights Fifth Addition, except that portion condemned in Case A-77197 and except that portion deeded to the City of Wichita by Warranty Deed, Book 1501 Page 50, Sedgwick County, Kansas. Generally located at the southwest corner of 21st Street and McComas.

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 26, 1977, 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 subject property is already screened from the residential properties to the south by an existing 6 foot solid wood fence; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will adversely affect the rights of adjacent property owners or residents inasmuch as the adjacent residential neighborhood would be providing and maintaining a screening fence to meet the screening requirement of the commercial development on subject property; 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 not constitute unnecessary hardship upon the property owner represented in the application inasmuch as he is not being deprived of his right to develop subject property in the same manner afforded to any other Light Commercial property; 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 the request is interiorly located; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the screening of commercial development from residential property is the responsibility of the commercial property owner to provide and maintain; 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 not 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 waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 11, Block 1, Sunset Heights Fifth Addition, except that portion condemned in Case A-77197

and except that portion deeded to the City of
Wichita by Warranty Deed, Book 1501 Page 50,
Sedgwick County, Kansas. Generally located
at the southwest corner of 21st Street and
McComas,

be denied.

ADOPTED AT WICHITA, KANSAS, this 26th day of April, 1977.

Ewald Behnke
Ewald Behnke, Chairman

ATTEST:

Larry Dobson
Larry Dobson, Assistant Secretary

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX

Tenth Floor, City Hall
455 North Main Street

May 18, 1977

Mr. Gerald Ervin
Box 246
Junction City, Kansas 66441

Re: Request for Variance
Case No. BIA 11-77

Dear Mr. Ervin:

Enclosed is a signed Resolution adopted by the Board of Zoning Appeals on April 26, 1977, in connection with your request for a variance to waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and generally located at the southwest corner of 21st and McComas.

This Resolution reflects the official action of the Board to deny the request. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call.

Yours very truly,

Larry Dobson
Assistant Secretary

LD:bh
Encl.

cc: E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas
Don Cisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Central Inspection

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE April 11, 1977



TO Jack Galbraith, Chief Planner, Currents Plans, MAPD
FROM Mary Pitman, CPO Administrative Aide

SUBJECT BZA 11-77 (McComas and 21st St.)

At their regular meeting on April 6, 1977, CPO Neighborhood Council "M" discussed BZA 11-77, a request for a waiver of the screening requirement on property zoned light commercial (and intended for restaurant use) at the southwest corner of 21st Street and McComas. Ten neighbors, now living in the single-family residences directly south of the applicant's property, were present at the meeting to explain their reasons for opposing the requested variance.

Currently, as you know, the applicant's property is separated from that of the residents by a 20-foot easement, with separating fences (owned by the residents) along its southern boundary. Residents feel that a separating wall on the northern boundary of the easement (in other words, on the applicant's southern property line) would help to shield them from the noise, trash, and traffic they anticipate from the proposed restaurant. Residents also fear damage to their fences from restaurant patrons, and think their fences would be more protected if a separating wall were required on the applicant's property line.

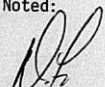
For these reasons, Neighborhood Council "M" voted to ask the Board of Zoning Appeals to deny the requested waiver. Council "M" asks that the BZA require the applicant to provide not only screening but also landscaping on the southern property line.

Please provide this information to the BZA when they are considering this case. Your assistance in this matter will be greatly appreciated.

Mary Pitman

Mary Pitman
CPO Administrative Aide

Noted:



David Furnas
CPO Coordinator

MP:sm

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

April 27, 1977

Tenth Floor, City Hall
455 North Main Street

Mr. Gerald Ervin
Box 246
Junction City, Kansas 66441

Re: Request for Variance
Case No. BZA 11-77

Dear Mr. Ervin:

At the regular meeting of the Board of Zoning Appeals on April 26, 1977, your request for a variance to waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and generally located at the southwest corner of 21st and McComas was considered.

It was the action of the Board to deny the request.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

If you have any questions, please call our office.

Yours very truly,

Larry Dobson
Assistant Secretary

LD:bh

cc: Jerry Bullins, 1802 Cornelison, 67203
Phil Pechin, 3820 Cornelison, 67203
E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas
C. Bickley Foster, 2818 W. Edwards, 67204
Don Giesick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Maintenance, Central Inspection

PETITION

We, the undersigned petitioners, hereby request that the Board of Zoning Appeals, for the City of Wichita, Kansas deny the request to waive screening requirements of that tract of land legally described as follows:

Lot 11, Block 1, Sunset Heights Fifth Addition, except that portion condemned in Case A-77197 and except that portion deeded to the City of Wichita by Warranty Deed, Book 1501, Page 50, Sedgwick County, Kansas. Generally located at the southwest corner of 21st Street and McComas.

The petitioners consist of those persons owning property adjacent to or otherwise situated in the immediate vicinity of said tract of land.

The petitioners feel that the granting of a variance to the screening of said tract of land would be in violation of K.S.A. 12-715, because we feel that the granting of such variance will adversely affect the rights of adjacent property owners or residents, and will adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare, and that granting such variance will be opposed to the general spirit and intent of the zoning ordinance.

NAME	ADDRESS	DATE
Edward Voss	3817 CORNELISON	25 Apr 77
Clare A. Voss	3817 CORNELISON	April 25, 1977
Susan L. Driskill	3809 Cornelison	April 25, 77
Donald B. Driskill	3809 Cornelison	4-25-77
Dorothy E. Hladizien	2110 N. McComas	4-25-77
Edgar W. Lucas	2114 N. McComas	4-25-77
Attie G. Lucas	2114 N. McComas	4-25-77
Ann Sanchez	2116 N. McComas	4-25-77
Armando Sanchez	2116 N. McComas	4-25-77
Barbara Wilburn	2124 N. McComas	4-25-77
John L. Willum Jr.	2124 No. McComas	4-25-77
Myles A. Schwartz	3808 Cornelison	4-25-77
Phil Pechin	3820 Cornelison	4/25/77
Janet Pechin	3820 Cornelison	4/25/77
Gemma Rogers	3821 Cornelison	4/25/77
Juvilla P. Rogers	3821 Cornelison	4/25/77
Carolyn Alnuti	3813 Cornelison	4/25/77
Deborah A. Bullins	3802 Cornelison	4/25/77
Jerry W. Bullins	3802 Cornelison	4/25/77

ATTESTION:

I hereby attest that, to the best of my knowledge & belief, that all the signers hereof are persons owning property within the immediate area of the property in question; that each signer had full knowledge of the contents of this petition; that their respective addresses are correctly stated and that each signature was obtained on the date stated opposite his/her name.

Robert A. Phillips

NAME	ADDRESS	DATE
Mary M. Razook	3805 Cornelison	4-25-77
Robert A. Phillips	3824 Cornelison	4-25-77
Norma C. Phillips	3824 Cornelison	4-25-77
Belle Gardner	3909 Cornelison	4-25-77
Mark Dandee	3909 Cornelison	4-25-77
Phyllis Pellett	3905 Cornelison	4-25-77
Robert F. Pellett	3905 Cornelison	4/25/77
Lee Shipley	3816 Cornelison	4/25/77
Lyf E. Juna	3812 Cornelison	4-25-77
Ashon Shipley	3816 Cornelison	4-25-77
Ruby E. Juna	3812 Cornelison	4-25-77
Robert R. Hoffman	3804 Cornelison	4-25-77
Viola M. Hoffman	3804 Cornelison	4-25-77
Robert D. Lippsey	2120 N. McComas	4-25-77
Sherry Ann Lippsey	2120 No. McComas	4-25-77
Gene Walker	2128 No. McComas	4-25-77
Velma Walker	2128 No. McComas	4-25-77
Jessie L. Sparks	2132 No. McComas	4-25-77
Sherrill J. Sparks	2132 No. McComas	4-25-77
Ray Collins	2125 Westledge	4-25-77

ATTESTION:

I hereby attest that, to the best of my knowledge & belief, that all the signers hereof are persons owning property within the immediate area of the property in question; that each signer had full knowledge of the contents of this petition; that their respective addresses are correctly stated and that each signature was obtained on the date stated opposite his/her name.

John L. Wilburn

4/22/77

John Dekker, Director of Law

Robert A. Lakin, Director of Planning

BZA 11-77
21st and McComas

You have asked, in light of the City Commission's inquiry as to acquisition of the property in this case, as to what we think the most appropriate land use would be. It would seem to me that the alley should be vacated thus giving the property a depth of about 210 feet. Then the most appropriate use would probably be into medium density apartment type project with entrances off of McComas Street. The "R-6" category at a density allowable at 29 DU per acre is what I am thinking of. This does not preclude development at a lower density, i.e. "R-5", however the economics of land costs probably would dictate the higher density. There is one argument against apartments on this site and that is the amount of road noise that exists off of I-235 and the 21st-West Street transition. We have no noise figures on this but with no physical barriers from the highway and with the curve involved on 21st Street, and the volumes on both of them, I would think that there would be to some degree a noise problem that would raise questions about the desirability of apartments. However, site design location of the buildings in relation to the roadways and exterior wall materials and other sound barrier devices, positioning of windows, etc. could certainly minimize this as a problem. On the positive side, one of the things that speaks well for apartments in this area is the siting across of a park area, even though it is a fishing park.

In the alternative it would seem that if apartments or residences were undesirable for any reason, the highest possible use would be the "BB" Office District with 1/3 land coverage factor and with the minimum number of entrances allowable along 21st. This, however, is opening up the possibility to major traffic generation as there are some offices that are extremely low in traffic and others that are extremely high, such as medical offices.

If there are any additional questions, please advise.



Robert A. Lakin, Director of Planning

RAL:ew

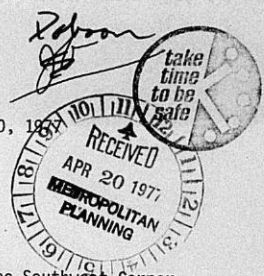
~~4/21~~

Site Plan loaned to R. Linn

WJ

THE CITY OF WICHITA
OFFICE OF CITY MANAGER

DATE April 20, 1977



TO John Dekker, Director of Law
FROM E. H. Denton, City Manager

SUBJECT Property at the Southwest Corner
of 21st and McComas

You were present on April 19, 1977, during the discussion of the use of the subject property. The residential neighborhood has strongly objected to the proposed construction of a restaurant at the location.

The Commission instructed the administrative staff to explore the possibility of public acquisition of the property in order to preclude its use for commercial purposes.

As you know immediate attention is necessary to this matter as the property is currently zoned LC and the owner has stated he already has a contract for construction of the restaurant.

Please accept responsibility for following up on the City Commissions' direction with a report and recommendation to be returned on the agenda for April 26, 1977.


E. H. Denton
City Manager

EHD/fsw

cc: Robert A. Lakin, Director of Planning
Kenneth H. Kitchen, Executive Director, Urban Renewal Agency

THE CITY OF WICHITA
OFFICE OF CITY MANAGER

DATE April 14, 1977



TO The Honorable Board of City Commissioners
FROM E. H. Denton, City Manager

SUBJECT Public Agenda for April 19, 1977 -
Request for Rezoning From "LC"
to Residential at the SW Corner of
McComas and 21st

The Public Agenda for the April 19, 1977, Commission Meeting carries an item from several property owners who are protesting the development of the SW corner of McComas and 21st as a restaurant.

The Planning Department advises that the tract of land where the restaurant development is planned has been zoned "LC" for over 20 years. The present owner is a Mr. E. Severin Schmidt. Mr. Schmidt has had some preliminary conversations with Central Inspection concerning his planned restaurant, but has not yet submitted plans for examination and issuance of a building permit.

Mr. Schmidt is scheduled for the April 26, 1977, Board of Zoning Appeals to request a waiver of the screening requirement for his development. Apparently, the adjacent property owners have a common wood fence screen and Mr. Schmidt is requesting the waiver on the grounds that further screening of the residential area would be superfluous.

The adjacent property owners learned that Mr. Schmidt was planning construction of a restaurant when they received notice of his BZA request for waiver of screening.

Mr. Schmidt has been notified of the Public Agenda request for rezoning of his property.

E. H. Denton
City Manager

EHD:mp

cc: Jack Galbraith, Chief Planner, Current Plans ✓
Robert Feldner, Central Inspection Superintendent

Shenker - more explore acquisition.

Jinch

Donnell - MC - more policy no LC on 21st Rev A (current) (at Big R.)

to I-235 (Shenker he meant Big Lake R.) called

Donnell on this will check w/ Donnell NA

Public agenda Item E down zoning of "LC" to?

S/W corner 21st & McComas

Annexed May 11, 1956 Ord. 21-914

Vacant "LC" zoned land ("AA" to "LC" May 9, 1957/Res. #19)

Lot 11, BIK 1,

Sunset Heights Fifth Addition (platted in Dec. 1955)

Jerry Bullins neighborhood spokesman (policeman)

Bickley Foster advises of much neighborhood opposition to commercial development. Says they will probably ask if City needs land in this area for public service use of some type.

CPO recommended denial of waiver of screening requirement along south property line. (BZA 11-77)

Bullins

- Difference in size, loss of frontage -
- air pollution
- curb cut on McComas - Traffic in Per area
- 30 accidents in 2 years on curve.
- petition from 627 people.
- possible use MF, office, drug store.

Dubbs - if specific use, requiring engineer, confessions

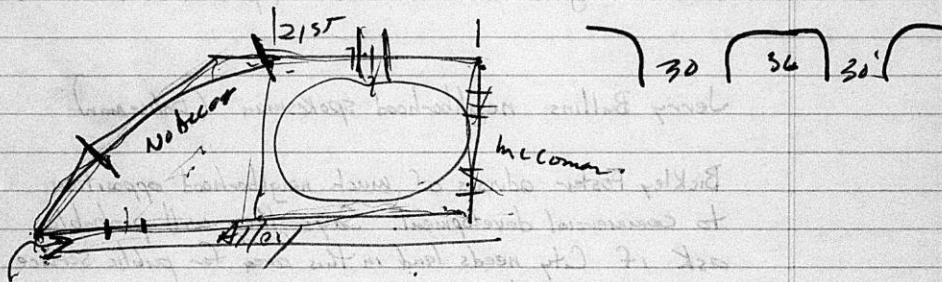
January 21
Bullins
January 12

Alt-Park Shan

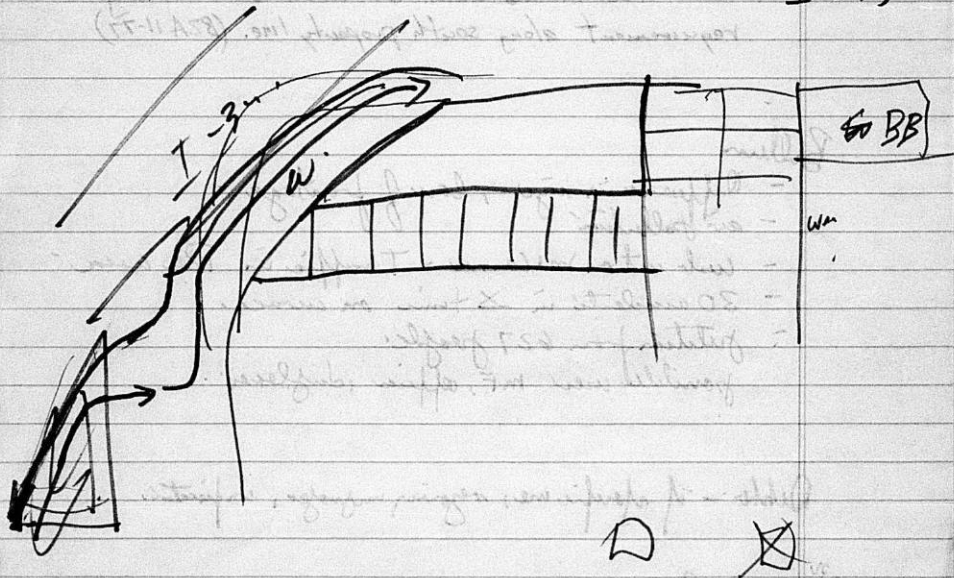
- KR + road barrier

Richard Lloyd - Representing Severin Seborn Schmitt,

Shanahan move / Donnell -
explains acquisition - MC -



Donnell - Policy not looking 21st Jan. Rent. to
S-235



SECRETARY'S REPORT
CASE NO. BZA 11-77

APPLICANT: E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas.

AGENT: Gerald Ervin, Box 246, Junction City, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to waive the screening requirement adjacent to the south property line.

GENERAL LOCATION: Southwest corner of 21st Street and McComas.

ZONING: Subject property is zoned the "LC" Light Commercial District. All surrounding properties are zoned the "AA" Single Family Dwelling District.

LAND USE: Subject property is undeveloped. Properties to the east and south are developed with single family residences. North and west of subject property is Interstate Highway 235.

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 waive the screening requirement adjacent to the south property line in conjunction with the proposed commercial development of subject property.

SECRETARY'S REPORT
Case No. BZA 11-77
Page 2

Section 28.04.160.K of the City Code provides that property developed for commercial use, when such use is established adjacent to any residential district, shall provide screening along all side or rear lot lines adjacent to the residential zoning district to extend to within 20 feet of each street right-of-way. When fencing is used for screening, it must be at least 6 and not more than 8 foot in height, except that screening within 20 feet of the street right-of-way must be reduced to 3 foot in height.

Subject property has street frontage on three sides and is bordered on the south by a dedicated, but unimproved 20 foot alley. It is along this south property line, which is common to the north side of the alley, that the applicants are requesting a waiver of the screening requirements. The south side of the alleyway, or the north side of the adjacent residential area, is defined by a 6 foot board fence for the entire length of the property. According to the zoning requirement above, the applicants would be required to screen along the entire 495 foot length of the south property line even though the proposed development is for only the east 233 feet of subject property.

The applicant contends that another fence, 20 feet from the existing fence, will create problems in maintenance of utilities, mowing and policing of the area and is unnecessary from the standpoint that the residential area to be protected by the required screening is already protected by the existing fence. In his statement of justification, he is further willing to stipulate that if the fence on the residential property line is ever removed, he will construct a fence to meet the City Code requirement at that time (statement is attached).

The applicant's plan shows that his proposed development of the eastern portion of the property will not have access to the alley. There are existing curb openings at both ends of this unimproved alley, and future development of the western portion of this site apparently needs the access provided by the alley at the southwest corner of the property.

Possible vacation of the alley was briefly discussed with the applicant, but he did not wish to pursue such action at this time.

UNIQUENESS:

It is the opinion of the Secretary that uniqueness may be found to exist in this situation inasmuch as subject property is already effectively screened from the residential properties to the south by an existing 6 foot solid wood fence.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the requested variance may not adversely affect the rights of adjacent property owners inasmuch as the existing fence will visually screen the properties to the south from the commercial development, while leaving the unimproved alley totally visible from the commercial property, which should be added impetus for the leasee of the property to keep the alleyway properly maintained.

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 applicant as long as the existing fence is in place inasmuch as the result which is desired to be achieved by screening is already accomplished by the existing fence, and for him to duplicate the effort would not increase the effectiveness of the screening.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the variance would not adversely affect the public interest inasmuch as the requested variance is located along an interior lot line.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the spirit and intent of the screening provisions of the Zoning Ordinance in this instance is to conceal commercial development on subject property from the view of adjacent residential properties to the south. It is the further opinion of the Secretary that these properties are already effectively screened.

RECOMMENDATION:

If the Board concurs that the five conditions necessary to the granting of a variance can be found to exist, it is recommended that the variance be granted subject to the following condition:

1. In the event one or more residential properties adjacent to the south are no longer screened from subject property, the applicant shall comply with the requirements of the zoning ordinance pertaining to screening of the entire south property line.
-

28 notices sent to applicant, agent and adjoining property owners
10 notices sent to MAPC members
1 notice sent to CPO-Dave Furnas
40 total notices sent on BZA 11-77, 3-31-77

BOARD OF ZONING APPEALS
TENTH FLOOR - CITY HALL
455 North Main Street, Wichita, Kansas 67202

March 31, 1977

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 11-77

An application has been filed by E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and legally described as follows:

Lot 11, Block 1, Sunset Heights Fifth Addition, except that portion condemned in Case A-77197 and except that portion deeded to the City of Wichita by Warranty Deed, Book 1501 Page 50, Sedgwick County, Kansas. Generally located at the southwest corner of 21st Street and McComas.

This application has been assigned Case No. BZA 11-76 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 26, 1977, at 1:30 p.m., in the Board Room, First Floor City Hall, 455 North Main, Wichita, Kansas, at which time you may appear if you so desire either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant E. Severin Schmidt

Mailing Address P.O. Box 1633, Wichita, Kansas Phone 316-682-8213

Name of Authorized Agent Gerald Ervin, Architect

Mailing Address Box 246, Junction City, Kansas Phone 913-238-1101

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

II. The variance requested is relief of requirement to construct a fence
on the south border

for property located at the southwest corner of 21st Street and McComas,
Wichita, Kansas

and legally described as: Lot 11, Block 1, Sunset Heights Addition to
City of Wichita #5.

in the City of Wichita; and which is presently zoned LC

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.

E. Severin Schmidt
Applicant

Gerald Ervin
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 10:00 (a.m.) - p.m.), 3-25 1977 together with appropriate fee of \$50.00.

T9-402

Map 5249

Larry Dobson
Signed

SW corner of 21st Street and McComas

GERALD ERVIN, ARCHITECT

859 S. WASHINGTON - BOX 246 - 238-1101 - JUNCTION CITY, KANSAS 66441

March 22, 1977

Mr. Larry Dobson
Board of Zoning Appeals
City of Wichita
Wichita, Kansas

Dear Mr. Dobson:

About three weeks ago I was in your office to discuss a possible variance for the property located at the southwest corner of 21st Street and McComas. At that time you provided me with the application, instructions and schedules for the Zoning Board of Appeals.

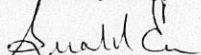
We plan to submit an application for a variance to eliminate the fencing requirement for the south side of the property by March 28, 1977 for a hearing date of April 26, 1977.

Under separate cover we are submitting the following documents:

1. Completed application form.
2. Certified list of property owners within 200 ft. of property involved.
3. Written statement justifying the variance requested.
4. Plot plan in duplicate.
Sketch perspective in duplicate.
5. Application fee - \$50.00.

If there are any questions, please notify me for additional information. Thank you.

Yours very truly,


Gerald Ervin

GE:sp

1. **SUBJECT:** Written statement justifying variance request.
2. **LOCATION OF PROPERTY:** Property located at the southwest corner of 21st Street and McCommas, Wichita, Kansas (see plot plan).
3. **PROPERTY OWNER:** E. Severin Schmidt
P. O. Box 1633
Wichita 1, Kansas
316-682-8213
4. **ARCHITECT:** Gerald Ervin
P. O. Box 246
Junction City, Kansas
913-238-1101
5. **LESSEE:** Grampy's International, Inc.
P. O. Box 461
Scottsbluff, Nebraska
308-632-6866

6. **PROPOSED PROJECT:** The owner of the property, Mr. E. Severin Schmidt, has entered into a preliminary contract with Grampy's International, Inc. to construct and lease a Grampy's family restaurant at 21st and McCommas Street, Wichita, Kansas.

7. **PRESENT ZONING:** The location of the proposed project is presently zoned LC. The area to the south and to the east of the project is presently zoned residential.

8. **EXISTING CONDITION:** The existing property is presently clear of any buildings. The area to the north is utilized for highway traffic, the area to the east is presently residential use, the area to the south is presently residential use and the area to the west is used for highway traffic. On the south of the property a 20 ft. easement exists from the east to the west extremes of the property. The south side of the easement which is the north side of the adjacent residential area is defined by a board fence for the entire length of the property.

9. **CITY FENCING REQUIREMENT:** Present subdivision requirements stipulate that a fence 6 ft. to 8 ft. in height shall be constructed along the property line when commercial property is adjacent to residential property. This fence height shall be maintained at this height to a point to within 20 ft. of the public property line and there reduced to 3 ft. in height. Mr. Schmidt, property owner, is not requesting the lot to be split and the fencing requirement for the rear yard would be the entire length as interpreted by the Building Department, even though only 233 ft. of the property will be used for the Grampy's Restaurant.

According to present ordinances, it will be necessary to construct a fence between the driveways on the east side of the property. We are not requesting a variance for the side yard.

10. **VARIANCE REQUEST:** We would like to request that the Board of Zoning Appeals consider a variance for the requirement to install a fence on the

Page Two

south border of the property. We are requesting relief on this requirement for the following reasons:

- a. Requirement of a fence would create a corridor 20 ft. wide and 500 ft. long with solid fence on both sides and no access. This would create a problem in maintenance of the utilities located in the easement and a problem in cleaning the trash and tumbleweeds.
- b. In the event of fire, it would create a problem in access to the properties.
- c. The owner, through three condemnation procedures over the past few years, has agreed to only one access to 21st Street and had planned a second access to 21st Street at the easement on the southwest corner of the property. This area is already provided with a curb, gutter and drive entrance. Requirement of the fence to the property line will cut off access to the owner's property and therefore reduce the land value considerably.
- d. The lessee would be required to pay for a fence which would create problems to the area and the individuals involved.
- e. Should the fence be required for the full south property line, the owner of the property would have to pay for fence at the back of his property which is not developed and therefore would actually be required to pay for a fence that would cut off his access to 21st Street.

1. INTENT OF ORDINANCE: We feel the ordinance which requires the fence is well founded. Fencing ordinances were created to separate land uses to protect residential areas from noise, light, blowing trash and other debris, privacy, etc. This request for variance would not remove the necessity of fencing but would only utilize the existing fence. We do not feel granting the variance would oppose the general purpose and intent of the fencing requirement called for by the Zoning Ordinance.

We also do not feel that a variance would adversely affect the public health, safety, morals, convenience, property, or general welfare. In fact, we feel the variance would be an improvement over the condition were the fence required.

We do not feel the granting of the permit for the variance will adversely affect the right of the adjacent property owners or residential owners in any manner.

We further feel that requirement of the fence would constitute a hardship upon the property owner as noted.

We feel this is an unusual situation which has occurred due to the fact that the developer of the adjacent property constructed a fence to protect the residential area from the nearby trafficways and commercial areas. To require a

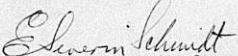
Page Three

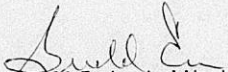
fence would seem to create a unique condition to the property involved.

12. FUTURE FENCING REQUIREMENT: The owner of the property and the lessee are well aware of the need for fencing. The owner of the property would agree to stipulate that if the fence at the residential property line ever be removed, that he will construct a fence to meet the City ordinance at that time.

13. GENERAL STATEMENT: The owner would appreciate consideration by the Board of Zoning Appeals for consideration of the variance request as outlined. With the above items and additional information, we would appreciate approval of the variance for the fencing requirement at the south side of the property. Thank you.

Yours very truly,


E. Severin Schmidt, Owner


Gerald Ervin, Architect

OWNERSHIP LIST

Lot	Block	Addition	Property Owner
Lot 3		except that portion condemned for Highway, West 46 ft lot 4, Block 1, Sunset Height Fifth Addition	✓ Leonard C. Cumley and Peggy S. 4409 Edminster 67212
Lot 4		except the West 46 feet, the West 40 feet of Lot 5, Block 1, Sunset Heights Fifth Addition	✓ Robert A. Phillips and D. Cozette 3824 Cornelison 67203
Lot 5		except the West 40 feet, the West 34 feet Lot 6, Block 1, Sunset Heights Fifth Addition	✓ Philip K. Pechin and Janet K. 3820 Cornelison 67203
Lot 6		except the West 34 feet, the West 28 feet Lot 7, Block 1, Sunset Heights Fifth Addition	✓ Leslie M. Shipley and Sharon J. 3816 Cornelison 67203
Lot 7		except the West 28 feet, the West 22 feet Lot 8, Block 1, Sunset Heights Fifth Addition	✓ Lyle E. Turner and Ruby E. 3812 Cornelison 67203
Lot 8		except the West 22 feet, the West 16 feet Lot 9, Block 1, Sunset Heights Fifth Addition	✓ Myles A. Schwartz and Debra K. 2307 McCormick 67213
Lot 9		except the West 16 feet, the West 10 feet Lot 10, Block 1, Sunset Heights Fifth Addition	✓ Robert L. Huffman and Viola M. 3804 Cornelison 67203
Lot 10		except the West 10 feet, Block 1, Sunset Heights Fifth Addition	✓ Jerry W. Bullins and Deborah A. 3802 Cornelison 67203
Lot 11		except that portion condemned in Case A-77197 and except that portion deeded to the City of Wichita by Warranty Deed, Book 1501, page 90	✓ E. Severin Schmidt & Challa J. 115 South Rutan 67218
3	2	Sunset Heights 5th Addition	✓ Mark W. Gardner and Billie J. 3859 Ponderosa 67203
4	2	Same	✓ Robert F. Pellett and Phyllis A. 3905 Cornelison 67203
5	2	Same	✓ James Harold Rogers and Twilla P. 3821 Cornelison 67203
6	2	Same	✓ Stephen C. Rudd and Karen L. 3817 Cornelison 67203
7	2	Same	✓ James H. Alnuti and Carolyn A. 3813 Cornelison 67203
8	2	Same	✓ Donald B. Driskill and Susan L. 3890 Cornelison 67203
9	2	Same	✓ Mary M. Razook 3805 Cornelison 67203

Lot	Block	Addition	Property Owner
1	3	Sunset Heights 5th Addition	✓ Travis R. Sparks and Sherrill J. 2132 North McComas 67203
2	3	Same	✓ Eugene H. Walker and Velma R. 2128 North McComas 67203
3	3	Same	✓ John L. Wilburn Jr and Barbara 2124 North McComas 67203
4	3	Same	✓ Robert D. Lipsey and Sherry Lou 2120 North McComas 67203
5	3	Same	✗ Margaret Ann Allison <i>not in SD</i> Address Unknown <i>not in CD</i>
6	3	Same	✓ Walter A. Lucas and Esther W. <i>not in CD</i> 2114 McComas 67203
7	3	Same	✓ Joseph A. Skladzien and Dorothy E. 2110 North McComas 67203
14	3	Same	✓ Norman E. Griffin and Elizabeth C. 2117 Westridge Drive 67203
15	3	Same	✓ Harold K. Lohn and Marjorie E. 2121 Westridge Drive 67203
		& 10' vacated street adj on East	
16	3	Same	✓ Kay Ilene Springsted 2125 Westridge 67203
		& W 10' vac. street adjacent	
17,	3	Same	✓ Henry Y. Geen and Jayne L. 2407 Benjamin Drive 67204
18		& 10' vacated street adj on East	

That part of Govt Lot 8 in the Southwest Quarter of Section 1-27-1W lying North of a line 50 feet North of the South line of Section 1 and bounded on the West by the East right of way line of Highway I-235 and bounded on the East by the West line of the Wichita Valley Center Flood Control

✓ Board of Park Commissioners of the City of Wichita
455 North Main 67202

The Security Abstract & Title Company, Inc., hereby certifies the foregoing to be a true and correct list of property owners of:

A 200 foot radius of: Lot 11, Block 1,
Sunset Heights Fifth Addition, except
that portion condemned in Case A-77197 and
except that portion deeded to the City of
Wichita by Warranty Deed, Book 1501 Page 90

as shown by the records on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 2nd day of March, 1977 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE COMPANY, INC.

By

Mary Stolle

Vice President

Order No. 2477.1
wh

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - SECOND 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	\$5000

Name E. Severin Schmidt

Address P.O. Box 1633, Wichita, Ks

Type AA-407103 Due Date

Comments:

Date 3-25-77 By ED

BOARD OF ZONING APPEALS
TENTH FLOOR - CITY HALL
455 North Main Street, Wichita, Kansas 67202

March 31, 1977

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 11-77

An application has been filed by E. Severin Schmidt, P.O. Box 1633, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to waive the screening requirement adjacent to the south property line on property zoned the "LC" Light Commercial District, and legally described as follows:

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Jack H. Galbraith
Secretary

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 1