

BZA 16-77 - Virginia G. Gilbert requests an exception to permit establishment of a child care facility on property generally located east of Robin Road in an area North of Maple.

BZA 16-77

*105169 11
5/27/77*

ACTION

DATE

5-24-77

Approved

COMMITTEE

Board of Zoning Appeals

M.A.P.C.

Denial 5/26/77

R.C.C./B. CO. C.

BZA 16-77

Map No. 4947
 Sec. 21
 Twp. 27
 Range 1W

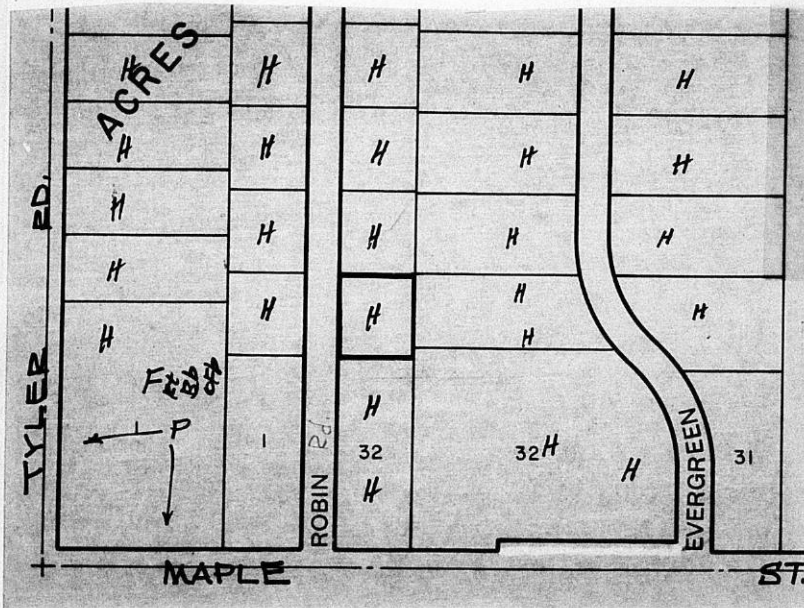
BZA- 16-77
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:

1. Acres: 0.48 (140 ft. by 150 ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East SINGLE FAM South SINGLE FAM
 West SINGLE FAM North SINGLE FAM
4. Sketch Plan Land Use is for: _____
5. Present Land Use is for: SINGLE FAM
6. Area (is) (is not) platted.

PHOTO DATA:

Taken by _____ Date _____ Time _____



No. 2-153C
 S. Mendenhall
 HASTINGS, SAN LOS ANGELES
 LOGAN OH - MORGENTHAU, TX, U. S. A.

Copy of minutes sent to Vince
 Bogert + Don Boldebeck 6-13-77

ed

6-7-77

Vince Bogart
examined file and
obtained xerox copies
of what he wanted.
Evelyn helped him and
said he got copy of site plan,
photos, names of protesters

CB

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6-13-77

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...outlined in Section

NOW, WHEREAS, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this application be approved to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lots 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

subject to the following conditions:

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.
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RESOLUTION NO. BZA 16-77

WHEREAS, Virginia C. Gilbert, 1000 South Woodlawn, Apartment 904, Wichita, Kansas, requests an exception as provided in Section 2.12.590.C, Code of the City of Wichita, to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

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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 May 24, 1977, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District subject to the conditions outlined in Section 28.04.185.2, Code of the City of Wichita.

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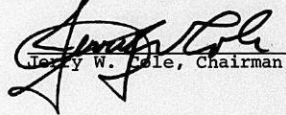
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RESOLUTION NO. BZA 16-77
Page 2

8. The applicant shall submit a lot grading plan to M. S. Mitchell, Assistant Superintendent of Public Works Maintenance, for his approval. Said plan shall provide that no run-off occur to the south, but be directed to the west. A copy of this approved plan shall be submitted to the Secretary of the Board prior to the issuance of a paving permit or the forwarding of the Resolution to the Superintendent of Central Inspection.

ADOPTED AT WICHITA, KANSAS, this 24th day of May, 1977.


Jerry W. Cole, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

RESOLUTION NO. BZA 16-77

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WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

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Larry Dobson, Assistant Secretary

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Jerry W. Doole, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

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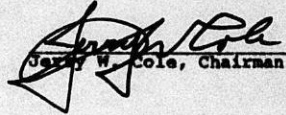
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Jerry W. Cole, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

RESOLUTION NO. BEA 16-77

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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 May 24, 1977, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District subject to the conditions outlined in Section 28.04.185.2, Code of the City of Wichita.

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RESOLUTION NO. BEA 16-77

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ADOPTED AT WICHITA, KANSAS, this 24th day of May, 1977.


Jerry W. Cole, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

RESOLUTION NO. BZA 16-77 (A)

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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 May 24, 1977, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District subject to the conditions outlined in Section 28.04.185.2, Code of the City of Wichita.

WHEREAS, the Board of Zoning Appeals did, at its meeting of May 24, 1977, approve the application to permit the establishment of a child care center on said property subject to seven (7) conditions; and

WHEREAS, a rehearing of this case was granted by the Secretary of the Board of Zoning Appeals, upon written request of parties opposing the application as provided for in Article VIII, paragraph B of the Board of Zoning Appeals Rules and Regulations; and

WHEREAS, proper notice of the rehearing 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 July 26, 1977, consider the rehearing of said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction and authority to rehear a previously decided application under the provisions of Article VIII, paragraph B of the duly adopted Rules and Regulations of the Board of Zoning Appeals; and

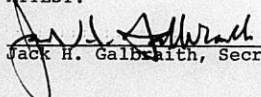
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that Resolution No. BZA 16-77 be rescinded and this application to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:


Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

be denied.

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

ATTEST:


Jack H. Galbraith, Secretary


Jerry W. Cole, Chairman

Tenth Floor, City Hall
455 North Main Street

August 8, 1977

Mrs. Virginia Gilbert
1000 S. Woodlawn, Apt 904
Wichita, Kansas 67218

Re: Case No. BZA 16-77
Request for Exception

Dear Mrs. Gilbert:

At the regular meeting of the Board of Zoning Appeals on July 26, 1977, a rehearing of your request for an exception to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District, and generally located on the east side of Robin Road in an area north of Maple was held.

It was the action of the Board to rescind the previous Resolution approving this request and to deny the application. A Resolution setting forth the official action of the Board is enclosed for your information and files.

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

Very truly yours,

Larry Dobson
Assistant Secretary

LD:bh

cc: Vincent Bogart, 444 North Market, 67202
Craig Kennedy, P.O. Box 405
Ms. Don Baldebuck, 236 S. Robin Road, 67209
Tom Powell, Legal Counsel
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Tenth Floor, City Hall
455 North Main Street

July 27, 1977

Ms. Virginia Gilbert
1000 S. Woodlawn, Apartment 904
Wichita, Kansas 67218

Re: Case No. BZA 16-77
Request for Exception

Dear Ms. Gilbert:

At its meeting of July 26, 1977, the Board of Zoning Appeals considered the rehearing of your previously approved exception for a child care center, generally located on the east side of Robin Road in an area north of Maple, and zoned the "AA" Single Family Dwelling District.

Inasmuch as your letter of June 25, 1977, indicated no further desire in pursuing the establishment of a child care center on subject property, it was the action of the Board to rescind the previous Resolution approving this case and to now deny the application.

A Resolution reflecting this action 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 concerning this case, please call our office.

Yours very truly,

Larry Dobson
Assistant Secretary

LD:bh

cc: Vincent Bogart, 444 North Market 67202
Craig Kennedy, P.O. Box 405
Ms. Don Baldebuck, 236 S. Robin Road, 67209
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator
Sam Powell, City Council

July 18, 1977

Board of Zoning Appeals
Larry Dobson, Assistant Secretary

Rehearing of Case No. BZA 16-77, Child Care Center
at 220 South Robin Road

Subject case was approved at the Board's meeting of July 26, 1977. Since that time, attorneys for both the opposition and the applicant have reviewed Restrictive Covenants in effect on subject property and have agreed that said covenants would prohibit the establishment of a child care center on the property.

Please find attached a letter from Vince Bogart, attorney for the opposition, requesting a rehearing of this case. Also attached is a letter from the applicant, Virginia Gilbert, stating that she has decided not to pursue the establishment of a child care center on subject property for the reason stated above.

Inasmuch as all parties involved are in apparent agreement, it is recommended that the previous resolution approving this exception be rescinded and a new resolution be adopted to deny the application based on the applicant's statement of no longer desiring to pursue a child care center on the property.

Sincerely,

Larry Dobson
Assistant Secretary

LD:bh

cc: Tom Powell, Assistant City Attorney
Vincent Bogart, 444 North Market, 67202
Virginia Gilbert, 1000 S. Woodlawn, Apt. 904, 67218
Craig Kennedy, P.O. Box 405

20 notices sent to applicant/agent and adjacent property owners

10 notices sent to MAPC members

1 notice sent to CPO

31 total notices sent on BZA 16-77, July 5, 1977

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

July 5, 1977

NOTICE OF REHEARING:

Case No. RZA 16-77

The following application was approved by the Board of Zoning Appeals on May 24, 1977: Virginia G. Gilbert, 1900 South Woodlawn, Apartment 904, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

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A rehearing of this case will be considered by the Board of Zoning Appeals at its meeting on Tuesday, July 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

June 27, 1977

Mr. Vincent L. Bogart
Attorney at Law
444 North Market
Wichita, Kansas 67202

Re: BZA 16-77

Dear Mr. Bogart:

I have reviewed your letter of June 22, 1977, and attachments, requesting rehearing of the above-captioned case. Based on the fact that the applicant's attorney also recognizes that the existing covenants prohibit any use other than single family and has advised that his client no longer plans to use the property as a child day care center, I agree that subject case should be reheard so that the Board has an opportunity to review the matter.

In my opinion it would be beneficial for the applicant to advise us in writing that she desires the case to be reheard so that the case can be withdrawn. Such information would be helpful to the Board and place them in a position to make a quick decision in rescinding their original action.

This is to advise those receiving copies of this letter that subject case will be readvertised and scheduled for rehearing at the next regular meeting of the Board on July 28, 1977, at 1:30 p.m., in the Board Room, First Floor, City Hall, 455 North Main.

If there are questions concerning this rehearing, please advise.

Yours very truly,

Jack H. Galbraith
Secretary

JHG:bh

cc: Virginia C. Gilbert, 1000 South Woodlawn, 67218
Donna Rossen, 1825 Gary, 67219
Craig Kennedy, 342 N. Old Manor, 67208
Ms. Don Boldebuck, 236 South Robin Road, 67209
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Maintenance, Central Inspection
Jerry W. Cole, 314 Bitting Building, 67202
Tom Powell, Legal Counsel

June 25, 1977

Mr. Jack Galbraith
City Hall
Wichita, Ks.

Dear Mr. Galbraith:

This letter is being written to inform you that as of this date, I have decided not to pursue the establishing of a child day care preschool facility at 220 S. Robin Road.

On May 26, the Board of Zoning Appeals granted an exception to the zoning in order to permit this establishment. Since that hearing, a restrictive covenant on the property has been brought to my attention.

My lawyer, Craig Kennedy, informed me that this letter was necessary in order to relieve the Appeals Board of their exception.

Sincerely,

Virginia Glee Gilbert

Virginia Glee Gilbert
1000 S. Woodlawn, Apt. 904
Wichita, Kansas 67218



Mr. Galbraith
22 June 1977
Page 2

For your information, I am enclosing a copy of
the restrictive covenants.

Thanking you in advance for your consideration, I am

Very truly yours,

VINCENT L. BOGART, Chartered

Vincent L. Bogart
Vincent L. Bogart

VLB/lat

cc: Mr. & Mrs. W. W. Marrs
201 South Robin Road
Wichita, Kansas 67209

Charles E. and Marilyn Lenning
219 South Robin Road
Wichita, Kansas 67209

Don and Eva Boldebuck
236 South Robin Road
Wichita, Kansas 67209

Craig Kennedy
Attorney at Law
P. O. Box 405
Wichita, Kansas 67201

Vincent L. Bogart, Chartered

*Attorneys at Law
444 North Market
Wichita, Kansas 67202
(316) 263-6291*

Vincent L. Bogart

22 June 1977



Ralph Galbraith, Secretary
Board of Zoning Appeals
City Building, 10th Floor
Wichita, Kansas 67202

Re: BZA 16-77

Dear Mr. Galbraith:

Please be advised that I represent a number of property owners who are opposed to the action of the Board of Zoning Appeals taken on May 24, 1977, in approving a child care center for Lot 31, Park Acres 2nd Addition.

Please consider this a request for a rehearing at the earliest date possible based on the rules and regulations of the Board and on the following supporting information:

- 1) In my opinion, the Restrictive Covenants affecting the use of the subject property would prohibit the type of use approved by the Board of Zoning Appeals;
- 2) Craig Kennedy, attorney at law and counsel for Virginia Gilbert the applicant, agrees with me that the covenants are in full force and effect and prohibit the usage;
- 3) Mr. Kennedy also informs me that Virginia Gilbert has determined that in view of the covenants she will not proceed to make use of the property in accordance with the request and resolution of the Board of Zoning Appeals.

In my judgment, it would be unfortunate to retain the exception which has been granted in view of the restrictive covenants and the decision of the applicant to not utilize the property for said purposes.

WHEREAS, the plat of "Park Acres Second" Sedgwick County, Kansas was duly filed for record in the office of the Register of Deeds, Sedgwick County, Kansas, on March 18, 1950, and the undersigned, as owners thereof, desire to create and impose hereby certain restrictive covenants in respect to the use and occupancy of all property and lots described in said plat except Lot 1 and Lot 32 thereof.

NOW THEREFORE, the undersigned, Claude R. Lambe and Pauline M. Lambe, his wife, as owners, do hereby create and impose the following restrictive covenants on all property and lots described in the plat of "Park Acres Second", Sedgwick County, Kansas, except Lot 1 and Lot 32 thereof, to-wit:

1. All Lots in said addition (except Lot 1 and Lot 32) shall be used for single family residential purposes only and a residential building plot or site may consist of one or more adjoining lots and/or portions of adjoining lots; provided, however that every such building plot or site shall be at least one hundred (100) feet in width measuring from North to South.
2. No more than one residential dwelling may be erected upon the plot of ground selected as a building site and such dwelling any attached garage shall be set back at least twenty-five (25) feet from the Robin Road frontage and at least fifteen (15) feet from the side line of such building site. All other buildings, except attached garages, shall be set back not less than ninety (90) feet from Robin Road and at least six (6) feet from the side lines of the building site.
3. No dwelling shall be constructed or converted for the use of more than one family. No trailer, basement, tent, shack, garage, barn or other buildings erected on this property shall be at any time used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted, nor shall any used or previously constructed building be moved upon this property.
4. No rolled roofing shall be used or any other roofing material not currently recognized as a permanent type of construction. Nor shall any building be constructed with an exterior covering of asphalt paper, tin, or any material not recognized as a substantial permanent type of construction. All wood exteriors shall be covered with not less than two coats of good paint. No building shall be permitted to stand with its exterior in an unfinished condition longer than five (5) months after commencement of construction. In the event of fire, windstorm or other damage, no building shall be permitted to remain in damaged condition longer than three (3) months.
5. No dwelling shall be constructed upon this property costing less than Seven Thousand Five Hundred Dollars (\$7,500.00) exclusive of the cost of the land. Toilets must be an integral part of the building.
6. No business buildings shall be erected or business of any nature conducted on this property nor shall anything be done thereon which may be or become a nuisance to the neighborhood.
7. No hogs or goats shall be brought onto said property or maintained thereon, and no more than two (2) dogs may be maintained on the property at any one time.

8. These restrictive covenants shall run with the land and shall be binding on all parties and all persons claiming under them until May 1, 1975, at which time said restrictive covenants shall be automatically extended for successive periods of ten (10) years unless by a vote of a majority of the then owners of the lots or building sites, it is agreed to change said covenants in whole or in part.

If the parties hereto or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real properties situated in Park Acres Second to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

IN WITNESS WHEREOF, the undersigned sole owners of all property and lots in "Park Acres Second" Sedgwick County, Kansas, as shown on the recorded plat thereof, have hereunto set their hands this 25th day of April 1950.

Claude R. Lambe
Pauline M. Lambe.

ACKNOWLEDGED: Before Norma Blackwood, Notary Public (Seal)
for Sedgwick County, Kansas xx April 25, 1950
xx came Claude R. Lambe and Pauline M. Lambe,
his wife.

FILED for record June 14 1950, at 10:25 A. M.

C. S. AUKERMAN, Register of Deeds.

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Armfield-Cole Consultants, Inc.

PENSION AND GROUP INSURANCE BENEFITS

314 BITTING BUILDING . WICHITA, KANSAS 67202

TELEPHONE (AC 316) 262-3576

PRESIDENT
LARRY J. ARMFIELD
VICE PRESIDENT
JERRY W. COLE, C.L.U.

CLAIMS ADMINISTRATOR
IRENA DEETER
EXECUTIVE SECRETARY
LINDA KELLEY

June 22, 1977

Mr. Jack Galbraith
City Planning Department
10th Floor
City Hall
Wichita, Kansas



Dear Jack:

I am enclosing a copy of a letter I received from Vincent Bogart in which he requests a rehearing on BZA No. 16-77. He attached a copy of the Restrictive Covenants regarding the property involved.

Would you please look this over and see if this constitutes a proper request for rehearing and if not please advise Mr. Bogart as to any further action he needs to take to obtain a rehearing.

Thank you for your assistance.

Sincerely yours,

Jerry W. Cole

Jerry W. Cole, CLU
Chairman
Board of Zoning Appeals

enc.

JWC:lk

Vincent L. Bogart, Chartered

Attorneys at Law
444 North Market
Wichita, Kansas 67202
(316) 263-6291

Vincent L. Bogart

21 June 1977

Jerry Cole, Chairman
Board of Zoning Appeals
Bitting Building
Wichita, Kansas 67202

Re: BZA NO. 16-77

Dear Mr. Cole:

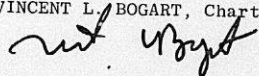
I am enclosing a copy of the Restrictive Covenants regarding Lot 31, Park Acres Second Addition, which would appear to restrict the usage of the property involved in your Board's hearing of May 24th wherein the use of Lot 31 as a children's day care center was approved.

Please note paragraphs 3 and 6 of those covenants.

It would seem a simpler procedure to have a rehearing on this matter rather than to face extended court action and I would appreciate your considering this a request from adjacent property owners and in particular my clients, W. W. and Ileen Marrs and Charles E. and Marilyn Lenning, for that purpose. They are adjacent property owners who signed a protest petition which was presented at the hearing of May 24th.

Very truly yours,

VINCENT L. BOGART, Chartered


Vincent L. Bogart

VLB/cp

Enclosure

WHEREAS, the plat of "Park Acres Second" Sedgwick County, Kansas was duly filed for record in the office of the Register of Deeds, Sedgwick County, Kansas, on March 18, 1950, and the undersigned, as owners thereof, desire to create and impose hereby certain restrictive covenants in respect to the use and occupancy of all property and lots described in said plat except Lot 1 and Lot 32 thereof.

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1. All Lots in said addition (except Lot 1 and Lot 32) shall be used for single family residential purposes only and a residential building plot or site may consist of one or more adjoining lots and/or portions of adjoining lots; provided, however that every such building plot or site shall be at least one hundred (100) feet in width measuring from North to South.
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4. No rolled roofing shall be used or any other roofing material not currently recognized as a permanent type of construction. Nor shall any building be constructed with an exterior covering of asphalt paper, tin, or any material not recognized as a substantial permanent type of construction. All wood exteriors shall be covered with not less than two coats of good paint. No building shall be permitted to stand with its exterior in an unfinished condition longer than five (5) months after commencement of construction. In the event of fire, windstorm or other damage, no building shall be permitted to remain in damaged condition longer than three (3) months.
5. No dwelling shall be constructed upon this property costing less than Seven Thousand Five Hundred Dollars (\$7,500.00) exclusive of the cost of the land. Toilets must be an integral part of the building.
6. No business buildings shall be erected or business of any nature conducted on this property nor shall anything be done thereon which may be or become a nuisance to the neighborhood.
7. No hogs or goats shall be brought onto said property or maintained thereon, and no more than two (2) dogs may be maintained on the property at any one time.

8. These restrictive covenants shall run with the land and shall be binding on all parties and all persons claiming under them until May 1, 1975, at which time said restrictive covenants shall be automatically extended for successive periods of ten (10) years unless by a vote of a majority of the then owners of the lots or building sites, it is agreed to change said covenants in whole or in part.

If the parties hereto or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real properties situated in Park Acres Second to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

IN WITNESS WHEREOF, the undersigned sole owners of all property and lots in "Park Acres Second" Sedgwick County, Kansas, as shown on the recorded plat thereof, have hereunto set their hands this 25th day of April 1950.

Claude R. Lambe
Pauline M. Lambe.

ACKNOWLEDGED: Before Norma Blackwood, Notary Public (Seal)
for Sedgwick County, Kansas xx April 25, 1950
xx came Claude R. Lambe and Pauline M. Lambe,
his wife.

FILED for record June 14, 1950, at 10:25 A. M.

C. S. AUKERMAN, Register of Deeds.

VINCENT L. BOGART, Chartered
444 North Market
Wichita, Kansas 67202
316/263-6291

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

DON BOLDEBUCK, EVA BOLDEBUCK,)
CHARLES E. LENNING, MARILYN LENNING,)
GARY D. HETTINGER, OPAL A. HETTINGER,)
DWAYNE L. HITZEMAN, BONNIE L. HITZEMAN,)
W. W. MARRS, ILEEN MARRS, and ROBERT D.)
BECKER,)

Appellants,)

-vs-)

THE BOARD OF ZONING APPEALS OF)
THE CITY OF WICHITA, KANSAS, and)
THE CITY OF WICHITA, KANSAS,)

Appellees.)

Case No.)

NOTICE OF APPEAL

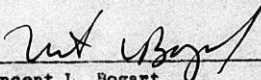
TO: THE BOARD OF ZONING APPEALS OF THE CITY OF WICHITA,
KANSAS, and THE CITY OF WICHITA, KANSAS.

Please take notice that Don Boldebeck, Eva Boldebeck,
Charles E. Lenning, Marilyn Lenning, Gary D. Hettinger, Opal A.
Hettinger, Dwayne L. Hitzeman, Bonnie L. Hitzeman, W. W. Marrs,
Ileen Marrs, and Robert D. Becker, appellants herein, intend to
and do appeal to the District Court of the Eighteenth Judicial
District, Sedgwick County, Kansas, under and by virtue of K.S.A.
12-715, K.S.A. 60-2101(d) and City of Wichita Ordinance No. 2.12.610,
from the decision of the Board of Zoning Appeals, made on May 24, 1977,
wherein it granted an exception to permit the establishment of a
child care center on property legally described as Lot 31, Park
Acres Second Addition to Sedgwick County, Kansas.

Appellants attach hereto, marked Exhibit "A," a true copy
of the minutes prepared by said Board, purporting to reflect the
actions of said Board on said date.

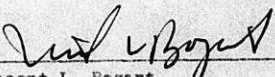
DATED this 21st day of June, 1977.

VINCENT L. BOGART, Chartered
Attorney for Appellants

By 
Vincent L. Bogart

CERTIFICATE OF SERVICE

The undersigned, attorney for appellants, hereby certifies that a copy of the foregoing Notice of Appeal was served personally upon the City Clerk of the City of Wichita, Kansas, and upon the Secretary of the Board of Zoning Appeals of the City of Wichita, by leaving a copy thereof at their respective offices with the person in charge thereat, on the 21st day of June, 1977.


Vincent L. Bogart

BZA Case

manus +
files

BZA MINUTES ·
5-24-77
Page 3

3. Case No. BZA 16-77- Virginia C. Gilbert, 1000 South Woodlawn, Apartment 904, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requests an exception to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

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

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.185(2) can be complied with.

COMMENTS BY THE SECRETARY:

The applicant is requesting an exception to permit the establishment of a child care center in the "AA" Single Family Dwelling District. The facility proposed to be used for the center is an existing single family residence. Subject property is a 150 x 140 foot lot.

The statement of justification submitted with the application describes the proposed program as one that would provide a pre-school service, in the form of two, three hour sessions Monday through Friday. The approximate times of these daily sessions would be 8:45 to 11:45 a.m. and 12:45 p.m. to 3:45 p.m.

The site plan furnished by the applicant and approved by the Division of Traffic Engineering indicates that adequate off-street parking and loading space can be provided and that the required fenced play area will be provided in the rear yard. The plan shows the location of a six space parking area adjacent to the south property line. It should be noted that a dense row of evergreen trees along this south property line should screen the parking area from the residence to the south.

The Department of Community Health, the Central Inspection Division and the Fire Prevention Division have inspected the premises and set forth the conditions which must be met to bring the facility into compliance with state and local codes and licensing requirements.

RECOMMENDATION:

It is the recommendation of the Secretary that the exception to permit the establishment of a child care center be approved subject to the following conditions:

EXHIBIT "A"

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.
3. Outdoor play shall be limited to the hours between 7:30 a.m. and 6:30 p.m. when any part of the fenced play area is within 100 feet of any occupied residence.
4. One off-street parking space shall be provided on the premises for each teacher and employee plus one off-street parking space for each vehicle used in the operation of the child care center.
5. When the capacity of the child care center exceeds twelve, one off-street loading space shall be provided for each ten children or major fraction thereof.
6. The required parking and loading space shall be paved with concrete, asphalt or other comparable material.

DOBSON called the attention of the Board to the fact that CPO Council Area "A" had recommended denial of the application, and one of the reasons for this recommendation had been that property in the area might deteriorate because of absentee ownership.

TAYLOR questioned the CPO's recommendation and DOBSON referred her to the memo furnished the Board, and also called attention to the fact that they had felt there would be increased traffic on the street.

RICHARDSON asked if compliance with the requirements of other City and State Departments had been made and DOBSON reminded him that oftentimes the applicant does not go ahead and comply with all the requirements until after the exception has been granted, but that conditions of granting such an exception requires the compliance with state and local regulations.

VIRGINIA G. GILBERT, the applicant, spoke to the Board. She advised the Board of her academic qualifications for operating a child care center which consisted of the fact that she held a Bachelor of Science degree in education and would be receiving a Master's degree in December. She also stated she felt she was qualified to work in this area for she was a school teacher and had been employed in that capacity for eight years.

GILBERT made available to the Board a letter written by Professor Bontrager at the University, in which he recommended her highly for the position as a child care center operator.

The applicant showed pictures of the property to the Board and called their attention to the ample parking space, the play area, the screening by the evergreens, and the orchard at the rear of the property.

GILBERT acknowledged her understanding regarding the concerns expressed by the CPO council that the property might become an eyesore because she would be an absentee owner. She assured the Board that she had owned property in various sections of Wichita, and Sedgwick County over a number of years and had always maintained her property in good condition.

The applicant then turned her attention to the CPO concern regarding heavy traffic on the street. She explained to the Board that she would have 20 children in each session, and they would arrive and depart in three or four cars, therefore, this could hardly be called excessive car traffic. As for any heavy truck traffic, she said there would be only the trash truck which would come on a weekly basis. As for delivering any supplies to the schools in trucks, she told the Board they must remember that no meals would be served at the center, and any supplies that were needed for the operation of the center would be transported by the teachers.

GILBERT also discussed the length of each session and advised the Board that she hoped to allow 15 minutes before the beginning of each session for the children to arrive, and 15 minutes after each session to allow time for the parents to pick up their children. In this manner, she concluded, there would be no children present earlier than 8:30 a.m. and none present later than 4:00 p.m. She said it might be necessary for the teachers to be at the center in the evenings and on week-ends to plan the activities of the center and maintain the property.

GILBERT concluded her remarks by advising the Board that as a teacher she knew this type of center was very badly needed. She pointed out that due to the economic condition of the country, it is often necessary that both parents work, and therefore, no one is able to be with a child to prepare him for school, and often-times such a child is just passed from grade to grade without learning anything. Her point was that early education for preschool children was very necessary in helping them succeed in school.

MOTION: MOORE moved, TAYLOR seconded, and it carried unanimously that the letter GILBERT had submitted from her instructor at the University be received and filed.

DONNA ROSSEN, 1825 Gary, spoke next in behalf of the applicant. She described her contacts with the applicant which had been the result of the applicant asking her for help in getting her preschool started, and she advised the Board that she had supplied the information to the applicant which would be helpful to her in meeting the various standards of the City and State. ROSSEN continued her remarks by advising the Board that she was an operator of a child care center and the circumstances of her center were very similar to the ones which would be present at GILBERT'S center. ROSSEN said her center was very successful and she believed that Gilbert's would also be successful.

ROSSEN said when she had first begun discussing the matter of Gilbert's center, she, Rossen, had investigated the area and found that there was a very real need in the area for the type of service Gilbert proposed to offer. She had also examined Gilbert's property and felt it was a good place for the child care center. She pointed out the excellent screening provided by the evergreens, and also cited the adequate pick-up and delivery area.

After questioning from the Board, it was established that ROSSEN'S child care center was located at 444 North Pershing.

The applicant's attorney, CRAIG KENNEDY, 342 North Old Manor, then spoke in support of the application. He informed the Board that he had known Mrs. Gilbert for some time and she had been his daughter's teacher. She had discussed her plans with him, and he felt it was a good idea, for there was a need for this type of service throughout the City. He urged the Board to grant the request as recommended by the staff and advised the Board that he felt the CPO's concerns were invalid because Gilbert would not let her property deteriorate and there would not be excessive car or truck traffic on the street.

In regard to the possible traffic in the area, CRAIG pointed out to the Board that there were several businesses in the area and they would generate much more traffic than the child care center. He emphasized this point by saying the parents would get together and arrange car pools to transport the children to and from the center, and as a result there would not be excessive traffic.

KENNEDY concluded his remarks by urging the Board again to grant the request.

No one else appeared in support of the application.

MS. DON BOLDEBUCK, 236 South Robin Road, spoke in opposition to the application. She presented to the Board a petition which had been signed by 28 property owners opposing the application. She explained that her property was directly south of the application area.

BOLDEBUCK pointed out that Robin Road has no curbing, guttering, or sidewalks. She referred to Rossen's remarks concerning her child care center and its similarity to Gilbert's and suggested that the situation was not very similar because Pershing did have curbs, guttering and sidewalks. She further advised the Board that she had checked the telephone directory for child care centers and found that most of them were located on corner lots, and not in the middle of a block such as Gilbert proposed.

She next discussed the drainage in the area, and said the drainage problem was the result of no guttering, and as the result of this, there is a ditch in front of all the homes where water lies and becomes stagnant. She said it was her feeling that a lot would absorb more water than asphalt or paving, and the water coming off of the parking lot would either drain onto her property or into the ditch and become a haven for mosquitoes.

BOLDEBUCK commented that Gilbert will not be living in the neighborhood, therefore, she explained that this property would be vacant during the nights, the week-ends, and holidays, and possibly during the summer months if Gilbert decides not to operate the center in the summer months. She said, in her opinion, this would create a problem because of vandalism, and there had already been some incidents of vandalism in the area.

BOLDEBUCK continued her opposition by discussing the screening provided by the evergreens, and advised the Board that the evergreens were hers, and if Gilbert had the parking area paved, the asphalt would be spread in such a manner as to destroy the root system of the evergreens, thereby destroying the trees, as well. She asked how her property would be screened if the trees were destroyed.

BOLDEBUCK acknowledged there were light commercial businesses in the area, but she didn't feel that was any reason to allow more light commercial to be established and she contended that Gilbert was establishing a commercial business whether she called it a school or not. She emphasized her feelings by saying that Gilbert would be opening up the school in the morning and closing it at night just like the other businesses did, and, in other words, Gilbert would not live in and be a contributing member of the neighborhood.

BOLDEBUCK turned next to the traffic situation and said the applicant's driveway would not accommodate 3 or 4 cars at once, and as a result there would be cars out on the street. Pointing to the map, she showed the poor access to the property. She continued that there are four driveways in that immediate area emptying onto a street not wide enough to accommodate them as it is, and Gilbert's proposal would add to the congestion.

BOLDEBUCK informed the Board that she was well aware of West Wichita's need for a center such as the one proposed by Gilbert, however, she felt a better location should be found.

MOORE called Boldebeck's attention to the fact that a circular drive could be installed which would eliminate the reason for her fears concerning traffic, and he also pointed out that a family with ten children could move into the house and it was possible that she would have more problems with that than she would have with a child care center.

BOLDEBUCK acknowledged that a family with 10 children could move in, but she doubted that all ten children would be the same age, or that the tenants would put asphalt in the front yard.

In response to inquiries from the Board, BOLDEBUCK pointed to the map and discussed the various traffic hazards she felt were inherent in granting the exception and showed the route the patrons of the business establishments used. It was pointed out to Boldebeck

that the applicant was not opening a business in the strict sense of the word, however, BOLDEBUCK maintained that the applicant was opening a business, for the property would be left unattended in the same manner as all businesses, i.e., nights, week-ends, holidays, perhaps during the summer, etc. She continued her opposition by referring to the screening and said that even the police would have a hard time keeping an eye on the place during Gilbert's absence because of the heavy screening, and surely the neighbors should not be expected to keep a watch on the situation.

In response to COLE'S questions concerning the drainage, she explained that the area has very poor drainage and that asphalt would add to the problem. She again expressed her fears that the water would run into her yard, while the remaining water would drain into the aforementioned ditch.

No one else spoke in opposition to the application.

GALBRAITH, in response to inquiries from the Board, advised that Boldebuck had raised some valid points - one was that in the event the evergreens were ever removed, the applicant should be responsible for erecting a fence along her south property line to shield the property owner, the other point was the matter of drainage for drainage was a serious problem in the area. He suggested that the applicant be required to submit a lot grading plan which would provide for drainage to the west.

TAYLOR commented that she would hope if the exception were granted, special attention could be given to the matter of paving the parking area bearing in mind the root system of the evergreens.

MOTION: TAYLOR moved, MOORE seconded and it carried unanimously that the exception be granted subject to the conditions in the Secretary's Report, plus the two following conditions:

7. In the event the evergreen trees to the south of the property are ever removed, the applicant shall erect a 6 to 8 foot solid fence, constructed of staggered or louvered redwood or rough sawed cedar along the south property line sufficient to screen the parking area from the south.
8. The applicant shall submit a lot grading plan to M. S. Mitchell, Assistant Superintendent of Public Works Maintenance, for his approval. Said plan shall provide that no run-off occur to the south, but be directed to the west. A copy of this approved plan shall be submitted to the Secretary of the Board prior to the issuance of a paving permit or the forwarding of the Resolution to the Superintendent of Central Inspection.

In addition, the Board also suggested that careful consideration be given to the root system of the evergreen trees on the property at the time the parking asphalt is laid.

The exception was granted as shown by the official adoption of the following Resolution:

RESOLUTION NO. BZA 16-77

WHEREAS, Virginia G. Gilbert, 1000 South Woodlawn, Apartment 904, Wichita, Kansas, requests an exception as provided in Section 2.12.590.C,, Code of the City of Wichita, to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

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 May 24, 1977, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District subject to the conditions outlined in Section 28.04.185.2, Code of the City of Wichita.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this application be approved to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lots 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

subject to the following conditions:

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.

3. Outdoor play shall be limited to the hours between 7:30 a.m. and 6:30 p.m. when any part of the fenced play area is within 100 feet of any occupied residence.
4. One off-street parking space shall be provided on the premises for each teacher and employee plus one off-street parking space for each vehicle used in the operation of the child care center.
5. When the capacity of the child care center exceeds twelve, one off-street loading space shall be provided for each ten children or major fraction thereof.
6. The required parking and loading space shall be paved with concrete, asphalt or other comparable material.
7. In the event the evergreen trees to the south of the proposed parking area are ever removed, the applicant shall erect a 6 to 8 foot solid fence, constructed of staggered or louvered redwood or rough sawed cedar along the south property line sufficient to screen the parking area from the south.
8. The applicant shall submit a lot grading plan to M. S. Mitchell, Assistant Superintendent of Public Works Maintenance, for his approval. Said plan shall provide that no run-off occur to the south, but be directed to the west. A copy of this approved plan shall be submitted to the Secretary of the Board prior to the issuance of a paving permit or the forwarding of the Resolution to the Superintendent of Central Inspection.

ADOPTED AT WICHITA, KANSAS, this 24th day of May, 1977.

Jerry W. Cole, Chairman

ATTEST:

Larry Dobson, Assistant Secretary

June 22, 1977

John Dekker, Director of Law
Jack H. Galbraith, Secretary, Board of Zoning Appeals

Case No. BZA- 16-77 - Child Care Center exception

Attached is a copy of a Notice of Appeal on the above referenced case, filed in our office on June 21, 1977 by Vincent Bogart, Attorney.

Please advise of any materials that your office may need from our files with regard to this case.

Jack H. Galbraith
Secretary
Board of Zoning Appeals

JHG:GLS:el

Attachment

cc: Tom Powell, Assistant City Attorney

June 21, 1977

Vincent J. Bogart, Attorney
444 North Market
Wichita, Kansas 67202

Re: Case No. BZA 16-77
Child Care Center Exception

Dear Mr. Bogart:

Yesterday, I had a call from Jerry Cole, Chairman of the City Board of Zoning Appeals with regard to the above referenced case. He indicated that you desire a rehearing of this case inasmuch as there are restrictive covenants on this property limiting its use to single family. In the past, the Board, as well as the Planning Commission and City Commission, has taken into consideration each case on its own merits as to whether the proposed use and/or zoning is logical and proper irrespective of covenants on the land. Section 28.04.010 reads in part as follows:

- A. . . . "It is not intended by this chapter to interfere with, abrogate or annul any ordinance, rule, regulation or permit previously adopted or issued and not in conflict with any of the provisions of this chapter, or which shall be adopted or issued, pursuant to law, relating to the use of building or premises, nor is it intended by this chapter to interfere with, abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of building or premises or requires a larger open space than one imposed or required by such ordinance, rules, regulations or permit, or by easements, covenants or agreements, the provisions of this chapter shall control."

Article VIII of the Rules and Regulations of the Board of Zoning Appeals states the following:

Vincent J. Bogart, Attorney
June 21, 1977

- A. Requests for rehearing shall be in writing and duly verified and shall be submitted to the Secretary of the Board within sixty (60) days of the date of the original hearing. The requests shall recite the reasons for the request. No requests for rehearing shall be entertained unless new evidence is submitted which could not reasonably have been presented at the previous hearing. If the request is granted by the Board, the same procedure will be followed as was followed in consideration of the original application.
- B. The Secretary of the Board shall determine if a rehearing shall be allowed, however, the applicant shall have the right to appeal the Secretary's determination to the Board of Zoning Appeals.

Should you have any questions, please call.

Sincerely,

Jack H. Galbraith
Secretary

JHG:GLS;el

cc: Jerry Cole, 314 Bitting Building, 67202

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX

May 26, 1977

Mr. Don Boldebuck
236 South Robin Road
Wichita, Kansas 67209

Re: Case No. BZA 16-77
Child Care Center Exception

Dear Mr. Boldebuck:

It is my understanding that you would like to know the names of the Board of Zoning Appeals members and also that you want to receive a copy of the Board's minutes of May 24, 1977, concerning the referenced case.

The Board Members are:

Jerry Cole - Chairman
James Richardson - Vice-Chairman
Robert M. Moore
Marjorie Taylor
(One position is vacant at this time).

I will be happy to forward you a copy of the minutes pertaining to Case BZA 16-77 as soon as they are available, probably two to three weeks.

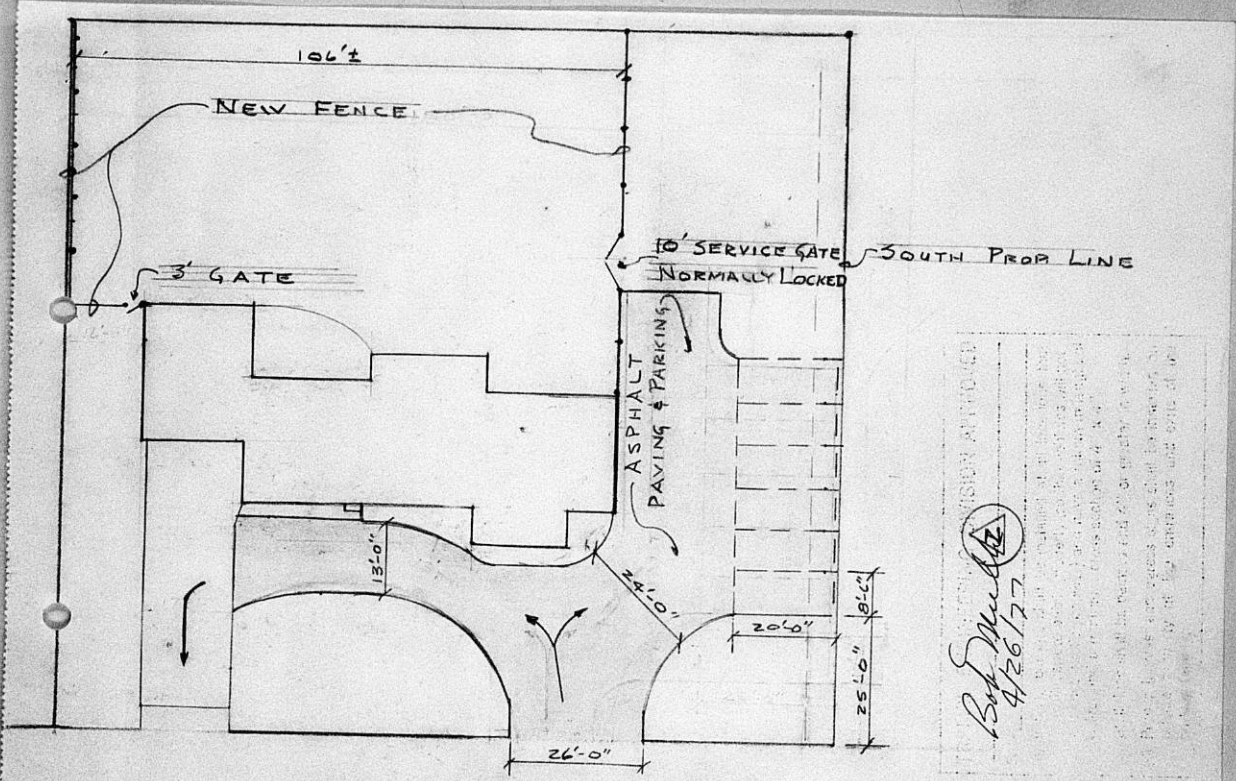
If I can be of further assistance, please call.

Sincerely yours,

Larry Dobson
Assistant Secretary

LD:bh

minutes sent 6-13-77

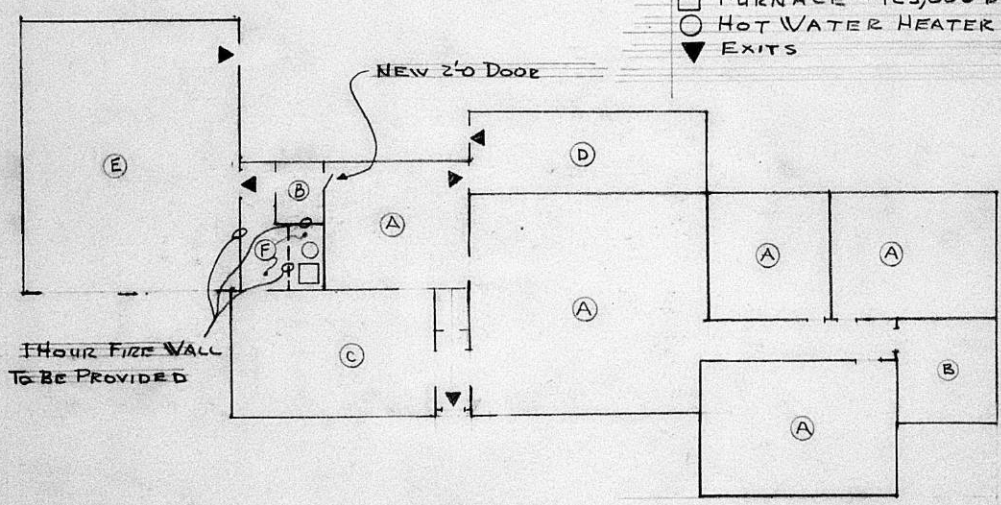


PLOT PLAN
 $\frac{3}{8}'' = 1'-0''$

VISION ATTACHED
Bob McCall
 4/26/77

2205
ROBIN ROAD
 WICHITA, KANSAS

- (A) CLASS ROOMS
- (B) BATH
- (C) KITCHEN
- (D) PORCH - PLAY ROOM
- (E) GARAGE - PLAY ROOM
- (F) UTILITY
- FURNACE - 125,000 BTU/HR INPUT
- HOT WATER HEATER
- ▼ EXITS



FLOOR PLAN
 $\frac{3}{32}'' = 1' - 0''$

220
ROBIN ROAD
 WICHITA, KANSAS

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Tenth Floor, City Hall May 25, 1977
455 North Main

Ms. Virginia G. Gilbert
1000 South Woodlawn
Wichita, Kansas 67218

Re: Request for Exception
Case No. BZA 16-77

Dear Ms. Gilbert:

At the regular meeting of the Board of Zoning Appeals on May 24, 1977, your request for an exception to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District, and generally located on the east side of Robin Road in an area north of Maple was considered.

It was the action of the Board to approve this request subject to the following conditions:

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.
3. Outdoor play shall be limited to the hours between 7:30 a.m. and 6:30 p.m., when any part of the fenced play area is within 100 feet of any occupied residence.
4. One off-street parking space shall be provided on the premises for each teacher and employee plus one off-street parking space for each vehicle used in the operation of the child care center.
5. When the capacity of the child care center exceeds twelve, one off-street loading space shall be provided for each ten children or major fraction thereof.
6. The required parking and loading space shall be paved with concrete, asphalt or other comparable material.

Ms. Virginia G. Gilbert
1000 S. Woodlawn, Apt 904
May 25, 1977

7. In the event the evergreen trees to the south of the proposed parking area are ever removed, the applicant shall erect a 6 to 8 foot solid fence, constructed of staggered or louvered redwood or rough sawed cedar along the south property line sufficient to screen the parking area from the south.
8. The applicant shall submit a lot grading plan to M. S. Mitchell, Assistant Superintendent of Public Works Maintenance, for his approval. Said plan shall provide that no run-off occur to the south, but be directed to the west. A copy of this approved plan shall be submitted to the Secretary of the Board prior to the issuance of a paving permit or the forwarding of the Resolution to the Superintendent of Central Inspection.

The Board also suggested that careful consideration be given to the root system of the evergreen trees on the property to the south when the parking asphalt is laid.

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: Donna Rossen, 1825 Gary, 67219
Craig Kennedy, 342 N. Old Manor, 67208
Ms. Don Baldebuck, 236 S. Robin Rd., 67209
M. S. Mitchell, Maintenance-Flood Control
Don Gisick, City Clerk
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Maintenance, Central Inspection

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE May 20, 1977



TO Larry Dobson, Secretariat, Board of Zoning Appeals
FROM Evelyn Pittman, CPO Administrative Aide

SUBJECT Case No. BZA 16-77

At a recent meeting, CPO Council "A" discussed the captioned subject. The applicant and area residents were in attendance. The applicant reviewed the case emphasizing the need of the service in the area. Opposition from residents was based on anticipated deterioration of Robin Road due to increased traffic, decline in property values and an absentee operator of the facility.

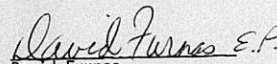
The Council, however, voted to recommend denial of the exception to permit the operation of a child care facility.

Your consideration of this recommendation will be appreciated.


Evelyn Pittman
CPO Administrative Aide

EP:sm

Noted:


David Furnas
Citizen Participation Coordinator

We the undersigned property owners wish to object to the application requesting an exception to permit the establishment of a child care center on the property zoned AA Single Family Dwelling District, legally described as follows:

Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

NAME:

ADDRESS:

Don Ballbach	236 So Robin Rd
Chuck Deming	819 So Maple Rd
H. Dean Morris	201 So. Robin Rd.
D. L. Nitzeman	157 So. Robin Rd.
Ray & Bursdaff	158 So Robin Rd.
J. J. Marshall	254 So. Robin Rd.
Gary Kettinger	202 S Robin Road
Grace A. Davis	142 So. Robin Rd.
Robert W. Becken	126 S. Robin Rd.
John J. Mealy	102 S. Robin Rd.
Howard E. Reitz	101 S. Robin Rd.
Ray Duffman	131 N. Robin Rd.
Ray Miller	122 N Robin Rd
Walter Wilder	148 No. Robin Road
Mrs. Geo E. Gutz	159 N. Robin Rd

We the undersigned property owners wish to object to the application requesting an exception to permit the establishment of a child care center on the property zoned AA Single Family Dwelling District, legally described as follows:

Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

NAME:

ADDRESS:

Ms. S. Townsend

211 71 Robin Rd

Albert Fortmeyer

227 N. Robin Rd.

Richard D. Kowalski

241 N. Robin Rd.

J. E. Frazier

260 N. Robin Road

R. J. Youngley

211 N. Robin Rd.

Hugh R. Creamer

117 N. Robin Rd.

J. Hammond

118 N. Robin Rd.

Carl A. Alsbury

103 N. Robin Road

Jackie McDaniel

125 S. Robin Road

Henry Esperson

141 So Robin Road

H. G. Nettles

219 So. Evergreen Lane

Ken Davis

102 N. Robin Rd.

Mr. Kenneth W. Scott

261 No. Robin Road

RALPH L. BONTRAGER BS, ME, EdD.

Education Consultant

622 South Yale Wichita 67218

May 23, 1977

To: The Board of Zoning Appeals, Wichita
From: Ralph L. Bontrager
Subject: Zoning for Day Care - the School Center
in West Wichita

This quickly written note is meant to call to your attention my knowledge and experience with Glee Gilbert, applicant for permission to establish the above Day Care, the School Center.

Glee Gilbert and her family were for many years our next door neighbors while I was superintendent of schools in Derby. Across the fence conversations and my observations lead me to recommend her highly in this enterprise. Most important, I believe, is the fact that Glee Gilbert will do with great care whatever she agrees with you to do. She is intelligent, careful, cooperative and trustworthy. Her work in my graduate classes stands to support the above opinions. Next in importance may well be her intentions to fulfill a need in West Wichita for the services indicated. She will do well with the idea.

Sincerely,
Ralph L. Bontrager
Professor, Administration, WSU.



Back Yard N.E. Corner



Back Yard S.E. Corner



North Side



North Side - by property to be owned

To side of fence



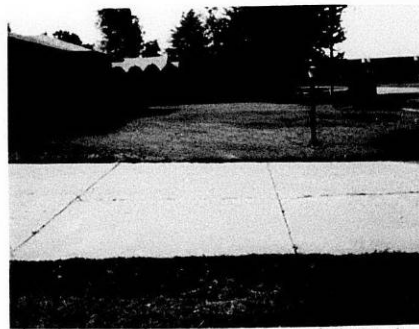
front



back side of garage



look looking south



look south - front yard

SECRETARY'S REPORT
CASE NO. BZA 16-77

APPLICANT: Virginia G. Gilbert, 1000 S. Woodlawn, Apt. 904,
Wichita, Kansas.

AGENT: Phyla Stewart, 1001 E. Lincoln, Wichita, Kansas.

REQUEST: Exception pursuant to Section 2.12.590.C, Code
of the City of Wichita to permit the establish-
ment of a child care center.

GENERAL
LOCATION: East side of Robin Road in an area north of
Maple.

LAND USE Subject property is developed as a single family
residence as are all surrounding properties.

ZONING: Subject property and all surrounding properties
are zoned the "AA" Single Family Dwelling Dis-
trict.

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.185.2 can be complied with.

COMMENTS BY THE SECRETARY:

The applicant is requesting an exception to permit the establishment of a child care center in the "AA" Single Family Dwelling District. The facility proposed to be used for the center is an existing single family residence. Subject property is a 150 x 140 foot lot.

The statement of justification submitted with the application describes the proposed program as one that would provide a pre-school service, in the form of two, three hour sessions Monday through Friday. The approximate times of these daily sessions would be 8:45 to 11:45 a.m. and 12:45 p.m. to 3:45 p.m.

The site plan furnished by the applicant and approved by the Division of Traffic Engineering indicates that adequate off-street parking and loading space can be provided and that the required fenced play area will be provided in the rear yard. The plan shows the location of a six space parking area adjacent to the south property line. It should be noted that a dense row of evergreen trees along this south property line should screen the parking area from the residence to the south.

The Department of Community Health, the Central Inspection Division and the Fire Prevention Division have inspected the premises and set forth the conditions which must be met to bring the facility into compliance with state and local codes and licensing requirements.

SECRETARY'S REPORT

CASE NO. BZA 16-77

Page 2

RECOMMENDATION:

It is the recommendation of the Secretary that the exception to permit the operation of a child care center be approved subject to the following conditions:

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
 2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.
 3. Outdoor play shall be limited to the hours between 7:30 a.m. and 6:30 p.m. when any part of the fenced play area is within 100 feet of any occupied residence.
 4. One off-street parking space shall be provided on the premises for each teacher and employee plus one off-street parking space for each vehicle used in the operation of the child care center.
 5. When the capacity of the child care center exceeds twelve, one off-street loading space shall be provided for each ten children or major fraction thereof.
 6. The required parking and loading space shall be paved with concrete, asphalt or other comparable material.
-

20 notices sent to the agent, applicant, and property owners
10 notices sent to members of MAPC
1 notice sent to CPO
31 total notices sent on BZA 16-77 - May 1, 1977

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

April 29, 1977

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 16-77

An application has been filed by Virginia C. Gilbert, 1000 South Woodlawn, Apartment 904, Wichita, Kansas, pursuant to Section 2.12.590.C, Code of the City of Wichita, requesting an exception to permit the establishment of a child care center on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 31, Park Acres Second Addition, Sedgwick County, Kansas. Generally located on the east side of Robin Road in an area north of Maple (220 S. Robin Road).

This application has been assigned Case No. BZA 16-77, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, May 24, 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

16-77

BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR EXCEPTION

I. Name of Applicant Virginia G. Gilbert
 1000 S. Woodlawn, Apt. 904
 Mailing Address Wichita, Kansas 67218 Phone 681-3543
 Name of Authorized Agent Phyla Stewart, Broker
 House of Stewart's Realty
 1001 E. Lincoln
 Mailing Address Wichita, Kansas 67211 Phone 267-4325

Relationship of applicant to property is that of Owner-under contract (Owner, Tenant, Lessee, Other).

II. Application is made for an exception as provided in Section 2.12.590.C, Code of the City of Wichita, Kansas, to permit the establishment of Child Care Pre-School Facility

_____ on property zoned "AA", located 220 South Robin Road, Wichita, Kansas 67209 and legally described as: Lot 31, Park Acres 2nd Addition to Sedgwick County, Kansas.

_____, in the City of Wichita.

- 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 all documents are attached hereto as noted in paragraphs 2, 3, and 4 of the instructions.
 - d. 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.

Applicant Virginia G. Gilbert
 Authorized Agent Phyla Stewart

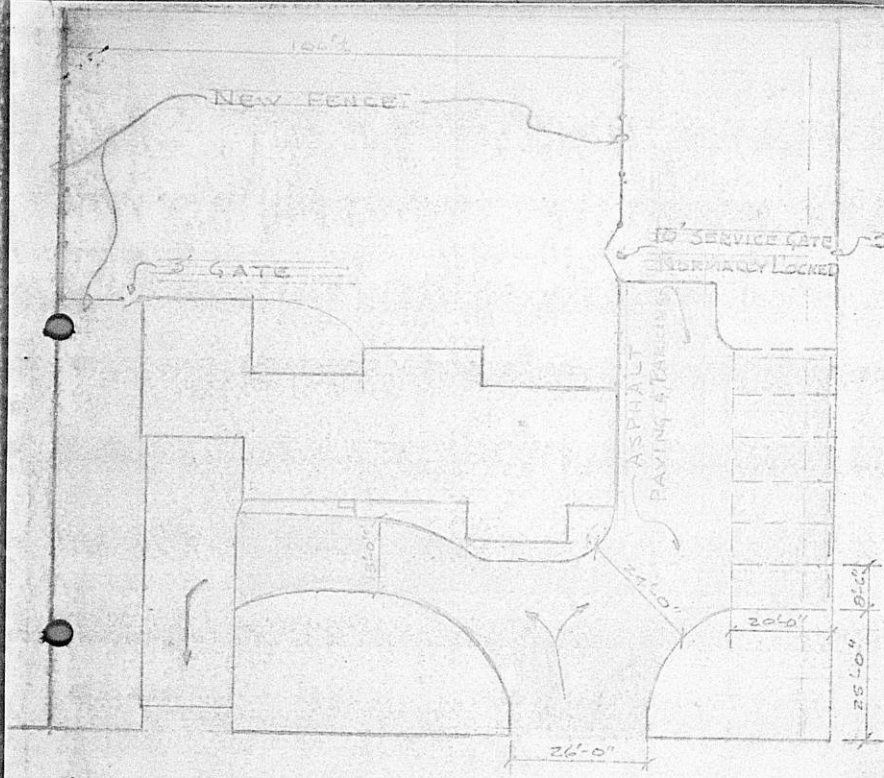
OFFICE USE ONLY: Received in the office of the Secretary, Board of Zoning Appeals, 10:00 (a.m. - p.m.), 4-25, 19 77, together with appropriate fee of \$50.00

~~To~~ east side of Robin Road
 in an area N. of Maple

Signed Larry Dobson

T9-403 4947

Subj. to receiving site plan and CID report this week.



PLOT PLAN
 $\frac{3}{16}'' = 1'-0''$

TRAFFIC ENGINEERING DIVISION APPROVED
[Signature]
 Date: 4/26/77
 (A) Parking barriers shall be installed at all locations that are adjacent to public property (so that vehicles will not obstruct public property) and have a minimum length of 6 feet and a minimum cross section of 4" x 4".
 (B) Stall lines shall be painted and 4" or greater in width.
 (C) Proper ingress and egress signs shall be installed on private property at the entrances and exits of the parking facility.

Note: Width of drive plus parking is 42' rather than 93'
 Width of each parking space should be 9' min. rather than 8.5'

2205
ROBIN ROAD
WICHITA, KANSAS

The following is a statement from Virginia G. Gilbert, name of applicant applying for Board of Zoning Appeals, effective under Ordinance No. 32-702, concerning proposed child day care pre-school facility, being submitted for approval by said person on April 25, 1977.

Location: 220 South Robin Road
Wichita, Kansas 67209

Zoned: "AA ^{One-}~~Two~~-family dwelling district

Legally Described As: Lot 31, Park Acres 2nd Addition to Sedgwick County, Kansas.

Child-care facility to be operated as a pre-school facility, part days, Monday through Friday, with three-hour scheduled sessions as follows:

3-Year Old Children - Tuesday and Thursday - 8:45-11:45 ~~and~~ 12:45-3:45

4 and 5-Year Old Children - Monday, Wednesday, Fridays - 8:45-11:45 ~~and~~ 12:45-3:45

Twenty to Twenty-Four children per session. No meals will be prepared or served in this facility.

The purpose of this pre-school is to provide quality education for pre-school children in the areas of emotional, social and developmental needs. With twenty children, two qualified teachers will be employed, meeting the requirements for licensing. If enrollment exceed twenty children per session, three qualified teachers will be employed, as required.

All inspection requirements will be completed per instructions on the attached inspection sheets, and will be completed before September 1, with time allowed for the follow-up inspection before opening the facility to children. As per inspections, the following additions and changes will be made to the property in order to meet all requirements:

Circular drive and off-street hard surface parking, as indicated on plot plans;

Chained-link fenced play area of 2400 sq. ft. as shown on plot plans;

All exit doors will be equipped with free-wheeling hardware and will swing out;

Hot water heater will be replaced or repaired and set not to exceed 120° temperature;

Furnace and hot water heater in utility room will be enclosed with proper fire-wall doors and air combustion provisions;

One-hour fire wall will be installed between utility room and garage;

Wiring extension cords on exterior of house will be removed by qualified electrician;

(Continued on next page)

Smoke detectors, fire alarm system and fire extinguisher will be installed;

Outlets within 5 feet of kitchen sink will be changed to grounding type and all outlets will be covered with safety plates;

Low windows in living room and dining room will be covered with guard protection;

Fireplace screen will be secured;

Landing to enclosed back porch will be constructed and two cement steps, not to exceed 7½" in height will be constructed plus installation of hand rails;

All drapes and carpeting will be tested for fire-proof resistance, and, if necessary, will be treated or removed and replaced with fire resistant materials;

Vented stove in garage will be removed from premises;

Improper door locks will be replaced with required type;

Paneling in utility room will be coated for fire-proofing;

Interior doorway will be installed in dining room wall leading to bathroom to meet requirement of children not passing through kitchen area;

Sink will be installed in bathroom where shower now exists;

Switch box to air conditioning unit to be locked and air conditioning unit will be protected with screening;

Attached plot plan shows existing dwelling, indicates planned off-street parking and circular drive, indicates ingress and egress, indicates planned area to be fenced for play area, indicates lay-out of rooms, central heating location, exterior openings, interior doorway to be installed, and use of areas.

Applicant Virginia G. Hellert

Dated April 25, 1977

CITY OF WICHITA
DEPARTMENTS OF INSPECTION-FIRE-HEALTH
WICHITA, KANSAS

SCHEDULED:
April 12, 1977
1:30 P. M.

Inter-Departmental Referral Notice for Evaluation
of
Structures Proposed for Adult and Child Care

Sue DeWitt

Agency Initiating Referral Health Department Case No. 10 Date 4-4-77

Prospective Applicant Leola Lindahl, R.N.

Name	Address	Phone
Virginia Gilbert	1000 South Woodlawn, Apt. 904	524-3236

Prospective Site Address		Present Use
220 South Robin Road		House
		Proposed Use
		Group Care Center
Owner	Address	Phone
Gourley	220 S Robin Road	

Preliminary Report of Improvements for Initial Approval Status 1. Changes of occupancy (add additional sheets as necessary)

required changing from a one-family occupancy to an E-3 day care center. Board of zoning appeal action required to allow child care center in "A" zoning. One hour occupancy separation required between the garage and day care center. The garage door between occupancies to be not less a 20 minute self-closing assembly. Four hard surface parking spaces are required. MECHANICAL - Remove non conforming heater in garage. Provide new combustion air for furnace and hot water heater before enclosure is complete. ELECTRICAL - Remove non-conforming wiring from exterior light fixtures or have exterior weatherproof fixtures mounted in an approved manner. Wiring to garbage disposal to be installed in an approved manner and grounded. Outlets within 5' of water source to be grounding type.

Wilbur E. Short
Agency Representative
Wilbur E. Short
Special Inspector

Routing of Referral: Original (white copy) to Health; 1st copy (green) to Inspection; 2nd copy (red) to Fire.
Intra Agency Routing: Central Inspection-Zoning, Puilding, Plumbing, Electrical Health-Environmental, Personal
Routing of Preliminary Reports: Photocopies from Health to Inspection and Fire; Inspection to Health and Fire; Fire to Health and Inspection

CITY OF WICHITA
DEPARTMENTS OF INSPECTION FIRE-HEALTH
WICHITA, KANSAS

SCHEDULED:
April 12, 1977
1:30 P.M.

Inter-Departmental Referral Notice for Evaluation
of
Structures Proposed for Adult and Child Care

Agency Initiating Referral Health Department Case No. 10 Date 4-4-77
Leola Lindahl, R.N.

Respective Applicant Name		
<u>Virginia Gilbert</u>	Address <u>1000 South Woodlawn, Apt. 904</u>	Phone <u>524-3236</u>

Respective Site Address		Present Use
<u>220 South Robin Road</u>		<u>House</u>
		Proposed Use <u>Group Care Center</u>

Owner	Address	Phone
<u>Gourley</u>	<u>220 S. Robin Road</u>	<u>722-3787</u>

Preliminary Report of Improvements for Initial Approval Status
(add additional sheets as necessary)

There is a total , useable floor area of 938 sq. feet. This would allow a maximum enrollment of twenty-six (26) children; however, at present, there are only restroom facilities for twelve (12) children. If a sink was installed in the north restroom and a secure route, not through the kitchen, is used, enrollment would be up to twenty-four (24) children, part day.

In addition, the following work will have to be completed prior to licensure:

1. Fenced play area of an area not less than 2,000 sq. ft. to be provided. If probable enrollment is to be twenty four (24), area will be 2400 sq. ft.
2. Low glass in dining room and living room areas will have to be guarded
3. The screen on the fireplace is to be properly secured
4. The switch box on the air conditioner needs to be locked
5. The steps to be constructed onto the enclosed porch will require suitable handrails
6. All electric outlets to have safety plates available

In general, all regulations as laid down in the latest state requirements are to be adhered to.
No children are to be moved into the center until the above work is approved by the Environmental Health Division.

If you have any questions, please call me at 268-835
cc: Virginia Gilbert
Larry Dobson, Planning
Jim Harris, Fire
John M. Davis, Sanitarian
Agency Representative

Sam Mobley, Central Inspection
Routing Leola Lindahl Original (white copy) to Health; 1st copy (green) to Inspection; 2nd copy (red) to Fire.
Intra Agency Routing: Central Inspection-Zoning, Building, Plumbing, Electrical
Health-Environmental, Personal
Routing of Preliminary Reports: Photocopies from Health to Inspection and Fire; Inspection to Health and Fire; Fire to Health and Inspection

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,

All the owners within 200 feet of:

Lot 31, PARK ACRES SECOND ADDITION, Sedgwick County, Kansas.



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.)

<u>LOTS</u>	<u>ADDITION</u>	<u>OWNER & ADDRESS</u>
31	PARK ACRES SECOND	Robert William Mary E. Gourley ✓ 220 South Robin Road Wichita, Kansas 67209
30	PARK ACRES SECOND	✓ Cary D. & Opal A. Hettinger 202 South Robin Road Wichita, Kansas 67209
29	PARK ACRES SECOND	✓ Ervin G. & Doris M. Burdorf 158 South Robin Road Wichita, Kansas 67209
North 150 feet of Lot 32	PARK ACRES SECOND	✓ Don Ralph & Eva L. Baldebuck 236 South Robin Road Wichita, Kansas 67209
Lot 32, except the North 150 feet	PARK ACRES SECOND	✗ Ralph A. & Henrietta Wolfe Address Unknown

*not in phone book
not in S.D.
not in C.D.*

Fidelity  Title
 COMPANY, INC.

<u>LOT</u>	<u>ADDITION</u>	<u>OWNER & ADDRESS</u>
1	PARK ACRES SECOND	Mitchel & Fred Elkouri 530 Cheryl Wichita, Kansas 67209
2	PARK ACRES SECOND	Charles C. & Marilyn C. Lenning 219 South Robin Road Wichita, Kansas 67209
3	PARK ACRES SECOND	Wilburn & Hope Ilene Marrs 201 South Robin Road Wichita, Kansas 67209
4	PARK ACRES SECOND	Duane L. & Bonnie L. Hitzeman 157 South Robin Road Wichita, Kansas 67209
Lot 1, except North 120 feet	PARK ACRES SECOND	D. D. & R. L. Floyd 8734 Maple Wichita, Kansas 67209
North 120 feet of Lot 1	PARK ACRES SECOND	John R. & Minnie E. Carnahan 226 South Tyler Road Wichita, Kansas 67209
2	PARK ACRES SECOND	David I. & Evelyn L. Morton 214 South Tyler Road Wichita, Kansas 67209
3	PARK ACRES SECOND	John M. & Philomena M. Rice 208 South Tyler Road Wichita, Kansas 67209
26	EVERGREEN PLACE	O. I. & Doris R. Cathey 153 South Evergreen Lane Wichita, Kansas 67209
28	EVERGREEN PLACE	Ernest W. & Maxine L. Hay 201 South Evergreen Lane Wichita, Kansas 67209
Lot 30, except the South 5 feet	EVERGREEN PLACE	Hilbert H. & Alberta A. Dettmer 219 South Evergreen Lane Wichita, Kansas 67209
The West 159.5 feet of the South 5 feet of Lot 30 and the West 159.5 feet of Lot 32, in	EVERGREEN PLACE	John M. Roberts 17 North Emporia Wichita, Kansas 67214
The South 5' of Lot 30 and all of Lot 32, except the West 159.5 feet thereof & except the South 20' of Lot 32, and except beginning at a point 20 feet North of the SE corner of said Lot 32; thence West 98 feet; thence North 334.65' to a point on the E line of said Lot 32, said point being 22' SEly of the NEly corner thereof; thence SEly and S along the Ely line of said Lot 32, to pt. of beginning, all in EVERGREEN PLACE ADDITION, Sedg. Co., Ks.		Ernest E. & Julia C. Oliphant 8406 Maple Street Wichita, Kansas 67209





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TRACT DESCRIPTION

OWNER & ADDRESS

Beginning at a point 20 feet North of the SE corner of Lot 32; thence West 98 feet; thence North 334.65 feet to a point on the East line of said Lot 32, said point being 22 feet Southeasterly of theNortheasterly corner thereof; thence Southeasterly and South along the Easterly line of said Lot 32 to the point of beginning, all in EVERGREEN PLACE, Sedgwick County, Kansas.

✓ Calvin L. Klaasen
Route #1
Whitewater, Kansas 67154

Dated at Wichita, Kansas, this 20th day of April, 1977,
at 7:00 o'clock A.M.



FIDELITY TITLE COMPANY, INC.

By *Arleta Gray*
Asst. Sec. ag

Tracer No. 38934

Form 2021

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 Exception	\$5000

Application

Name *Virginia C. Gilbert*

Address *1500 S. Washington St. 74*

Type *AA 4071* Due Date

Comments:

Date *4-25-77* By *[Signature]*