

BZA 25-66 - Clovis J. & Florence E.
Nitcher request Variance of rear
yard setback at the northeast corner
of 32nd St. North & Fairview Avenue

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

Recd
9-26-66
A-51
P.C
b.1.

ACTION

By COMMITTEE A perve 10-25-66

M.A.P.C. _____

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

BZA 25-66 - Clovis J. & Florence E.
Mitcher request Variance of rear
yard setback at the northeast corner
of 32nd St. North & Fairview Avenue

R E S O L U T I O N N O. BZA 25-66

WHEREAS, Florence E. and Clovis J. Nitcher, 437 South Erie, Wichita, Kansas, by K. W. Pringle, Jr., Attorney, 1400 Wichita Plaza, Wichita, Kansas, pursuant to Section 2.12.590.2, Code of the City of Wichita, Kansas, requests a variance of the regulations of Section 28.04.040.C.3 Code of the City of Wichita, requesting a variance of the rear yard setback requirement from 20 feet to 6 feet in order that the applicant may complete remodeling the existing structure; and

WHEREAS, this request pertains to property legally described as follows:

Lots 23, 24, 25, and 26, Block 12, in Jones Park Addition to North Wichita, in the City of Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of 32nd Street North and Fairview.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, in regular meeting, consider said application on October 25, 1966; and

WHEREAS, the Board of Zoning Appeals determined that it had proper jurisdiction to consider said request for variance under provisions of Section 2.12.590.2, Code of the City of Wichita, Kansas; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested arises from such condition which is unique and not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant inasmuch as the structure is located in exactly the same position as the original house had been for some 30 years, and that in actuality the rear yard is a sideyard since the residence faces to the south rather than to the west as the lots are platted; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance, as approved, would not adversely affect adjacent property owners or residents inasmuch as the house is situated so that the front of the house faces a side lot line and therefore the rear of the lot in essence becomes a side yard which has the present 6 foot setback. The house immediately to the east also faces 32nd Street and maintains a 6 foot setback from the property line dividing it from subject property should not be affected as an adequate 12 foot separation will still remain between houses; 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 inasmuch as there would actually be no difference in the setbacks which have existed for some 30 years past; and

WHEREAS, the Board of Zoning Appeals has found that granting the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance); and

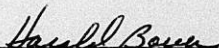
WHEREAS, each of the five conditions required by Section 2.12.590.2, Code of the City of Wichita, necessary to be present before a variance can be granted, has been found to exist; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the request be approved granting a variance of the regulations of Section 28.04.040.3, Code of the City of Wichita, ("AA" One Family Dwelling District), to reduce the rear yard setback adjacent to the east property line from the required 20 feet to 6 feet, and that the Superintendent of Central Inspection be authorized to issue a permit to the applicant for completion of remodeling, all relating to property legally described as:

Lots 23, 24, 25, and 26, Block 12, in Jones Park Addition to North Wichita, in the City of Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of 32nd Street North and Fairview.

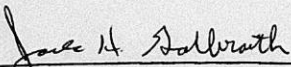
subject to the applicant maintaining a minimum 20 foot setback adjacent to the north boundary of the application area.

ADOPTED AT WICHITA, KANSAS, this 25th day of October, 1966.



Harold Bauer, Chairman

ATTEST:



Jack H. Galbraith, Secretary

November 3, 1966

Mr. & Mrs. Clovis J. Nitcher
437 South Erie
Wichita, Kansas

Dear Mr. and Mrs. Nitcher:

Re: Case No. BZA 25-66 - Request
for Variance

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on October 25, 1966, in connection with your application for Variance of the setback requirements on property zoned "AA" Single Family Residential and generally located on the northeast corner of 32nd Street North and Fairview. This Resolution reflects the official action of the Board and sets out the conditions of approval.

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

Very truly yours,

Ronald A. Williamson
Assistant Secretary

RAW:kkj

Attachment

cc: K. W. Pringle, Jr., 1400 Wichita Plaza
Glen Lytle, Superintendent, Central Inspection
L. L. Binkley, Maintenance Inspection Supervisor
Ralph Eberly, City Clerk

October 25, 1966

Mr. and Mrs. Clovis J. Witcher
437 South Erie
Wichita, Kansas

Dear Mr. and Mrs. Witcher:

Re: BZA Case No. 25-66 - Request for
variance of rear yard setback.

At the regular meeting of the Board of Zoning Appeals on October 25, 1966, your request for a variance of the rear yard setback on property zoned "AA" Single Family Residential and located on the northeast corner of 32nd Street North and Fairview, was considered.

It was the action of the Board to approve a variance of the rear yard setback from the required 20 feet to 6 feet adjacent to the east property line subject to the applicant maintaining a minimum 20 foot setback adjacent to the north boundary of the application area.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy thereof as soon as the Chairman and Secretary of the Board have signed it. If you have any questions, please call.

Very truly yours,

Ronald A. Williamson
Assistant Secretary

RAW:kgg
cc: K. W. Fringle, Jr., 1400 Wichita Plaza
Glen Lytle, Superintendent, Central Inspection
L. L. Binkley, Maintenance Inspection Supervisor
Ralph Eberly, City Clerk

JOHN T. (JACK) REEVES

OFFICE OF
BAUGHMAN CO.
Surveyors

FRED J. DOANE

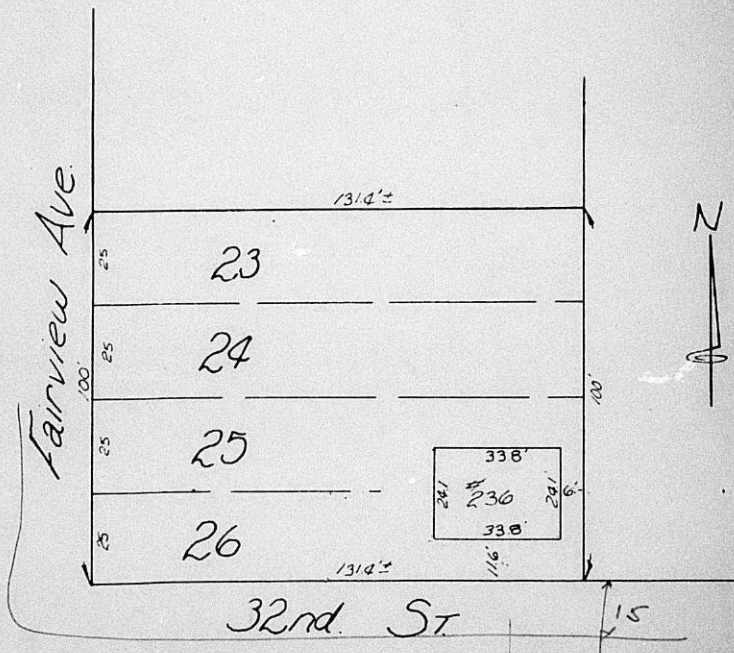
2522 EAST KELLOGG
WICHITA, KANSAS 67211
MURRAY 3-7431

State of Kansas)
County of Sedgwick) SS

September 16, 1966

I, John T. Reeves, Surveyor in aforesaid county and state do hereby certify that I did on this 16th day of September, 1966, survey Lots 23-24-25-26, Block 12, Jones Park Addition to Wichita, Kansas. On said lots is house No. 236 (under construction) which is in the clear of all boundary lines. There are no encroachments on said lots by buildings on the adjacent lots. The accompanying plat is a true and correct exhibit of said survey.

John T. Reeves
Surveyor



SECRETARY'S REPORT

CASE NO. BZA 25-66

APPLICANT: Florence E. and Clovis J. Nitcher, 437 South Erie

AGENT: K. W. Pringle, Jr., 1400 Wichita Plaza Building, Wichita, Kansas

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to reduce the required 20-foot rear yard setback to 6 feet.

GENERAL LOCATION: Northeast corner of 32nd Street North and Fairview

ZONING: Subject property is zoned "AA" as is that to the north, east, south, and west.

LAND USE: Land use on subject property is single family as is that to the north, east, south, and west.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.2, 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 effect 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

The applicants point out in their statement of justification

that they were originally remodeling an existing structure and through the process of tearing down and rebuilding became aware of more and more structural deficiencies. They further state that they had fully advised the Central Inspection Division of their proceedings, obtained the initial permit, and likewise had a representative of said department present at the site on various occasions during construction.

After partially completing the structure and spend approximately \$4,500, the applicants were then notified by the Building Inspection Department that they would need to obtain another permit and were likewise to cease construction because the building was located only 6 feet from the rear property line. The ordinance states that all main structures shall maintain a minimum rear yard setback of 20 feet in the "AA" Single Family district. (See the attached copy of the applicants letter of justification.)

Uniqueness

It is the opinion of the Secretary that this is a unique situation inasmuch as the structure is located in exactly the same position as the original house had been for some 30 years, and that in actuality the rear yard is a sideyard since the residence faces to the south rather than to the west as the lots are platted.

Adjacent Property

It is the opinion of the Secretary that the granting of the variance would not have an adverse affect on the adjacent properties inasmuch as the house is situated so that the front of the house faces a side lot line and therefore the rear of the lot in essence becomes a side yard which has the present 6 foot setback. The house immediately to the east also faces 32nd Street and maintains a 6 foot setback from the property line dividing it from subject property. Therefore, the privacy of the adjacent property should not be affected as an adequate 12 foot separation will still remain between houses.

Hardship

It is the opinion of the Secretary that the applicant would be burdened with an unnecessary hardship if the variance is not granted, inasmuch as the applicants house could not be completed unless a substantial amount of money is invested to move the structure 14 feet west of its present location.

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Secretary's Report

Public Interest

It is the opinion of the Secretary that the granting of the variance would not have an adverse affect on the public interest, inasmuch as there would actually be no difference in the setbacks which have existed for some 30 years past.

Spirit and Intent

It is the opinion of the Secretary that the variance requested is not opposed to the spirit and intent of the Zoning Ordinance.

Recommendation

It is the opinion of the Secretary that all five conditions necessary to the granting of the variance can be found to exist and therefore, it is the recommendation of the Secretary that the variance of the rear yard setback from 20 feet to 6 feet be granted adjacent to the east property line subject to the applicant maintaining a minimum 20 foot setback adjacent to the north boundary of the application area.

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

October 14, 1966

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 25-66

An application has been filed by Florence E. and Clovis J. Nitcher, 437 South Erie, Wichita, Kansas, by K. W. Pringle, Jr., Attorney, 1400 Wichita Plaza, Wichita, Kansas, pursuant to Section 2.12.590.2, Code of the City of Wichita, requesting a variance of the rear yard setback requirement from 20 feet to 6 feet on property zoned "AA" One Family Residential and legally described as follows:

Lots 23, 24, 25, and 26, Block 12, in Jones Park Addition to North Wichita, in the City of Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of 32nd Street North and Fairview.

This application has been assigned Case No. BZA 25-66, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, October 25, 1966, at 2 p.m., in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

25-66

Board of Zoning Appeals
City of Wichita, Kansas

Gentlemen:

In connection with the application for variance which we have this day filed covering the property at 236 West 32nd Street North, Wichita, Kansas, we wish to submit the following facts and circumstances which, in our opinion, justify the granting of a variance.

The variance requested arises from the condition which is unique to this property and is not ordinarily found in the same zone or district. The undersigned, Florence E. Nitcher, inherited an undivided interest in Lots 23, 24, 25 and 26, Block 12, Jones Park Addition to North Wichita, Sedgwick County, Kansas, from her father, and recently purchased the remaining interest from her brothers and sisters. At the time of her father's death, and until recently, there was a frame house located upon the subject property facing the South (32nd Street), at the same location as the house which presently is located on the property. This house was in a bad state of repair and the undersigned desired to recondition the house and discussed the reconditioning with the Building Inspection Department of the city of Wichita and obtained the necessary permit to remodel and refurbish the property. In the course of the remodeling and refurbishing, and pursuant to the permit which they obtained, applicants removed the roof, the inside and outside walls, and the flooring and sub-flooring, which left only the floor joists and wall studs. At this point in the remodeling, applicants found that the floor joists and wall studs were termite infested, and again visited the Building Inspection Department of the city of Wichita, and advised this office that they would like to put in new floor joists and studding because of the termite infestation and asked for a supplemental permit and were advised by the Building Inspection Department that they would not need a supplemental permit. After they had removed the additional studs and floor joists and while a representative of the Building Inspection Department was present, they found that the foundation cement was in a crumbling condition and after first discussing the same with

the Building Inspection Department representative, it was decided to tear out the old cement and put in new, and this was accomplished. On various occasions while the old cement was being removed and the new foundation and footings being poured, a representative of the Building Inspection Department was present and knew of the work which was taking place. After the foundation was finished, the new floor joists were installed and sub-flooring and flooring was placed in position and the studding and other material was installed and applicants were ready to put on the roof and outside walls, a Building Inspection Department representative advised them that they needed an additional permit, which would cost them an additional permit fee, before they would be able to proceed and, thereafter, without any notice to the applicants, posted a notice on the subject property that they were prohibited from performing any further work on the structure by reason of the fact that the building was located too near the rear property line.

The Building Inspection Department did authorize applicants to make the structure weathertight until such time as an application for variance could be filed. Applicants state that at all times during the tearing down and remodeling and building of the present structure, applicants fully advised the Building Inspection Department of the City of Wichita of the plans which they had and the action which they were taking and not until applicants had expended approximately \$4,500.00 did the Building Inspection Department notify them that they should stop on the structure and that they could not finish the same. The incompleated house now located on the subject property, as shown on the attached plat, is in the same location with reference to the South and East property lines as the structure which existed on the property for more than thirty years last past, and immediately to the East of this structure on the property adjoining on the East is located a house which also faces South on 32nd Street and is located approximately in the same position with reference to the property line dividing the properties as the structure which applicants have partially completed.

Applicants further state that the granting of the permit for the variance from twenty feet to six feet on the

Page 3
Board of Zoning Appeals

rear yard set back will not adversely affect the rights of adjacent property owners or residents and that the strict application of Title 28 of which variance is requested will constitute unnecessary hardship upon the applicants.

Applicants further state that the variance herein requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare and that granting the variance desired will not be opposed to the general spirit and intent of Title 28.

Florence E. Nitcher

Florence E. Nitcher

Clovis J. Nitcher

Clovis J. Nitcher

APPLICATION FOR VARIANCE

I. Name of Applicant Florence E. Nitcher and Clovis J. Nitcher
Mailing Address 437 South Erie, Wichita, Kansas Phone MU 2-2226
Name of Authorized Agent K. W. Pringle, Jr.
Mailing Address 1400 Wichita Plaza, Wichita, Kansas Phone AM 7-0235
Relationship of applicant to property is that of Owner
(owner, tenant, lessee, other)

II. The variance requested is Authorizing a rear yard set back of
six (6) feet instead of the basic required set back of 20 feet.

for property located at 236 West 32nd Street North, Wichita, Kansas

NE corner of 32nd & Fairview

and legally described as: part of (112) of Lots 23, 24, 25 and
26, Block 12, Jones Park Addition to North Wichita, Sedgwick County,
Kansas
in the City of Wichita; and which is presently zoned AA.

(Give metes and bounds description below if appropriate):

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

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- c. That he has been advised of his right to appeal of the decision of the Board to the City Commission within ten (10) days of that decision;
- d. That all documents are attached hereto as noted in paragraphs 3 and 4 of the instructions.

Clovis J. Nitcher
Clovis J. Nitcher

Florence E. Nitcher
Applicant Florence E. Nitcher
K. W. Pringle, Jr.
Authorized Agent K. W. Pringle, Jr.

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeal
9:25 (a.m. - p.m.), Sept 22, 1946, together with
appropriate fee of \$50.00.

Ronald C. Williamson PTE
Signed

CERTIFICATE OF OWNERSHIP

CALLAHAN GUARANTEE TITLE CO. Inc., hereby certifies the following to be a true and correct list of the property owners as shown by the last deed of record in the office of the Register of Deeds of Sedgwick County, Kansas, of the real estate within a radius of 200 feet of and including the following described property:

Lots 23-24-25 and 26, Block 12,
in Jones Park Addition to North Wichita,
Sedgwick County, Kansas.

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| DESCRIPTION | OWNER/OWNERS |
|-----------------------------|---|
| <u>Jones Park Block 12</u> | |
| Lots 15-16-17-18 | ✓ Ada M. Sidel Route 2 Fredonia |
| Lots 19 and 20 | ✓ Josephine Alexander Stabler 3944 No. Athenian |
| Lots 21 and 22 | ✓ Benjamin G. Jones and Anna T. 3310 Fairview |
| Lots 23-24-25-26 | ✗ Florence E. Nitcher and Clovis J. 437 So. Erie |
| Lots 41-42-43-44 | ✗ Ada M. Sidel Route 2, Fredonia |
| Lots 45 and 46 | ✓ Clarence E. Carson and Anna Blanche 719 West 23rd St. North. |
| Lots 47 and 48 | ✓ Wm. H. Meek 3319 Wellington Place |
| <u>Block 13</u> | |
| Lots 19-20-23-24 | ✓ McKay Bros. Inc. 3728 No. Seneca |
| Lots 21-22 | ✗ Minnie B. Wood <i>no address found</i> No address |
| Lots 25 and 26, exc. W. 40' | ✓ J. F. McCabe 1305 McCormick |
| E 40' of Lots 25 and 26 | ✓ Allen Lingenfelter and Ruth 3302 Wellington Place |
| <u>Block 16</u> | |
| Lots 1 and 2 | ✓ Wm. I. Stagner 3260 Fairview |
| Lots 3 and 4 | ✓ Roland G. Travis and Louise D. 3250 Fairview |
| Lots 5 and 6 | ✓ Jack J. Fisher and Mary D. 3246 Fairview |
| Lots 25 and 26 | ✓ Samuel E. Keeler and Opal M. 346 No. Mt Carmel |

C Jones Park contd.

A Block 16

L Lots 27 and 28 ✓ Jimmy D. Jones and Della
3253 Wellington Place

L Lots 29-30-31-32 ✓ Virgil L. Smith
3243 Wellington Place

A Block 17

H Lot 1 ✓ Arthur McCord and Pearl
3247 Park Place

A N/2 SE/4 NW/4 SE/4
N 32-26-1 East. ✓ Dorothy P. Waymire
3245 Fairview

G GIBBONS GARDENS
Fairview
Lots 134-135-136-137

U Lots 138-139-140-141 ✓ Robert D. Fisher and Marjorie L.
3301 Fairview

A Lots 142-143-144 X W. D. Hahn and Ruby F.
No address *no address found*

R Lot 145 ✓ Floyd D. Brannan
3307 Fairview

A Waco

N Lots 126-127 Charles J. Moore and Fannie ✓ *142 1/2 S Bldwy.*
no address ✓ *2639 Jackson*

E Lots 128 and 129 ✓ Leslie E. Pike and Matilda M. *2004 N. Main*
3306 No. Waco

E Lots 130 and 131 ✓ Wm. B. Schroeder and Vera Mae
1849 Park Place

T Lots 132 and 133 ✓ Morris W. Gray
1407 No. Topeka

I WITNESS our Hand and Seal this the 15th day of September, 1966
T at 7:00 o'clock A.M.

CALLAHAN GUARANTEE TITLE CO. Inc.,
By *Nellie M. Lester*
Vice-President

C
O., Order No. 10404

I
N
C.

Form 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

| | | | |
|--------------|-------------|-------------|-------------|
| Bldg & Elev. | Elec. | Elev. Insp. | Exam. Fees |
| Hoc. Mvr. | Hoc. Moving | Licse. | Mech. |
| Oil Well | Pav. Cuts | Plan. | Pibg. Cert. |
| Sanitation | Sewer | Signs | Sidewalk |
| Street | Trailer | 9.50.00 | |

| DESCRIPTION | AMOUNT |
|-------------------|--------|
| B 2 A application | |

Name *Mrs. C. J. Ditcher*

Address *137 S. Erie*

Type *R-712* Due Date *9-22-66*

Comments:

Date *9-22-66* By *Ja*