

BZA 28-75 - Allied Building Cont.  
requests variance of front yard  
setback for off-street parking on  
east side of Waco in an area no.  
and south of Eighth Street.

POSTED  
7-7-75  
MAP V  
C.I.  
10-23-75

# ACTION

B3a COMMITTEE Approved DATE 7-22-75

M.A.P.C. \_\_\_\_\_

B.C.C./B. CO. C. \_\_\_\_\_

BZA 28-75 - Allied Building Cont.  
requests variance of front yard  
setback for off-street parking on  
east side of Waco in an area no.  
and south of Eighth Street.



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

June 30, 1975

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 28-75

An application has been filed by Harold Perry, 355 N. Waco, Suite 216, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required front yard setback from 20 feet to 0 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District and legally described as follows:

Lots 106, 108, 110, 122 and the north 15 feet of Lot 120, on Waco Avenue. Munger's Original Town now City of Wichita, Sedgwick County, Kansas.  
Generally located on the east side of Waco in areas north and south of Eighth Street.

This application has been assigned Case No. BZA 28-75, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, July 22, 1975, at 1:30 p.m., in Room 401 City Building Annex, 104 South Main Street, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith  
Secretary

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Jack H. Galbraith  
Secretary

RESOLUTION NO. BZA 28-75

WHEREAS, Harold Perry, 355 North Waco, Suite 216, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 20 feet to 0 feet, on property zoned the "B" Multiple Family Dwelling District, and legally described as follows:

Lots 106, 108, 110, 122, and the north 15 feet of Lot 120, on Waco Avenue, Munger's Original Town, now City of Wichita, Sedgwick County, Kansas. Generally located on the east side of Waco in areas north and south of Eighth Street.

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 July 22, 1975, consider said application; and

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

WHEREAS, the Board of zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant, inasmuch as with the exception of subject property and the "B" Multiple Family zoning adjacent to it on the north, the remainder of this two-block area between Murdock and 9th Street is zoned "BB", "LC", or "C", each of which permit parking to the front property line; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the buildings themselves would set well behind the setback lines and all surrounding properties are either presently zoned to permit parking to the property line or could potentially be so zoned; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance), of which variance is requested, will constitute unnecessary hardship upon the property owner represented in the application inasmuch as subject property is located in an area that the Metropolitan Area Planning Commission has an established policy of looking with favor on zoning changes which would permit parking to the property line, but such a change would be to a less restrictive zoning district, which is not needed for the intended use other than for the parking aspect; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the granting of the desired variance would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare and would be preferred to potential commercial uses; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance), inasmuch as this area is undergoing a period of change, as evidenced by the mixture of zoning districts and the zoning policy adopted by the MAPC; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted, has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this request for a variance to reduce the required front yard setback from 20 feet to 0 feet for off-street parking purposes only, on property zoned the "B" Multiple-Family Dwelling District, and legally decribed as:

Lots 106, 108, 110, 122, and the north 15 feet of Lot 120, on Waco Avenue, Munger's Original Town, now City of Wichita, Sedgwick County, Kansas. Generally located on the east side of Waco in areas north and south of Eighth Street,

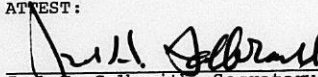
be approved subject to the following conditions:

1. The applicant shall dedicate by separate instrument, for street right-of-way purposes, the west 10 feet of subject property.
2. There shall be no ingress or egress from the parking lots to Waco.
3. The applicant shall either contact the Engineering Division of the Department of Public Works and submit satisfactory guarantees for the paving of the alley adjacent to the east property line; or submit a site grading plan to the Flood Control Division of the Department of Public Works for approval.
4. The parking areas shall have adequate guards to prevent the extension or the overhanging of vehicles beyond property lines or parking spaces.

ADOPTED AT WICHITA, KANSAS, this 22nd day of July, 1975.

  
Marjorie L. Taylor, Chairman

ATTEST:

  
Jack A. Galbraith, Secretary

August 25, 1975

Harold Perry  
355 North Waco  
Suite 216  
Wichita, Kansas 67202

Subject: Case No. BZA 28-75  
Request for Variance

Dear Mr. Perry:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on July 22, 1975, in connection with your request for a variance to reduce the required front yard setback from 20 feet to 0 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District and generally located on the east side of Waco in areas north and south of Eighth Street.

This Resolution reflects the official action of the Board to approve this request and sets out the conditions of approval. It is forwarded to you for your information and files.

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

Sincerely,

Jack H. Galbraith  
Secretary

JHG:el

Enc.

cc: Robert Feldner, Superintendent of Central Inspection  
Donald C. Gisick, City Clerk  
Joe Donnelly, Central Inspection

July 23, 1975

Harold Perry  
355 North Waco  
Suite 216  
Wichita, Kansas 67202

Subject: Case No. EZA 28-75  
Request for Variance

X Dear Mr. Perry:

At the regular meeting of the Board of Zoning Appeals on July 22, 1975, your request for (a variance to reduce the required front yard setback from 20 feet to 0 feet for off-street parking purposes only on property zoned the "B" Multiple Family Dwelling District and generally located on the east side of Waco in areas north and south of Eighth Street,) was considered.

It was the action of the Board (to approve this request) <sup>and sets out.</sup> subject to the following conditions:

1. The applicant shall dedicate by separate instrument, for street right of way purposes, the west 10 feet of subject property.
2. There shall be no ingress or egress from the parking lots to Waco.
3. The applicant shall either contact the Engineering Division of the Department of Public Works and submit satisfactory guarantees for the paving of the alley adjacent to the east property line; or submit a site grading plan to the Flood Control Division of the Department of Public Works for approval.

Harold Perry  
July 23, 1975

4. The parking areas shall have adequate guards to prevent the extension or the overhanging of vehicles beyond property lines or parking spaces.

Regarding the requirement for dedicating 10 additional feet of right of way for Waco, enclosed is the necessary dedication form that should be executed and returned to our office. It is also necessary that Condition #3 be complied with prior to the preparation of the Resolution granting this variance.

If you have any questions, please call our office.

Sincerely,

Jack H. Galbraith  
Secretary

JHG:js

Attachment

cc: Michael Gagert, Midtown Citizens Assoc., 1250 N. Market, 67214  
Vern Lamberts, 812 North Waco, 67203  
Robert Feldner, Supt. of Central Inspection  
Donald C. Gisick, City Clerk  
Joe Donnelly, Central Inspection

3 negs.

SECRETARY'S REPORT

CASE NO. PZA 28-75

APPLICANT: Harold Perry, 355 North Waco, Suite 216, Wichita, Ks.

AGENT: None

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to reduce the required front yard setback from 20 feet to 0 feet for off-street parking purposes only.

GENERAL LOCATION: East side of Waco in areas north and south of Eighth Street.

ZONING: Subject property is zoned the "B" Multiple Family Dwelling District as are properties to the west. South is "C" Commercial and "BB" Office District; east is the "E" Light Industrial District.

LAND USE: Subject property is vacant except for one single family structure that is in the process of being removed. East is single family residences and a commercial building. West are single family residences and apartments. North is single family. South is an office.

JURISDICTION

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.E, 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.

Secretary's Report  
Case No. BZA 28-75  
Page Two

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance.)

COMMENTS BY THE SECRETARY

The applicant is requesting a variance of the required front yard setback from 20 feet to 0 feet to provide off-street parking for an apartment complex to be constructed on subject property.

The application area is intersected by 8th Street and other property owned by the applicant, that is zoned the "C" Commercial District which permits the utilization of the front yard for parking. The proposed plans show an apartment building north of 8th Street and another on the property south of 8th Street. The north 45 feet of the proposed development located north of 8th Street is zoned the "B" Multiple Family Dwelling District, which does not permit parking in the front yard setback. All of the property being developed south of 8th Street is zoned "B". Lot 112, located adjacent to the south side of 8th Street, was included in the submitted application and is intended to be included in the proposed project. However, due to an inadvertent omission of this lot in the official notice published in the newspaper, it is not a legal part of the application area and therefore cannot be acted on at this meeting. Due to the time factor involved in readvertising the entire case, the applicant requests that the case, as advertised, be considered at this time and then, should the Board approve this request, the omitted lot can be advertised for consideration at your next meeting.

As mentioned, "C" Commercial property lies between the application areas and is included in the total area being developed as apartments. South of the application area is property zoned the "BB" Office District. The north end of the block (southeast corner of Waco and 9th) is the "C" District. All the property located east of the application area is zoned "E" Light Industrial. All of these areas would by ordinance be permitted to do what the applicant is requesting. In addition, the Metropolitan Area Planning Commission has an adopted policy of looking with favor on zone change requests to "IC" Light Commercial or "C" Commercial on the east side of Waco between Murdock and 10th Streets.

Secretary's Report  
Case No. BZA 28-75  
Page Three

Waco is designated as an arterial street which carries a 100 foot street right-of-way as a standard. There is presently 80 feet of street right-of-way adjacent to subject property. The applicant's submitted plans show a 50 foot half street right-of-way.

It should be pointed out that in considering the plat of McClelland Sound Addition, which is a part of this site plan, the paving of the unimproved alley to the east was discussed. Representatives from the Department of Public Works recommended that the platator guarantee the paving of the alley. It was finally agreed to accept a grading plan that proposed to drain the property to Waco rather than to require the paving of the alley.

Since the proposed site plan now proposes to back cars into an unpaved alley, it is assumed that the grading plans may have been changed. Consideration should be given to either requiring the alley to be paved or requiring a new site grading plan to be submitted to the Flood Control Division of the Department of Public Works for approval.

#### UNIQUENESS

It is the opinion of the Secretary that uniqueness may exist in this instance inasmuch as with the exception of subject property and the "B" Multiple Family zoning adjacent to it on the north, the remainder of this two block area between Murdock and 9th Street is zoned "BB", "LC" or "C", each of which permit parking to the front property line.

#### ADJACENT PROPERTY

It is the opinion of the Secretary that it is difficult to determine if the granting of this request would adversely affect the rights of adjacent property owners or residents, but that it may not inasmuch as the buildings themselves would set well behind the setback lines and all surrounding properties are either presently zoned to permit parking to the property line or could potentially be so zoned.

#### HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may create an undue hardship upon the applicant inasmuch as the subject property is located in an area that the Metropolitan Area Planning Commission has an

Secretary's Report  
Case No. EZA 28-75  
Page Four

established policy of looking with favor on zoning changes which would permit parking to the property line, but such a change would be to a less restrictive zoning district, which is not needed for the intended use other than for the parking aspect.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the desired variance would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare and would be preferred to potential commercial uses.

SPIRIT AND INTENT

It is the opinion of the Secretary that the granting of the variance would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as this area is undergoing a period of change, as evidenced by the mixture of zoning districts and the zoning policy adopted by the MAPC.

RECOMMENDATION

Should the Board determine that all five conditions necessary to the granting of a variance can be found to exist, it is recommended that the request be approved subject to the following conditions:

1. The applicant shall dedicate by separate instrument, for street right of way purposes, the west 10 feet of subject property.
2. There shall be no ingress or egress from the parking lots to Waco.
3. The applicant shall either contact the Engineering Division of the Department of Public Works and submit satisfactory guarantees for the paving of the alley adjacent to the east property line; or submit a site grading plan to the Flood Control Division of the Department of Public Works for approval.
4. The parking areas shall have adequate guards to prevent the extension or the overhanging of vehicles beyond property lines or parking spaces.

July 9, 1975

Vern Lambertz  
812 North Waco  
Wichita, Kansas 67203

Subject: Case No. BZA 28-75 -  
Request for Variance

Dear Mr. Lambertz:

I have received your letter of July 3, 1975, and I will forward copies onto the members of the Board when they consider subject case. Regarding the requested variance for the front yard setback, please be advised that such request is to permit off-street parking only and not for the purpose of constructing buildings closer to the street. The "BB" Office District that is on your property will permit parking in the front yard setback area, and as I view it, the applicant only wants the variance approved to permit parking in his front setback as other properties along the two block section are privileged to do because of their zoning classification.

I appreciate you advising us of your concern.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:js

**LAMBERTZ COMPANY**

*Established 1955*

AREA CODE 316 PHONE: 265-8537  
812 NORTH WACO / WICHITA, KANSAS 67203



July 3, 1975

Mr. Jack Galbraith, Secretary  
BOARD OF ZONING APPEALS  
Room 402, City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

Re: Case No. BZA 28 - 75

Dear Mr. Galbraith:

I have received your notice relative to the case mentioned.

I am scheduled to be in and out of town with an out of town client on the 22nd. If you feel that this letter will not be sufficient, please advise.

My wife and I own Lots 94, 96, 98, and 100 on Waco Avenue, Munger's Original Town. Prior to purchasing this land, it was zoned for offices with the south half of Lot 94 being light commercial. The set backs imposed have been adhered to in our planning of our site. I do not feel there should be a change which will in any way require modification of our plans which are in keeping with the zoning of our land or the adjoining land.

We are not in favor of penetrating any block in Wichita without full consideration of the zoning which exists. The effect of modifications to existing zoning may or may not be compatible with the future development of the other land.

As a matter of information, Mr. Perry is also reported to be the record owner of that part of Lots 86, 88, 90, and 92 not taken by roads and which lies immediately south of our property. By alteration of the set back or restrictions imposed upon by zoning, we will not have the protection which we are due when zoning was acquired when we purchased our property.

Sincerely,

LAMBERTZ COMPANY

*Vern Lambertz*  
Vern Lambertz

pc: Mr. Harold Perry



COMMERCIALS ■ SHOPPING CENTERS ■ PROPERTY MANAGEMENT ■ INDUSTRIALS ■ APPRAISALS ■ COUNSELING ■ INSURANCE

individual membership in -  
Kansas State Chamber of Commerce  
Kansas Association of Realtors

National Association of Real Estate Board  
International Council of Shopping Centers

Wichita Chamber of Commerce  
Wichita Board of Realtors

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

June 30, 1975

NOTICE TO ADJOINING PROPERTY OWNERS

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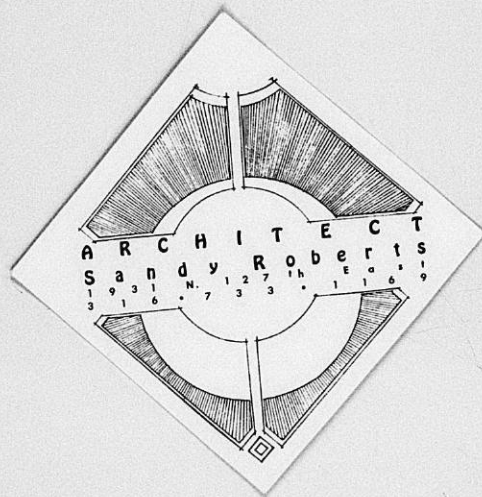
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Jack H. Galbraith  
Secretary

6.30.75

23 notices mailed to adjacent property owners.  
9 notices mailed to maps.



BOARD OF ZONING APPEALS  
CITY OF WICHITA, KANSAS

map 5-448  
CASE NO. 28-75  
FILED 6-19-75

APPLICATION FOR VARIANCE

I. Name of Applicant Harold Perry

Mailing Address 355 N. Waco - Suite 216 Phone 267-5367  
Wichita, Kansas 67202

Name of Authorized Agent Allied Building Contractors, Inc.

Mailing Address 355 N. Waco - Suite 216 Phone 267-5367  
Wichita, Kansas 67202

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

II. The variance requested is to reduce the 20 ft. front yard setback  
to "0" ft. for off-street parking purposes.

for property located East side of Waco, both South and North  
corners of 8th and Waco.

(1)  
and legally described as: Lots 106, 108, 110 & 112 on Waco  
Street, Munger's Original Town of Wichita.  
(2) North 15 ft. of Lot 120, all of Lot 122, on Waco Street,  
Munger's Original Town of Wichita.

in the City of Wichita; and which is presently zoned B-Multiple.

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

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

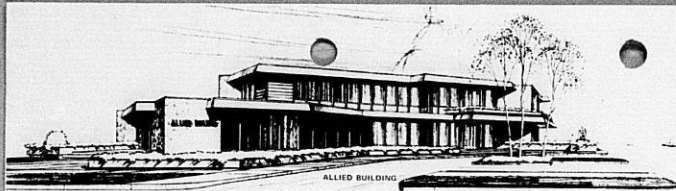
Harold Perry  
Applicant

Allied Building Contractors, Inc.  
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 1:30 (a.m. - (p.m.)), June 19 19 75 together with appropriate fee of \$50.00.

T9-402

Larry Dobson  
Signed



355 NORTH WACO  
SUITE 216  
WICHITA, KANSAS 67202

PHONE: 267-5367

**ALLIED BUILDING CONTRACTORS, INC.**

GENERAL CONTRACTORS

STATEMENT JUSTIFYING VARIANCE REQUEST

1. Our variance request arises from such condition which is unique to the property because the properties to the north, south and east are zoned either light commercial or light industrial within the same block or adjacent areas, allowing offstreet front parking.
2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents because offstreet parking is already permitted to the north, south and east of the properties in question, and are zoned light commercial or light industrial.
3. The strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship on the owner represented in the application because it will deprive them of developing the land to the highest and best use possible. This multi-family development is in agreement with the recent decision of the Wichita City Commission to down zone light commercial and commercial properties along 11th Street and Waco, and is also in agreement with the Mid Town Citizens Committee announcement to keep residential living in the proposed area also.
4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, and general welfare because this multi-family development will better all the items mentioned above besides being in agreement with the Wichita City Commission and the Mid Town Citizens Committee as stated in No. 3. This development will also help clear out some of the sub-standard type housing.
5. We do not feel that the granting of this variance request would oppose the general spirit and intent of Title 28 (zoning ordinance).

Respectfully submitted

ALLIED BUILDING CONTRACTORS, INC.

Harold Perry, General Manager



355 NORTH WACO  
SUITE 216  
WICHITA, KANSAS 67202

PHONE: 267-5367

## **ALLIED BUILDING CONTRACTORS, INC.**

GENERAL CONTRACTORS

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Respectfully submitted

**ALLIED BUILDING CONTRACTORS, INC.**

Harold Perry, General Manager

Form 223-C

**PAYMENT NOTICE**

City of Wichita

**PAY AT TREASURER'S OFFICE - FIRST FLOOR**

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

DESCRIPTION	AMOUNT
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B2H License Applied	500
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Name Harold Perry (Bldg Insp)

Address 355 N Wood Ave 216

Type <u>AA-407103</u>	Due Date <u>6-19-75</u>
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Comments:

Date <u>6-19-75</u>	By <u>[Signature]</u>
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\*

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