

Case No. BZA 28-78 - Gary/W. Turley requests a variance to reduce the required side yard setback from 6 feet to 3 feet on property generally located on the west side of Gordon Avenue in

6-23-78

*Posted
7-6-78
C. IV
MAYOR
6-15-78*

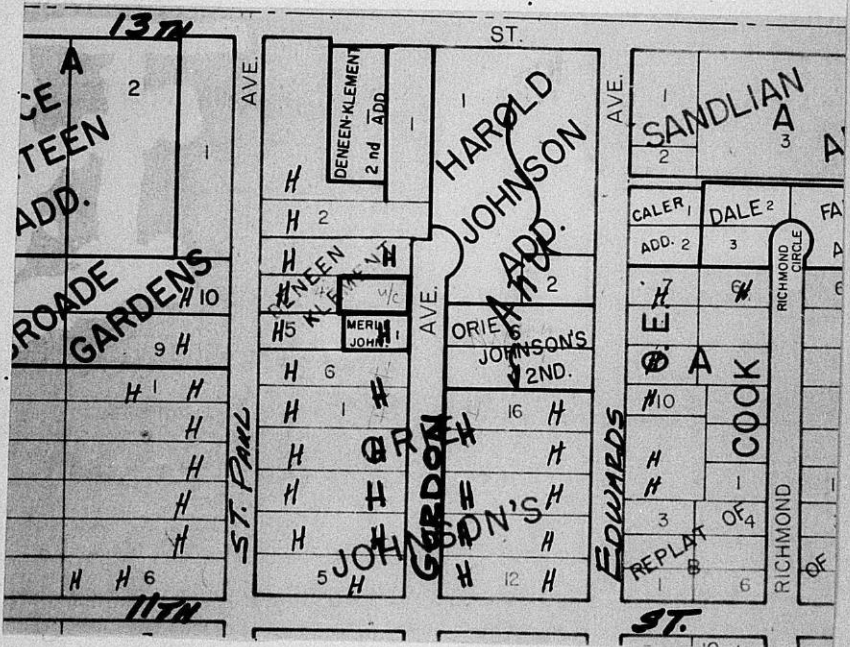
ACTION

BZA 28-78 COMMITTEE *Approved* DATE *7-25-78*
M.A.P.C. _____
B.C.C./B. CO. C. _____

EZ
 Map No. 5248
 Sec. 13
 Twp. 27
 Range 1W
 BZA- 28-70
 SCZ- _____
 CU- _____
 Filed _____

AREA DATA:
 1. Acres: 0.18 (70 ft. by 117 ft.)
 2. Adjoining Zoning: E _____ S _____ W _____ N _____
 3. Land Use: East Nursery South Single Farm
 West Single Farm North Single Farm
 4. Sketch Plan Land Use is for: _____
 5. Present Land Use if for: home under construction
 6. Area (is) (is not) platted.

PHOTO DATA:
 Taken by _____ Date _____ Time _____



Survey
 No. 2432C
 NATIONAL INSURANCE CO. OF LOS ANGELES
 LOS AN, CALIF. - MEMPHIS, TENN. - L. S. A.

RESOLUTION NO. BZA 28-78

WHEREAS, Garyl W. Turley, 550 West Central, #1123, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the required side yard setback, adjacent to the north property line, from the required six feet to four and one-half feet on property zoned the "AA" Single Family Dwelling District and legally described as follows:

Lot 4, except the west 154 feet thereof, and except the east 30 feet for street in DeNeen-Klement Addition, Sedgwick County, Kansas. Generally located on the west side of Gordon Avenue in an area between 13th and 11th Streets (1313 North Gordon).

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 25, 1978, 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 human error and misunderstanding resulted in setback violations which were not caught and cited by Central Inspection until an advanced stage of construction was achieved; 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 approximately 14 feet separates the house to the north from subject structure; 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 the violation was not noted until framing was complete and then the applicant was permitted to continue construction even though the violation was known to exist; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the request is interiorly located; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the 14 foot separation between structures is adequate for the passage of light and air; 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.

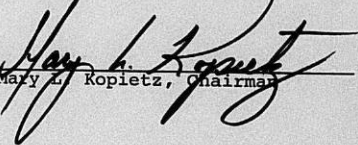
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request for a variance to reduce the required side yard setback, adjacent to the north property line, from the required six feet to four and one-half feet on property zoned the "AA" Single Family Dwelling District, and legally described as follows:

RESOLUTION NO. BZA 28-78
Page 2

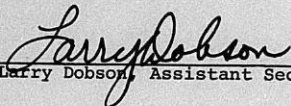
Lot 4, except the west 154 feet thereof, and
except the east 30 feet for street in DeNeen-
Klement Addition, Sedgwick County, Kansas.
Generally located on the west side of Gordon
Avenue in an area between 13th and 11th Streets
(1313 North Gordon).

be approved for that portion of the north sideyard setback
being violated by the existing structure.

ADOPTED AT WICHITA, KANSAS, this 25th day of July, 1978.


Mary L. Ropietz, Chairman

ATTEST:


Larry Dobson, Assistant Secretary

August 9, 1978

Mr. Garyl W. Turley
550 W. Central, #1123
Wichita, Kansas 67203

Re: Case No. BZA 28-78
Request for Variance

Dear Mr. Turley:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on July 25, 1978, in connection with your request for a variance to reduce the required side yard setback, adjacent to the north property line, from the required six feet to four and one-half feet on property zoned the "AA" Single Family Dwelling District and generally located on the west side of Gordon Avenue in an area between 13th and 11th Streets (1313 N. Gordon).

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

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

Sincerely,

Larry Dobson
Assistant Secretary

LD:bbc
Enclosure

cc: Jack A. and Linda K. Karst, 1319 N. Gordon, 67203
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator
Don Gisiak, City Clerk

THE CITY OF WICHITA
OFFICE OF CITIZEN PARTICIPATION

DATE July 21, 1978

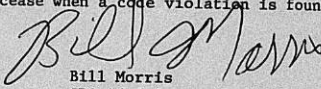
TO Larry Dobson, Secretariat, Board of Zoning Appeals

FROM Bill Morris, CPO Administrative Aide

SUBJECT BZA 28-78 (West Side of Gordon in
an Area Between 13th and 11th)

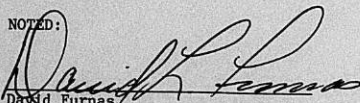
On July 19, 1978, CPO Council "N" considered the captioned case. The Council voted 4-2 to recommend that the applicant not be required to move his house, but that he be required to take one foot off the roof overhang in order to make it more nearly conform to City regulations.

Council "N" is concerned that the City's code enforcement and appellate procedure encourages builders to rush through completion of building projects, when a code violation is found, in order to more easily meet the hardship provision used by the Board of Zoning Appeals. Because of this, the Council feels that it is important that all construction cease when a code violation is found.


Bill Morris
CPO Administrative Aide

BM:rh

NOTED:


David Furnas
Citizen Participation Coordinator

July 26, 1978

Mr. Garyl W. Turley
550 W. Central, #1123
Wichita, Kansas 67203

Re: Case No. BZA 28-78
Request for Variance

Dear Mr. Turley:

At the regular meeting of the Board of Zoning Appeals on Tuesday, July 25, 1978, your request for a variance to reduce the required side yard setback, adjacent to the north property line, from the required six feet to four and one-half feet on property zoned the "AA" Single Family Dwelling District and generally located on the west side of Gordon Avenue in an area between 13th and 11th Streets (1313 N. Gordon) was considered.

It was the action of the Board to grant approval for only that portion of the north setback being violated by the existing structure.

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.

Very truly yours,

Larry Dobson
Assistant Secretary

LD:bh

cc: Jack A. and Linda K. Karst, 1319 N. Gordon, 67203
Aldine M. Johnson, 1309 N. Edwards, 67203
Robert Feldner, Supt., Central Inspection
Joe Donnelly, Housing and Zoning Administrator
Don Gisick, City Clerk

I received a notice of the
meeting to-day - but I am
sorry I am unable to attend.

my north east corner comes
to Mr. Turley's south west corner

I would like you to know
that I fully support Mr. Turley
in this matter.

Helena Coulter
1304-110, St. Paul

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

June 30, 1978

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 28-78

An application has been filed by Garyl W. Turley, 550 West Central, #1123, Wichita, Kansas, pursuant to Section 2.12.590.B, Code of the City of Wichita, requesting a variance to reduce the required side yard setback, adjacent to the north property line, from the required six feet to four and one-half feet on property zoned the "AA" Single Family Dwelling District and legally described as follows:

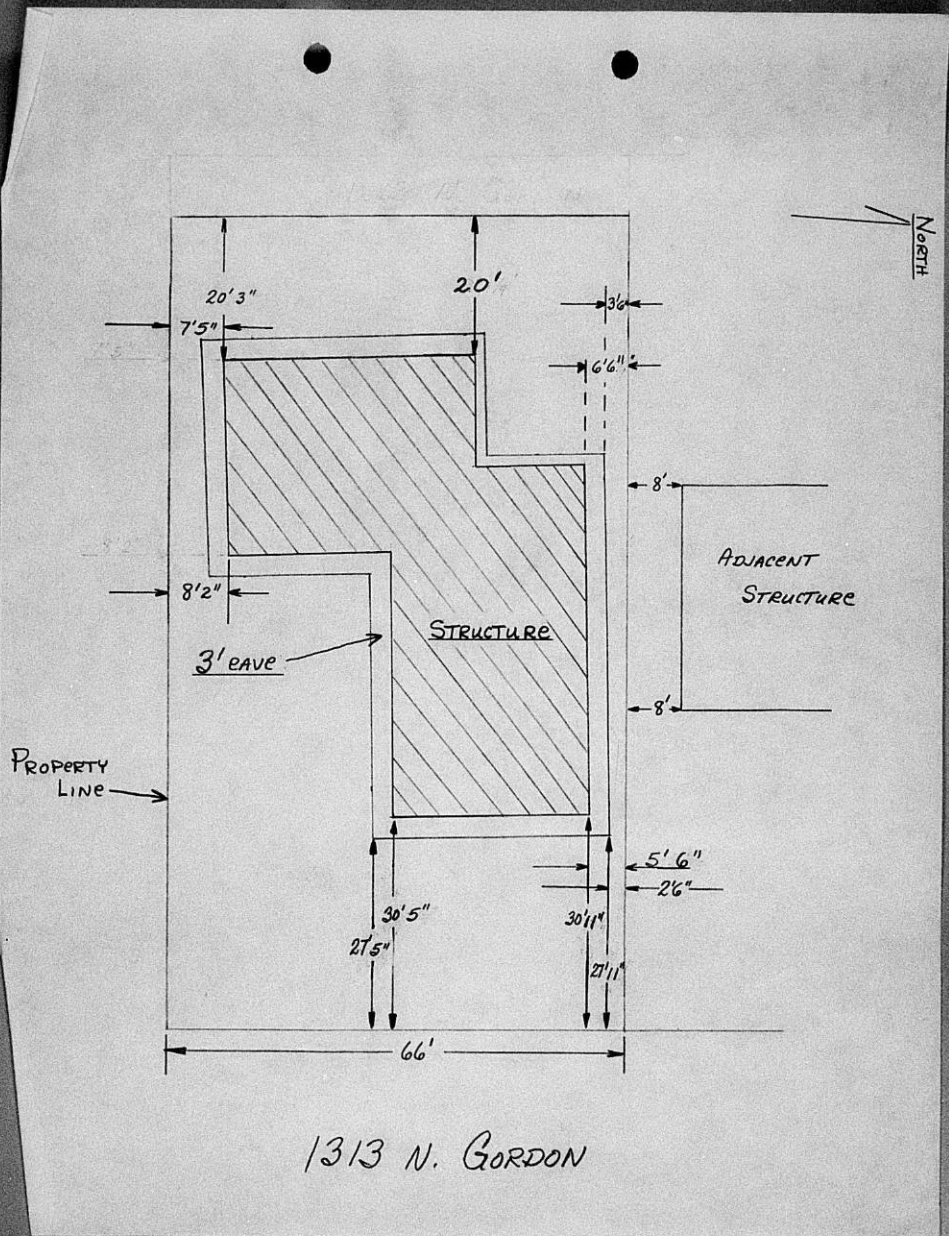
Lot 4, except the west 154 feet thereof, and except the east 30 feet for street in DeNeen-Klement Addition, Sedgwick County, Kansas. Generally located on the west side of Gordon Avenue in an area between 13th and 11th Streets (1313 North Gordon).

This application has been assigned Case No. BZA 28-78 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, July 25, 1978, 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

To Board of appeal - I support Garyl W. Turley
in his request for a Variance to reduce
the required side yard set back. Guy N. Hinton
I am unable to attend meeting - 1305 N. Gordon
phone 943-7595



SECRETARY'S REPORT

Case No. BZA 28-78

APPLICANT: Garyl W. Turley, 550 W. Central, #1123,
Wichita, Kansas.

AGENT: Same.

REQUEST: Variance pursuant to Section 2.12.590.B,
Code of the City of Wichita, to reduce the
required side yard setback adjacent to the
north property line from the required 6 feet
to 4 1/2 feet.

GENERAL LOCATION: West side of Gordon Avenue in an area be-
tween 13th and 11th Streets (1313 North Gor-
don).

ZONING: Subject property is zoned the "AA" Single
Family Dwelling District as are properties to
the north, south, and west. East is "AA" and
"LC" Light Commercial.

LAND USE: Subject property is being developed with a
single family residence. Properties to the
north, south and west are all developed as
single family residences. Property to the
east is part of Johnson's Garden Center grow-
ing area.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

SECRETARY'S REPORT

Case No. BZA 28-78

Page 2

5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance).

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to reduce the required side yard setback adjacent to the north property line from 6 feet to 4 1/2 feet for the purpose of accommodating the side wall of a house under construction located within 5 1/2 feet of the north property line and a roof overhang within 2 1/2 feet of the north property line.

Under the provisions of Section 28.04.188 of the zoning ordinance, eaves may overhang at not more than two feet without encroachment in the yard area. Therefore, even though the wall of the house is only six inches too close to the property line a variance of 1 1/2 feet is requested to compensate for the eave overhang.

When the footing inspection was made on this house, the project was 'red tagged' because the front wall was too close to the front property line. The footing location was moved back to line up with the houses adjacent to the north and south, but no side yard violation was noted. As construction proceeded it was determined by area residents that the foundation was not parallel to the north property line and appeared to be closer than six feet to this line. This was mentioned to the Central Inspection Office, but by the time an inspector arrived to check on this, a property line stake had been moved, so the property line could not accurately be determined without a survey to reset the stake. A survey substantiated that a stake had been moved and that the northeast corner of the house was 5 1/2 feet from the north property line, tapering back to 6 1/2 feet at the northwest corner of the house. At this point in construction (the walls and roof were framed) the project was halted. The applicant met with Central Inspection representatives to determine what could be done to permit him to continue enclosing the house, in order to protect materials and equipment from the weather. The variance procedure was explained to the applicant and also the possibility of purchasing a strip of land from the adjacent property owner was discussed. In the final analysis, the applicant was permitted to continue construction with the understanding that if all the available remedies failed, he would be required to move or remove that portion of the structure in violation.

The submitted site plan shows a lot width of 66 feet, with the structure 7 1/2 feet from the south property line at the closest point. It appears that the house could have been located 7 feet from both the north and south property lines to allow for 3 foot eaves. It should also be noted that the plan shows the adjacent house to the north maintains an 8 foot setback from the property line in question, thereby providing approximately a 14 foot separation between structures.

UNIQUENESS:

It is the opinion of the Secretary that it is difficult to determine that uniqueness exists simply because of error in the placement of the house on the lot.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the requested variance may not adversely affect the rights of adjacent property owners or residents inasmuch as approximately 14 feet separates the house to the north from subject structure.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as the violation was not noted until framing was complete and then the applicant was permitted to continue construction even though the violation was known to exist.

PUBLIC INTEREST:

It is the opinion of the Secretary that the granting of the requested variance would not adversely affect the public interest inasmuch as the request is interiorly located.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of this variance may not be opposed to the general spirit and intent of the zoning ordinance as the situation presently exists with the 14 foot separation between structures.

RECOMMENDATION:

It is the opinion of the Secretary that it is difficult to find the five conditions necessary to the granting of a variance. However, if the Board should determine that the five conditions can be found to exist a condition should be attached to any approval of this request making it applicable only to that part of the structure presently in violation.

The fact that work on this house is still progressing reveals a major problem in administering an effective appellant procedure through the Board of Zoning Appeals. The Secretary recognizes that human error cannot be eliminated from the construction and inspection process, but is of the opinion that once a violation is cited that affects the placement of a permanent structure on a property, work that further compounds that violation should be completely stopped until a satisfactory remedy is achieved.

13 notices sent to adjacent property owners, and agent and applicant
10 notices sent to MAPC
1 notice to CPO
24 total notices sent on BZA 28-78, 6-29-78

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

June 30, 1978

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 28-78

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Lot 4, except the west 154 feet thereof, and except the east 30 feet for street in DeNeen-Klement Addition, Sedgwick County, Kansas. Generally located on the west side of Gordon Avenue in an area between 13th and 11th Streets (1313 North Gordon).

This application has been assigned Case No. BZA 28-78 and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, July 25, 1978, at 1:30 p.m., in the Board Room, First Floor City Hall, 455 North Main, Wichita, Kansas, at which time you may appear if you so desire, either in person or by agent or attorney.

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

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. BZA-28-78

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

I. Name of Applicant GARYL W. TURLEY
Mailing Address 550 W. CENTRAL #1123⁰³ Phone 263 4738
Name of Authorized Agent _____

Mailing Address _____ Phone _____

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

II. The variance requested is EXCEPTION TO SIDE YARD SETBACK
OF 6 FEET WHICH WILL ALSO MAKE THE 3 FOOT
CAVES O.K.

for property located AT 1313 N. GORDON

* and legally described as: LOT 4, EXCEPT THE WEST 154 FEET
THEREOF, AND EXCEPT THE EAST 30 FEET FOR STREET IN
DEWGEN - KLEMENT ADDITION, SEDGWICK COUNTY, KANSAS.

in the City of Wichita; and which is presently zoned AA.

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.

Garyl W. Turley
Applicant

Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals 11:30 (a.m. - p.m.), June 26, 1978 19____ together with appropriate fee of \$50.00.

5248
W. side of Gordon Ave.
T9-402 in an area between
13th and 11th streets

J. Lynn Shirley
Signed

VARIANCES

The board may authorize in specific cases a variance from the specific terms of Title 28 which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of Title 28 will, in an individual case, result in unnecessary hardship, and provided that the spirit of Title 28 shall be observed, public safety and welfare secured and substantial justice done. Such variance shall not permit any use not permitted by Title 28 (zoning ordinance) in such zoning district. A request for a variance may be granted upon a finding by the board that all of the following conditions have been met:

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

JACK KARST 1319 N. GORDON 67203

GUY HIXON 1305 N. GORDON 67203

page 1

3. variance requested is for the 6 foot side yard setback which includes the 3 foot eaves, which because of the improper setback extends over the 2 foot allowable extension into the side yard.

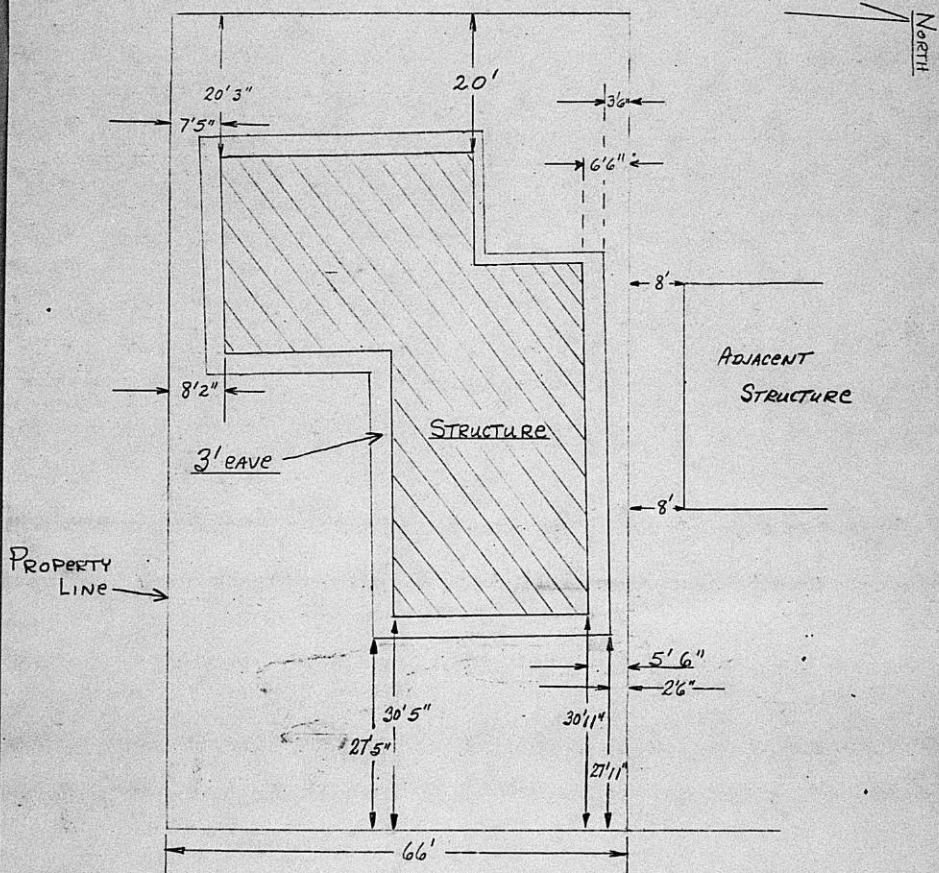
1. A variance is requested for the property I own and am building a house on, at 1313 N. Gordon. I sub-contracted the foundations and basement construction. After proper city inspection, the concrete was poured and the carpenters came to put up the house. The framing was completed and properly inspected. At this point it became apparent that the house appeared to be sitting crooked on the lot, instead of straight as it was supposed to. The attached sketch shows the location. It was not my intent to have this structure located in contradiction to the building codes of the City.

2. The granting of a permit should not adversely affect the rights of the adjacent property owner. The adjacent house is 8 feet from the property line which makes the distance between the two structures over 14 feet.

3. Strict application of the provisions of Title 28 would cause me an extreme financial hardship. There is no way that I can imagine being able to pay for moving this structure. My finances are totally tied up with building this house in its present state.

4. I do not believe that the variance desired will adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare in any way. The two structures will be over 14 feet apart which complies with the code for health and safety. A new house in a neighborhood always seems to enhance the value of the existing houses on the block. It is my desire to finish the house and establish residence and become a member of the neighborhood.

5. Granting the variance should not be opposed to the general spirit and intent of Title 28 which is in general to provide a guideline for building safe and sturdy structures that will be safe for occupancy and shall also be free from defects and substandard methods of construction. This structure will conform to all of the requirements of the code except for the location of the structure for which variance is requested.



1313 N. GORDON

OWNERSHIP LIST

Lot	Addition	Property Owner
lot 1	De Neen-Klement	✓ Richard S. Darge 2723 W. 14th 67203
lot 2	same	✓ D. I. De Neen Mary W. De Neen 1316 N. St. Paul 67203
lot 3 except west 144' and except east 30'	same	✓ Jack A. Karst Linda K. Karst 1319 N. Gordon 67203
the west 144' of lot 3	same	✓ Floyd R. Heflin Ruth Heflin 1312 N. St. Paul 67203
lot 4 except west 154' and except east 30' for street	same	✓ Garyl Turley 550 W. Central 67203
west 154' of lot 4	same	✗ Selso Perez <i>not in phone book</i> Diane D. Perez <i>SD</i> address unknown <i>not in book</i>
lot 5, except east 146'	same	✓ Glenna H. Coulter Barbara Jean Norton Darline Gay Overstake Aldine M. Johnson 1304 N. St. Paul 67203
Beg on south lot line of lot 6 152.2' east of SW cor of sd lot th NLY to a point on North lot line 154.13' east of NW cor sd lot, thence east along north lot line 115.87' to a point 30' west of NE cor sd lot, thence south parallel to east lot line a distance of 66', thence west along south lot line 117.8' to point of beginning	same	✓ Robert Navarro Adeline E. Navarro 3019 Columbine 67204
lot 6 except above described tract	same	✓ Everett Parrish Josephine Parrish 1300 N. St. Paul 67203
lot 1	Merle Johnson	✓ Guy M. Hixon Sylvia J. Hixon 1305 N. Gordon 67203
lots 1 & 2	Harold Johnson	✓ Harold E. Johnson Orle Johnson Aldine M. Johnson 1309 N. Edwards 67203

Lot	Addition	Property Owner
Beginning on North line of lot 1, 152.2' east of NW corner of sd lot, thence east 117.8' to point 30' west of NE corner of lot, thence South parallel to east lot line 75', thence west along the south lot line 120', thence Nly to pob	Orie Johnson's	Robert Navarro Adeline E. Navarro 3019 Columbine 67204
lot 1 except above described tract	same	Robert A. Schroeder Jacqueline Voth Schroeder 1807 Woodland Ave. 67203
the west 165' of lot 16	same	David M. McCord Wanda L. McCord 1226 N. Gordon 67203
lot 16 except west 165' and 5' tract adj on north in NE $\frac{1}{4}$	same	Virgil P. Runyon A. June Runyon address unknown
East $\frac{1}{2}$ lot 6	Orie Johnson's 2nd	Harold E. Johnson Aldine M. Johnson 1301 N. Edwards 67203
West $\frac{1}{2}$ lot 6	same	same
West $\frac{1}{2}$ lot 7 except west 30' for street	same	same
East 135' lot 7	same	same
Beg 247' South of NW corner of NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 13-27-1E thence East 257', thence South 83', thence West 257', thence North 83' to beginning		Louis D. Covington Charlotte Covington 1320 N. St. Paul 67203

We hereby certify the foregoing to be a true and correct list of the property owners of a 200 foot radius of lot 4, except the west 154 feet thereof and except the east 30 feet for street in De Neen-Klement Addition, Sedgwick County, Kansas, as shown by the last deeds of record on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 23rd day of June, 1978 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

By

Mary Gable
Vice President

Order No. 265906

jc

FORM 223-021

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Pibg	Exam Fees	Sewer	Elev.
Signs	Plan	Cement	M.S.P.

DESCRIPTION	AMOUNT
524 City	

NAME _____
ADDRESS _____
FUND 110-21-002 DUE DATE 1-1-32
COMMENTS 110-21-002
DATE 1-1-32 BY E. L. Tucker