



Wichita-Sedgwick County Metropolitan Area Planning Department

April 4, 2006

Benjamin B. / Diane M. Berheimer
505 Sunset
Colwich KS 67030

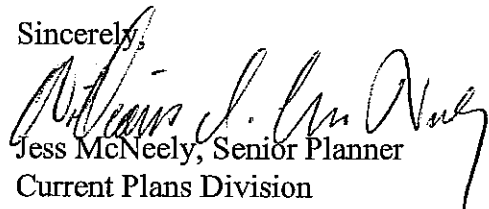
RE: BZA2006-00010 – Sedgwick County variance request to reduce setback along a major roadway from 85 feet to 79 feet. The building is 79.66 feet at the closest point to the centerline of the roadway. Generally located north of 37th Street North and 3/4 mile west of 247th Street.

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the County Board of Zoning Appeals on **April 4, 2006**. This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,


Jess McNeely, Senior Planner
Current Plans Division

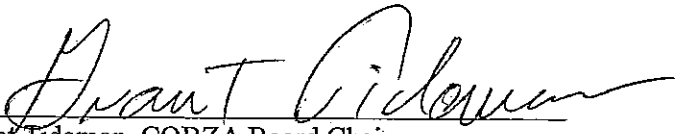
JMC/yja

Cc: Kenneth Weninger, 4949 N 274th St W. Andale, KS 67001
Tom Winters, BOCC, District III, Mail Stop County Suite 320
Bob Parnacott, County Law Dept., Mail Stop, County Suite 359
Glen Wiltse, County Code Enforcement, 1144 S. Seneca, Wichita, KS 67213
Sherman Township, Larry Reichenberger, 5000 N 295th St West, Mount Hope KS 67108

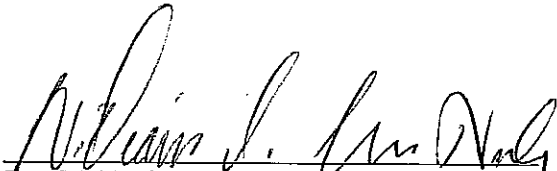
setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.

3. The applicant shall obtain all permits and approvals necessary to construct the improvement as if the barn was not constructed.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 5th DAY of JULY, 2005.


Grant Tideman, COBZA Board Chairman

ATTEST:


Jess McNeely, BZA Secretary

BZA RESOLUTION NO. 2006-00010

WHEREAS, Benjamin and Diane Berkheimer (Owners/Applicants); pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, requests variance to reduce the front building setback for a section line road from 85 feet to 79 feet 8 inches.

Tract A:

That part of the South half of the Southwest Quarter of Section 27, Township 26 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southeast Corner of said Southwest Quarter; thence North 0 degrees 16'22" West on an assumed bearing along the East line of said Southwest Quarter, 1303.97 feet to the Northeast corner of the South half of said Southwest Quarter; thence South 89 degrees 39'40" West along the North line of said South half, 516.67 feet; thence South 0 degrees 16'22" East parallel to the East line of said Southwest Quarter, 299.58 feet; thence South 89 degrees 29'19" West, 196.34 feet; thence South 0 degrees 16'22" East parallel to the East line of the Southwest Quarter, 1005.96 feet to the South line of said Southwest Quarter; thence North 89 degrees 29'17" East, 713 feet to the point of beginning.

Tract B:

The East half of the South half of the Southwest Quarter of Section 27, Township 26 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT Beginning at the Southeast Corner of said Southwest Quarter; thence North 0 degrees 16'22" West on an assumed bearing along the East line of said Southwest Quarter, 1303.97 feet to the Northeast corner of the South half of said South west Quarter; thence South 89 degrees 39'40" West along the North line of said South half, 516.67 feet; thence South 0 degrees 16'22" East parallel to the East line of said Southwest Quarter, 299.58 feet; thence South 89 degrees 29'19" West, 196.34 feet; thence South 0 degrees 16'22" East parallel to the East line of the Southwest Quarter, 1005.96 feet to the South line of said Southwest Quarter; thence North 89 degrees 29'17" East, 713 feet to the point of beginning. Generally located North of 37th Street North and 3/4 mile west of 247th Street.

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

WHEREAS, the Sedgwick County Board of Zoning Appeals did, at the meeting of July 5, 2005, consider said application; and

WHEREAS, the Sedgwick County Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759 *et. seq.*; and

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the variance is unique in that the property owner attempted to determine the correct setback by calling staff but somehow ended up establishing the building in an improper location.

WHEREAS, the Sedgwick County 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, inasmuch as the adjacent properties are all very large tracts and used for agricultural purposes.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute an unnecessary hardship upon the property owners represented in the application inasmuch as requiring the applicant to comply with the setback requirement will require the building to be dismantled and rebuilt.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the variance desired would not adversely affect the public interest, inasmuch as the county typically would only need 60 -feet of half street right of way to accommodate a typical section line road. Approval of this request would leave nearly 80 feet of half-street right-of-way.

WHEREAS, the Sedgwick County Board of Zoning Appeals has found that the granting of the variance desired would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the setback requirements is to maintain sufficient separation between structures to maintain fire safety and to provide for the circulation of light, air and traffic, and the requested variance does not negatively impact this intent.

WHEREAS, each of the five conditions required by Kansas Statutes Annotated 12-759 *et. seq.*, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Sedgwick County Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, variance be granted to reduce the front building setback for a section line road from 85 feet to 79 feet 8 inches on property zoned "RR" Rural Residential legally described as follows:

Tract A:

That part of the South half of the Southwest Quarter of Section 27, Township 26 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southeast Corner of said Southwest Quarter; thence North 0 degrees 16'22" West on an assumed bearing along the East line of said Southwest Quarter, 1303.97 feet to the Northeast corner of the South half of said Southwest Quarter; thence South 89 degrees 39'40" West along the North line of said South half, 516.67 feet; thence South 0 degrees 16'22" East parallel to the East line of said Southwest Quarter, 299.58 feet; thence South 89 degrees 29'19" West, 196.34 feet; thence South 0 degrees 16'22" East parallel to the East line of the Southwest Quarter, 1005.96 feet to the South line of said Southwest Quarter; thence North 89 degrees 29'17" East, 713 feet to the point of beginning.

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The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the 81-foot length of the 81 by 41 pole barn as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the

2. The setback reduction shall apply only to the 81-foot length of the 81 by 41 pole barn as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits and approvals necessary to construct the improvement as if the barn was not constructed.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

SECRETARY'S REPORT

CASE NUMBER: BZA2006-00010

APPLICANT/AGENT: Benjamin and Diane Berkheimer (Applicants/Owner)

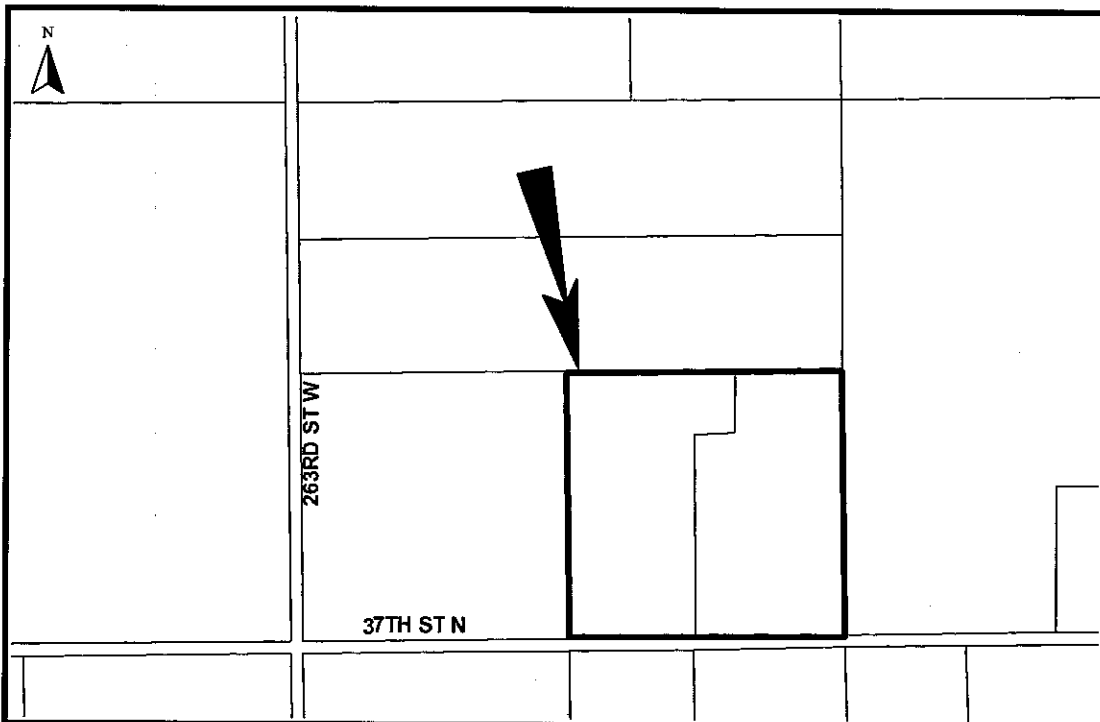
REQUEST: Variance to reduce the front building setback for a section line road from 85 feet to 79 feet 8 inches.

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 40 acres

LOCATION: North of 37th Street North and .75-mile west of 247th Street West

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Kansas Statutes Annotated 12-759 *et. seq.* The Board may grant the request when all five conditions, as required by the statutes, are found to exist.



BACKGROUND: Article III-Sec.III-E.e.(3) of the *Unified Zoning Code* establishes an 85-foot building setback from all section line roads located in the unincorporated area of Sedgwick County, irrespective of the minimum setbacks established by individual zoning districts. The applicant proposes to reduce the required 85-foot setback from a section line road to 79 feet 8 inches feet order to remove any front setback nonconformity associated with an existing pole barn located north of 37th Street North and $\frac{3}{4}$ mile west of 247th Street West. A pole barn has been constructed within the 85-foot setback, encroaching 5 feet 4 inches, resulting in a setback of 79 feet 8 inches.

According to the applicant (see attached written justification), prior to construction, he contacted Sedgwick County staff that allegedly advised him the setback was only 65 feet, instead of 85 feet. The building that is the subject of this request was then sited so as to comply with the 65-foot setback back. County staff does not recall talking with the applicant prior to construction. The setback inaccuracy might have been caught if the applicant's contractor had applied for a building permit or had called for building inspections, but he did not. So the building was completed with the setback encroachment.

Solutions available to the applicant include this variance or removal of the encroaching portion of the building. At this point, the applicant has chosen to apply for the variance rather than removing a portion of the building. The applicant's justification letter indicates that the building is constructed in such a fashion that removal of a portion of the building is not possible without having to rebuild the entire building.

The application site is 40 acres of farm ground located in an area where agricultural activities are the dominant land use. No other buildings exist on the application area. Surrounding ownerships are in large tracts, and virtually all of the homes in the vicinity are farmsteads. The site is not located within any city's anticipated urban service area, nor within any city's projected growth area. The property is zoned RR Rural Residential and would have a 20-foot front setback, absent the 85-foot section line road rule.

37th Street at this point has a 30-foot half-street right-of-way. There are not any improvements scheduled for 37th Street by the *Sedgwick County Capital Improvement Program 2006-2010*. The *Functional Classification Map* depicts this segment of 37th Street as a minor rural collector. *Sedgwick County Subdivision Regulations* require a 60-foot half-street right-of-way. The proposed setback would accommodate that standard.

ADJACENT ZONING AND LAND USE:

NORTH "RR" Rural Residential; Farm ground owned by the applicant
SOUTH "RR" Rural Residential; Farm ground

EAST "RR" Rural Residential; Farm ground owned by the applicant
WEST "RR" Rural Residential; Farm ground

UNIQUENESS: It is the opinion of staff that this property is not unique inasmuch as the property is physically similar to property adjoining and abutting it in size, use and topography; however the situation is somewhat unique in that the property owner states that he attempted to determine the correct setback by calling staff but somehow ended up establishing the building in an improper location. County staff indicates they do not remember talking with the applicant. To compound the initial error, the applicant's contractor failed to obtain a building permit for the nonconforming building or to have it inspected. Because of the source of the initial error cannot be fully ascertained, it resulted in the construction of nonconforming improvements.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the adjacent properties are all very large tracts and used for agricultural purposes. It is unlikely the encroachment would even be noticed by any of the adjoining property owners.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the setback requirement will require the building to be dismantled and rebuilt.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the county typically would only need 60-feet of half street right of way to accommodate a typical section line road. Approval of this request would leave nearly 80 feet of half-street right-of-way.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the setback requirements is to maintain sufficient separation between structures to maintain fire safety and to provide for the circulation of light, air and traffic, and the requested variance does not negatively impact this intent.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the setback from 85 feet to 79 feet eight inches be **GRANTED**, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.