

LAWRENCE BOARD OF ZONING APPEALS

AGENDA

APRIL 7, 2016 – 6:30 P.M., CITY COMMISSION MEETING ROOM, FIRST FLOOR OF CITY HALL AT SIXTH AND MASSACHUSETTS STREET, LAWRENCE, KANSAS

CALL THE MEETING TO ORDER

TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT

ITEM NO. 1 COMMUNICATIONS

Acknowledge communications to come before the Board.

Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration.

Announce any agenda items that will be deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the February 24, 2016 meeting of the Board, which was rescheduled from the original meeting date of February 4th.

BEGIN PUBLIC HEARING:

**ITEM NO. 3 BUILDING OR SETBACK LINES ON MAJOR STREETS OR HIGHWAYS
VARIANCE FOR A NEW DENTAL OFFICE DEVELOPMENT; 4111 WEST
6TH STREET [DRG]**

B-16-00081: A request for a variance as provided in Sections 20-814(c) and 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is a variance from the required 50 feet building and parking setback line established along certain major streets or highways, which are found in Section 20-814(a)(2), "Building or Setback Lines on Major Streets or Highways" in the Development Code. The applicant is seeking a variance to reduce the 50 feet setback line to a minimum of 31 feet for parking only; a proposed new building structure will comply with the minimum 50 feet setback. The property is located at 4111 West 6th Street. Submitted by Joy Rhea with Paul Werner Architects, for Freestate Dental Building, LLC, the property owner of record.

ITEM NO. 4 MISCELLANEOUS

a) Consider any other business to come before the Board.

LAWRENCE BOARD OF ZONING APPEALS

Meeting Minutes of February 24, 2016 (Rescheduled from February 4th) – 6:30 p.m.

Members present: Fertig, Gardner, Holley, Kimzey, Wilbur

Staff present: Cargill, Crick, Guntert

ITEM NO. 1 COMMUNICATIONS

Guntert said all communications received were included in the online packet.

Wilbur abstained from Item 3.

There were no agenda items deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the January 7, 2016 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the minutes from the January 7, 2016 meeting.

Motion carried 4-0-1.

BEGIN PUBLIC HEARING:

ITEM NO. 3 OFF-STREET PARKING SPACE VARIANCE FOR RENOVATION OF AN EXISTING DUPLEX RESIDENTIAL USE; 1030 OHIO STREET [DRG]

B-16-00005: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is a variance from the required number of off-street parking stalls calculated using the standards found in Section 20-902, "Off-Street Parking Schedule A" in the Development Code, which requires multi-dwelling structures to provide one off-street parking stall per bedroom for a duplex dwelling structure. The applicant is seeking a variance to reduce the number of parking stalls from the code required six (6) spaces to four (4) parking spaces, which will be accessed from the alley. The property is located at 1030 Ohio Street. Submitted by Abel Leon, President, Kolibri Ventures LLC, the property owner of record.

STAFF PRESENTATION

Guntert presented the item.

Fertig understands the property to be historic, and asked what makes it unique.

Guntert explained that the property is currently a duplex with each dwelling unit being two bedrooms. There were two parking spaces off the alley, which is two parking spaces short of the code requirement. The property is narrower than an Original Townsite lot - 44 feet instead of 50 feet. If the lot was the typical 50 feet width it would have allowed an additional parking space. These conditions were in existence when the property was purchased and not created by the applicant.

Fertig asked how long the property had been a duplex with four bedrooms and two parking spaces.

Guntert said he did not know.

Holley asked if the one-to-one ratio for parking accounts for guests.

Guntert said the parking standards address guest parking but only when there were 10 or more dwelling units on the property.

APPLICANT PRESENTATION

Mr. Brett Groene thanked staff and neighbors for their support of the project, noting that prior concerns by neighbors have been alleviated. He said it's a historic house that is crumbling and needs attention. As proposed, the project will restore its historical integrity. He could not recall the year the property became a duplex.

Mr. Abel Leon, property owner, said the previous owner took ownership in the early 90's; it was a duplex at that time. He added that they really only have one parking spot, due to the condition of the detached garage, which will be removed as part of the project improvements. He said the neighbor on the north would also gain a parking space as well because of the grading work they would be doing on the back side of the property adjacent to the alley.

Gardner asked the applicant to indicate on the map where the neighbor will gain a parking space.

Leon explained the situation and indicated the space on the map.

Holley suggested they could make the basement space a studio, and enter a shared use agreement for the extra space the neighbor will gain.

Groene said this is their third variation on the original project, but they have not explored that idea.

Fertig asked if there is currently one off-street parking space for that property.

Groene said yes.

PUBLIC COMMENT

Ms. Marci Francisco, 1101 Ohio Street, said many property owners in the neighborhood would like to increase the number of bedrooms they have and many properties need rehabilitation. Those factors did not make this project unique. She felt this is a self-inflicted hardship, partially due to the City's stacked parking determination for duplexes. She briefly discussed stacked parking. She suggested the applicant create four spacious one-bedroom apartments to decrease the amount of needed parking. She felt any new development in the neighborhood must adhere to the code required parking standards and appreciates the applicant's efforts to work with the neighborhood and preserve the historic structure.

Mr. Kyle Thompson read aloud Ms. Marcia Epstein's communication submitted and included in the online packet earlier today. Personally, he would like to see applicant be allowed to move forward with the project.

Mr. Jon Josserand brought up the Oread Design Guidelines, which are not officially adopted at this time. He said granting the variance will harm those who have relied on the parking regulations and felt it would set a precedent. He said it was not the purpose of this Board to remedy economic situations. He feels this is not a unique situation, and recommended the Board deny the project request.

Ms. Candice Davis said she's lived in the neighborhood for 18 years and worked hard to stabilize it. She said parking impacts density. They were working hard on the neighborhood plan with design guidelines that would be implemented as conservation overlay districts to combat the stacked parking problem. She doesn't feel the project is appropriate for this property due to the narrow lot and steep grade, which will create more water runoff issues.

Leon read through minutes from the most recent Historic Resources Commission (HRC) meeting, specifically Ms. Marcia Epstein's comments regarding this project. The minutes stated that she was in favor of a variance for a few parking spaces, which was an important part of their decision and current proposal. He said they have staff and HRC support, in addition to the three neighbors who wrote letters in support. He read the letter of support sent by Mr. Arthur Neis.

ACTION TAKEN

Motioned by Gardner, seconded by Kimzey, to close public comment for the item.

Unanimously approved 5-0.

BOARD DISCUSSION

Fertig said the project is tricky because Oread parking is a struggle. She said there's currently a deficit of two parking spaces which is forcing tenants to park on the street. The HRC approved the project for two extra bedrooms, but she is struggling with the uniqueness factor.

Holley said the HRC doesn't address the parking, but it sounds like the developer is doing what he should by working with the neighborhood. He is also stalled on the uniqueness.

Fertig said it's a 44 feet wide lot, which is unique.

Holley said it's not unique to this neighborhood.

Fertig said other parking arrangements have been shot down.

Holley acknowledged the hard work the applicant has put into the project, but the Board is still tasked with finding a uniqueness factor that he can't find.

Kimzey asked if it's unique because the proposed project doesn't make the parking problem worse than it already is.

Fertig did not recall any similar variance requests like this one.

Gardner said the property is unique based on the lot width and the decisions made by the HRC. He has no problem approving the variance since it will add to the available parking and not worsen the parking deficit.

Fertig said that would speak to whether it would not adversely affect the adjacent property owners or the public health and safety.

Holley said if he was the owner he would have every interest in maximizing the parking, but doesn't know if that makes this unique.

Fertig said the history of the project is discussed in the staff report, but there is no mention as to what is unique about the property.

Kimzey was not sure the project presents anything unique; it had to be related to the property.

Fertig believed the request met all the criteria for a variance except the uniqueness factor.

Holley agreed, but was also unsure if they met the hardship criteria.

Fertig loved everything about the project but cannot get past the lack of uniqueness to meet that condition.

Kimzey agreed and feels satisfied the request meets the other four criteria.

ACTION TAKEN

Motioned by Holley, seconded by Fertig, to deny the variance for failure to meet the condition of uniqueness.

Motion carried 3-1-1.

**ITEM NO. 4 SIDE YARD BUILDING SETBACK VARIANCE FOR NEW ROOM
ADDITION ON AN EXISTING RESIDENTIAL DWELLING; 5750 YANKEE
TANK COURT [DRG]**

B-16-00006: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance to reduce the 20 feet side yard building setback required in Section 20-601(a) of the City Code to a minimum of 4.6 feet, which will allow construction of a 16 feet by 22 feet kitchen addition on the northeast corner of the residential dwelling. The property is located at 5750 Yankee Tank Court. Submitted by Monte L. and Molly C. Soukup, the property owners of record.

STAFF PRESENTATION

Guntert presented the item.

Wilbur asked if the hardship is incurred if the kitchen must be built in a different location.

Guntert said relocating it would require a total revamp of the home's floor plan.

APPLICANT PRESENTATION

Mr. Monte Soukup, property owner, said the house was previously a rental property and not well maintained. He explained why the proposed kitchen placement is the best solution.

Gardner asked if they would have been able to build the kitchen before the property was annexed.

Guntert explained that it would not have been possible as proposed.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Wilbur, seconded by Kimzey, to close public comment for the item.

Unanimously approved 5-0.

BOARD DISCUSSION

Wilbur believes it's a reasonable request that meets the criteria for a variance.

Kimzey doesn't see an issue since it was originally built in a different zoning classification.

Fertig agreed and said she doesn't see any negative impact on the neighbors.

ACTION TAKEN

Motioned by Wilbur, seconded by Gardner, to approve the variance as proposed in the staff report.

Unanimously approved 5-0.

Wilbur excused himself from the rest of the meeting.

ITEM NO. 5 FRONT AND EXTERIOR SIDE YARD BUILDING SETBACK VARIANCES FOR AN EXISTING FRONT PORCH AND A NEW ROOM ADDITION ON A RESIDENTIAL DWELLING; 845 ILLINOIS STREET [JSC]

B-16-00008: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The requests are for a variance to reduce the 20 feet front yard and exterior side yard building setbacks required in Section 20-601(a) of the City Code, to a minimum of 15.87 feet and 11 feet, respectively. The variances are requested for an existing front porch and a proposed 10 feet x 24 feet addition on the east side of the residential dwelling. The property is located at 845 Illinois Street. Submitted by Mike Logan, property owner of record.

STAFF PRESENTATION

Crick presented the item.

APPLICANT PRESENTATION

Mr. Mike Logan, property owner, described the current porch situation and explained that he would like to square things off and open up that area of the home.

PUBLIC COMMENT

Mr. Tony Backus said the house has improved over the years and he believes Mike has done some good things with it. He felt it needs an addition to make it a modern home and supports the variance.

ACTION TAKEN

Motioned by Gardner, seconded by Kimzey, to close public comment for the item.

Unanimously approved 5-0.

BOARD DISCUSSION

Holley said it's a great addition to the neighborhood; he fully supports the variance and believed it meets the five conditions.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to approve the variance based on the staff report.

Unanimously approved 5-0.

ITEM NO. 6 FRONT, REAR, SIDE AND EXTERIOR SIDE YARD BUILDING SETBACK VARIANCES, AND OFF-STREET PARKING SPACE VARIANCE FOR A NEW RESIDENTIAL DWELLING; 945 MISSOURI STREET [DRG]

B-16-00007: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is for variances from the code required 25 feet front yard, 25 feet exterior side yard, 20 feet rear yard, and 5 feet interior side yard building setbacks required in Section 20-601(a) of the City Code to a 5 feet front yard, 11 feet exterior side yard, 6 feet rear yard, and 3 feet interior side yard setbacks for a new single-family residential dwelling which is proposed on a nonconforming lot. The second request is a variance from the required number of off-street parking stalls calculated using the standards found in Section 20-902, "Off-Street Parking Schedule A" in the Development Code, which requires a detached dwelling to provide a minimum of two (2) off-street parking stalls. The applicant proposes to provide the parking spaces in the public right-of-way adjacent to the property with a use of right of way agreement with the city. The property is located at 945 Missouri Street. Submitted by Paul Werner, Paul Werner Architects, representing the property owner of record, Geneva L. Swartzel Trustee.

STAFF PRESENTATION

Guntert presented the item.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said it's rare that someone takes a triplex and converts it back to a single-family home. He explained details of the project, and mentioned that the right-of-way agreement is currently being reviewed by city legal staff.

Holley asked how many parking spaces are included in the right-of-way agreement.

Werner explained that the agreement doesn't specify the number, but the site plan shows four.

Fertig asked if that plan is incorporated into the right-of-way agreement.

Werner said it's an exhibit to the right-of-way-agreement.

PUBLIC COMMENT

Mr. Jon Josserand thanked the applicant. He said he's supportive of their application. His only suggestion is to make sure there were four parking spaces, as shown on the site plan.

ACTION TAKEN

Motioned by Gardner, seconded by Holley, to close public comment for the item.

Unanimously approved 4-0.

BOARD DISCUSSION

Holley said it seems like a solid project.

Fertig said it's in desperate need of repair and there has clearly been some type of parking arrangement. She suggested they find parking by some other means as a condition of approval, if they can't come to an agreement with the City. She supports the applicant's recommendation in that regard.

Gardner asked if addressing parking is stepping beyond their purview.

Fertig asked if that recommendation is based on the fact that the property is currently out of compliance with parking requirements.

Guntert said parking should be provided on the same property as the development; in this case, it's off-premise in the city street right-of-way.

Fertig asked if approval of the variance might inadvertently approve the current parking situation.

Guntert said they need to provide it on their property.

Werner said he likes the idea that the variance acknowledges the parking agreement, that staff supports it, and that there may be other ways of providing parking.

ACTION TAKEN

Motioned by Fertig, seconded by Gardner, to approve with conditions as recommended in the staff report and based on Board discussion.

Unanimously approved 4-0

ITEM NO. 7 ACCESSORY STRUCTURE SETBACK VARIANCE FROM AN INTERIOR LOT LINE; 607 ELM STREET [DRG]

B-16-00009: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance to reduce the 5 feet accessory building setback from an interior lot line required in Section 20-533(3), "General Standards for Accessory Structures, Density and Dimensional Standards," in the City Code, to a minimum of 1.5 feet from the rear lot line. The property is located at 607 Elm Street. Submitted by Tony Backus, Backus Construction Company, representing the property owner of record, Matthew F. Gilhousen.

STAFF PRESENTATION

Guntert presented the item.

Gardner asked about the structure to the west.

Guntert said it is a detached garage on the property next door which uses N. 6th Street for its driveway access.

Gardner asked about the setback requirement for it.

Guntert said it should have a 5 feet setback from the property line, but it does not appear to meet that setback standard based upon the City's GIS mapping layers. Another accessory structure further to the east also appears to be located closer to the rear property line.

Fertig asked if her understanding of the situation is accurate.

Guntert said the building permits were issued based upon code compliant drawings showing the accessory garage with a 5 feet setback from the rear property line. A separate building permit was issued for the new dwelling which is now finished. The lean-to addition on the accessory garage was not included in the garage permit; and a decision was made between the owner and contractor to move the garage closer to the rear property line. The project is

completed but the City is withholding a final Certificate of Occupancy until the accessory structure building setback issue is resolved.

Fertig asked (since staff is recommending denial) if the solution is to demolish the structure and build it back with the correct setback.

Guntert said the building could be lifted off its foundation and moved further away from the rear property line; or, they could remove some of the building to comply with the minimum 5 feet setback. Staff could not find how this variance was necessary because of conditions unique to the property; it was totally the result of actions of the property owner or applicant. He agreed that granting the variance will probably not affect the surrounding property owners in any way.

Holley said he doesn't see how it meets the first condition. He asked if the variance can be tied to the structure and not the property, since it was obviously an honest mistake.

Guntert said they could craft a condition that the variance would expire with the demolition/destruction of the structure.

Gardner asked if it would be possible for the properties to the north to build closer to the rear property line if there were no easements along the back of those lots.

Guntert said the zoning to the north is RSO, which has a 25 feet rear yard building setback. The two platted easements totaled 25 feet, so a principal structure could not be built any closer. Accessory structures should not be located in utility easements, but it happens sometimes because they don't always require a building permit if the size of the structure does not exceed 200 square feet.

APPLICANT PRESENTATION

Mr. Tony Backus explained the variance request and how the building mistake was made. He feels the structure meets the spirit of the code, and he explained the unique features in the home.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Kimzey, seconded by Gardner, to close public comment for the item.

Unanimously approved 4-0.

BOARD DISCUSSION

Gardner said it originally looked like an intentional mistake, but he no longer feels that way.

Fertig agreed and did not want to blame the property owner for a builder's mistake.

Gardner asked how they could approve it without setting a precedent.

Fertig said it sounds like an innocent mistake by the builder, and a denial would result in a severe consequence. She said they could approve and make the variance applicable only to the existing structure. If that structure is removed, any new structure would have to follow the current zoning setback rules in effect at that time.

Kimzey said he also agrees but is concerned about setting a precedent.

Fertig said it would be a different situation if this was an undeveloped property. She supported the variance.

Gardner & Holley agreed.

ACTION TAKEN

Motioned by Fertig, seconded by Holley, to approve the variance based on a finding that the request met all five criteria for a variance, subject to a condition that the variance only covers the currently existing accessory structure and does not apply to any future additions or new structures that might be built on this property.

Unanimously approved 4-0.

ITEM NO. 8 MISCELLANEOUS

a) There was no other business to come before the Board.

ADJOURN 8:45 pm

**ITEM NO. 3 BUILDING OR SETBACK LINES ON MAJOR STREETS OR HIGHWAYS
VARIANCE FOR A NEW DENTAL OFFICE DEVELOPMENT; 4111 WEST
6TH STREET [DRG]**

B-16-00081: A request for a variance as provided in Sections 20-814(c) and 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is a variance from the required 50 feet building and parking setback line established along certain major streets or highways, which are found in Section 20-814(a)(2), "Building or Setback Lines on Major Streets or Highways" in the Development Code. The applicant is seeking a variance to reduce the 50 feet setback line to a minimum of 31 feet for parking only; a proposed new building structure will comply with the minimum 50 feet setback. The property is located at 4111 West 6th Street. Submitted by Joy Rhea with Paul Werner Architects, for Freestate Dental Building, LLC, the property owner of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

B. REASON FOR REQUEST

Applicant's Request – *"The variance requested is to reduce the 50' setback at 4111 W. 6th Street to 31' for parking only. The 50' building setback would remain in effect. Due to the existing access to the site from the west, the parking configuration for this site has been determined through no fault of the existing owners."*

C. ZONING AND LAND USE

Current Zoning & Land Use:	RMO (Multi-Dwelling Residential - Office) District; residential dwelling and accessory building.
Surrounding Zoning and Land Use:	PCD [Monterey Center] (Planned Commercial Development) District to the north; office uses.
	RS7 (Single-Dwelling Residential) District to the south; residential dwellings.
	RSO (Single-Dwelling Residential – Office) District to the east; offices and residential use.
	RMO District to the west; multi-family residential apartments.

D. ZONING ORDINANCE REQUIREMENTS

Section 20-814, "Building Setbacks, Enforcement, Exceptions," found in Article 8, Subdivision Design & Improvements, in the Land Development Code establishes rules for how far buildings and parking areas must be set back from certain streets that act as major entrances or gateways to the city. A goal of this code section is to create a greenway effect along identified corridors. Subsection (a)(2)(i), "Building or Setback Lines on Major Streets or Highways", is the specific code associated with this variance request.

Subsection (c), "Appeal – Setback", designates any appeal from the setback requirement shall be directed to the Board of Zoning Appeals for hearing. The Board may "modify or vary the building and parking setback line in specific cases in order that *unwarranted hardship, which constitutes a complete deprivation of use as distinguished from merely granting a privilege, may be avoided.* (Emphasis added) In the absence of such a hardship, the intended purpose of the building and parking setback line shall be strictly observed."

All of Section 20-814 follows:

20 - 814 Building Setbacks, Enforcement, Exceptions

(a) Building or Setback Lines On Major Streets or Highways

(1) Purpose

As part of the [Comprehensive Plan](#), the City and County have identified major entrances or gateways to the City and the [Urban Growth Area](#) around it. To enhance the appearance of those gateways, it is the intent of the City and the County to create a greenway effect along the major corridors through those gateways.

(2) Building and parking [Setback Lines](#) are hereby established on certain major [Streets](#) or highways as follows:

(i) West Sixth Street from K10 (South Lawrence Trafficway) to Wakarusa Drive and West Sixth [Street](#) from Monterey Way to Folks Road: a [Setback Line](#) of 50 feet.

(3) Building and parking setback limits on West Sixth Street from Wakarusa Drive to Folks Road shall be based on the approved zoning for each [Tract](#) of land.

(b) Exceptions

(1) In the event that a governmental taking or acquisition for [Right-of-Way](#), [Easement](#) or other governmental use would reduce a setback that previously complied with this Section, that reduction in setback shall not be deemed to constitute a violation of this Section.

(2) Any non-conforming residential building or structure located within the 50 foot building and parking setback, which is damaged by fire, flood, explosion, wind, earthquake, war, riot, or other calamity or Act of God, may be restored or reconstructed provided; said restoration or reconstruction occurs on the original foundation. The building or structure may not be rebuilt to a greater density or intensity than existed before the damage.

(c) Appeal – Setback

Notwithstanding Section 20-813, any appeal of the building and parking [Setback Line](#) established for major [Streets](#) or highways shall be to the Board of Zoning Appeals of the applicable jurisdiction, provided that no appeal shall be required in the instance of the reduction in a setback resulting from a governmental taking or acquisition for [Right-of-Way](#), [Easement](#), or

other governmental use, as provided in Section 20- 814(b) (1). The Board of Zoning Appeals shall have the power to modify or vary the building and parking [Setback Line](#) in specific cases in order that unwarranted hardship, which constitutes a complete deprivation of use as distinguished from merely granting a privilege, may be avoided. In the absence of such a hardship, the intended purpose of the building and parking [Setback Line](#) shall be strictly observed.

(d) Enforcement

No building or occupancy permit shall be issued for any new building within the [Plat](#) approval jurisdiction of the City of Lawrence, or the [Unincorporated Area](#) of Douglas County, which fails to comply with the requirements of Section 20-814.

(e) Interpretation

The provisions of Section 20-814 shall not be interpreted to deprive the [Owner](#) of any existing property or of its use or maintenance for the purpose to which such property is then lawfully devoted.

E. SPECIFIC ANALYSIS

Staff's review of this variance application covers the appeal test outlined in Section 20-814(c) as well as the code standards of Section 20-1309(g)(1) in the Development Code, which lists the five requisite conditions that have to be met for a variance to be approved.

1. The variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zone or district; and are not created by an action or actions of the property owner or applicant.

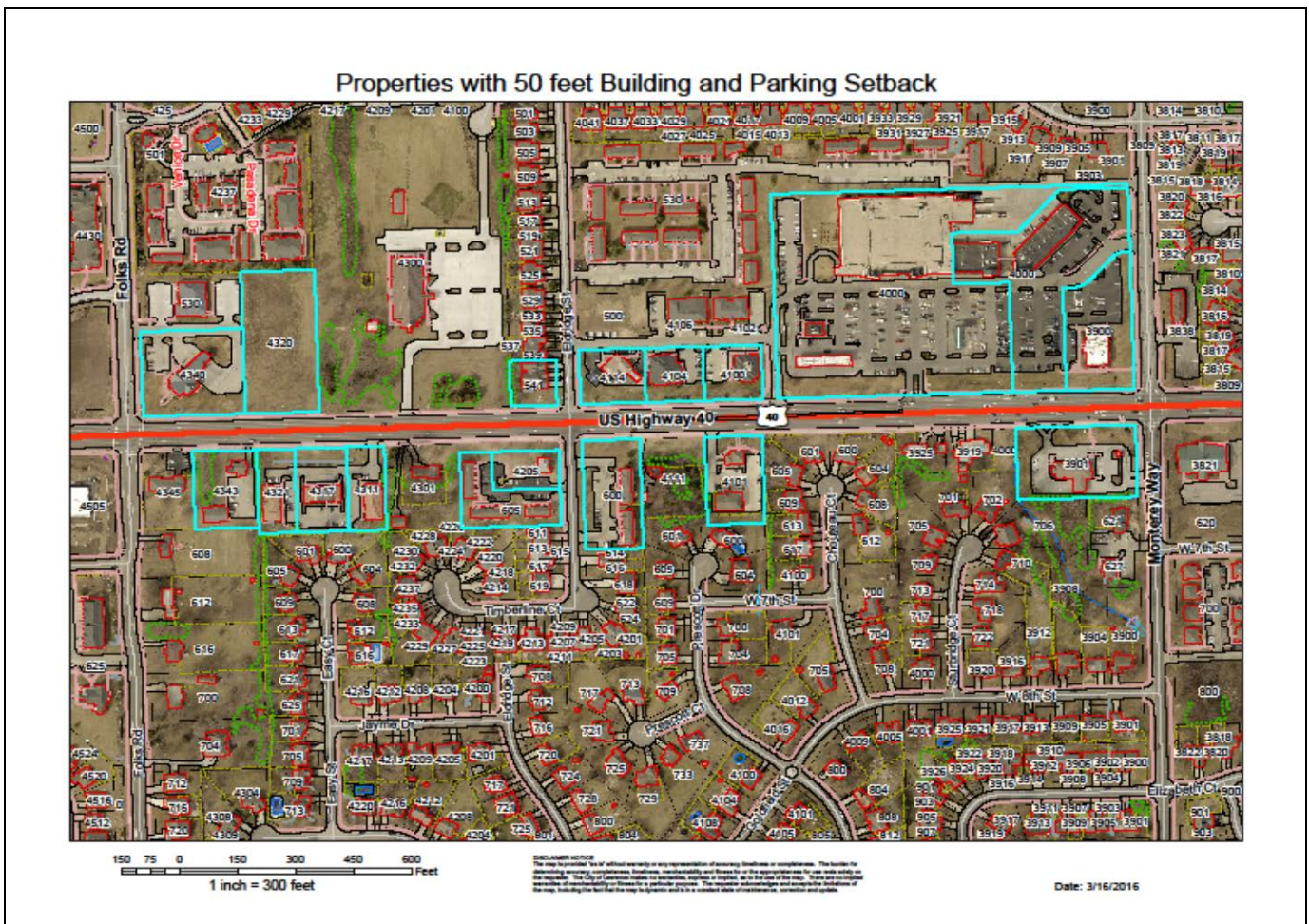
Applicant response: *"The pre-determined parking location by the existing access drive provided to the west has made it necessary to request a variance in order to provide the necessary parking allowed by the Development Code. This was not a circumstance created by actions of the property owner or applicant."*

Building and Parking Setback from Major Street:

The variance request is the result of decisions made by the owner and applicant rather than any extraordinary or unique property conditions that make it impractical to design a code compliant project that meets the required 50 feet building and parking setback from a major street (W. 6th Street). Currently, the property is developed with a single-dwelling residential structure and a small detached garage. The existing structures will be demolished. The applicant plans to redevelop the property with an approximate 11,600 gross square feet dental office building with off-street parking facilities for patients and staff.

The code required 50 feet setback applies to properties having street frontage along both sides of West 6th Street between the intersections of Monterey Way and Folks Road. Staff reviewed the recorded final plats, development plans and approved site plans of properties in this one-half mile street section to see whether there has been any variance from the code required setback since it went into effect in 1990. No other variance applications were found.

The following graphic shows all of the code compliant properties along W. 6th Street between Monterey Way and Folks Road in a cyan color. A majority of the properties are code compliant with the 50 feet building and parking setback; those that do not comply are properties that were developed before this code provision went into effect in 1990.



Finding – No unique property conditions exist that prevent the applicant from complying with the code required 50 feet building and parking setback from a major street. Options are available for the applicant to develop this property without needing a variance from the 50 feet building and parking setback along W. 6th Street. The request is solely the result of actions of the applicant.

2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.

Applicant response: *"Granting the variance would not adversely affect the rights of the adjacent property owners. The property to the east already has a building located in the setback; the property to the west was developed with the existing access drive to the subject site. The residential properties to the south will gain the most benefit from granting the variance because it will allow most of the parking to occur on the subject site at the front of the site instead of closer to the residential property line. The residential property owners expressed concern at the rezoning hearing regarding the destruction of the existing natural vegetative screen between the properties. With that in mind our proposal is to keep development toward the front of the site as much as possible."*

Building and Parking Setback from Major Street:

In staff's opinion granting the requested setback variance, which will allow room to pave a single row of parking stalls on the north side of the 30 feet wide access easement rather than reserving it for greenspace along W. 6th Street, will adversely affect the rights of adjacent property owners or residents. The adjacent properties on the east and west sides of the subject property provided the code required 50 feet building and parking setback on their respective final plats. On the property to the east, the north structure is partially in the 50 feet setback; however it existed when the property was platted. The structure is permitted to remain as a noncomplying structure; all other site improvements observed the 50 feet building and parking setback. In the event this noncomplying structure is damaged, destroyed or demolished, a note on the final plat states that "all new buildings (and or additions) and new parking lot improvements will need to comply with the 50' building and parking setback."

The applicant plans to redevelop this property with a professional dental office use. None of the existing property improvements remain. Essentially, they are starting from scratch and have to design the project to be code compliant with the City's Land Development Code. Other property owners along this major street corridor have been faced with the same code standard and found design options for their projects that did not require a variance.

As part of the development process, the applicant is required to submit a site plan for city review and approval. The property also has to have a subdivision plat approved, which will include the dedication of easements, street right-of-way (if needed), and may include various notes related to the property development. Landscape buffers and screening issues where land use types differ are typically addressed during the site plan review process.

Finding -- Granting the 50 feet building and parking setback variance from the major street right-of-way will have an adverse effect upon the rights of adjacent property owners or residents. It is also inconsistent with the evolving development pattern along this section of the W. 6th Street corridor.

3. That the strict application of the provisions of this chapter for which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

Applicant response: *"Strict application of the 50' setback for buildings and parking would deprive the owner of developing the site within the guidelines set out in Section 20-902, Section 20-1003 and Section 20-1005. Should the 50' setback remain as is the building which is 15% of the site, well under the maximum of 50% allowed in Section 20-601, could not be built because the parking requirements of 20-902 and the interior greenspace of 20-1003 could not be met. In addition, the development would be squeezed in very close to the residential property to the south and the existing vegetative buffer would be removed and the new buffer yard required by Section 20-1005 would not have enough room to be provided. (See Exhibit A)"*

Building and Parking Setback from Major Street:

In staff's opinion, strict adherence to the code required 50 feet building and parking setback from a major street (W. 6th Street) does not represent an "unwarranted hardship" for the property owner as it is defined in Section 20-814(c) of the Land Development Code. The Development Code describes an "unwarranted hardship" to exist when the code requirement "constitutes a complete deprivation of use as distinguished from merely granting a privilege."

Section 20-1701, "General Terms," in the Development Code defines "Unnecessary Hardship" as "The condition resulting from application of these regulations when viewing the property in its environment that is so unreasonable as to become an arbitrary and capricious interference with the basic right of private property ownership, or convincing proof exists that it is impossible to use the property for a conforming use, or sufficient factors exist to constitute a hardship that would in effect deprive the [Owner](#) of their property without compensation. Mere financial loss or the loss of a potential financial advantage does not constitute [Unnecessary Hardship](#)."

Staff believes there are other design options the applicant has for developing their property for the desired purpose that will not require a variance from the Development Code.

Finding -- Strict application of the 50 feet building and parking setback from a major street (W. 6th Street) does not create an unnecessary hardship for the property owner. Strict application of this code standard does not constitute a complete deprivation of the owner's ability to develop and use their property.

4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Applicant response: *"The variance requested would not adversely affect the residents of Lawrence in any way. The variance would allow the quality of living south of this development to remain by keeping the existing natural vegetative buffer in place."*

Building and Parking Setback from Major Street:

This request represents the first variance application of its kind in the 26 year history of this code provision in the one-half mile section of West 6th Street between Monterey Way and Folks Road. Since 1990, when the 50 feet building and parking setback standard was adopted by the City, many of the properties along both sides of the street have been developed in accordance with the code required 50 feet building and parking setback. A few of the existing properties in this road section were developed before the standard was adopted. When those properties are redeveloped in the future, the 50 feet building and parking setback will be required.

An amendment to Section 20-814 in the Subdivision Regulations was proposed in 2006 when the Bauer Farm PCD and PRD development area was presented to the City for approval. The code was altered to require new development on West 6th Street between Wakarusa Drive and Folks Road to follow the building and parking setbacks of the approved zoning on each lot. All other sections of West 6th Street from the intersection of K-10 Highway to Monterey Way were unaffected by this code amendment. The amendment was approved to help facilitate what was presented to the City as a new urbanist development project. It should be noted that the south side of the street was already developed in conformance with the 50 feet building and parking setback when this amendment was proposed and approved by the city.

In staff's opinion, granting the variance may adversely affect the public health, safety, order, convenience, prosperity or general welfare because of the reduced off-street parking setback from the public street right-of-way. It will become more difficult to adhere to the code required 50 feet setback in the future as other properties prepare to redevelop if this request is granted a variance without the existence of an unnecessary hardship on this property.

Finding – Granting the variance may adversely affect the public health, safety, order, convenience, prosperity or general welfare because of the reduced off-street parking setback from the public street right-of-way. It will become more difficult to adhere to the code required 50 feet setback in the future as other properties prepare to redevelop if this request is granted a variance without the existence of an unnecessary hardship on this property.

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.

Applicant response: *“Granting this variance is within the guidelines of the Development Code in order to keep from depriving the owners from developing their property per the guidelines laid out in Section 20-902, 20-1003 and 20-1005. Should the variance be granted the residential owners of the property to the south will not be deprived by the removal of their existing vegetative buffer. (See Exhibit B)”*

Building and Parking Setback from Major Street:

In staff's opinion, granting a variance that reduces the required 50 feet building and parking setback from West 6th Street to a minimum of 31 feet is opposed to the general spirit and intent of the code. The intent and purpose for the extraordinary building and parking setback is designed to enhance the appearance of identified gateways in the city through the creation of “a greenway effect along the major corridors through those gateways.” Over time, the majority of properties in this one-half mile gateway along West 6th Street have been developed in compliance with this setback requirement.

No factual evidence has been presented by the applicant to show why it is not possible for a new development project on this property to be designed and built in conformity with the 50 feet building and parking setback along West 6th Street.

Finding -- Granting a variance that reduces the required 50 feet building and parking setback from West 6th Street to a minimum of 31 feet is opposed to the general spirit and intent of the Land Development Code.

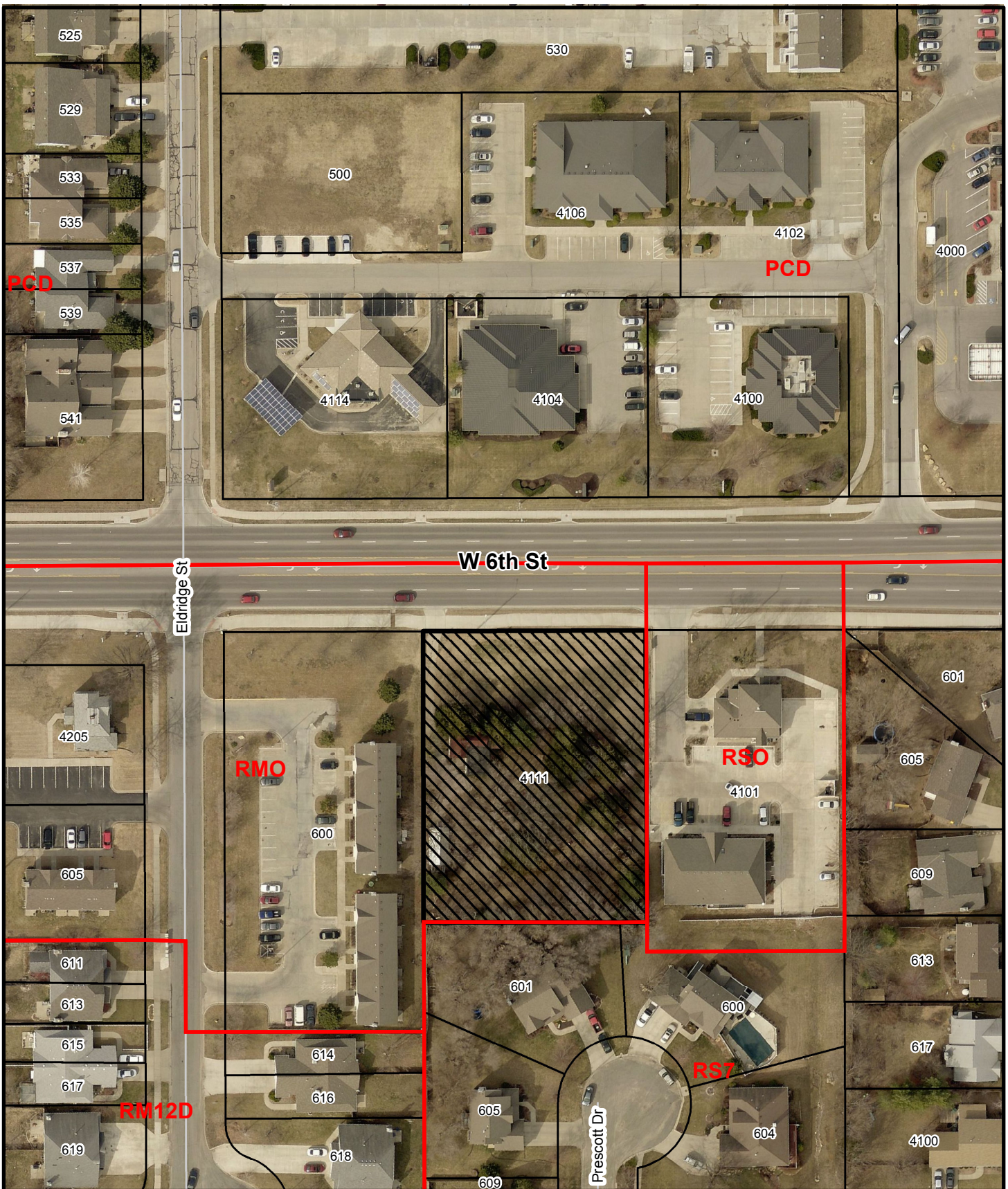
Conclusions:

Building and Parking Setback from Major Street:

Staff's analysis finds the applicant's request does not meet all requisite conditions set forth in Sections 20-814(c) and 20-1309(g)(1) of the Development Code which the Board must find existing to grant a variance.

Recommendation:

Staff recommends denial of the 50 feet building and parking setback variance based upon the findings in the staff report that conclude the applicant's request does not meet the conditions outlined in Sections 20-814(c) and 20-1309(g)(1) needed for variance approval.



B-16-00081: Variance from the Code Required 50 Feet Building or Parking Setbacks on Certain Major Streets or Highways in the City; 4111 West 6th Street

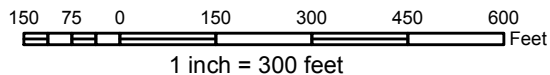
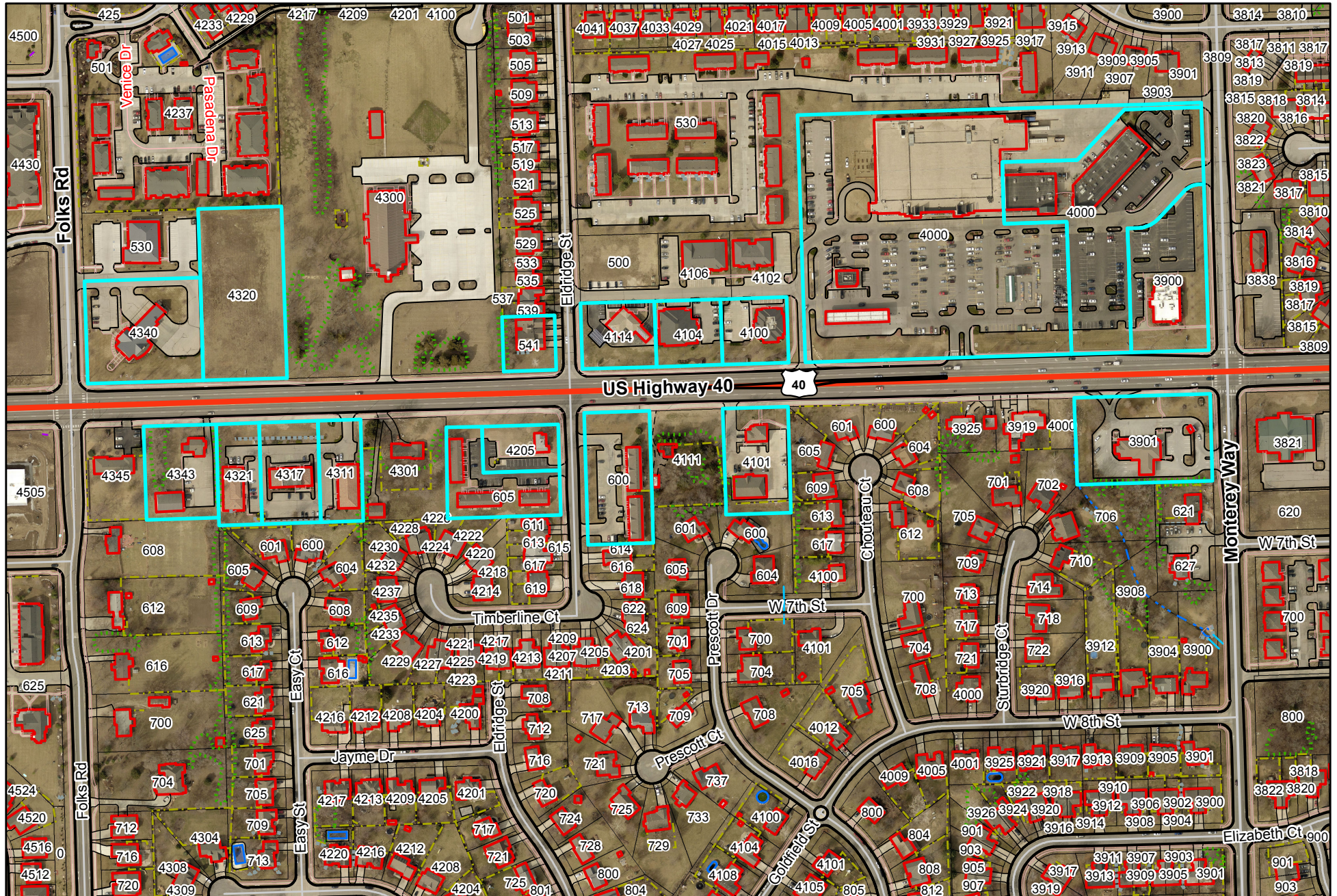
Lawrence Planning & Development Services Dept
March 15, 2016



Subject Property

Scale: 1 Inch = 100 Feet

Properties with 50 feet Building and Parking Setback



DISCLAIMER NOTICE
The map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requester. The City of Lawrence makes no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The requester acknowledges and accepts the limitations of the map, including the fact that the map is dynamic and is in a constant state of maintenance, correction and update.

Date: 3/16/2016



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

Lawrence Douglas County
Metropolitan Planning Office
6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

APPLICATION FOR VARIANCE FROM UNNECESSARY HARDSHIP

OWNER INFORMATION

Name(s) Freestate Dental Building, LLC
Contact Nealy Newkirk
Address 4137 Wimbledon Drive
City Lawrence State Kansas ZIP 66047
Phone (785) 843-2636 Fax (____) _____
E-mail _____ Mobile/Pager (____) _____

APPLICANT/AGENT INFORMATION

Contact Joy Rhea
Company Paul Werner Architects
Address 123 W 8th Street, Suite B2
City Lawrence State Kansas ZIP 66044
Phone (785) 832-0804 Fax (____) _____
E-mail joyr@paulwernerarchitects.com Mobile/Pager (____) _____
Pre-Application Meeting Date 02.05.16 Planner S. Stogsdill/Becky Pepper

PROPERTY INFORMATION

Present Zoning District UR Present Land Use Single Family
Proposed Land Use Health Care Office
Legal Description (*may be attached*) See Attached
Address of Property 4111 W 6th Street
Total Site Area 1.04 Acres
Number and Description of Existing Improvements or Structures An existing house and garage on site.



6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

See Attached

Rev 5/5/2009



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

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UNNECESSARY HARDSHIP CRITERIA

The Board of Zoning Appeals may approve a zoning variance if it finds that all of the following criteria have been met. The Development Code places the burden on the applicant to show that an application complies with such criteria. Please respond to each criterion to the best of your knowledge. (Attach additional sheets if needed.)

- 1. That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property owner or applicant:**

See Attached

- 2. That granting the variance would not adversely affect the rights of adjacent property owners or residents:**

See Attached



**City of Lawrence
Douglas County**

PLANNING & DEVELOPMENT SERVICES

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- 3. That strict application of the provisions of this chapter for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application:**

See Attached

- 4. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare:**

See Attached



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5. That granting the variance desired would not be opposed to the general spirit and intent of the Development Code:

See Attached

SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for variances as indicated above.

Signature(s): Jay D. Thua Date 3-4-16

Date _____

Date _____

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____

Description of variance requested:

The variance requested is to reduce the 50' setback at 4111 W. 6th Street to 31' for parking only. The 50' building setback would remain in effect. Due to the existing access to the site from the west, the parking configuration for this site has been determined through no fault of the existing owners.

1. That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property owner or applicant:

The pre-determined parking location by the existing access drive provided to the west has made it necessary to request a variance in order to provide the necessary parking allowed by the Development Code. This was not a circumstance created by actions of the property owner or applicant.

2. That granting the variance would not adversely affect the rights of adjacent property owners or residents:

Granting the variance would not adversely affect the rights of the adjacent property owners. The property to the east already has a building located in the setback, the property to the west was developed with the existing access drive to the subject site. The residential properties to the south will gain the most benefit from granting the variance because it will allow most of the parking to occur on the subject site at the front of the site instead of closer to the residential property line. The residential property owners expressed concern at the rezoning hearing regarding the destruction of the existing natural vegetative screen between the properties. With that in mind our proposal is to keep development toward the front of the site as much as possible.

3. That strict application of the provisions of this chapter for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application:

Strict application of the 50' setback for buildings and parking would deprive the owner of developing the site within the guidelines set out in section 20-902, Section 20-1003 and Section 20-1005. Should the 50' setback remain as is the building which is 15% of the site, well under the maximum of 50% allowed in section 20-601, could not be built because the parking requirements of 20-902 and the interior greenspace of 20-1003 could not be met. In addition, the development would be squeezed in very close to the residential property to the south and the existing vegetative buffer would be removed and the new buffer yard required by Section 20-1005 would not have enough room to be provided. (See Exhibit A)

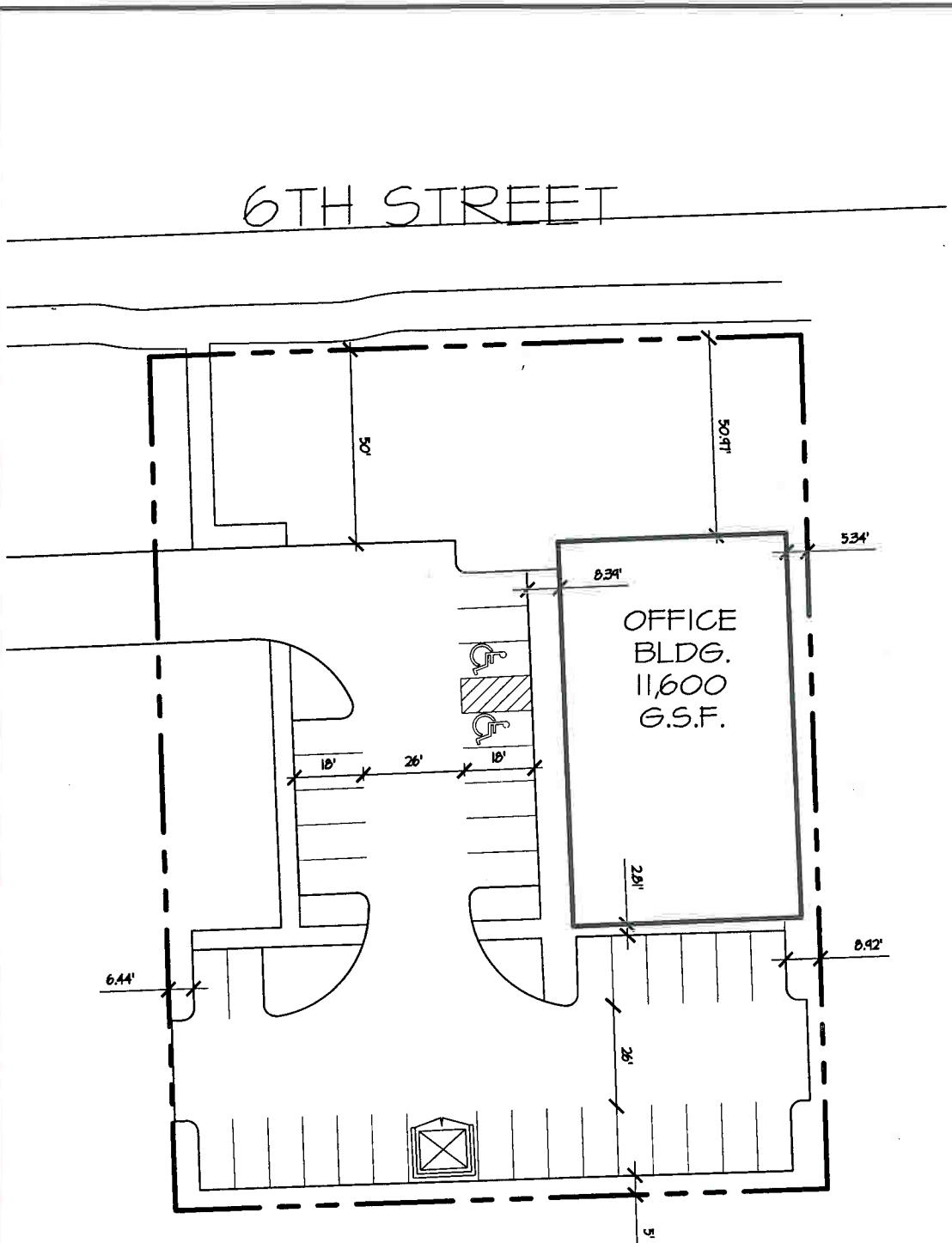
4. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare:

The variance requested would not adversely affect the residents of Lawrence in any way. The variance would allow the quality of living south of this development to remain by keeping the existing natural vegetative buffer in place.

5. That granting the variance desired would not be opposed to the general spirit and intent of the Development Code:

Granting this variance is within the guidelines of the development Code in order to keep from depriving the owners from developing their property per the guidelines laid out in section 20-902, 20-1003 and 20-1005. Should the variance be granted the residential owners of the property to the south will not be deprived by the removal of their existing vegetative buffer. (See Exhibit B)

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DEVELOPMENT CODE REQUIREMENTS

- ALL PARKING NOT PROVIDED (BASE ON 1 PER 300 S.F.)
- INTERIOR GREENSPACE NOT MET
- BUFFERYARD NOT MET



EXHIBIT A

SCALE: 1" = 40'-0"

paulwerner
ARCHITECTS

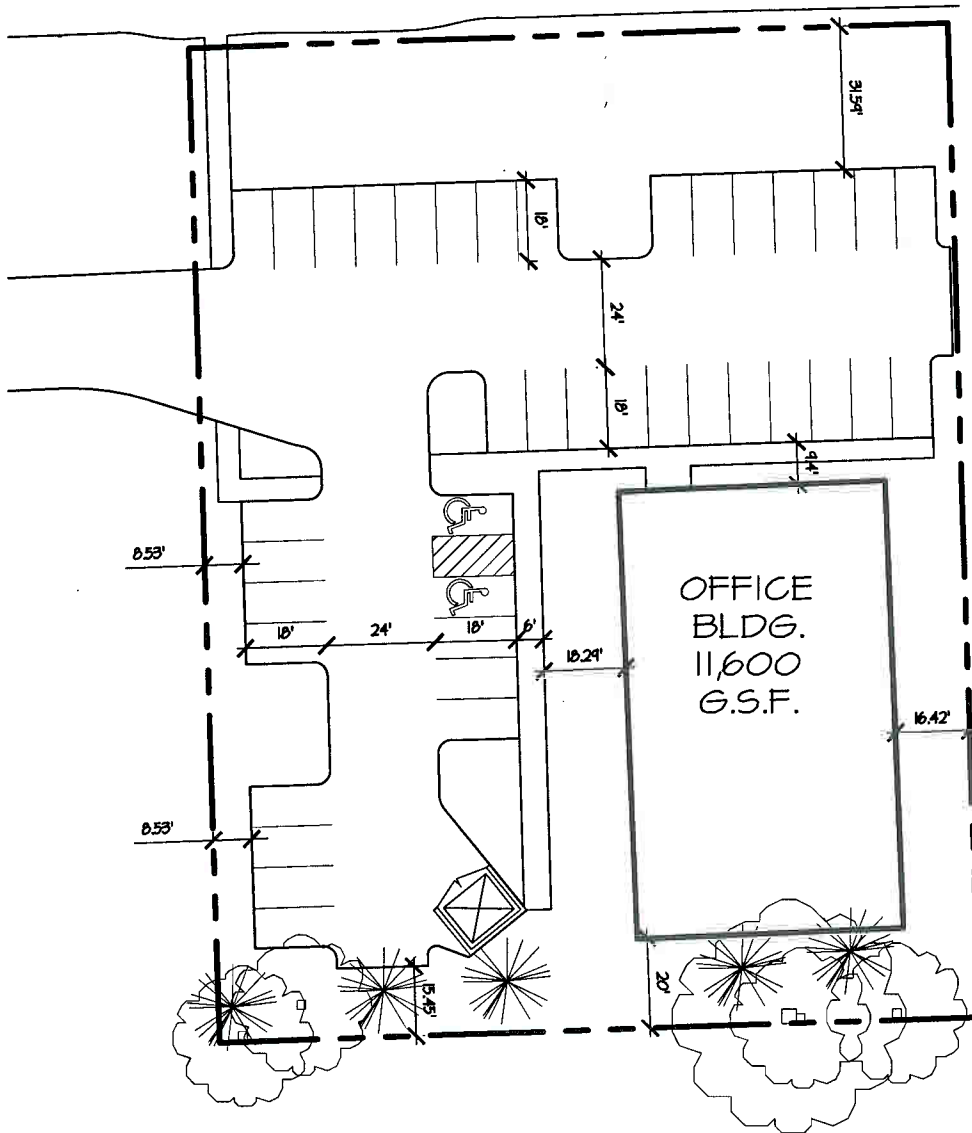
123 W. 8TH STREET
SUITE B2
LAWRENCE, KS 66044
OFFICE: 785.832.0804
FAX: 785.832.0890

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VARIANCE REQUEST
4111 W. 6TH STREET
LAWRENCE, KANSAS

PROJECT # 215-710
MARCH 4, 2016

6TH STREET



DEVELOPMENT CODE REQUIRMENTS

- ALL PARKING PROVIDED (BASED ON 1 PER 300 S.F.)
- INTERIOR GREENSPACE MET
- EXISTING BUFFERYARD REMAINS



EXHIBIT B

SCALE: 1" = 40'-0"

paulwerner
ARCHITECTS

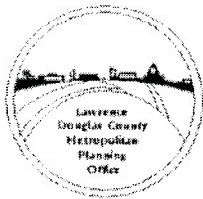
**123 W. 8TH STREET
SUITE B2
LAWRENCE, KS 66044**

**OFFICE: 785.832.0804
FAX: 785.832.0890**

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VARIANCE REQUEST
4111 W. 6TH STREET
LAURENCE, KANSAS

PROJECT # 215-710
MARCH 4, 2016



**Lawrence Douglas County
Metropolitan Planning Office**

6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceplanning.org>

OWNER AUTHORIZATION

I, **FREESTATE DENTAL BUILDING, LLC**, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 7th day of October 2015, make the following statements to wit:

1. I the Undersigned, on the date first above written, am the lawful owner in fee simple absolute of the following described real property:

SECTION 34, TOWNSHIP 12, RANGE 19 BEGINNING AT THE NORTHWEST CORNER OF THE WEST 1/2, OF THE EAST 1/2, OF THE NORTHWEST 1/4, AT WHICH POINT IS APPROXIMATELY THE CENTER OF THE PAVEMENT ON US HWY 40, THENCE EAST ALONG THE NORTH LINE OF THE SAID SECTION 168.5 FEET, THENCE SOUTH PARALLEL TO THE WEST LINE OF THE WEST HALF OF THE EAST HALF OF SAID NORTHWEST QUARTER 270 FEET FORMING AN INTERIOR ANGLE 89DEG53", THENCE WEST PARALLEL TO NORTH LINE OF SAID SECTION 168.5 FEET TO WEST LINE OF SAID WEST HALF OF EAST HALF OF SAID NORTHWEST QUARTER, THENCE NORTH ALONG SAID WEST LINE 270 FEET TO POINT OF BEGINNING. CONTAINS 1.04 ACRES

2. I the undersigned, have previously authorized and hereby authorize **Paul Werner Architects** (Herein referred to as "Applicant"), to act on my behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding **4111 W. 6th Street, Lawrence, Kansas** (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.
3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

Nealy A. Newkirk
Owner

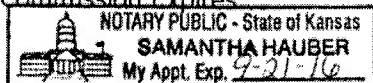
Owner

STATE OF **KANSAS**
COUNTY OF **DOUGLAS**

The foregoing instrument was acknowledged before me on this 7th day of October, 2015,

by Samantha Hauber.

My Commission Expires:



Samantha Hauber
Notary Public



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

**Lawrence Douglas County
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PROPERTY OWNERSHIP LIST CERTIFICATION

As required by Article 13, Section 20-1301(q) of the Development Code, the applicant is responsible for providing certified Ownership information (including names and mailing addresses) of all real property owners within a defined radius from the subject property. The Planning Department is required by the Development Code to use the submitted Ownership list to mail notice of the public hearing to surrounding property owners regarding this Application.

Ownership Information

The applicant is responsible for providing certified Ownership information. Current Ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered current if it is **no more than 30 days old** at the time an application is submitted to the Planning Department.

Radius of Notification

The Ownership list shall include the record Owner of the subject property and all Owners of property located within 200 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

A map of the "Radius of Notification" can be obtained **at the Applicant's request** at the Planning Office. The map indicates ownership of each property and can be used to check the accuracy and completeness of the Ownership List. The map will be supplied **at the Applicant's expense. Allow 10 business days** to receive the map.

THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

I certify that I have read and understood the above information and that the submitted Ownership list:

1. was a) obtained from and b) certified by the Douglas County Clerk,
2. is current (**no more than 30 days old**), and
3. includes all property owners within the required notification radius of the subject property.

Signature Joy D. Rheg

Date 2-4-16

Printed Name Joy D. Rheg



"Exhibit A, Legal Description"

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 34, THENCE NORTH 88°15'13" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 1,321.76 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE NORTHWEST CORNER OF THE WEST ONE-HALF OF THE EAST ONE-HALF OF SAID NORTHWEST QUARTER OF SECTION 34; THENCE CONTINUING NORTH 88°15'13" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 168.36 FEET; THENCE SOUTH 1°42'32" EAST, ALONG THE WEST LINE OF LOT 1, FREE STATE VETERINARY HOSPITAL, 270.00 FEET TO AN ANGLE POINT ON THE NORTH LINE OF LOT 2, BLOCK 1, PRESCOTT PLACE; THENCE SOUTH 88°15'13" WEST, PARALLEL TO THE NORTH LINE OF SAID NORTHWEST QUARTER, 168.36 FEET TO THE NORTHWEST CORNER OF LOT 3, BLOCK 1, PRESCOTT PLACE; THENCE NORTH 1°42'32" WEST, ALONG THE EAST LINE OF LOT 23, SUMMERTREE WEST, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS, 270.00 FEET TO THE POINT OF BEGINNING. CONTAINS 1.044 ACRES, MORE OR LESS.

Description of variance requested:

The variance requested is to reduce the 50' setback at 4111 W. 6th Street to 31' for parking only. The 50' building setback would remain in effect. Due to the existing access to the site from the west, the parking configuration for this site has been determined through no fault of the existing owners.

1. That the variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning or district and are not created by action(s) of the property owner or applicant:

The pre-determined parking location by the existing access drive provided to the west has made it necessary to request a variance in order to provide the necessary parking allowed by the Development Code. This was not a circumstance created by actions of the property owner or applicant.

2. That granting the variance would not adversely affect the rights of adjacent property owners or residents:

Granting the variance would not adversely affect the rights of the adjacent property owners. The property to the east already has a building located in the setback, the property to the west was developed with the existing access drive to the subject site. The residential properties to the south will gain the most benefit from granting the variance because it will allow most of the parking to occur on the subject site at the front of the site instead of closer to the residential property line. The residential property owners expressed concern at the rezoning hearing regarding the destruction of the existing natural vegetative screen between the properties. With that in mind our proposal is to keep development toward the front of the site as much as possible.

3. That strict application of the provisions of this chapter for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application:

Strict application of the 50' setback for buildings and parking would deprive the owner of developing the site within the guidelines set out in section 20-902, Section 20-1003 and Section 20-1005. Should the 50' setback remain as is the building which is 15% of the site, well under the maximum of 50% allowed in section 20-601, could not be built because the parking requirements of 20-902 and the interior greenspace of 20-1003 could not be met. In addition, the development would be squeezed in very close to the residential property to the south and the existing vegetative buffer would be removed and the new buffer yard required by Section 20-1005 would not have enough room to be provided. (See Exhibit A)

4. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare:

The variance requested would not adversely affect the residents of Lawrence in any way. The variance would allow the quality of living south of this development to remain by keeping the existing natural vegetative buffer in place.

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