



LAWRENCE BOARD OF ZONING APPEALS

AGENDA FOR **APRIL 5, 2018**

1ST FLOOR OF CITY HALL, 6 E. 6TH STREET, CITY COMMISSION MEETING ROOM
6:30 PM

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

ITEM NO. 1 COMMUNICATIONS

- A. Acknowledge communications to the come before the Board.
- B. Disclosure of ex-parte communications and/or abstentions for specific agenda items.
- C. Announce any agenda items that will be deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the February 1, 2018 meeting of the Board.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE PARKING AND DRIVEWAY STANDARDS FOR A RESIDENTIAL DWELLING; 868 ELM STREET

B-18-00098: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The request is for a variance from the surfacing requirements for parking and driveway standards required by 20-913(e)(1) of the City Code for a detached dwelling. The applicant is seeking a variance from this code standard to allow for the construction of a gravel driveway. The property is located at 868 Elm Street. Submitted by Tiffany Asher, property owner of record.

ITEM NO. 4 VARIANCE FROM THE FRONT BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 1415 E. 18TH STREET

B-18-00100: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The request is for a variance from the 25 foot front setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the front setback to a minimum of 1 foot to allow for the construction of an attached car port. The property is located at 1415 E. 18th Street. Submitted by Napoleon S. Crews, Crews Law Firm, on behalf of Todd La Prad, property owner of record.

**ITEM NO. 5 ADOPT FINDINGS OF FACT FOR BOARD OF ZONING APPEALS
DECISION DENYING A PARKING AREA SETBACK FOR A
RESIDENTIAL DWELLING AT 900 ALABAMA STREET**

Consider adopting findings of fact as reasons for the Board's decision in the matter of the following appeal:

B-17-00664: 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 from the 25 foot parking area setback standard required by Section 20-908(b) of the City Code for a Residential District. The applicant is seeking a variance from this code standard reducing the parking setback to a minimum of 10 feet to allow for the construction of a parking area. The property is located at 900 Alabama Street. Submitted by Mark Kern, JJMT, L.L.C., property owner of record. Heard by the Board of Zoning Appeals on February 1, 2018.

ITEM NO. 6 MISCELLANEOUS

- A. Correspondence with Mark Kern, re: 900 Alabama Street
- B. Upcoming Annual Training
- C. Consider any other business to come before the Board.



LAWRENCE BOARD OF ZONING APPEALS
MEETING MINUTES FOR **FEBRUARY 1, 2018**

Members present: Clark, Gardner, Gascon, Mahoney, Shipley, Wilbur, Wisner
Staff present: Crick, Dolar, Mortensen

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

ITEM NO. 1 COMMUNICATIONS

- A. All communications were included in the agenda packet.
- B. There were no ex-parte communications and/or abstentions.
- C. No agenda items were deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the December 7, 2017 and January 4, 2018 meetings of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Clark, to approve the minutes from the December 7, 2017 and January 4, 2018 meetings of the Board.

Motion carried 5-0-2, Mahoney and Shipley abstained.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE PARKING AREA SETBACK FOR A RESIDENTIAL DWELLING; 900 ALABAMA STREET

B-17-00664: 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 from the 25 foot parking area setback standard required by Section 20-908(b) of the City Code for a Residential District. The applicant is seeking a variance from this code standard reducing the parking setback to a minimum of 10 feet to allow for the construction of a parking area. The property is located at 900 Alabama Street. Submitted by Mark Kern, JJMT, L.L.C., property owner of record.

STAFF PRESENTATION

Crick presented the item.

Clark asked staff to describe the highlighted areas on the map.

Crick explained what each color signified on the map.

Clark asked if the northern area is in the setback.

Crick said that's correct.

Gardner asked if the property right next to it received a variance.

Crick said he isn't aware of a variance for that property or how it was constructed.

Gardner said it doesn't fit the triangle.

Crick said that's correct.

Gascon asked staff to clarify the applicant's request based on the proposed plan.

Crick explained the applicant's intent for the variance request, without which, the applicant cannot achieve their desired number of bedrooms.

Gascon said it appears that parking is driving the number of bedrooms allowed in the community, in this case.

Crick said the number of bedrooms drives the number of parking spaces required.

Gascon said the parking restriction forces them to reduce their proposed number of bedrooms.

Crick said that's possible, yes.

Gardner concluded that parking is controlling density.

Mahoney asked if the 25 feet setback on the northwest corner of the property is an issue.

Crick said the 25 feet setback is only for parking, not for building.

Gascon asked for the specific reasons why staff is recommending denial of the variance.

Crick said the hardship is induced by the request of the applicant, and there is nothing unique about the parcel or a unique platting situation. He explained the additional safety issues created by the absence of a clear sight triangle.

Gascon asked how many units are allowed by zoning on this lot if parking wasn't an issue.

Crick said a duplex use with no more than four unrelated occupants per unit would allow up to eight occupants.

Gascon asked if a different use would allow a higher density.

Crick said yes, if the zoning was different.

Gascon asked if this is the maximum use based on the current zoning.

Crick said yes.

Clark asked if, under Article 6, a house could be built into the 10 foot setback space.

Crick said the structure could be built into the 10 foot setback, pointing out that Article 6 pertains to building setbacks and Article 9 pertains to parking setbacks.

Gascon asked if stacked parking is allowed on this site.

Crick said no, stacked parking is prohibited by the Oread Neighborhood Design Guidelines.

Gascon asked when the design guidelines were enacted.

Crick said February of 2017.

Gascon asked when the property was purchased.

Crick said the applicant could answer that question.

APPLICANT PRESENTATION

Mr. Mark Kern, property owner, thanked the Board for considering his request. He addressed the number of units and discussed details of the proposed project.

Gascon asked when the property was acquired.

Kern said it was acquired in October 2017.

Wilbur asked if the applicant was aware of the revision in the Oread Neighborhood Design Guidelines prohibiting stacked parking.

Kern said yes, and the seller provided a letter from the City explaining that it was zoned for a duplex. He said they also own the property across the alley and have 16 spaces for that 8-plex.

Gascon asked if the 16 parking spaces are typically full.

Kern said very seldomly.

Gascon asked if they're providing two spaces per unit.

Kern said yes, they have 14 spaces and are allowed two stacked with the garage.

Gardner suggested a re-configuration of the project to accommodate the desired parking spaces.

Crick said the interior side setback is typically 5 feet but the Oread Neighborhood Design Guidelines requires an additional setback. He further explained how parking setbacks are calculated.

They discussed Gardner's suggested configuration.

Crick reminded them that the City Engineer would also have to weigh in on issues with the suggested re-configuration, and he's unsure whether it would be supported by the Historic Resources Commission.

Gascon asked if staff discussed the possibility off-site parking and/or a curb cut to allow parking from the front.

Kern said they did discuss shared off-site parking, but not a curb cut. He mentioned that language in the overlay didn't specifically mention shared parking as an option.

PUBLIC COMMENT

Ms. Candice Davis, resident of the Oread Neighborhood, said she feels they should follow the code guidelines and not work to meet a request which clearly doesn't meet code.

ACTION TAKEN

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

Unanimously approved 7-0.

BOARD DISCUSSION

Mahoney doesn't think the variance application meets the necessary criteria. It is not unique, is against the general spirit of the code, and there appears to be potential safety issues. He doesn't think it will affect the rights of property owners.

Wilbur also doesn't feel it's unique and feels it might create a safety issue.

Wisner agreed it doesn't meet the criteria, but it is similar to other properties in the area.

Gascon said that's an important point, particularly with corner lots and the added complexity of determining uniqueness. In response to Ms. Davis' comment, he felt it was bordering on insulting to suggest that this Board would do anything but its fiduciary responsibilities to address criteria set forth in the code. He said the Board also takes great respect in assisting property owners when determining if criteria is met, and perhaps identify solutions for the future. He agreed with other Board members and felt they don't have a case to offer the variance for this request. He added that the current code is missing the mark and isn't providing what the community needs long term.

ACTION TAKEN

Motioned by Mahoney, seconded by Wilbur, to deny the variance request based upon staff presentation, findings of fact, failure to meet the five conditions (specifically uniqueness), and to direct staff to prepare Findings of Fact.

Unanimously approved 7-0.

ITEM NO. 4 PARKING SETBACK VARIANCE FROM W. 6TH STREET ON BUILDING OR SETBACK LINES ON MAJOR STREETS OR HIGHWAY; 3900 W 6TH STREET

B-17-00687: 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 from the 50 foot setback from W. 6th Street standard required by Section 20-814(a)(2)(i) of the City Code. The applicant is seeking a variance from this code standard reducing the setback to a minimum of 40 feet to allow for the construction of a Vehicle Cleaning (Car Wash) structure. The property

is located at 3900 W. 6th Street. Submitted by Austin Davis, Wild Pines Ventures, L.L.C., on behalf of Lawrence Monterey Investors, L.L.C., property owner of record.

STAFF PRESENTATION

Crick presented the item.

Mahoney asked if there are overhead electrical lines present.

Crick said yes.

Gardner asked if they must meet the same five criteria for a variance, and if so, whether staff feels the overhead electrical easement is unique.

Crick explained that staff could not recommend approval because it did not meet the five criteria, and although the easements are somewhat unique, it is not unlike other parcels with similar restrictions that constructed in different ways.

Gascon asked about the required parking for the proposed use.

Crick said he isn't handling the Special Use Permit but the applicant may be able to answer.

Gascon asked if it's a drive-thru car wash.

Crick said that's correct.

Gardner asked if the green space requirement stops at the street.

Crick explained that the green space buffer/setback is from the property line 50 feet into the parcel.

Gardner asked if the Board of Realtors across the street has the same 50 feet requirement.

Crick indicated on the map where the setback runs from Monterey Way to Folks Road and from Wakarusa Drive to K-10.

Gardner said the property across the street doesn't have the same setback.

Crick said that's correct.

Gascon asked if it's normal to have a large diagonal electrical easement.

Crick said this part of town does have a large area affected by this easement.

Wilbur asked if the easement affects any of the other mentioned properties along 6th Street or just this lot.

Crick said it encumbers portions of the HyVee lot as well as the building to the north, which runs at an angle to accommodate the easement. He mentioned that they are private utility easements.

Shipley pointed out that the buildings on the neighboring lots have been built to accommodate the easements.

Crick said that's correct. He explained that staff research indicates only two other variances have requested for this setback, both of which did not move forward with the Board.

Mahoney asked if the variance request involves the green space setback only and no other easement or building setback.

Crick said that's correct.

Gascon asked if the green space setback precludes the use of any pavement.

Crick said that's correct. He clarified that the ordinance establishes a 50 foot building and parking setback along W 6th Street.

APPLICANT PRESENTATION

Mr. Matthew Gough, attorney for the applicant, introduced the applicants, owners, and representatives present. He said staff has categorized the green space buffer improperly, because the 1990 ordinance identifies it as a building and parking setback. He pointed out that the applicant isn't proposing to construct a building or parking in that setback, only an access drive. He argued that the property is unique and creates a hardship for the applicant.

Gardner asked if the southern turn into the car wash can be moved closer to the building.

Mr. Harlan Russell, GBA Architects, explained that they used the minimum turning radius possible to achieve the entrance as proposed.

Wisner asked about a comment on the application that says constraints on the lot were not known by the applicant until an offer was made on the property.

Gough said there is very seldom title work in place when a contract is signed.

Wisner asked if they had no idea there were easements.

Gough said he couldn't speak to that specifically.

Mahoney asked why they are here this evening if they don't believe a variance wasn't needed.

Gough said he was just recruited by the applicant this morning, but the applicant team doesn't have experience in Lawrence and doesn't know the code, so when staff told them this was a green space buffer and they need a variance, that's what they did.

Mahoney asked what type of hardship this creates for the applicant.

Gough said the proposed type of building involves a lot of necessary machinery that dictates the size of the building.

Clark asked if they have discussed the easement with Westar Energy.

Russell said this is a major electrical line and in his experience, they've never been successful in moving buildings under this type of easement. He mentioned the gas main on the property is also very large.

Gough mentioned that many current parking spaces will be converted back to green space.

Gascon asked Russell for the size of a typical gas main and if a 16 inch gas main like the one on this property is rare.

Russell said it is likely a transmission pipeline, not a service line. He said the gas company has very specific restrictions when doing pavement and trees. He explained which trees will be saved and where trees and other landscaping will be added.

They further discussed trees and line of sight down the corridor

Mr. Chris Michael, franchisee and distributor for Tommy's equipment, spoke to the uniqueness of their car wash operations.

Mr. Austin Davis, applicant, thanked the Board for their time.

No public comment.

ACTION TAKEN

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

Unanimously approved 7-0.

BOARD DISCUSSION

Mahoney talked about the uniqueness of the lot due to the green space buffer and its location along a US Highway.

Gardner felt the buffer and easements combined make it unique.

Gascon felt that the buffer seems inconsistent making the intent a bit dubious.

Mahoney agreed the inconsistency might warrant review at a later date.

Wilbur agreed that it's unique in comparison to other surrounding properties.

Mahoney explained that neighboring properties were able to build around the easements, so the only uniqueness comes from the green space buffer.

Wilbur noted that the easements have been there for a long time.

Gascon felt the combination of a major gas line and overhead electrical easement make the property unique.

Mahoney stated that financial hardship is not sufficient to grant a variance, and he is unsure whether the hardship to the applicant is solely financial.

Gascon pointed out their restrictions with the machinery for the car wash.

Clark said the applicant knew the requirements going into the project.

Gascon pondered whether the variance would even be needed if the access drive was dirt.

Crick said the setback would be in place regardless of what type of pavement materials are installed.

Gascon asked why.

Crick said setbacks are determined by property lines and by the ordinance

Gascon pointed out that they aren't proposing a building or parking in the setback.

Crick explained that the Planning Director has determined in the past that pavement of any kind is potentially available for parking.

Wisner asked why the ordinance was originally created.

Mahoney read part of the ordinance.

Gardner noted that the applicant is providing the visual green space desired by the ordinance.

Mahoney was unsure whether the hardship was anything other than financial.

Gascon and Gardner both noted that the significant combined easements were a unique hardship.

Gascon discussed the term "unnecessary hardship".

Crick read the definition of "unnecessary hardship" from Article 17.

Shipley noted that other types of businesses could locate on this property without hardship.

Clark said the site is still usable.

Gascon asked for the square footage of the encroachment into the setback.

Mr. Harlan Russell replied that it was less than 200 square feet.

Gascon asked for total size of the site.

Russell said it is about 1.33 acres equal to 60,275 square feet.

Board members agreed they don't have a problem with uniqueness.

Gardner said the drive couldn't be used for parking and they've added landscaping.

Wisner asked staff if the Board has the authority to determine that the applicant does not need a variance.

Crick said he has no knowledge of that type of determination in the past, but the Board should take action of some sort based on the request before them- approve, approve with conditions, or deny the item.

They discussed conforming uses. Crick clarified that the applicant is seeking a rezoning approval in addition to their Special Use Permit request.

Mahoney asked if a variance approval can be conditioned upon an approval of a site plan.

Crick said that is an option, to condition upon the approval of the Special Use Permit.

ACTION TAKEN

Motioned by Gardner, seconded by Wilbur, to open public comment for the item.

Unanimously approved 7-0.

PUBLIC COMMENT

Mr. Harlan Russell, GBA Architects, asked for clarification about the proposed condition.

Mahoney explained that the variance would be approved upon the condition that a Special Use Permit is also granted. Without the Special Use Permit, the variance is void.

ACTION TAKEN

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

Unanimously approved 7-0.

BOARD DISCUSSION

Clark said he doesn't feel there is hardship, and that the request arises from convenience.

Gascon said it sounds like he defined the hardship, because the property cannot accommodate this particular car wash.

Mahoney felt they met the five conditions for a variance.

ACTION TAKEN

Motioned by Mahoney, seconded by Gardner, to approve the variance based on meeting all five conditions, staff and applicant presentations, and Board discussion, with the condition that a Special Use Permit is approved for the applicant.

Motion carried 6-1, Clark dissented.

ITEM NO. 5 MISCELLANEOUS

A. There was no other business to come before the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Clark, to adjourn the meeting.

ADJOURNED 8:12 PM

ITEM NO. 3 **VARIANCE FROM THE PARKING AND DRIVEWAY STANDARDS FOR A
RESIDENTIAL DWELLING; 868 ELM STREET [LRM]**

B-18-00098: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The request is for a variance from the surfacing requirements for parking and driveway standards required by 20-913(e)(1) of the City Code for a detached dwelling. The applicant is seeking a variance from this code standard to allow for the construction of a gravel driveway. The property is located at 868 Elm Street. Submitted by Tiffany Asher, property owner of record.

B. REASON FOR REQUEST

Applicant's Request - "I am requesting approval to relocate an existing gravel driveway from the middle of my lot to the east side of my lot. The current driveway is approximately 17 feet wide with no concrete apron. The existing driveway is approximately 120 feet in length, and the relocate driveway would be approximately the same length. The location of the existing driveway will be scraped, and grass will be planted. There are two main reasons that I would like to relocate the driveway. The first being that it is in the middle of my lot, as you can see from the attached photos. One of the main reasons that I purchased the property was the size of my lot. I plan to fence the whole lot so that my toddler and my dogs are able to safely enjoy the whole property, and not risk running into the street. Having the driveway in the middle of the lot makes this cumbersome, and renders much of the yard unusable for that purpose.

The second reason for moving the driveway to the east side is the location of an accessory structure that I recently had constructed. When choosing the location of the building, I learned that there is a septic tank at the end of the current driveway, as shown on the attached drawing. When I purchased the property, the seller's disclosure statement, the appraiser, and the City all told me that the house was on City sewer. I have recently learned that it is on an active septic tank. And because of the location of the tank and the lateral lines, I had to put the metal building in its current location. By moving the driveway to the east, I will be able to drive my vehicle to the building to unload materials/supplies, something that I am not currently able to do because of the location of the existing driveway. I'm not sure I would have purchased the property had I known it was on a septic tank. This will be another huge expense when I go to hook up to City sewer.

The main reason for wanting to use gravel in the relocation, as opposed to concrete or asphalt, is the need for pervious surface area in North Lawrence. There is an existing issue with Stormwater drainage, and adding approximately 1,440 sq. ft. of concrete would only exacerbate the issue. I get water in my basement every time that it rains. That will get worse if I have a concrete driveway within feet of my foundation.

I have been told by planning staff and the city engineer that concrete "strips" are acceptable. I think it would be very difficult to stay on concrete strips for 120 feet, especially backing out, even for the best drivers. This would then cause ruts along the strips. I have support of neighboring property owners, as well as the North Lawrence Improvement Association. I feel that gravel is an appropriate use for the neighborhood. For those of you that have never driven through North Lawrence, I have attached a map highlighting the properties that currently have gravel driveways so that you can get a feel for the neighborhood. And although this request is not based on costs, I cannot justify adding a \$15,000 concrete driveway to a \$99,000 house"

C. ZONING AND LAND USE

Current Zoning & Land Use:	RS7 (Single-Dwelling Residential) District; single-family residence.
Surrounding Zoning and Land Use:	RS7 District to the immediate north, south, and west. Douglas County A District to the east; single-family dwellings to the east, west, and north.

D. ZONING ORDINANCE REQUIREMENTS

20-913 PARKING AND LOADING AREA DESIGN STANDARDS

The design standards of this section apply to all [Parking Areas](#), including commercial parking lots and "non-required" [Parking Areas](#).

(e) Surfacing

- (1) All off-street [Parking Areas](#) and [Driveways](#), including those serving [Attached Dwellings](#), [Detached Dwellings](#) and Duplexes, shall be surfaced with a minimum of one of the following:
 - (i) 4 inches of reinforced Portland cement concrete;
 - (ii) 5 inches of granular rock base with 2 inches of asphalt;
 - (iii) 7 inches of granular rock with a double asphaltic prime and seal;
 - (iv) 5 inches of full depth asphalt; or
 - (v) 4 inches of compacted gravel for residential [Driveways](#) constructed in [Floodplains](#) areas with a paved [Driveway Apron](#) constructed to city residential [Driveway](#) standards.
- (2) As an alternative to the surfacing required in the preceding paragraph, all off-street parking for uses allowed by right within residential Districts or areas of low off-street parking use as determined by the City Engineer (such as fire safety lanes or overflow [Parking Areas](#)), may be surfaced with the following alternative methods of paving. The surfacing shall be installed per the manufacturer's recommendations, with the pavement and base designed by a professional engineer licensed in the State of Kansas. The pavement cross-section shall demonstrate the structural ability to support the anticipated vehicle loads for the use. The pavement design shall be reviewed and approved by the City Engineer.
 - (i) Grid unit pavers with grass; or
 - (ii) Concrete, brick, or clay interlocking paver units.

E. History

8/15/2017 – Development Services reviews permit and plot plans for new garage at 868 Elm Street. Permit is not approved. Comments include, "show driveway to garage on plot plan. Provide details on driveway".

8/24/2017 – Permit NO. 1-17-01351 approved. "Garage" changes to "accessory structure" on plot plan. Note on permit from Dev. Services staff says, "The structure shall not be used as a detached garage. New detached garages shall comply with the City of Lawrence Code Section 16.302 (D. A driveway conforming to City standards would be required".)

1/24/2018 – In response to the applicant's issues of stormwater on the property, the Driveway Committee denies the Applicant's request for proposed gravel driveway. Committee permits the use of 18" concrete strips with gravel, dirt, or grass in between. Applicant is informed of permitted surfacing materials found in Section 20-913 of the Code.

1/30/2018 – Unsatisfied with the Driveway Committee's determination, the applicant requests a variance from the Land Development Code.

F. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Development Code 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 condition that makes this property and this request unique is that I already have a gravel driveway. This is not new construction. I am not asking for an additional curb cut, there are NO curbs or gutters on my street. I am not asking to have something that I do not currently have. I am just asking to relocate an existing gravel driveway. I have attached multiple photos showing new construction that have been allowed to use gravel either by the BZA or building inspection."*

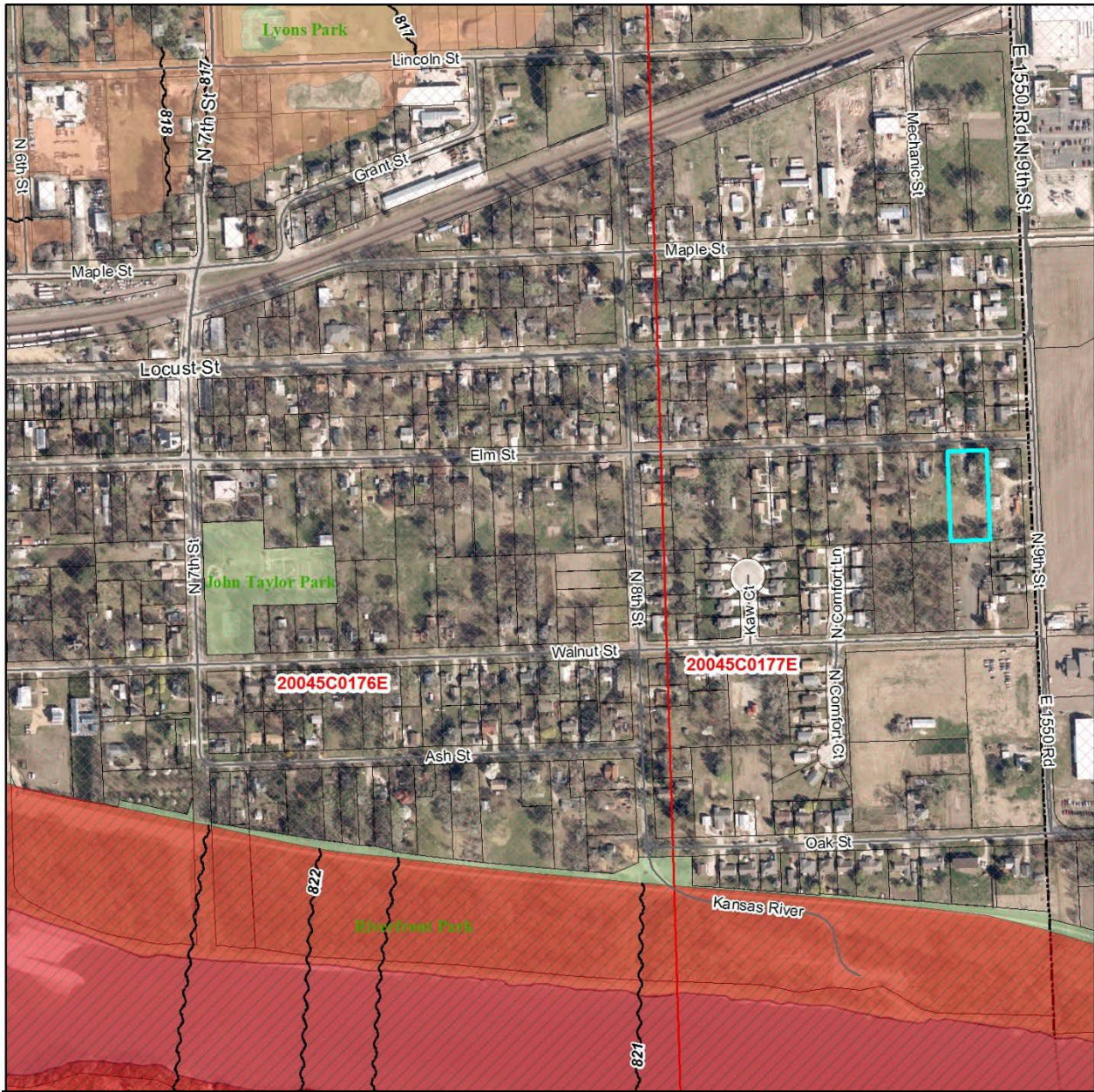
This property is located in North Lawrence which is identified on the new September 2, 2015 FEMA Flood Hazard Area Maps as being in the boundaries of Zone X, Area with Reduced Flood Risk Due to Levee.

The Development Code allows a residential property owner to use compacted gravel for their driveway when the property is located in floodplain areas. The Development Code defines floodplain in Section 20-1701, General Terms, as "The land inundated by a flood of a given magnitude as determined by the Flood Insurance Study or by an approved Hydrologic & Hydraulic Study." The City considers the term "Floodplain" to be the 100-year regulatory flood hazard area such as Zones A, AE, and AH. Since this property is not located in such an area, the applicant is not permitted to use gravel material as a code compliant driveway surface type. The applicant's property is located in Zone X-Protected by Levee. This is defined as an area with a .2% annual chance of a flood and is not considered a locally regulated flood hazard area.

The purpose for allowing gravel as a surface type on a residential driveway in the floodplain is to help reduce surface water runoff. Gravel surfacing will let some rainwater infiltrate into the ground so the storm water drainage system is less stressed.

The existing natural drainage system, the very minimal topographic relief, the permeable alluvial soils in North Lawrence, and the Development Code standards regarding when gravel materials may be used to build a residential driveway are conditions the applicant did not create. These conditions are not solely unique to this property due to a zoning or platting requirement; they are applicable to any property not located in a floodplain area.

See following page for map of subject property.



Map 1a: Subject property outlined in blue. Regulatory floodplain areas marked by deep red and pink shades.

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

Applicant response: *"Since I currently have a gravel driveway, and the properties to both the east and west of mine have gravel driveways, I do not think it would adversely affect their rights. Also, by adding a concrete apron, that I do not have would be an improvement to the property and therefore benefit the neighborhood. I have support from the neighboring property owners and residents to move the existing driveway and to use gravel."*

In staff's opinion, allowing the applicant to use gravel as a substitute for one of the paved surface material types identified in Section 20-913(e) of the Development Code will not adversely affect the rights of adjacent property owners or residents if the gravel is contained to the applicant's property.

Staff also believes that without any concrete or hard surfaced edge along the driveway it is possible loose gravel may find its way to the street or the yard of adjacent properties. The driveway approach in the street right-of-way shall be constructed in compliance with City Code standards. Staff believes concrete edges, along with a compliant concrete apron in the street right-of-way, will best protect the applicant's property from stormwater runoff as well as neighboring properties and the street right-of-way from loose gravel and rock material.

Staff appreciates the addition of a concrete apron, connecting the proposed driveway and street right-of-way, but would like to reaffirm that this action is required for the issuance of a driveway permit by the Public Works Department. The concrete apron would be necessary regardless of material used to construct the driveway.

Staff has supported variances from the driveway surfacing material requirements in past BZA cases. The applicant for case B-15-00444 at 872 Oak Street received a variance in October, 2015. In the application the applicant suggested he would add a concrete curb on both sides of the drive as well as place a sloped concrete pad directly in front of the garage. The applicant was also subject to the driveway apron requirement set forth by the Public Works Department.

Staff supported and the BZA approved a variance from the driveway surfacing materials for case B-12-00226 for 754 Elm Street. The applicant received the variance and installed crushed asphalt millings as well as concrete edges along the length of the drive and a concrete parking pad adjacent to the garage.

As of the time this report is written, staff has heard from a number of nearby property owners in support of a gravel driveway.

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: *"Requiring concrete or asphalt (an impervious surface) in an area that already has Stormwater issues would inflict a hardship on myself and the neighboring property owners."*

In staff's opinion, strict application of the code standard requiring a fully paved residential driveway for this property in North Lawrence is not an unnecessary hardship upon the owner. The applicant has induced a hardship upon herself by choosing to move an existing driveway to be near an accessory structure. Requiring the applicant to provide a hard surfaced parking area, as a portion of the driveway, will not interfere with her basic private property ownership rights or make it impossible to utilize the

property for a conforming use. Rather, it will bring the driveway and the site in line with the spirit and intent of the Land Development Code.

All new driveways outside of the FEMA floodplain zones A, AE, and AH are held to the standards set forth by Section 20-913 of the Land Development Code. This area of North Lawrence has not been classified by FEMA as part of a regulatory floodplain but its designation as Zone X Protected by Levee inherently suggests potential stormwater drainage or flooding issues. For this reason, staff has suggested a mix of permeable and hard surfaces as appropriate.

Both Planning staff and the Driveway Committee recognize the stormwater issues throughout North Lawrence. Staff and the Driveway Committee members have suggested alternatives to a full concrete driveway such as 18" concrete ribbons separated by dirt, gravel, or grass. Interlocking clay or brick paver units were also suggestions. Hard surfaced edges with a concrete apron and parking pad can be paired with gravel to mitigate the applicant's stormwater concerns as well as more closely align with the intent of the Code.

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

Applicant response: *"I think that the use of concrete would adversely affect the public health, safety, ect. North Lawrence has a Stormwater issue. My property is not technically in the floodplain, but I have an issue with standing water. We have no curbs or gutters on our block, so all of the stormwater from the street gets dumped onto our properties. The use of gravel, as opposed to concrete, would prevent more stormwater from pooling in the ditch in front of my property, and also not make the water problem in my basement worse."*

In staff's opinion, granting this variance to use gravel as a substitute for the approved surfacing materials of a residential driveway will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. Many examples can be found throughout the neighborhood where there are residential properties with driveways that are not fully paved with concrete. A driveway that included a gravel portion would be compatible with the wide variety of surfacing materials found throughout North Lawrence.

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

Applicant response: *"I feel that allowing me to move an existing driveway would not be in opposition to the general spirit and intent of the Development Code. I would like to think that the intent of the City is for homeowners to be able to improve on their properties in a way that makes the most sense for both the homeowner and the City. By allowing me to relocate my driveway, and construct a concrete apron, I am benefitting by continuing to have a pervious driveway, and the city is benefitting by getting a concrete apron that I do not currently have because I am grandfathered in."*

In staff's opinion, allowing the use of gravel as the sole driveway surfacing material is opposed to the spirit and intent of the Code. As previously mentioned, the code allows gravel for residential driveways in floodplain areas. The applicant's property is not within a regulated floodplain area per the City's Floodplain Management Regulations but does lie within an area that FEMA recognizes as a zone protected from flooding by levee.

A driveway with a gravel component framed by a band of hard surfacing, such as concrete, would align more closely with the intent of the Code. This allows for drainage of stormwater through the majority of the driveway while confining the gravel to one area of the site. The intent of the Code is to keep mud and gravel off of the public street right-of-way.

Staff would also recommend the applicant include a paved concrete section near the accessory structure at the end of the proposed driveway. If the applicant intends to use the accessory structure for storage and unloading of materials it would function similarly to a garage.

Staff recommends the applicant explore incorporating concrete elements into a gravel driveway in order to better match the spirit and intent of the Land Development Code. Examples of driveways staff would be more willing to support include 607 Elm Street, 618 Walnut Street, 532 Walnut Street, and 630 Walnut Street. All are located in North Lawrence. These examples incorporate concrete edges and some include concrete pads adjacent to garages.

Staff is aware of the drainage concerns throughout North Lawrence and understands the desire for gravel in order to alleviate drainage issues. However, in order to more closely match the spirit and intent of the Code, it is necessary for the applicant to provide an approved surface for driving and parking a vehicle. Section 20-913(e) provides material options that allow for stormwater drainage. Staff has indicated there may be flexibility to incorporate gravel into a driveway design that includes concrete or hard surfaced driving and parking areas.

Conclusions: Staff's analysis finds the applicant's request, for the use of only gravel for the driveway, does not satisfy the five conditions set forth in Section 20-1309(g)(1) of the Development Code the Board must find existing to approve a variance.

Recommendation:

Staff recommends denial of the variance request to allow the applicant to use only gravel for the residential driveway surface instead of one of the pavement surface standards identified in Section 20-913(e) of the Development Code.

Staff would support the request if the applicant placed a concrete parking pad adjacent to the accessory structure as well as concrete or solid surface edging along both sides of the proposed driveway.



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) Tiffany Asher (King)
Contact Tiffany Asher
Address 868 Elm Street
City Lawrence State Kansas ZIP 66044
Phone (785) 218-7117 Fax (____) _____
E-mail asherking1500@gmail.com Mobile/Pager (____) _____

APPLICANT/AGENT INFORMATION

Contact Same as Above.
Company _____
Address _____
City _____ State _____ ZIP _____
Phone (____) _____ Fax (____) _____
E-mail _____ Mobile/Pager (____) _____
Pre-Application Meeting Date 02/28/18 Planner Jeff Crick

PROPERTY INFORMATION

Present Zoning District RS7 Present Land Use Single Family
Proposed Land Use Single Family
Legal Description (*may be attached*) North Lawrence Addition No. 11, Lot 22, Lawrence, Douglas County, Kansas
Address of Property 868 Elm Street
Total Site Area 0.90 Acres
Number and Description of Existing Improvements or Structures One single family home and one accessory structure.



Description of variance requested:

I am requesting approval to relocate an existing gravel driveway from the middle of my lot to the east side of my lot. The current driveway is approximately 17 feet wide with no concrete apron. The relocated driveway will be approximately 12 feet wide with an approved concrete apron. The existing driveway is approximately 120 feet in length, and the relocated driveway would be approximately the same length. The location of the existing driveway will be scraped, and grass will be planted.

There are two main reasons that I would like to relocate the driveway. The first being that it is in the middle of my lot, as you can see from the attached photos. One of the main reasons that I purchased the property was the size of the lot. I plan to fence in the whole lot so that my toddler and my dogs are able to safely enjoy the whole property, and not risk running into the street. Having the driveway in the middle of the lot makes this cumbersome, and renders much of the yard unusable for that purpose.

The second reason for moving the driveway to the east side is the location of an accessory structure that I recently had constructed. When choosing the location of the building, I learned that there is a septic tank at the end of the current driveway, as shown on the attached drawing. When I purchased the property, the seller's disclosure statement, the appraiser, and the City all told me that the house was on City sewer. I have recently learned that it is on an active septic tank. And because of the location of the tank and the lateral lines, I had to put the metal building in its current location. By moving the driveway to the east, I will be able to drive my vehicle to the building to unload materials/supplies, something that I am not currently able to do because of the location of the existing driveway. I'm not sure that I would have purchased the property had I known it was on a septic tank. This will be another huge expense when I go to hook up to City sewer.

The main reason for wanting to use gravel in the relocation, as opposed to concrete or asphalt, is the need for pervious surface area in North Lawrence. There is an existing issue with stormwater drainage, and adding approximately 1,440 sq. ft. of concrete would only exacerbate the issue. I get water in my basement every time that it rains. That will get worse if I have a concrete driveway within feet of my foundation.

I have been told by planning staff and the city engineer that concrete "strips" are acceptable. I think it would be very difficult to stay on concrete strips for 120 feet, especially backing out, even for the best drivers. This would then cause ruts along the strips.

I have support of neighboring property owners, as well as the North Lawrence Improvement Association. I feel that gravel is an appropriate use for the neighborhood. For those of you that have never driven through North Lawrence, I have attached a map highlighting the properties that currently have gravel driveways so that you can get a feel for the neighborhood.

And although this request is not based on costs, I cannot justify adding a \$15,000 concrete driveway to a \$99,000 house.



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:

The condition that makes this property and this request unique is that I already have a gravel driveway. This is not new construction. I am not asking for an additional curb cut, there are NO curbs or gutters on my street. I am not asking to have something that I do not currently have. I am just asking to relocate an existing gravel driveway.

I have attached multiple photos showing new construction that have been allowed to use gravel either by the BZA, or building inspection.

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

Since I currently have a gravel driveway, and the properties to both the east and west of mine have gravel driveways, I do not think it would adversely affect their rights. Also, by adding a concrete apron, that I do not currently have would be an improvement to the property and therefore benefit the neighborhood. I have support from the neighboring property owners and residents to move the existing driveway and to use gravel.



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:

Requiring concrete or asphalt (an impervious surface) in an area that already has stormwater issues would inflict a hardship on myself and the neighboring property owners.

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

I think that the use of concrete would adversely affect the public health, safety, etc. North Lawrence has a stormwater issue. My property is not technically in the floodplain, but I have an issue with standing water. We have no curbs or gutters on our block, so all of the stormwater from the street gets dumped onto our properties. The use of gravel, as opposed to concrete, would prevent more stormwater from pooling in the ditch in front of my property, and also not make the water problem in my basement worse.



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
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<http://www.lawrenceks.org/pds/>

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

I feel that allowing me to move an existing gravel driveway would not be in opposition to the general spirit and intent of the Development Code.

I would like to think that the intent of the city is for homeowners to be able to improve on their properties in a way that makes the most sense for both the homeowner and the city. By allowing me to relocate my driveway, and construct a concrete apron, I am benefitting by continuing to have a pervious driveway, and the city is benefitting by getting a concrete apron that I do not currently have because I am

grandfathered in.

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): hggaytshur Date 3.2.18

_____ Date _____

_____ Date _____

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____



City of 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 400 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.

Tiffany Asher
Signature

3.2.18
Date

Tiffany Asher
Printed Name

Elm St

Concrete Apron Built Per
City Approved Design

Existing Gravel Driveway
To be Scraped and
Grass Planted

2 feet from
property line

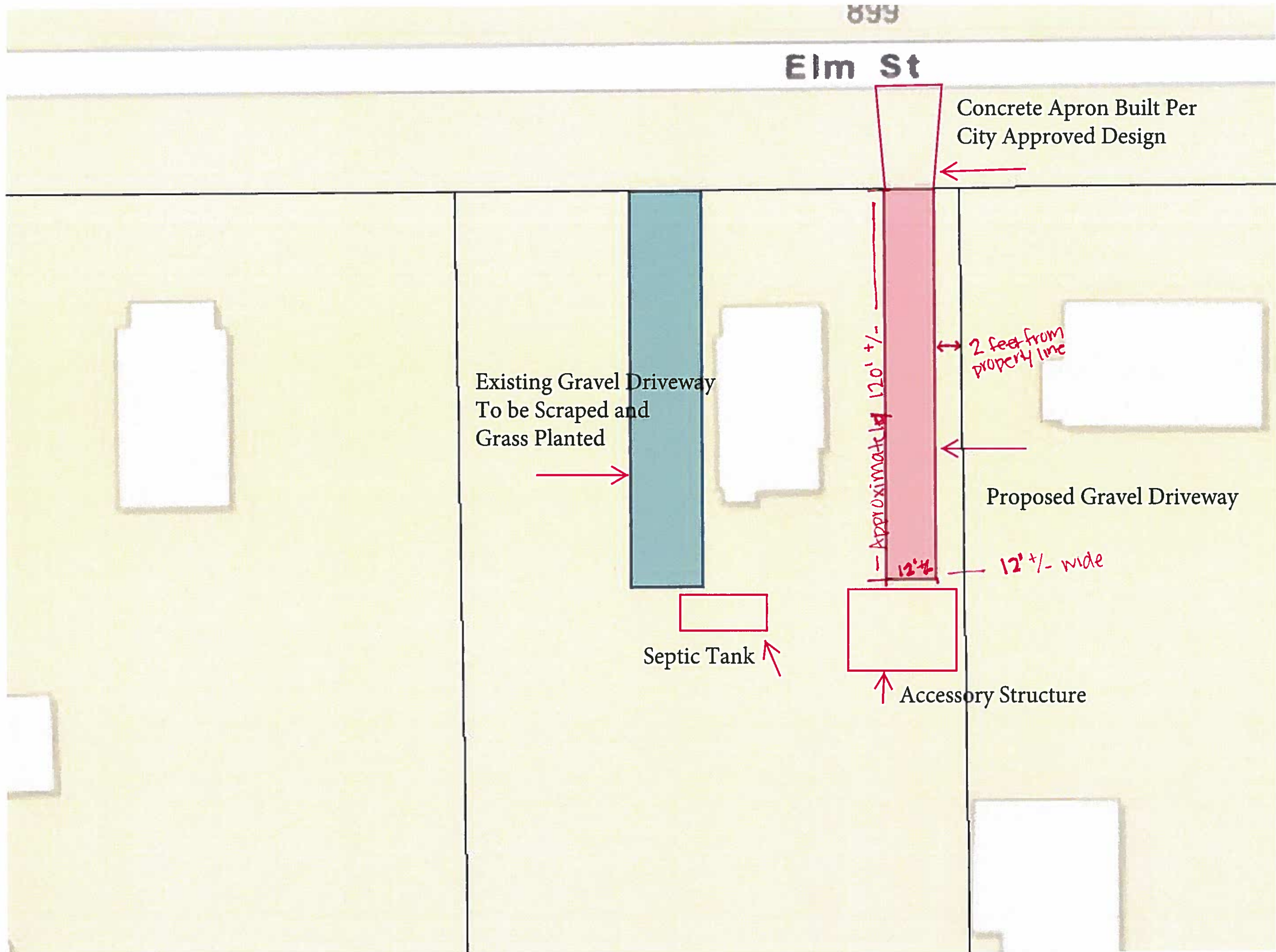
Proposed Gravel Driveway

Approximately 120' +/-

12' +/- wide

Septic Tank

Accessory Structure

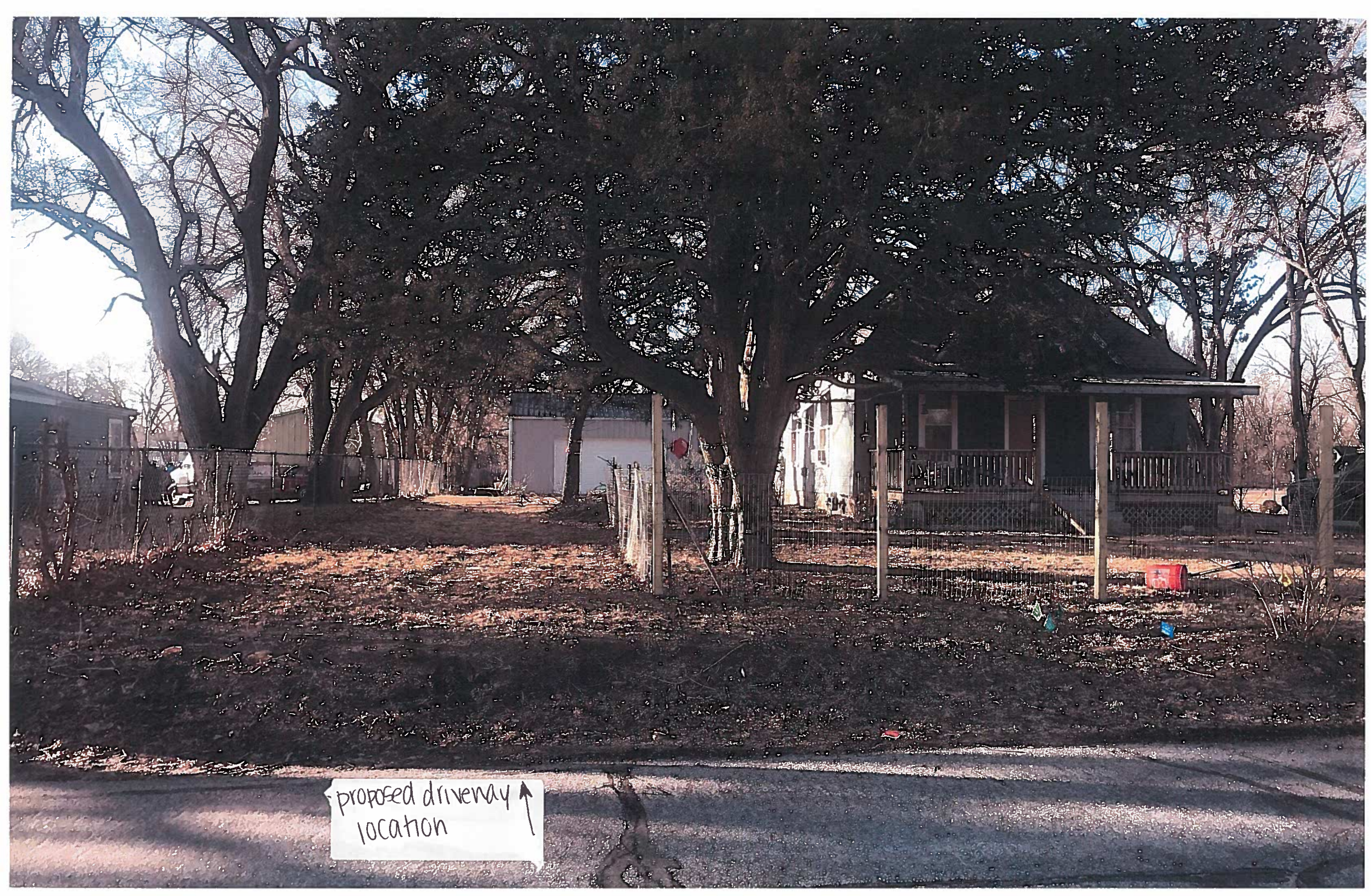




East
property
line
not
visible
from
this

Existing Driveway ↑
in middle of lot

West ↑
property
line



proposed driveway
location ↑



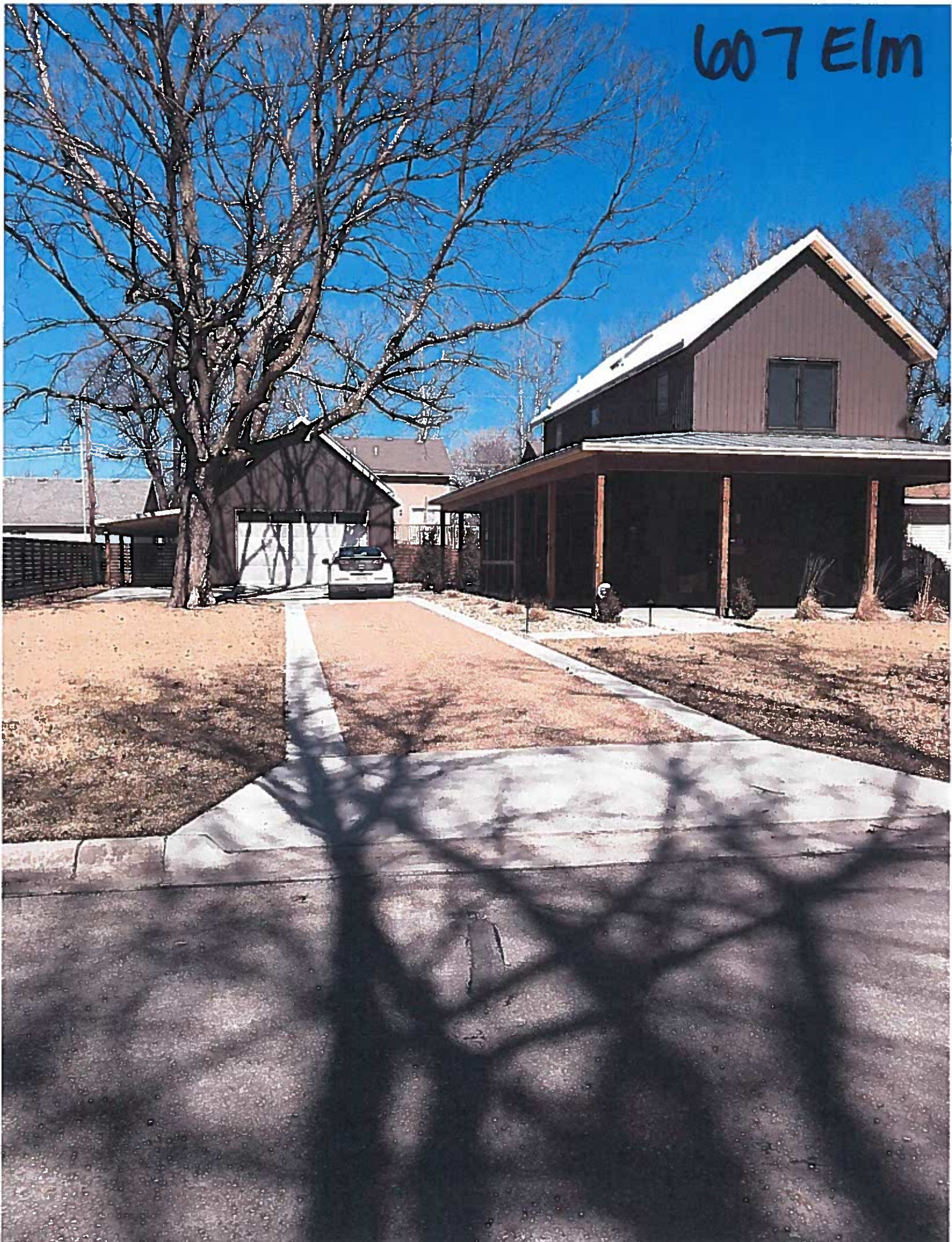
Gravel Drive

Subject Property

872 Oak St.

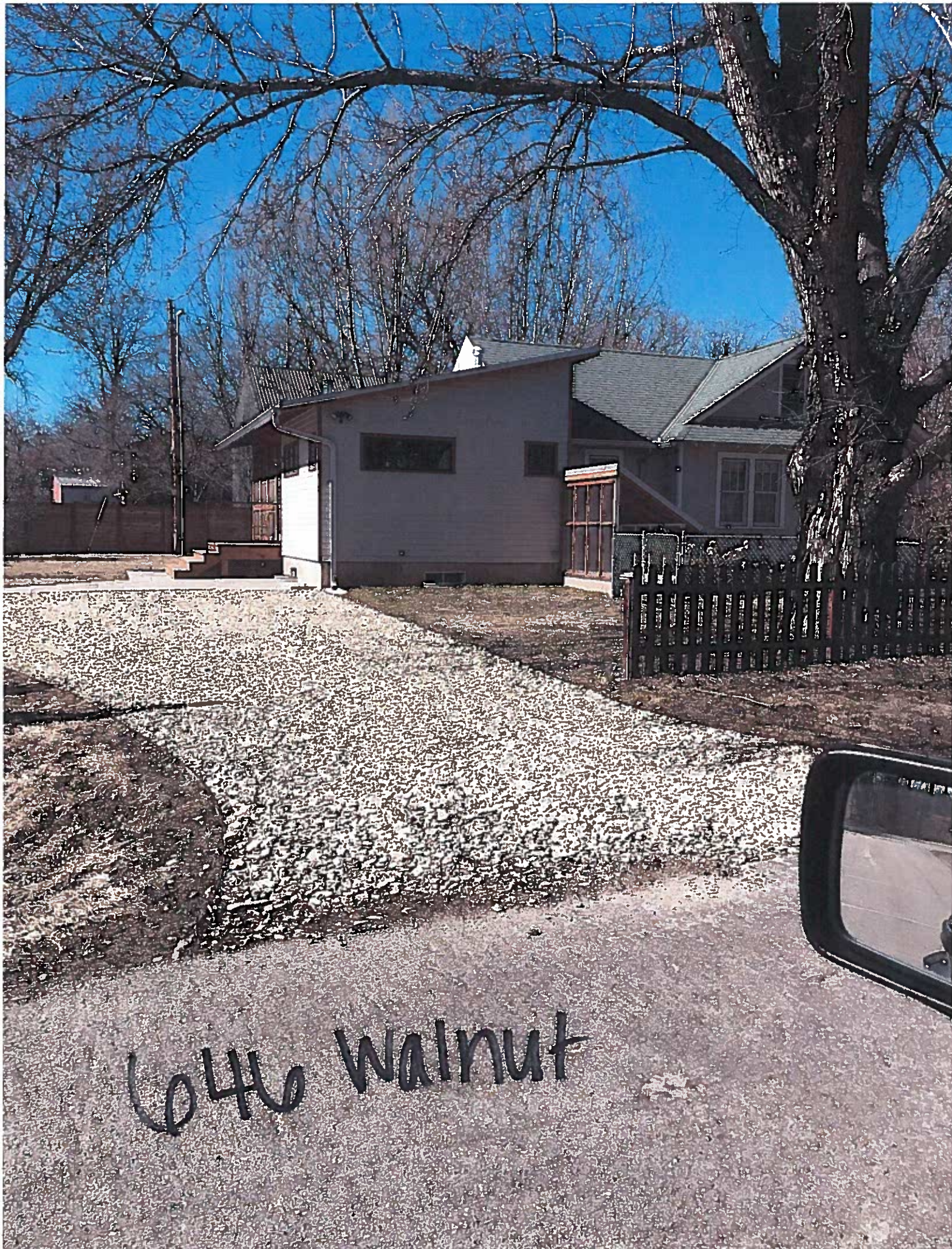


607 Elm





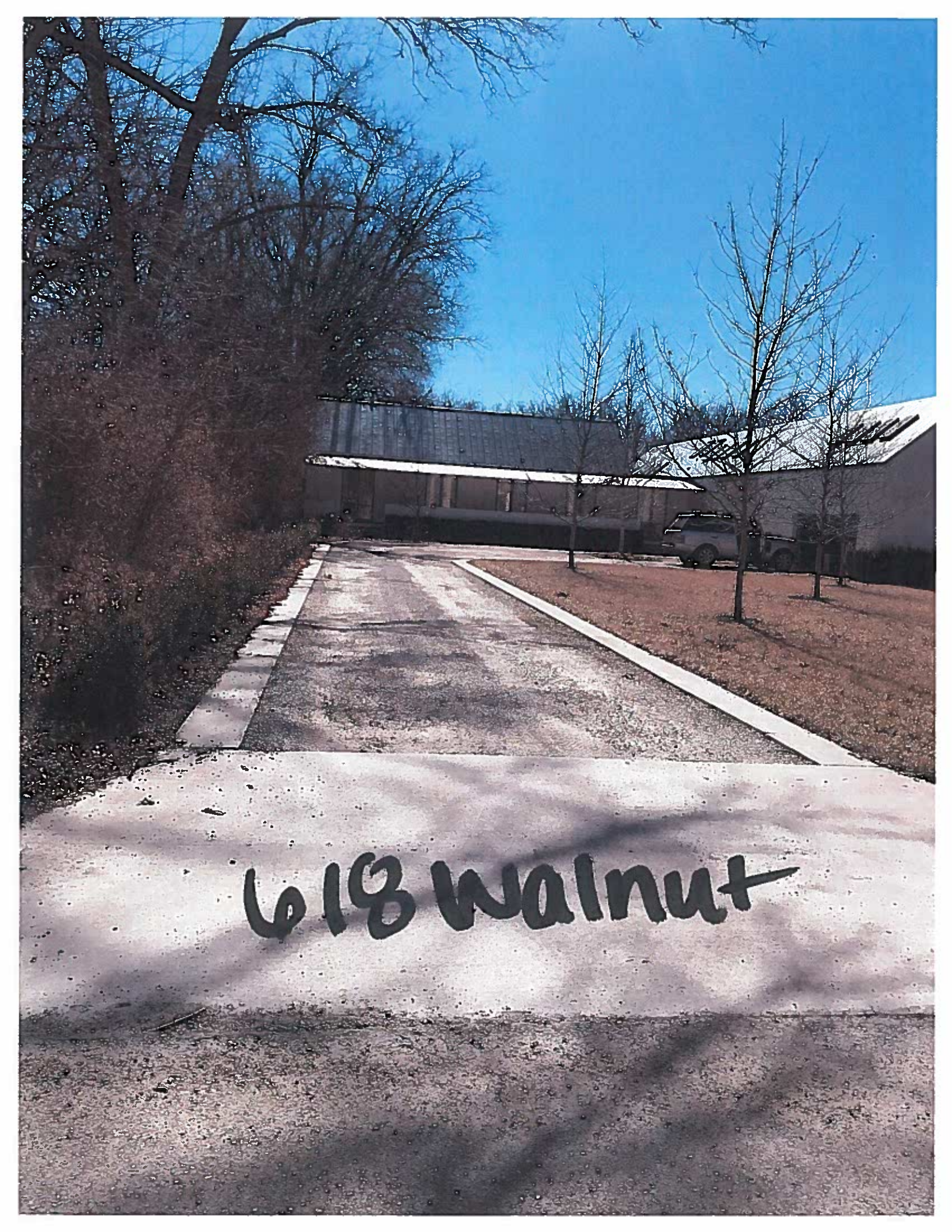
730 Ash



6046 Walnut

A photograph of a residential street. In the background, there is a red building with large windows and a white vehicle parked nearby. The street is lined with trees, some of which are bare, suggesting a cooler season. The foreground shows a concrete sidewalk with shadows cast by the trees. The text "630 Walnut" is written in a stylized font in the lower right corner of the image.

630
Walnut

A photograph of a residential property. In the foreground, a concrete driveway has the address "618 Walnut" handwritten in black marker. The driveway leads towards a single-story house with a dark, possibly metal, roof. To the left of the driveway is a large, dense bush. To the right is a lawn with several bare trees. A silver SUV is parked on the lawn near the house. The sky is clear and blue.

618 Walnut



6002 Walnut

A photograph of a residential property. In the foreground, there is a gravel driveway. A concrete walkway leads from the driveway towards the background. To the left of the walkway is a large, dark, irregularly shaped object, possibly a pile of mulch or a large rock. In the background, there are two buildings. The building on the left is a two-story, dark-colored structure. The building on the right is a single-story, light-colored structure with several windows. Behind the buildings are bare trees, suggesting a winter or late autumn setting. The sky is clear and blue.

532 Walnut

-----Original Message-----

From: Mary Lou Roberts [mailto:marylouroberts@stephensre.com]

Sent: Tuesday, February 27, 2018 3:27 PM

To: Caitlyn Dolar <cdolar@lawrenceks.org>

Subject: 868 Elm Street

City of Lawrence:

The purpose of this email is to support the use of gravel at 868 Elm Street when moving their driveway from the west side of their property to the east side of their property.

We have been long time property owners of 860 Elm and have no objection and further would draw your attention to the fact that many of the homes on Elm Street are in fact gravel.

We believe this aids in drainage which currently is not at an acceptable level in North Lawrence, more so than concrete would.

Thank you,

Mary Lou Roberts

Sent from my iPhone

03/01/2018

RE: 868 Elm Street

To: Lawrence BZA members:

I would like to let you know as a resident and business owner in North Lawrence that I offer my full support for Tiffany King-Asher's request to have a gravel driveway relocated and installed. We are continuing to battle storm water and drainage issues. The City of Lawrence has made incredible strides to help with the addition of the North Lawrence pump station. I feel very thankful for the resources the city has made towards the improvement of our storm water management. The uses of gravel as a pervious surface will allow the rain water to soak into the soil. North Lawrence soil conditions (when they are not paved over with impervious materials) are ideal for the near instant collection of rain water.

Thanks for taking the time to consider my letter.

Sincerely,

Jeff Hatfield
306 Elm Street
Lawrence, KS 66044

From: cchave7 [mailto:cchave7@gmail.com]
Sent: Monday, March 5, 2018 4:16 PM
To: Caitlyn Dolar <cdolar@lawrenceks.org>
Subject: 868 Elm St gravel driveway

To whom this may concern: I would like to express my support of our neighbor and friends at 868 Elm Street in using gravel for their driveway.

Thank you

Chris Chavez

-----Original Message-----

From: Rita Wilson [mailto:ritamarita@icloud.com]

Sent: Monday, March 5, 2018 11:36 AM

To: Caitlyn Dolar <cdolar@lawrenceks.org>

Subject: Asher, 868 Elm St driveway

I am writing to totally support the North Lawrence Asher family wishing to move a current gravel driveway to a different location and keep it gravel. Our soil over here is precious and it is an injustice to be forced to pave when you truly do not want that and the current coverage is gravel. Please consider their request with an open mind toward nature and our area! I applaud them for wanting to take care of Mother Earth!

I wish my home had half the patio coverage it has (same nearly 900 sq ft as the house). I think of the wonderful soil they covered with so much driveway and huge patio. Plus the runoff that much covered ground causes is sad, but undoing the patio is cost prohibitive!

Sincerely and thanks!

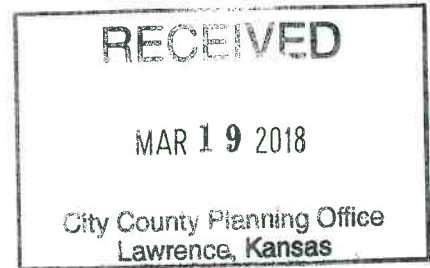
Rita Wilson

621 Lincoln

Sent from my iPhone

NORTH LAWRENCE IMPROVEMENT ASSOCIATION

LAWRENCE, KANSAS



March 12.2018

TO WHOM IT MAY CONCERN:

The North Lawrence Improvement Association does not approve of the installation of concrete or asphalt driveways in North Lawrence. Impervious surfaces that do not allow storm water to drain into the ground adds to storm water issues already present in flood prone areas.

Specifically, to the property at 868 Elm Street, there are no drainage ditches and the yard is very flat. The installation of an impervious surface driveway will contribute further to storm water drainage issues already present for this property. A gravel driveway will help alleviate the issue, allowing storm water to drain into the ground.

The NLIA approves of a concrete apron at the street entrance as long as the City repairs the ditches and puts driveway tubes under the apron.

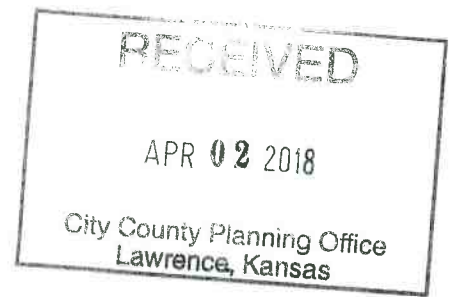
Sincerely,

A handwritten signature in blue ink, appearing to read "Ted Boyle". The signature is stylized with a large "T" and a cursive "Boyle".

Ted Boyle, President
North Lawrence Improvement Association

March 28, 2018

City of Lawrence Planning & Development Services
6 East 6th Street
P.O. Box 708
Lawrence, KS 66044



To the Board of Zoning Appeals:

Regarding Item B-18-00098, a requested variance to the Land Development Code of the City. The request for a variance from surface requirements for parking and driveway standards. The standard is for rigid (concrete) parking and driveway surfaces; the requested variance is for gravel driveway and parking surfaces.

I own property on Elm Street on the same block as the requested variance and have gravel surfaces for driveway and parking. I have a few observations and comments:

- The existing home at 868 Elm Street is a vintage cottage in apparent good condition with an existing gravel drive and gravel parking.
- There are no sidewalks or curb & gutter on this block. Storm water drainage is by poorly functioning open ditches with small diameter culvert pipes at driveway entrances.
- More than 50% of the driveway and/or parking surfaces are gravel on this block (14 gravel and 11 concrete, by my count).
- Gravel for driveway and parking surfaces, when properly installed and maintained, is adequate for the purpose, is cost effective, and is relatively easy to maintain (though gravel surfaces do require more maintenance effort than concrete).

My opinion and recommendation are to allow the requested variance from the standard Land Development Code. The gravel surfacing base should properly prepared and compacted, adequate surfacing material placed, spread, and compacted, and the surfacing should be properly maintained.

Sincerely,

A handwritten signature in blue ink that reads "G Alan Johnson". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

G Alan Johnson, Owner
842 Elm Street
Lawrence, KS 66044

Residence:
723 Illinois Street
Lawrence, KS 66044

ITEM NO. 4 VARIANCE FROM THE FRONT BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 1415 E. 18th STREET [JSC]

B-18-00100: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2018 edition. The request is for a variance from the 25 foot front setback standard required by Section 20-601(a) of the City Code for the RS7 (Single-Dwelling Residential) District. The applicant is seeking a variance from this code standard reducing the front setback to a minimum of 1 foot to allow for the construction of an attached car port. The property is located at 1415 E. 18th Street. Submitted by Napoleon S. Crews, Crews Law Firm, on behalf of Todd La Prad, property owner of record.

Staff Note: This case was previously before the Board on August 3rd, 2017 (B-17-00337) and was denied. Mr. LaPrad was unable to attend due to health reasons and filed an appeal with the Douglas County District Court. Both parties agreed to rehear the variance request under a new application to allow Mr. LaPrad to be heard.

B. REASON FOR REQUEST

Applicant's Request – "Applicant requests variance from the front building setback for a residential dwelling located at 1415 E. 18th Street, for a carport constructed partially over the driveway on the subject property. The carport was constructed such that it infringes into the required front setback by 24 feet. A private contractor by the name of Don McKay constructed the carport. Applicant relied upon Mr. McKay to obtain the necessary and required building permits and variance for the carport, but McKay failed to do so. The cost of the carport was \$6,797. It is Applicant's belief that McKay took advantage of applicant's disabled state. Applicant suffers from a broken back which is managed by medication. The pain of the injury and the effect of the pain medication prevents Applicant from engaging in snow removal and otherwise maintaining the driveway. Applicant also has difficulty in getting into and out of his motor vehicle. A shingled roof and gutters were added to the carport."

C. ZONING AND LAND USE

Current Zoning & Land Use:	RS7 (Single-Dwelling Residential) District; residential dwelling
----------------------------	--

Surrounding Zoning and Land Use:	RS7 (Single-Dwelling Residential) District; residential dwellings.
----------------------------------	--

D. ZONING ORDINANCE REQUIREMENTS

Section 20-601(a), "Density and Dimensional Standards; Occupancy Limits – Residential Districts," has standards defining the minimum building setbacks for residential dwellings based upon each residential zoning district. In the RS7 District, the minimum front building setback is listed to be 25 feet.

E. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Development Code lists the five requisite conditions that must 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: *"Applicant's property is situated such the carport could not be built on either side or at the back of the residence. In particular, there is a ditch that goes through the back yard and there is no alley to access a carport built in the back of the residence. According to contractors, it would cost more to tear down the carport than it cost to build it. There are at least 2 carports within a two-block radius that were built with the same or similar dimensions as the Applicant's."*

The variance request is to reduce the front setback due to the construction of an attached carport to the existing residence. This originates from a Development Services inspection related to a notification of working being conducted without the required permits. The carport has been constructed in a manner infringing approximately 24 feet into the required front setback as required in Section 20-601(a), "Density and Dimensional Standards; Occupancy Limits – Residential Districts," for properties zoned RS7, necessitating the variance request. If the carport was not attached to the existing residence, then the Land Development Code would not permit the carport. Section 20-533(3) states, "Accessory Structures in residential districts shall be located to the rear of the front Building line," meaning the carport could not exist between the residence and the front property line. When an accessory structure is attached to the primary residence, it then ceases to be accessory, becoming part of the principal residence. At that point, Section 20-601(a), "Density and Dimensional Standards; Occupancy Limits – Residential Districts" is applicable to the carport structure.

The property was platted in 1958 as Lot 4, Block 10 in Edgewood Park Addition No. 2. Overall, the lots in this subdivision are very similar in both the platted length and width of the lots. In the larger surrounding area, generally the lots are also rectangular in shape and are relatively consistent in overall lot size. The design of the plat does not generally create unique shapes due to platted lot lines or due to other unique site factors, such as topology and natural land features.

In this instance, the request for the variance is induced by the homeowner. The request, to grant a post hoc variance, is not due to a condition that is unique to the property in question and is not due to a condition not ordinarily found in the same zone or district. The action to authorize construction of the carport was granted by the property owner, and conducted without obtaining the required building permit for this structure by the contractor. It is important to note that if a permit had been applied for prior to the construction, Development Services staff would have informed the applicant about the code required setback, and therefore the need for a variance to construct the carport before they could issue a building permit.

Staff reviewed the residential variance cases within ½ mile of the subject property and identified 10 cases for carports since 1976. The general details of each case have been provided below:

Case No.	Year	Address	Request	Board Finding	Zoning Code
B-11-23-78	1978	1817 Almira Ave.	Reduction to minimum side yard from 5 feet to 3.8 feet.	Approved	1966 Zoning Code
B-10-30-85	1985	1743 Maple Ln.	Reduction of the minimum side yard setback requirement of 5 feet to a minimum of 3 feet	Approved	1966 Zoning Code
B-10-27-87	1987	1515 Powers St.	Reduction of the front yard setback requirement of 25 feet to a minimum of 1 foot.	Denied	1966 Zoning Code
B-11-26-88	1988	1906 Maple Ln.	Reduction of the minimum front yard setback requirement of 25 feet required in Section 20-608 of said City Code, to a minimum of 9 feet.	Approved, subject to the condition the carport not to be enclosed at any time in the future.	1966 Zoning Code
B-4-9-90	1990	1501 Harper St.	Reduction to allow one side yard to be reduced to a minimum of 4 feet allowing construction of a detached carport.	Approved	1966 Zoning Code
B-5-11-95	1995	2002 Maple Ln.	Reduction to the front yard setback requirement of 25 feet to a minimum of 4.5 feet to allow construction of a carport addition	Approved, subject to the condition the structure shall not have enclosed walls or other screening materials on it.	1966 Zoning Code
B-9-24-95	1995	1634 Rose Ln.	Reduction from the minimum side yard setback requirement of 5 feet to a minimum of 2 feet.	Denied	1966 Zoning Code
B-12-30-95	1995	1808 Maple Ln.	Reduction from the minimum 25 feet front yard setback requirement to a minimum of 11 feet on the above referenced property	Approved, subject to the condition that the carport addition remain an open sided structure over the duration of its existence on the property.	1966 Zoning Code
B-15-00304	2015	1914 Maple Ln.	Reduction from the minimum 25 feet front yard building setback to a 0 feet setback for a new free standing carport	Approved	Land Development Code
B-17-00337	2017	1415 E. 18th St.	Reduction from the minimum 25 feet front yard building setback to a 1 feet setback for a new free standing carport	Denied°	Land Development Code

° Same property subject to this request.

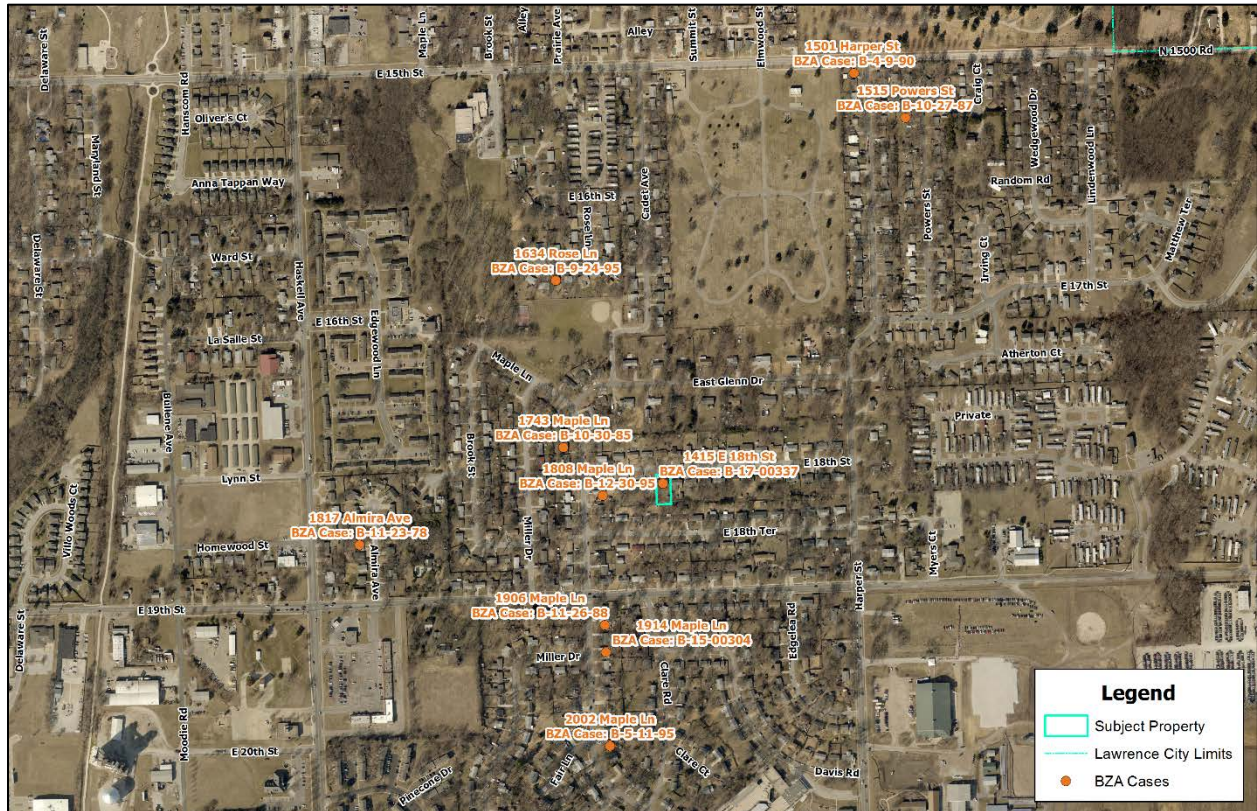


Figure 1: Map of Similar Board of Zoning Appeal Cases from Table



Figure 2: Subject Property (in light blue outline)



Figure 3: Setbacks and Approximate Carport Location based on Submitted Drawing

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

Applicant response: "The carport as constructed is an open-sided structure that will remain so for the duration of the existence of the property. There are other single-family dwellings in the surrounding area that have carports similar in look and design as the Applicants, although not as long as the subject structure."

In staff's opinion, the requested variance may not adversely affect the rights of adjacent property owners or residents. However, this may provide a right to this property that other similar properties in the area cannot equally enjoy. Notice was provided to property owners within 400 feet of the subject property informing them of the application filed by the property owner. As of the time this report was written, staff has not been contacted by any property owner expressing concerns or objections to the applicant's request.

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: "The Applicant is a disabled individual due to a broken back. He is prohibited from

strenuous activities, which includes driveway snow removal. The carport provides Applicant with a means of keeping the portion of the driveway free of snow, ice, and rain so that he may go to and from his vehicle without fear of falling and seriously re-injuring himself. Applicant cannot afford the cost of having the carport and guttering removed from his property and the connecting roof section restored."

In staff's opinion, strict adherence to the code required building setbacks would not constitute an unnecessary hardship. The Land Development Code explicitly states that the conditions for the variance cannot be created by action(s) of the property owner. It should also be noted that as defined for the intent and purpose of the Land Development Code, unnecessary hardship is defined noting that, "mere financial loss or the loss of a potential financial advantage does not constitute unnecessary hardship." (§ 20-1701) Under this definition, financial considerations are not singularly adequate grounds to constitute an unnecessary hardship.

The intent of a variance is not to grant additional rights to a particular property, but instead it is to equalize the rights of properties in instances when one property has lesser rights in context to a particular aspect of the Land Development Code. A variance is not an escape clause from standards and requirements placed in the Land Development Code to avoid those regulations when they are inconvenient to a preferred outcome. By this definition, showing some form of a hardship is insufficient to meet the threshold established in the definition of the term by Section 20-1701 of the Land Development Code. To meet the threshold established by this definition, the hardship must be more than mere inconvenience or a preference for a more lenient standard; merely showing some aspect of a hardship is not sufficient grounds to meet the statutory standards to constitute an unnecessary hardship.

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

Applicant response: *"The carport is an open-sided structure, strongly constructed, and will remain so for the life of the property. The openness, durability, and appearance of the structure does not adversely affect public health, safety, morals, order, convenience, prosperity or general welfare of the community. As an extension of Applicant's home, the carport conforms to the appearance of the homes and carports in the surrounding area."*

In staff's opinion, granting the requested variance may create an adverse effect upon the public health, safety, morals, order, convenience, prosperity or general welfare. The request in question is contained within the parcel owned by the applicant. However, a front setback reduction of this degree within a residential zoning district may create spill-over effects to the surrounding area. As the structure will be located before the front building line, and will be highly visible, staff would caution that effects from a structure of this size and scale cannot be mitigated as easily as they can be for structures located in the rear or interior side setbacks can be in certain cases. Setbacks to provide a reasonable assertion of order to the neighboring properties and residents on this block.

Regulating building sizes and placement through density and dimensional standards helps ensure that an individual property owner's interest are balanced and equal to their neighbors abilities and expectations, as well as the community as a whole. Doing so ensures everyone the use of their land, under the expectation that their neighbor is equally held to the same standards and requirements, ensuring the health, safety, and welfare of each person and the larger community is respected and maintained. Setbacks are one instrument created to outline what can be done within an area to govern the size, shape, and placement of buildings in relation to property lines and adjacent structures.

Staff is also concerned that an encroachment of this amount may affect future infrastructure improvements currently within the right-of-way. Currently, there is a water service line that runs parallel between the front property line and E. 18th Street. While the line is within the city's right-of-way, the possible conflicts should that line need to be replaced cannot be fully accounted for at this time. This may also restrict the ability of the city to conduct and improve other parts of the city's infrastructure in the adjacent right-of-way to this property.

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

Applicant response: *"The carport as constructed does not change the look of Applicant's neighborhood or significantly alter the master plan for the area. It is the belief of Applicant that the carport in no way alters the size, scale, or visibility of the property and is a reasonable use of the land and structure."*

This variance request is opposed to the general spirit and intent of the code because it provides a different zoning standard for one property that is not unique on the block. There is a distinction between what is considered a difficulty versus an unnecessary hardship. The Land Development Code defines an 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. (Section 20-1701)

In this particular instance, the property is still able to be used for a conforming use within the RS7 zoning district, and the strict interpretation of the Land Development Code would not deprive the owner of their property without compensation. The front setback requirement of Section 20-601(a) is equally applied throughout Lawrence for all properties within the same zoning district. The conditions surrounding this variance request are due to the actions of the contractor and owner not obtaining the required building permit, and are not originating from a condition that is unique to this property, and/or not ordinarily found in the same zone or district. While staff agrees the carport alleviates some difficulty for the current property owner, it is not a hardship imposed on the property through the application of the Land Development Code that would necessitate equalization of a right for future owners of this property in the future.

In staff's opinion, granting the setback variance requested would be opposed to the general spirit and intent of the Land Development Code. Strict adherence to the code requiring the 25 foot front yard building setback is not an unnecessary hardship in this instance, as defined within the purview of this Board.

Conclusions:

Staff's analysis of this variance application finds the request does not meet all five conditions set forth in Section 20-1309(g)(1) of the Land Development Code that the Board must find existing to grant a variance.

Recommendation:

Staff cannot recommend approval of the front yard building setback variance based upon the findings in the staff report concluding that the request does not meet the five conditions outlined in Section 20-1309(g)(1).



Friday, March 02, 2018

Lawrence Douglas County
Metropolitan Planning Office
6 East 6th Street
Lawrence, Kansas 66044

Re: Todd La Prad Application for Residential Variance – 1415 East 18th Street

Dear Planning Office:

I represent Mr. La Prad in what you will recognize as his second attempt to obtain a variance for a carport at his residence located at the above address. Mr. La Prad filed a prior variance on June 30, 2017. Due to medical reasons beyond his control, my client failed to appear at the hearing on his application. The application was subsequently denied.

I have talked with Mr. La Prad a number of times about his failure to appear and the weaknesses found in his original application. On his behalf, it is my firm belief that the strong medication my client had been prescribed and was taking at the time, contributed to the poor condition of his application and his non-appearance. My client suffered a broken back and was in the early stages of recovery during the time the application was prepared, submitted, and to be heard. His immobility and disability will be with him for the remainder of his life.

After meeting with Mr. McCullough, Mr. Larkin, and your legal counsel, I advised Mr. La Prad that all may not be lost and that your Office might give consideration to a second application if his medical situation was explained in a little more detail. Mr. La Prad deeply regrets any inconvenience that he may have caused by his failure to appear or the failure to fully address the variance requirements set forth in his prior application.

Respectfully,

Napoleon Crews
Attorney at Law

VARIANCE FROM UNNECESSARY HARDSHIP BY THE BOARD OF ZONING APPEALS

Application Requirements

Please note, the application and application materials must be submitted in print and electronic format, on disc. If you are unable to provide the application materials in electronic format, please contact the Planning Office at 785-832-3150.

This checklist has been provided to assist you as you prepare your application. Submission of less information than necessary to adequately review and process your application may delay the review process. Planning Staff will determine the completeness, accuracy, and sufficiency of the application within five (5) business days of submission. Incomplete applications will be returned to the applicant.

Pre-Application Meeting

- ☐ 1. Pre-Application Meeting. The applicant shall meet with Planning Staff at _____ least seven (7) business days prior to submittal of the application.

General Submittal Requirements ☐

1. A complete application form.
- ☐ 2. Payment of review fee. (\$150 residential; \$350 other, +\$50 Legal Ad Fee for All BZA Applications) (Make check payable to the City of Lawrence.)
- ☐ 3. Owner Authorization form if Applicant is not the legal owner of the property.

Requirements for Public Notification of the Public Hearing

- ☐ 1. Legal description of the property in print and electronic (Microsoft Word) formats.
- ☐ 2. A list certified by the County Clerk of all property owners within the notification area (400 feet) of the subject property. ☐ 3. Ownership List Certification form.

Other Requirements

- ☐ 1. Plot plan illustrating the requested variances and proposed development.
- a. Submit 2 paper copies and 1 copy in electronic format (TIF or PDF).
- b. If larger than 8.5 " x 11", fold all plans with the image side out.



APPLICATION FOR VARIANCE FROM UNNECESSARY HARDSHIP

OWNER INFORMATION

TODD LA PRAD

Name(s) _____

Contact _____

1415 East 18th Street

Address _____

City Lawrence State Kansas ZIP 66044

Phone (550) 588-5324 Fax _____

E-mail toddlaprad@gmail.com Mobile/Pager _____

APPLICANT/AGENT INFORMATION

Napoleon S. Crews, Attorney at Law

Contact _____

Crews Law Firm

Company _____

3300 Clinton Parkway Court

Address _____

City Lawrence State Kansas ZIP 66047

Phone (785) 856-5562 Fax (785) 856-5563

E-mail ncrews@crewslawfirm.net Mobile/Pager (785) 218-8798

Pre-Application Meeting Date _____ Planner _____

PROPERTY INFORMATION

Present Zoning District _____ Present Land Use Single-Dwelling Residential

Proposed Land Use Single-Dwelling Residential

Legal Description (may be attached) Attached

Address of Property 1415 East 18th Street, Lawrence, Kansas 66044

Total Site Area _____

Number and Description of Existing Improvements or Structures 1 – Single Family

Dwelling _____

Description of variance requested:

Applicant requests variance from the front building setback for a residential dwelling located at

1415 E. 18th Street, for a carport constructed partially over the driveway on the subject

property. The carport was constructed such that it infringes into the required front setback by 24 feet

A private contractor by the name of Don McKay constructed the carport. Applicant relied upon

Mr. McKay to obtain the necessary and required building permits and variance for the carport, but

McKay failed to do so. The cost of the carport was \$6,797. It is Applicant's belief that McKay

took advantage of applicant's disabled state. Applicant suffers from a broken back which is managed

by medication. The pain of the injury and the effect of the pain medication prevents Applicant from

engaging in snow removal and otherwise maintaining the driveway. Applicant also has difficulty in

getting into and out of his motorvehicle. A shingled roof and gutters were added to the carport

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:**

Applicant's property is situated such the carport could not be built on either side or at the back of the

residence. In particular, there is a ditch that goes through the back yard and there is no alley to access

a carport built in the back of the residence. According to contractors, it would cost more to tear down

the carport than it cost to build it. There are at least 2 carports within a two-block radius that were

built with the same or similar dimensions as the Applicant's.

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

The carport as constructed is an open-sided structure that will remain so for the duration of the

existence of the property. There are other single-family dwellings in the surrounding area that have

carports similar in look and design as the Applicants, although not as long as the subject structure.

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:

The Applicant is a disabled individual due to a broken back. He is prohibited from strenuous activities,

which includes driveway snow removal. The carport provides Applicant with a means of keeping the

portion of the driveway free of snow, ice, and rain so that he may go to and from his vehicle without

fear of falling and seriously re-injuring himself. Applicant cannot afford the cost of having the carport

and guttering removed from his property and the connecting roof section restored.

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

The carport is an open-sided structure, strongly constructed, and will remain so for the life of the

property. The openness, durability, and appearance of the structure does not adversely affect public

health, safety, morals, order, convenience, prosperity or general welfare of the community. As an

extension of Applicant's home, the carport conforms to the appearance of the homes and carports in

the surrounding area.

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

The carport as constructed does not change the look of Applicant's neighborhood or significantly

alter the master plan for the area. It is the belief of Applicant that the carport in no way alters the

size, scale, or visibility of the property and is a reasonable use of the land and structure.

SIGNATURE

I, Tod La Prad, the undersigned am the **owner** of the aforementioned property. By execution of my signature, I/we do hereby officially apply for variances as indicated above.

Signature: _____ Date _____

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____



Lawrence Douglas County
th Metropolitan Planning Office

6 East 6 Street, P.O. Box 708, Lawrence, KS 66044
(785)

832-3150 Fax (785) 832-3160 <http://www.lawrenceks.org/pds/>

OWNER AUTHORIZATION

I, Todd La Prad, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 1st day of February, 2018, make the following statements to wit:

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

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I the undersigned, have previously authorized and hereby authorize **Napoleon S. Crews, Attorney at Law**, to act on my behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding **1415 E. 18th Street**, 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.

Todd La Prad, Owner

0

STATE OF KANSAS
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this 1st day of February, 2018,

by Todd La Prad.

My Commission Expires:

Notary Public

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 400 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

Date

Printed Name



**City of Lawrence
Douglas County**
PLANNING & DEVELOPMENT SERVICES

**Lawrence Douglas County
th Metropolitan Planning Office**

6 East 6 Street, P.O. Box 708, Lawrence, KS 66044
(785)

832-3150 Fax (785) 832-3160 <http://www.lawrenceks.org/pds/>

Hardship Variance Packet

Note to Applicant:

Replace this page with "Exhibit A, Legal Description".



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

Rev 12/2016

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**Lawrence Douglas
Countyth Metropolitan
Planning Office**

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

Rev 12/2016

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VARIANCE
Unnecessary Hardship or Flood Protection Regulations

DETERMINATION OF COMPLETENESS, ACCURACY, AND SUFFICIENCY
(Completed by Staff)

The following items apply to variance applications. Submission of less information than necessary to adequately review and process your application may delay the review process. The following submittal requirements will be deemed: (P)provided or (NP)not provided. (Circled items have not been reviewed due to time constraints.)

Pre-Application Meeting P NP

- ☐ ☐ 1. Pre-Application Meeting. The applicant shall meet with Planning Staff at least seven (7) business days prior to submittal of the application.

General Submittal Requirements

- ☐ ☐ 2. A complete application form.
- ☐ ☐ 3. Payment of review fee.
- ☐ ☐ 4. Owner Authorization form if applicant is not the legal owner of the property.

Requirements for Public Notification of the Public Hearing

- ☐ ☐ 5. Legal description of the property in print and electronic (Microsoft Word) formats.
- ☐ ☐ 6. A list certified by the County Clerk of all property owners within the notification area of the subject property.
- ☐ ☐ 7. Ownership List Certification form.

Other Requirements

- ☐ ☐ 8. Plot plan illustrating the requested variances and proposed development.
 - a. Submit 2 copies (in print form) and an electronic copy of the entire application.
 - b. If larger than 8.5 " x 11", fold all plans with the image side out.
 - c. Additional plans and an 11" x 17" reduction (if larger than 8.5 " x 11") may be requested prior to completion.

Determination of Completeness, Accuracy, and Sufficiency

I have reviewed the variance application submitted by:



Name: _____ Date: _____

Application No. _____

Based upon the submitted information, I find the application to be:

- ☐ Complete (based upon the items reviewed)
- ☐ Incomplete, inaccurate, or insufficient (circle) for the following reasons:
 - ☐ The application or plan contains one or more significant inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with Development Code standards.
 - ☐ The application contains multiple minor inaccuracies or omissions that hinder timely or competent evaluation of the plan's/application's compliance with Development Code standards.
 - ☐ Other

Planner _____

Date

(1) Resubmit by _____ to be placed on the agenda for the Board of
Zoning Appeals meeting on _____. (All resubmitted materials
must be deemed to be complete, accurate, and sufficient.)

RESOURCES AVAILABLE TO THE APPLICANT

1. Planning Staff
2. Calendars:
 - Board of Zoning Appeals Submittal Deadlines and Meeting Dates

- Planning Commission Submittal Deadlines and Meeting Dates
 - Historic Resources Commission Submittal Deadlines and Meeting Dates
3. Fee Schedule
 4. City of Lawrence Development Code

The following articles of the Development Code are applicable to variance applications:

- Article 6: Density and Dimensional Standards
- Article 13, Section 20-1308: Zoning Variances

PLANNING DEPARTMENT PROCEDURES

Public Hearing: Planning Staff will schedule a hearing before the Board of Zoning Appeals, which is responsible for hearing the request.

Newspaper Publication: Planning Staff will publish the notice of the public hearing twenty (20) days prior to the date of the public hearing.

Mailed Notice: Planning Staff will mail notices of the public hearing to all property owners within the required notification area at least twenty (20) days prior to the public hearing. Planning Staff will also mail notice to any Registered Neighborhood Associations whose boundaries include or are contiguous to the subject property.

APPROVAL AND EXTENSION TIME PERIOD LAND DEVELOPMENT CODE ARTICLE 13

No action by the City shall be necessary to cause the approval to expire. Its expiration shall be considered a condition of the original approval.

SITE PLANS:

[Section 20-1305(o)(1)]

Approval time period -- Building permit must be obtained within **24 months** of final approval of the site plan or the approval shall expire.

Extension -- Extension of **up to 24 months** may be approved by City Commission for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

SPECIAL USE PERMITS:

[Section 20-1306(k)]

Approval time period -- Building permit must be obtained within **24 months** of the effective date of the decision on the Special Use or the approval shall expire.

Extension -- Extension of **up to 24 months** may be approved by City Commission for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

PRELIMINARY DEVELOPMENT PLAN:

[Section 20-1304(d)(12)]

Approval time period -- Application for a Final Development Plan must be submitted within **24 months** after final approval of the preliminary development plan or within 6 months after the date shown on an approved development schedule or the approval shall expire.

Extension -- Extension of **up to 24 months**, or the proposed phasing schedule may be modified to extend all dates by a period **up to one-half the original period allowed for development of that phase**, may be approved by City Commission for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

FINAL DEVELOPMENT PLAN

[Section 20-1304(e)(2)(vii)]

Approval time period -- A building permit must be obtained within **24 months** after the final approval of the Final Development Plan or the approval shall expire.

Extension -- Extension of **up to 24 months**, or the proposed phasing schedule may be modified to extend all dates by a period up to **one-half the original period allowed for development of that phase** may be approved by City Commission for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

INSTITUTIONAL DEVELOPMENT PLAN

[Section 20-1307(g)]

Approval time period -- A building permit must be obtained within **24 months** after the final approval of the Institutional Development Plan or the approval shall expire.

Extension -- Extension of **up to 24 months** may be approved by the City Commission for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

ZONING VARIANCES

[Section 20-1309(k)]

Approval time period -- A building permit must be obtained within **24 months** after the variance has been granted or the variance will expire. The variance will also expire upon expiration of a building permit.



Extension -- Extension of up to **24 months** may be approved by the Board of Zoning Appeals for good cause shown if written request is made by letter to the Planning Director before the expiration date. Additional extensions may be requested, if necessary.

APPROVAL AND EXTENSION TIME PERIOD SUBDIVISION REGULATIONS PRELIMINARY PLAT*

[Section 20-809(j)]

Approval time period -- A final plat must be submitted within **24 months** of the date approval of the preliminary plat was granted by the Planning Commission or the approval of the preliminary plat shall expire.

* Per Section 20-1304(d)(10) of the Development Code, approval of a Preliminary Development Plan constitutes approval of a preliminary plat. In the case of properties that were platted with a Preliminary Development Plan, the approval and extension dates of the Preliminary Development Plan shall apply. (See previous page)

Extension -- An extension of **up to 24 months** may be granted by the Planning Commission for a Preliminary Plat if the cause of failure to submit a final plat is beyond the subdivider's control. A written request must be provided to the Planning Director prior to the expiration date. Additional extensions may be requested, if necessary.

FINAL PLAT

[Section 20-809(n)(5)]

Approval time period -- Approval of a Final Plat shall be effective for no more than **24 months** from the date of approval unless all conditions of approval have been completed.

Extension -- An extension may be granted by the Planning Director for good cause. A written request for extension must be provided to the Planning Director prior to the expiration of the original 24 month approval period.

MINOR SUBDIVISION/REPLAT

(Section 11-108(k))

Approval of a Minor Subdivision/Replat by the Planning director and acceptance of dedications by the Governing Body shall be effective for no more than **24 months** from the date of acceptance unless all conditions of approval have been completed or an extension has been granted by the Planning Director for good cause.

Extension -- The extension request must be submitted to the Planning Director prior to the expiration of the original 24 month approval period.

**BEFORE THE BOARD OF ZONING APPEALS FOR
THE CITY OF LAWRENCE, KANSAS**

INTRODUCTION

JJMT, LLC, a Kansas limited liability company, is the owner of record of that real property commonly known as 900 Alabama Street, Lawrence, Douglas County, Kansas. On November 28, 2017, pursuant to City of Lawrence, Kan., Code § 20-1309 (Jan. 1, 2015), JJMT, LLC, filed with the Lawrence-Douglas County Metropolitan Planning Office "Application for Variance from Unnecessary Hardship," B-17-00664. In its application, JJMT, LLC, sought a variance from City of Lawrence, Kan., Code § 20-908(b) (Jan. 1, 2015), which zoning standard prohibits, in residential zoning districts, the location of parking areas within 25 feet of a Street Right of Way. The proposed variance would enable JJMT, LLC, to provide sufficient parking to convert the structure on the subject property from a single-unit, 4-bedroom, detached dwelling to a 7-bedroom duplex. On February 1, 2018, after giving proper notice, the Board of Zoning Appeals ("BZA") conducted a hearing on the application for variance. At the hearing, the BZA received evidence from City Staff, from Mark Kern, manager/owner of JJMT, LLC, and from the general public. At the conclusion of the hearing, the BZA voted unanimously to deny the "Application for Variance from Unnecessary Hardship." Pursuant to City of Lawrence, Kan., Code § 20-1309(h) (Jan. 1, 2015), based on the credible evidence adduced at the hearing, the BZA makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. JJMT, LLC ("the Owner), owns that real property commonly known as 900 Alabama Street, Lawrence, Douglas County, Kansas ("the subject property").

2. The subject property is currently zoned RM12D-UC (Multi-Dwelling Residential District-Urban Conservation Overlay) District.

3. Located on the subject property is a structure that is currently used as a single-unit, 4-bedroom, detached dwelling. The structure was built *circa* 1900.

4. As it is situated on the subject property, the structure faces Alabama Street to the West. Adjoining the subject property to the north is 9th Street, which is defined by the City as a minor arterial street. To the east and rear of the subject property is an alley, which currently provides parking for the subject property. To the south is a neighboring house.

5. The Owner wishes to convert the use of the structure on the subject property from that of a single-unit, 4-bedroom, detached dwelling to a 7-bedroom duplex.

6. A duplex is a permitted use in RM12D-UC zoning districts. Consequently, a duplex is a permitted use of the subject property.

7. However, under City of Lawrence, Kan., Code § 20-902 (Jan. 1, 2015), the subject property must provide a minimum of one parking space for each bedroom within a duplex. Also, the Oread Design Guidelines -- which are applicable to the subject property under the Urban Conservation Overlay -- prohibit the stacking of parking for duplex and multi-dwelling uses.

8. Accordingly, in order to provide seven parking spaces to accommodate a 7-bedroom duplex, the Owner must expand the parking area of the subject property. The Owner proposes to that by expanding the parking area to within ten feet of the 9th Street Right of Way.

9. However, City of Lawrence, Kan., Code § 20-908(b) (Jan. 1, 2015), prohibits the location of parking areas within 25 feet of a Street Right of Way in residential zoning districts, including RM12D-UC.

10. The Owner can provide five parking spots without encroaching upon the 25-foot setback requirement, but, in order to provide seven parking spots, the Owner must expand the parking area within the 25-foot setback from the 9th Street Right of Way.

11. The Owner can also renovate the structure to a 5-bedroom duplex without expanding the parking area or encroaching upon the 25-foot setback.

12. Therefore, in order to expand the parking area to provide sufficient parking to convert the existing structure to 7-bedroom duplex, on November 28, 2017, the Owner filed with the Lawrence-Douglas County Metropolitan Planning Office an "Application for Variance from Unnecessary Hardship," B-17-00664, seeking a variance from the 25-foot setback requirement of Section 20-908(b).

13. The credible evidence presented at the hearing was that the applicant seeks the variance solely for the purpose of providing sufficient parking to convert the existing single-unit, 4-bedroom, detached dwelling into a 7-bedroom duplex.

14. No evidence was adduced at the hearing that would tend to establish that the variance request arises from conditions that are unique to the subject property, from conditions that are not ordinarily found in the same zoning or district, or from conditions that are not created by actions of the Owner.

15. No evidence was adduced at the hearing that would establish that approval of the requested variance would or would not adversely affect the rights of adjacent property owners or residents.

16. Similarly, no evidence was adduced that would establish that strict adherence to the 25-foot setback requirement would constitute Unnecessary Hardship on the Owner of the subject property.

17. No evidence was adduced at the hearing that would show that approval of the variance would or would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare of the City. Although it must be noted that some evidence was presented that encroachment of the parking area into the 25-setback would impinge upon the sight triangle for vehicular traffic using the alley at the point it intersects 9th Street and that it might be dangerous to drivers of motor vehicles using that intersection.

18. Finally, no evidence was adduced at the hearing that would tend to show that the proposed variance was not in opposition to the general spirit and intent of the City Code.

CONCLUSIONS OF LAW

1. The zoning standards of the City Code prohibit an owner of real property from locating a parking area "within 25 feet of a Street right-of-way [sic] in any residential Zoning District." City of Lawrence, Kan., Code § 20-908(b) (Jan. 1, 2015).

2. The subject property is zoned RM12D-UC, which is a residential zoning district. See City of Lawrence, Kan., Code § 20-204(a)(2)(i) (Jan. 1, 2015).

3. Pursuant to City of Lawrence, Kan., Code § 20-1309 (Jan. 1, 2015), the Owner filed an application seeking a variance from the zoning standards, specifically Section 20-908(b).

4. The BZA is authorized, under City of Lawrence, Kan., Code § 20-1309(a) (Jan. 1, 2015), to approve, "in specific cases, variances from specific zoning standards of [the City Code] ... that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in Unnecessary Hardship." *Id.*

5. "Unnecessary Hardship" is defined by City Code 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.

City of Lawrence, Kan., Code § 20-1701 (Jan. 1, 2015).

6. In order too obtain a variance from a zoning standard of the City Code, such as the 25-foot setback requirement of Section 20-908(b), an applicant must establish by a preponderance of the evidence -- and the Board of Zoning Appeals must find -- **each** of the following:

- a. 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;
- b. That granting the variance would not adversely affect the rights of adjacent property Owner or residents;
- c. 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;
- d. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and
- e. That granting the variance would not be opposed to the general spirit and intent of this chapter.

City of Lawrence, Kan., Code § 20-1309(g) (Jan. 1, 2015).

7. The burden of showing the existence of conditions warranting the granting of a variance rests squarely upon the applicant. See 8 McQuillin, *Municipal Corporations* § 25.167, p. 763 (3d ed. rev. 1991).

8. Here, viewing the evidence in the light most beneficial to the Owner, the BZA concludes that the Owner has presented no evidence that would tend to establish that the requested variance is the result of conditions unique to the subject property, conditions that are not common in RM12D zoning districts or that

district in particular, or conditions are not caused by actions of the Owner. In fact, the credible evidence discloses that the Owner could readily convert the structure on the subject property to a 5-bedroom duplex without the need for a variance, and that the requested variance is only necessitated by the Owner's desire to convert the structure to a 7-bedroom duplex.

9. The BZA concludes that, although no evidence was presented on the issue by the Owner or the City, by its very nature the requested variance would not be inimical to the rights of adjacent property owners or residents.

10. The BZA concludes that, applying the definition of "Unnecessary Hardship," the Owner has not presented evidence that would tend to establish that absent the approval of the requested variance that the Owner will suffer unnecessary hardship. In fact, the Owner has presented no evidence that would tend to show that the zoning standard in question is unreasonable such that it arbitrarily and capriciously interferes with the Owner's right to use the subject property, that the Owner cannot use the subject property for a conforming use, or that there are factors that would deprive the Owner of the use of the subject property without just compensation. The credible evidence is that the proposed zoning standard prohibits the Owner from using the property in the manner it desires -- a 7-bedroom duplex instead of a 5-bedroom duplex -- which the BZA concludes falls well short of establishing that the zoning standard causes an unnecessary hardship on the Owner of the subject property.

11. The BZA concludes further that, although no evidence was presented on the issue by the applicant or the City, by its very nature the requested variance would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare of the community. The BZA does recognize, however, that the purpose of the 25-setback rule is to protect sight triangles for the safety of users of the City's roadways.

12. The BZA concludes finally that, based on the credible evidence presented at the hearing, the proposed variance is opposed to the general spirit and intent of the City Code.

13. In sum, the Owner of the subject property and applicant for the present variance failed to establish each element necessary for the granting of a variance under Section 20-1309 of the City Code. For that reason, the BZA hereby denies the "Application for Variance from Unnecessary Hardship," B-17-00664, filed by JJMT, LLC, on November 28, 2017.

Dated at Lawrence, Kansas, this 5th day of April, 2018.

JOHN GASCON
Chair

From: Jeff Crick
Sent: Friday, February 02, 2018 3:59 PM
To: 'Mark Kern' <mkern@kerngroupinc.com>
Cc: Lucas Mortensen <lmortensen@lawrenceks.org>
Subject: RE: Board of Zoning Appeals Action Letter

Mark,

As the Secretary for the Board of Zoning Appeals, it is my responsibility to respond to your correspondence. One of the questions that the Board must address in considering a variance request is that it "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." (Section 20-1309(g)(1)(i))

Uniqueness can take many forms, such as an oddly shaped parcel, extreme changes in topography, or other easements/encumbrances on a property to name a few. While uniqueness can vary from case to case, the uniqueness relating to an unnecessary hardship typically is in reference to the property being unique and not generally applicable to other properties in a similar district.

While I cannot speak for each Board members' consideration process, typically the distinction is that the property being considered for a variance must demonstrate that a special condition placed upon it by the application of the Land Development Code zoning standards would result in unnecessary hardship to this property. By code, the Board of Zoning Appeals cannot consider financial loss or the loss of a potential financial advantage as an unnecessary hardship.

I think it's also important to note that the Board of Zoning Appeals is not the board that reviews the Oread Neighborhood Design Guidelines; that is the responsibility of the Historic Resources Commission. While the Board of Zoning Appeals can consider that as part of the case, they are not responsible for the interpretation of those guidelines.

If you have any questions about the information above, please feel free to let me know.

Thanks,
Jeff

Jeff Crick, AICP, Planner II – jcrick@lawrenceks.org Planning and Development Services | City of Lawrence, KS P.O. Box 708, Lawrence, KS 66044 Office (785).832.3163 | Fax (785).832.3160

-----Original Message-----

From: Mark Kern [<mailto:mkern@kerngroupinc.com>]
Sent: Friday, February 02, 2018 10:44 AM
To: Jeff Crick <jcrick@lawrenceks.org>
Cc: wilbur45@sunflower.com; shipleyc@gmail.com; nathancolgate@gmail.com; ggardner@sunflower.com; john.gascon@edwardjones.com; erik.wisner@gmail.com; macloney@yahoo.com
Subject: RE: Board of Zoning Appeals Action Letter

Jeff and Zoning Board,

Would you provide us with a better understanding of why our property did not have the "uniqueness" to grant the approval? With our change to the trash location, our application met all 5 standards under our interpretation. I was very disappointed that the board member who made the motion did not have an understanding of the number of bedrooms/parking spots that would be allowed with the denial of our variance. Without the variance we only have room for 5 parking spots, which leaves us with the ability to build a one bedroom duplex. (He stated we could still have 6 bedrooms.) The current house is a 4 bedroom.

The Oread Overlay guidelines are going turn to many of the Oread homes into blighted properties. If investors are looking to rehab a home built in 1900, why wouldn't you find a way to make it happen. Allowing the additional parking is one way to accomplish that. Thanks for listening and hopefully this encourages you to look for a way to make this work and appease both sides.

Please note: The Oread Design guidelines were called guidelines for a reason. It shouldn't be considered as code.

Mark Kern - President & CEO
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730 New Hampshire, ste 110
Lawrence, Kansas 66044
mkern@KernGroupInc.com
www.KernGroupInc.com
O: 785.856.1990
F: 785.856.1995
C: 785.691.6940

-----Original Message-----

From: Jeff Crick [<mailto:jcrick@lawrenceks.org>]
Sent: Friday, February 2, 2018 9:32 AM
To: Mark Kern (mkern@kerngroupinc.com) <mkern@kerngroupinc.com>
Cc: Sherri Riedemann <sriedemann@lawrenceks.org>; Brian Jimenez <bjimenez@lawrenceks.org>; Adrian Jones <ajones@lawrenceks.org>; Janet Smalter <jsmalter@lawrenceks.org>; Lucas Mortensen <lmortensen@lawrenceks.org>
Subject: Board of Zoning Appeals Action Letter

Good morning Mark,

Please find attached the action letter regarding the Board of Zoning Appeals decision on February 1, 2018. If you have any questions about the Board's action, please feel free to let me know.

Thanks,
Jeff

[horiz_PandD-mutual-8]

Jeff Crick, AICP, Planner II -

jcrick@lawrenceks.org<<mailto:jcrick@lawrenceks.org>>

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