



LAWRENCE BOARD OF ZONING APPEALS
AGENDA FOR **JUNE 6, 2019**
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.

BEGIN PUBLIC HEARING:

ITEM NO. 2 VARIANCE FROM THE SURFACING REQUIREMENTS FOR PARKING AND LOADING AREAS TO PERMIT THE USE OF GRAVEL; 1104 E 23RD STREET

B-19-00202: A request for 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 loading areas as required by Section 20-913(e) of the City code to allow gravel as a paving material. The property is located at 1104 E 23rd St. Submitted by Richard W. Hird on behalf of Dr. James T. Brady, property owner of record.

ITEM NO. 3 VARIANCE FROM CONTINUOUS STREET FRONTAGE REQUIREMENTS FOR AN ADDITIONAL CURB CUT ALONG LOCAL AND RESIDENTIAL COLLECTOR STREETS; 830 E 13TH STREET

B-19-00221: A request for 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 one driveway per 200 feet of continuous street frontage standard required by Section 20-915(f)(1) of the City code for Driveways for parcels along local and residential collector streets. The request is for a second driveway opening. The property is located at 830 E 13th St. Submitted by Patrick Watkins, property owner of record.

ITEM NO. 4 VARIANCE FROM THE REAR YARD BUILDING SETBACK FOR A RESIDENTIAL STRUCTURE; 4829 TEMPE STREET

B-19-00243: A request for 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 30

foot rear setback standard for RS7 (Single-Dwelling Residential) District zoning required by Section 20-601)(a) of the City code. The applicant is seeking a variance from this code section reducing the rear setback to 22 feet. The property is located 4829 Tempe St. Submitted by Michael David Cobb & Lauren Cobb, property owners of record.

ITEM NO. 5 MISCELLANEOUS

- A. Consider any other business to come before the Board.

**ITEM NO. 2 VARIANCE FROM THE PARKING AND DRIVEWAY SURFACING STANDARDS
FOR A PARKING AND LOADING AREA; 1104 E. 23RD STREET [KEW]**

B-19-00202: 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 loading areas as required by Section 20-913(e) of the City Code to allow gravel as a paving material. The property is located at 1104 E. 23rd St. Submitted by Richard W. Hird on behalf of Dr. James T. Brady, property owner of record.

B. REASON FOR REQUEST

Applicant's Request - "Applicant requests allowance to keep area used for storage containers to use gravel as opposed to paved."

C. ZONING AND LAND USE

Current Zoning & Land Use:	CS (Commercial Strip) District; chiropractic office.
Surrounding Zoning and Land Use:	CS (Commercial Strip) District to the immediate south, east and west. Commercial business along the E. 23 rd Street corridor. RM12 (Multi-Dwelling Residential) to the north. Apartment structures.

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.

E. History

11/7/1990 – Agreement signed between the city and James T. Brady (property owner of record) where one of the conditions of agreement enumerated states that "Brady will not improve, modify or change the subject real estate or its appurtenances or improvements, or allow such to be done, without first obtaining all required permits and approval of the City." This agreement was entered into by the City and James T. Brady after work without a permit to construct a second story to the existing chiropractic office

structure, to bring the site up to compliance with land use permitted by zoning, site planning, building permitting and to come to mutual agreement regarding disputes over use of right-of-way for use in the construction of a frontage road.

3/5/2018 – After inspection and investigation, Code Enforcement staff concluded that the site had been altered and a new use established at the site without city approvals. Staff sent a letter to the property owner with notice that site planning approval is required for the addition of a storage unit use on the property. This notice was a cease and desist the storage unit use or submit a site plan application for review.

5/31/2018 – Pre-application meeting, the applicant was informed that the surfacing under the storage units would be permitted to be gravel, but drive aisles and parking areas would need to be surfaced with asphalt, concrete, or other means as provided in Section 20-913(e) of the Development Code.

6/27/2018 – Site Plan application SP-18-00326 was submitted for the storage unit use. This plan showed that gravel was proposed in the parking and loading areas in front of the storage units.

7/19/2018 – Site Plan review comments for SP-18-00326 were sent to the applicant. Comments included: "The proposed changes to this site are considered a major development project per Section 20-1305(b)(3). This site is subject to full compliance with the requirements of the Land Development Code. Any waivers should be specifically listed on the face of the plan."

7/25/2018 – Responses were received to the review comments from the applicant. Specifically, the response was, "A waiver of gravel requested under the storage containers for easier move ability providing a service to the renters of the units. If they request the storage containers to be relocated to another site. With the use of gravel the storage containers can be picked up and relocated."

1/03/2019 – Letter from the applicant's representative requesting a waiver from the surfacing requirements of Section 20-913(e) of the Land Development Code and permit the use of gravel.

3/14/2019 – An email from the planning director was sent to the applicant notifying the applicant that a variance would be required for use of gravel in parking and loading areas.

3/27/2019 – Site Plan review comments were sent to the applicant which included the following comment: "Use of gravel for public access to storage containers does not comply with Section 20-913. Revise plan to show code compliant pavement. Please be advised that the site cannot exceed 80% impervious cover. Site summary must be revised to use correct lot area, excluding 23' right-of-way."

4/12/2019 – Variance application received.

F. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Land 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 site plan proposed by the applicant shows an asphalt drive extending to the back (North) end of the property where the containers will be parked. Applicant is requesting a variance from having to install asphalt under the containers and allowing gravel instead. Access to the containers and the turn-around area would all be on asphalt; only the areas under the containers would be gravel."*

The containers have receiving slots built into the bottom to allow movement with a forklift; thus, they are portable and not permanently located on the ground. They are easier to move around on gravel and an asphalt surface would be more easily torn up by the movement of the heavy containers. The containers will be placed no more than 2' back from the edge of the asphalt driveway."

There are many other examples throughout Lawrence of businesses with gravel parking."

The variance originates from the applicant seeking to add an additional commercial use (*Mini-Warehouse*) to the property. This property is located on the north side of E. 23rd Street just east of Haskell Avenue. The site plan (SP-18-00326) submitted for the additional use (*Mini-Warehouse*) shows an area, approximately 13 feet wide, in front of the storage units is proposed to be gravel. The proposed site plan is in conflict with the applicant's description of the area to be gravel. 13 feet adjacent immediately in front of the storage units is the entire parking and loading area. The proposed pavement is only located in the drive aisles. This parking and loading area proposed to be gravel is in addition to the area directly under the storage units. This area is where parking and loading of the units will occur and is the area that the applicant is asking for a variance from this code standard.

See following site plan for the proposed (*Mini-Warehouse*) use. (Image 1)

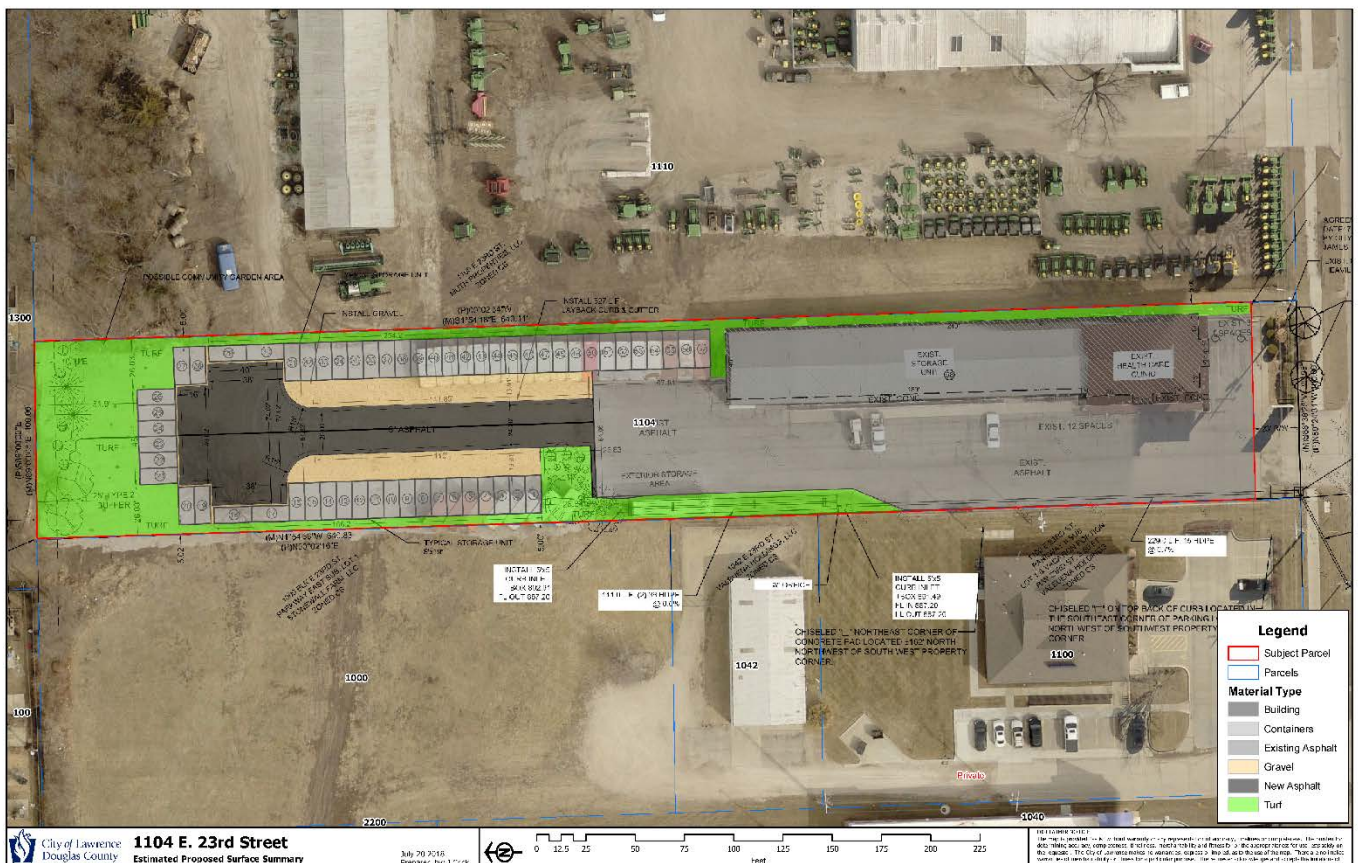


Image 1: The area in question where gravel is proposed is shown in tan.

The variance request does not arise from conditions that are unique to the property. The request is being triggered by the applicant's desire to add an additional use (*Mini-Warehouse*) to the property. The addition of the use, storage structures and improvements required to accommodate the use trigger a major site plan application. The major site planning process requires compliance with all aspects of the code per Section 20-1305(b)(3). This process is wholly created by the applicant.

Parking requirements are applied equally across all applications and zoning districts based on the standards in the Land Development Code. For the specified use intended for the area in front of the storage units, which is being utilized as parking and loading for the units, the Land Development Code enumerates specific requirements in Section 20-913(e). The description of the request provided by the applicant asks that "gravel be permitted under the storage units. Access to the units and the turn-around area would be paved." There should be no need for gravel in the areas intended to be traversed by vehicles.

This condition is not unique to this property due to the application of the standards applicable to the zoning or platting requirement; they are applicable to all properties seeking to develop as part of a major site plan process. There are also ADA surfacing requirements that would enable the storage units to be utilized by all potential users. These requirements are met by the specified surfacing materials listed in Section 20-913(e) of the Land Development Code.

The site plan application submittal was a response from the applicant after a code enforcement citation was issued. The applicant had begun adding the storage units to the site and utilizing them for the (*Mini-Warehouse*) use prior to obtaining proper site plan approval or building permitting that is required.

Also, per Section 20-913; Parking and loading design standards, specifically states that the design standards of this section apply to all parking areas, including commercial parking lots and "non-required" parking areas. Parking area is defined in the code as "An area devoted to off-street parking of vehicles on any one lot of public or private use. The common definition of a loading area is "a stop where carriers may be loaded or unloaded" Merriam-Webster. In this case it is the area directly in front of individual storage units where vehicles will be parking to unload/load items into and from the storage units. This is the primary area where vehicular activity for this use will occur.

See following page for map of subject property. (Map 1)



Map 1: Subject property outlined in blue.

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

Applicant response: *"The variance will have no effect upon the rights of adjacent property owners or residents. Allowing the use of gravel instead of asphalt paving would be beneficial, in that runoff to the adjacent properties would be minimized and will not be adverse to the surrounding areas."*

In staff's opinion, allowing the applicant to use gravel as a substitute for of the code enumerated surface material types identified in Section 20-913(e) of the Land Development Code would not adversely affect the rights of adjacent property owners or residents if the gravel is contained to the applicant's property. By limiting the use of gravel to the areas directly under the storage units, prevents gravel from being dispersed by vehicle traffic and keep it contained to the subject property.

Staff also believes that without any concrete or hard surface in the area utilized by vehicles, it is possible loose gravel may find its way into areas of the property or adjacent properties that it is not intended.

As of the time this report is written, staff has not heard from nearby property owners in regards to the variance application.

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 requirement to pave the parking area for the containers will constitute an unnecessary hardship upon the property owner. It will prevent him from engaging in an authorized use because it is expensive, will create unnecessary impervious surface, and will increase water run-off. And*

the application of the requirement to the intended use is arbitrary and capricious in that other parking uses are not required to be paved."

In staff's opinion, strict application of the code standard requiring a fully paved parking and loading area in front of the storage containers does not constitute an unnecessary hardship upon the owner as outlined by the Land Development Code. Requiring the applicant to provide a hard surfaced parking area for parking and loading areas is expected on all land development processes that trigger compliance with code requirements. It would bring the area intended to be used by vehicle and the site in line with the spirit and intent of the Land Development Code. Staff has determined that the area directly under the storage areas could be gravel as the storage units are potentially temporary in nature and gravel under the units would permit the skids and transport devices used to move the units to function effectively without damaging permanent surfacing such as concrete or asphalt.

Areas that are intended to be used by vehicles and people, to drive, park, or for loading have specific requirements for surfacing. Although there are no technical requirements that are unique to self-service facilities, elements and spaces provided in facilities containing self-service storage spaces are required to comply with the 2010 ADA standards for accessible design where applicable. All parking and loading areas are held to the standards set forth by Section 20-913 of the Land Development Code. These areas are intended to be utilized by vehicles which is the intent of the areas in front of the storage units.

An unnecessary hardship must be due to an exceptional condition or application of the Land Development Code that is specific to the property, not due to the general zoning district requirements, or the broader context of the area/neighborhood. Such irregular characteristics might arise, for example, from the size or shape of the lot, topography, or water features on a site. Merely demonstrating some hardship is insufficient to satisfy the Land Development Code's unnecessary hardship definition. The requirement for providing approved surfacing material is consistently applied throughout all zoning districts, and the Land Development Code does provide options for alternative surfacing that would meet site specific concerns for things such as drainage.

The applicant cites the expense of complying with the code as a hardship. Financial consideration cannot be taken into account when determining an unnecessary hardship. The definition of unnecessary hardship reads "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."

Other projects with similar uses have been built and approved in compliance with the surfacing requirements at the expense to the owner. Context and examples of approved surfacing for similar uses are included below. Additionally, the recently approved site plan for the adjacent site located at 1110 E. 23rd Street, for Heritage Tractor (SP-18-00349) has exterior storage for farm equipment. The exterior storage area was surfaced in asphalt millings (not gravel.) The asphalt millings were approved only in the area of the site where large equipment was going to be located and not where customer and vehicles would travel. All other areas traversed by vehicles or where light storage is occurring, concrete or asphalt paving was specified.

Examples of the same use (*Mini-warehouse*) are in the same or similar zoning districts, on similar sites and have met the surfacing requirements. The first site is located at 3707 W. 6th Street. This parcel is located in a Planned Commercial Development which is similar to a conventional commercial zoning district. This first example shows that all parking and loading areas are paved.



Example 1: Space Saver (*Mini-Warehouse*) 3707 W. 6th Street. All parking and loading areas are paved.

The second example is located in the same zoning designation (CS – Commercial Strip District) as the subject property and is located at 3215 Ousdahl Road. There is an existing *Mini-Warehouse* use and a site plan in process for a new *Mini-Warehouse* facility. The parking and loading areas at this location are also paved.



Example 2: Site Plan SP-17-00133 (In Process); (*Mini-Warehouse*) 3215 Ousdahl Road. Existing parking and loading areas are paved. The site plan in process also proposes pavement in all parking and loading areas to comply with section 20-913(e).

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

Applicant response: *"In this case, the use of gravel instead of an impervious surface (asphalt paving) makes infinite good sense and would be in harmony with the regulations. The Parking, Loading and Access section of the Code, Section 20-901 (a) indicates, "The regulations of this article are intended to ensure that the off-street parking, loading, and Access demands of various land uses will be met without adversely affecting surrounding areas." In this case, paving the property would increase the drainage run-off to the surrounding areas. By comparison, the use of gravel would maintain the ability of the property to absorb rainwater, minimizing the impact of the use.*

Section 20-901(c) of the Code refers to the Mid-America Regional Council and American Public Works Association Manual for Best Management Practices for Stormwater Quality, adopted by the City. One of the consistent themes throughout the BMP Manual is that avoiding impervious surfaces is the preferred method to minimize the impact of a given use. Section 7.0 of the BMP Manual indicates, "For stormwater management, one of the primary goals of site development should be minimizing site disturbance and maintaining native, natural site conditions. Impervious or paved areas should be minimized." (emphasis added) This is also reflected by the limitation in the City Code of 80% impervious lot coverage in CS Districts."

In staff's opinion, granting this variance to use gravel as a substitute for the approved surfacing materials of parking and loading areas will adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The dimensional standards for the CS zoning district, including limiting impervious coverage to 80%, applies to all significant development projects per footnote [11] in section 20-601(b). A major site plan qualifies as a significant development project per Section 20-1701; General Terms. The intent of dimensional standards by zoning district is to establish uniform design standards for development projects. Minimums and maximums including those for impervious surface coverage take into account the city's engineering standards as applicable, the city's approved codes and regulations for safety and health, community values on accessibility, a uniform standard for all development to be reviewed under and which offer the same level of prosperity and/or value to all land owners. The limits are established to ensure that sites are utilized with approved uses in a manner that is compatible with its zoning district. In setting the maximum, the code already takes into account the threshold at which impervious surface coverage would not adversely affect the general public.

If the site cannot accommodate development that would add an additional use which meets all applicable standards, including the maximum allowed impervious surface coverage, it would adversely affect the public by impacting the area. The purpose of the Land Development Code states that "This Development Code is intended to implement the Lawrence/Douglas County Comprehensive Land Use Plan and other applicable plans adopted by the City Commission... in a manner that protects, enhances and promotes the health, safety, and general welfare of the citizens of Lawrence."

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

Applicant response: *"20-913(a) provides, "There shall be safe, adequate, well-lit, and convenient arrangement of pedestrian pathways, bikeways, roads, Driveways, and off-street parking and loading spaces within off-street Parking Areas. Streets, pedestrian walks, and Parking Areas shall be designed as integral parts of an overall site design, which shall be properly related to existing and proposed Buildings, adjacent uses and landscaped areas."*

The variance requested will comply with all of these principals and, in addition, will recognize the preference for and advantages of, avoiding impervious surfaces."

In staff's opinion, allowing the use of gravel as the surfacing material in parking and loading areas is opposed to the spirit and intent of the Code.

Staff is of the opinion that allowing the gravel under the storage units, which are not permanent structures and may be moved frequently, would trigger the flexibility noted in code Section 20-901 of the Land Development Code to allow gravel where the containers are parked and still be in keeping with the intent of the code. The temporary nature of the containers and the need for skids and lift equipment could warrant gravel to minimize damage to surfacing materials from equipment. The use of gravel under the containers also allows for drainage of stormwater. Because they are not permanent structures and are lifted on skids, proper drainage of water under the containers would be facilitated by the gravel.

Allowing the gravel in additional areas that are going to be utilized by people and vehicles for the loading of storage units would not meet the intent of the code. The intent of the Code is to "ensure that the off-street parking, loading and access demands of various land uses will be met without adversely affecting surrounding areas." The regulations are intended to help maintain a safe and efficient transportation system and advance other planning goals related to land use and the environment. The applicability of the parking and loading standards of this article apply to all new structures built and all new uses established in all zoning districts." Section (20-901.)

Staff is aware of the drainage concerns that may be present any time there is additional paving on a given property 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 vehicles. This area is also the area that will be utilized for loading the individual units. Section 20-913(e) provides material options that allow for stormwater drainage. Staff has agreed with the desire for gravel under the storage units themselves to provide flexibility and efficiency in the mobility of the storage units.

Conclusions: Staff's analysis finds the applicant's request, for the use of gravel for the parking and loading area, does not satisfy the five conditions set forth in Section 20-1309(g)(1) of the Land 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 gravel for the parking and loading area instead of one of the pavement surface standards identified in Section 20-913(e) of the Land Development Code.



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 785-832-7700.

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.
 - c. Additional plans and an 11" x 17" reduction (if larger than 8.5 " x 11") may be requested prior to completion.



**APPLICATION FOR
VARIANCE FROM UNNECESSARY HARDSHIP**

OWNER INFORMATION

Name(s) Dr. James T. Brady

Contact _____

Address 1104 E. 23rd St.

City Lawrence State KS ZIP 66046

Phone (785) 749-0130 Fax () _____

E-mail dcjbrady@gmail.com Mobile/Pager () _____

APPLICANT/AGENT INFORMATION

Contact Richard Hird

Company Petefish Immel Hird Johnson Leibold & Sloan, LLP

Address 842 Louisiana

City Lawrence State KS ZIP 66044

Phone (785) 843-0450 Fax (785) 843-0407

E-mail rhird@petefishlaw.com Mobile/Pager () _____

Pre-Application Meeting Date waived Planner _____

PROPERTY INFORMATION

Present Zoning District CS Present Land Use office, multi-use/storage

Proposed Land Use _____



Legal Description (*may be attached*)

The East 100 feet of the West One-half of a tract of land described as:

Beginning at a point 474 feet East and 67.3 feet North of the Southwest corner of Section Five (5), Township Thirteen (13) South, Range Twenty (20) East, at a point on the North Right of Way of State Highway #10, thence North parallel with the West line of said Quarter Section 641.8 feet, thence South 89° East 497.4 feet, thence South parallel with West line of said Quarter Section 641.75 feet more or less to the North Right of Way of State Highway #10, thence West along the North Right of Way of said Highway #10, a distance of 497.4 feet, more or less to the point of beginning, in the City of Lawrence.

Address of Property 1104 E. 23rd St., Lawrence, KS 66046

Total Site Area 1.4706 acres

Number and Description of Existing Improvements or Structures One structure; in 1961, a 2,520 sq. ft. general office building was constructed; in 1991 an addition for office/multi-use/storage was added.

Description of variance requested:

Per Code Article 20-913(e), parking areas must be surfaced with concrete, asphalt or double chip and seal.

If the pre-submittal review letter is correct and the storage containers can be parked on gravel, a variance is requested from the surfacing requirements set forth in Code Article 20-913(e) for the 2' area between the front of the containers and the asphalt driveway to allow surfacing with gravel.

In the alternative, if the pre-submittal review letter is incorrect and the containers cannot be parked on gravel, then a variance is requested from the surfacing requirements set forth in Code Article 20-913(e) for the area under and in front of the containers, to allow surfacing with gravel.

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 site plan proposed by the applicant shows an asphalt drive extending to the back (North) end of the property where the containers will be parked. Applicant is requesting a variance from having to install asphalt under the containers and allowing gravel instead. Access to the containers and the tum-around area would all be on asphalt; only the areas under the containers would be gravel.

The containers have receiving slots built into the bottom to allow movement with a forklift; thus, they are portable and not permanently located on the ground. They are easier to move around on gravel and an asphalt surface would be more easily torn up by the movement of the heavy containers. The containers will be placed no more than 2' back from the edge of the asphalt driveway.

There are many other examples throughout Lawrence of businesses with gravel parking.

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

The variance will have no effect upon the rights of adjacent property owners or residents. Allowing the use of gravel instead of asphalt paving would be beneficial, in that runoff to the adjacent properties would be minimized and will not be adverse to the surrounding areas.

- 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 requirement to pave the parking area for the containers will constitute an unnecessary hardship upon the property owner. It will prevent him from engaging in an authorized use because it is expensive, will create unnecessary impervious surface, and will increase water run-off. And the application of the requirement to the intended use is arbitrary and capricious in that other parking uses are not required to be paved.

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

In this case, the use of gravel instead of an impervious surface (asphalt paving) makes infinite good sense and would be in harmony with the regulations. The Parking, Loading and Access section of the Code, Section 20-901 (a) indicates, "The regulations of this article are intended to ensure that the off-street parking, loading, and Access demands of various land uses will be met without adversely affecting surrounding areas." In this case, paving the property would increase the drainage run-off to the surrounding areas. By comparison, the use of gravel would maintain the ability of the property to absorb rainwater, minimizing the impact of the use.

Section 20-901(c) of the Code refers to the Mid-America Regional Council and American Public Works Association Manual for Best Management Practices for Stormwater Quality, adopted by the City. One of the consistent themes throughout the BMP Manual is that avoiding impervious surfaces is the preferred method to minimize the impact of a given use. Section 7.0 of the BMP Manual indicates, "For stormwater management, one of the primary goals of site development should be minimizing site disturbance and maintaining native, natural site conditions. Impervious or paved areas should be minimized." (emphasis added) This is also reflected by the limitation in the City Code of 80% impervious lot coverage in CS Districts.

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

20-913(a) provides, "There shall be safe, adequate, well-lit, and convenient arrangement of pedestrian pathways, bikeways, roads, Driveways, and off-street parking and loading spaces within off-street Parking Areas. Streets, pedestrian walks, and Parking Areas shall be designed as integral parts of an overall site design, which shall be properly related to existing and proposed Buildings, adjacent uses and landscaped areas."

The variance requested will comply with all of these principals and, in addition, will recognize the preference for and advantages of, avoiding impervious surfaces.



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

**Lawrence Douglas County
Planning Office**

1 Riverfront Plaza, Ste 320 | P.O. Box 708
Lawrence, KS 66044
(785) 832-7700 Fax (785) 832-3110
<http://www.lawrenceks.org/pds/>

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____

OWNER AUTHORIZATION

I/WE _____, hereby referred to as the "Undersigned", being of lawful age, do hereby on this _____ day of _____, 20 __, 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/We the undersigned, have previously authorized and hereby authorize _____ (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding _____ (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

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

Owner

Owner

STATE OF KANSAS
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 __,
by _____.

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



Note to Applicant:

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

The East 100 feet of the West One-half of a tract of land described as:

Beginning at a point 474 feet East and 67.3 feet North of the Southwest corner of Section Five (5), Township Thirteen (13) South, Range Twenty (20) East, at a point on the North Right of Way of State Highway #10, thence North parallel with the West line of said Quarter Section 641.8 feet, thence South 89° East 497.4 feet, thence South parallel with West line of said Quarter Section 641.75 feet more or less to the North Right of Way of State Highway #10, thence West along the North Right of Way of said Highway #10, a distance of 497.4 feet, more or less to the point of beginning, in the City of Lawrence.



**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.

Ray H

Please file
Hanks
By

A G R E E M E N T

This Agreement made and entered into this 7TH day of November, 1990, by and between the City of Lawrence, Kansas, a municipal corporation (hereafter "City"), and James Timothy Brady (hereafter "Brady").

WHEREAS, Brady is the owner of the following described real estate situated in Lawrence, Douglas County, Kansas, to-wit:

The east 100 feet of the west one-half of a tract of land described as: Beginning at a point 474 feet east and 67.3 feet north of the southwest corner of Section 5, Township 13 South, Range 20 East, at a point on the north right-of-way of State Highway #10; thence north parallel with the west line of said quarter section 641.8 feet; thence south 89° E 497.4 feet; thence south parallel with west line of said quarter section 641.75 feet more or less to the north right-of-way of State Highway #10; thence west along the north right-of-way of said Highway #10, a distance of 497.4 feet, more or less to the point of beginning, commonly known as 1104 E. 23rd Street, Lawrence, Douglas County, Kansas, together with all appurtenances thereon and improvements thereto;

WHEREAS, the above-described real estate is zoned C-4 which permits its use for a chiropractic office, its present use, but does not permit it to be occupied for dwelling purposes;

WHEREAS, Brady, did previously present a plat of the above-described real estate to the Lawrence-Douglas County Metropolitan Planning Commission for consideration and approval, which said approval was granted;

WHEREAS, said previously approved plat was submitted to the City's governing body for acceptance of dedicated right-of-way and easements, and such were so accepted, including the dedication of the south fifty (50) feet of said real estate for a frontage road; and

WHEREAS, the aforesaid plat has not been filed of record in the office of the Register of Deeds, Douglas County, Kansas, because of a dispute that has arisen between the City and Brady over the platted fifty (50) feet of right-of-way for a frontage road and other matters;

WITNESSETH, that the parties, do by this agreement desire and intend to resolve and settle their differences regarding the platting of the above-described real estate, the completion of the second floor expansion of Brady's office building, and other matters relating to the use and occupancy of said real estate by Brady, all in accordance with the terms, conditions and agreements hereafter provided.

IT IS THEREFORE BY THE PARTIES AGREED that the above-stated recitals are incorporated herein by reference and made a part of this agreement.

IT IS FURTHER UNDERSTOOD AND AGREED BY THE PARTIES that the City will upon proper application by Brady, cause to be issued to Brady, a building permit whereby Brady will be permitted to continue construction of the second floor expansion to his office building located on the above-described premises, when Brady does, or causes to be done the following:

1. Submit to the Lawrence-Douglas County Metropolitan Planning Commission and obtain its approval of a new plat of the above-described real estate, with only the south 23 feet thereof dedicated for use in the construction of a frontage road. Said plat shall also provide for dedication of utility easements and other matters provided in the previously approved plat;
2. Have the new plat presented to the City's governing body for acceptance of the dedication of right-of-way and easements;
3. Have the new plat filed of record in the office of the Register of Deeds, Douglas County, Kansas;
4. Obtain approval by the City's governing body of a site plan for the subject tract;
5. Submit and have approved by the City a water detention plan for the subject tract; and
6. Submit to the City's building inspector all required plans and specifications for the issuance of said building permit and pay the required fee(s).

In further consideration of the resolution of the dispute between the parties and full compliance by Brady of his duties, obligations and promises created by this agreement, the City agrees as follows:

1. City will not object to the platted dedication by Brady of only the south 23 feet of the above-described real estate as right-of-way for a frontage road;
2. City will permit Brady to have and construct up to three (3) parking spaces between the north edge of the 23 feet to be plat dedicated by Brady as frontage road right-of-way and the south edge of Brady's existing office building. Said parking spaces shall be laid out and constructed in a manner that will allow their full use, but create the least interference with normal use of the frontage road when built; Brady shall have the right to the use of said parking spaces and to have free use to back onto the frontage road ingress and egress; and
3. At such time as a frontage is installed the City will, at its cost, cause to be moved from the frontage road right-of-way and installed elsewhere on the subject tract the existing sign post and sign used in advertising Brady's business. Said location to be at the discretion of Brady so long as said location is reasonable.

IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES that the City can not, nor does it imply that it can, control or dictate the approval of the new plat by said planning commission.

Brady warrants, and assures the City the following:

1. That the second floor expansion of his present office building will be used only for chiropractic practice, and will not at anytime be used for dwelling purposes;
2. That Brady will immediately remove from the above-described real estate the existing satellite dish(es): Provided, however, the City will favorably consider approval of satellite location provided it meets existing City code;
3. That Brady will not use nor permit the use of the subject real estate for any purpose other than is permitted under and by its present zoning classification (C-4) or such other zoning classification as may be lawfully designated for said real estate; and
4. That Brady will not improve, modify or change the subject real estate or its appurtenances or improvements, or allow such to be done, without first obtaining all required permits and approval of the City.

This agreement is and shall be binding and obligatory upon the parties and their heirs, administrators, executors, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the City of Lawrence, Kansas, has caused this agreement to be executed this 7th day of November, 1990, and James Timothy Brady has executed this agreement on the 8th day of November, 1990.

City of Lawrence, Kansas
a municipal corporation

By: Mike Wildgen
Mike Wildgen, City Manager

ATTEST:

Raymond Hummert
Raymond Hummert, City Clerk

James T. Brady, P.C.
James Timothy Brady

ACKNOWLEDGEMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss

The foregoing instrument was acknowledged before me this 7th day of November, 1990, by Mike Wildgen, City Manager, for the City of Lawrence, Kansas.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.



Emeline C. Dahlem
Notary Public

ACKNOWLEDGEMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss

The foregoing instrument was acknowledged before me this 8th day of November, 1990, by James Timothy Brady.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.



Emeline C. Dahlem
Notary Public

AC&A NO: 0110.10F.11E

**ITEM NO. 3 VARIANCE FROM THE REQUIRED DRIVEWAY SPACING REQUIREMENTS
FOR A PARCEL ALONG A LOCAL ROAD; 830 E 13th Street [LRM]**

B-19-00221: 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 200 feet minimum continuous frontage for an additional driveway opening standard required by Section 20-915(f)(1) of the City Code. The applicant is seeking a variance from this code standard reducing the required amount of continuous frontage to a minimum of 100 feet to allow for the construction of a second driveway opening. The property is located at 830 E 13th Street. Submitted by Patrick Watkins, property owner of record.

B. REASON FOR REQUEST

Applicant's Request – *"I am hoping to add a second driveway entrance to our house at 830 E 13th Street, so that we can accommodate a U-shaped driveway. I've been informed that the code requires a lot width of 200 feet. Our lot width is only around 100 feet".*

C. ZONING AND LAND USE

Current Zoning & Land Use: RS5 (Single-Dwelling Residential) District; *detached dwelling residential use.*

Surrounding Zoning and Land Use: PRD (Planned Residential District) and *multi-dwelling residential use* – Delaware Commons to the west.

IG (General Industrial) District and *construction sales and service use* – Advanced Glass and Mirror to the east.

RS5 (Single-Dwelling Residential) District and *detached dwelling residential use* to the south.

D. ZONING ORDINANCE REQUIREMENTS

Section 20-915(f)(1), "DRIVEWAYS PER PARCEL ALONG LOCAL AND RESIDENTIAL COLLECTOR STREETS," provides the minimum frontage amount for additional driveway openings. The code required minimum continuous frontage amount along a local road or residential collector street and what is being requested by the applicant follow:

The Code permits one driveway opening per 200 feet of continuous frontage. The applicant is proposing a reduction in the required amount of continuous frontage to 100 feet. The applicant is proposing two driveway openings that will each measure 10 feet wide at the front property line.

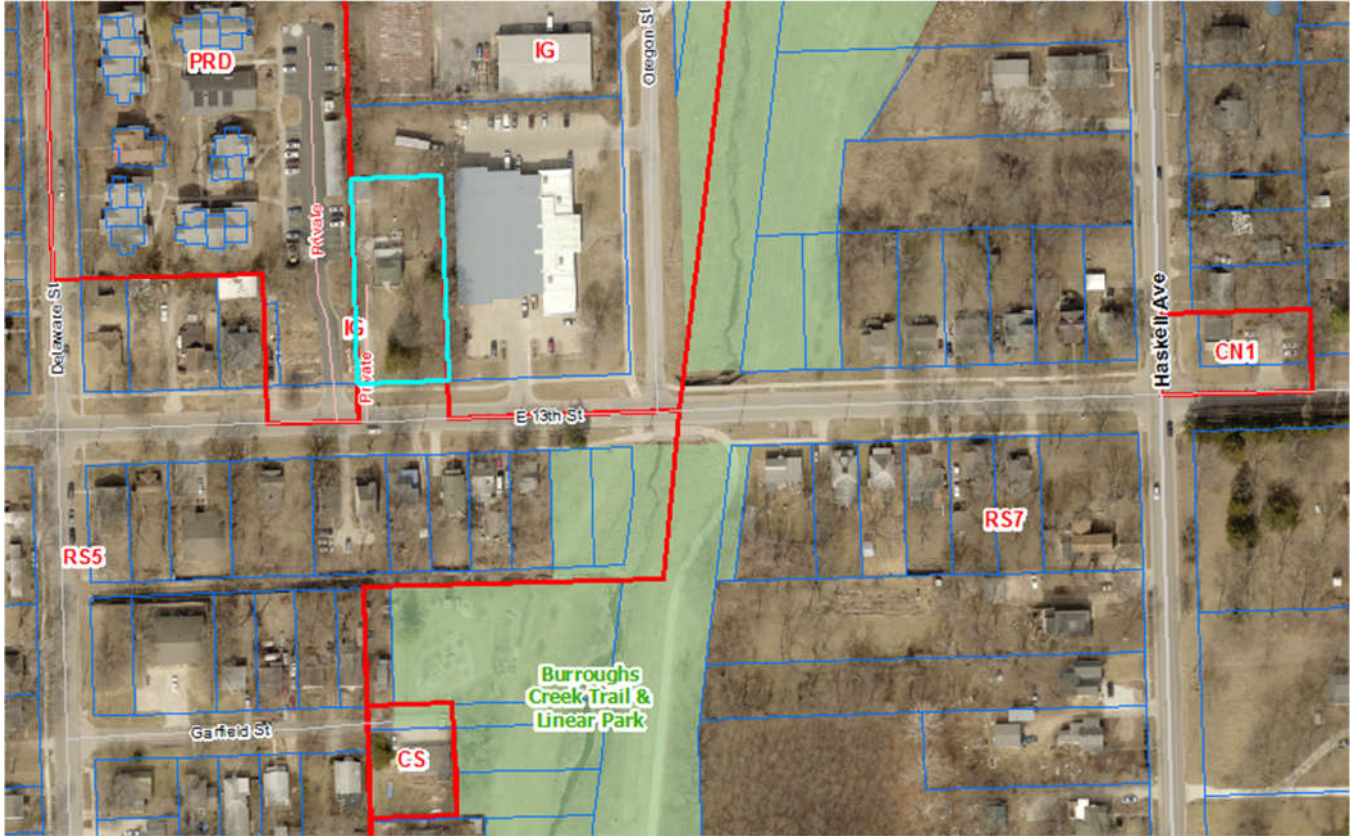


Figure 1: Subject Property outlined in Teal. Subject Property is located within the RS5 (Single-Dwelling Residential) District and is adjacent to the IG, PRD, and RS5 zoning districts.



Image 2: Driveway openings along E. 13th Street between Delaware Street and Haskell Avenue. Driveways and curb cuts are outlined in black, structures in red and the subject property in teal.

E. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Land 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 conditions on our property are unique. We are particularly close to the Burroughs Creek Trail, which is increasingly busy with pedestrian activity. We area also close to the Delaware Street Commons, which is a very active neighborhood complex with many children which play in the area around our current exit. With the bike boulevard, we anticipate increased pedestrian and bike activity in front of our house. Our lot width is also quite a bit wider than the standard lot with in this neighborhood. From a design standpoint, we have enough space to make a circle drive possible".*

The subject property is a portion of a platted lot of record. It is approximately 22,000 square feet located in the southeast corner of Block 5, Earl's Addition. The existing on-site detached-dwelling was constructed in 1910 per CAMA record.

The subject property is zoned RS5 (Single-Dwelling Residential) District and could be replatted as two RS5 lots each with 50 feet of frontage along E. 13th Street. If the subject property was developed with two RS5 district lots and two detached-dwellings, the Land Development Code would permit one driveway opening per lot. Image 2 shows the locations of existing driveway openings along E. 13th Street between Delaware Street and Haskell Avenue. The majority of lots along the street have a width and frontage measurement of 50 feet and almost all have their own driveway openings. Two driveway openings on the subject parcel with its width and frontage measurements of 100 feet would match the existing development pattern of the street.

Section 16-302.2, "NEW HOMES; SINGLE FAMILY AND MULTI-FAMILY," subsection (B) in the City Code also provides standards for residential driveways including the amount of lot frontage needed to qualify for a second driveway opening. This code provision requires a minimum lot frontage of 100 feet to be eligible for a second driveway opening. Staff is aware of the conflicting lot frontage standards currently found in the City Code and is working to resolve the problem with a Development Code text amendment that modifies the lot frontage requirement so it is consistent with the 100 feet minimum frontage standard found in Chapter 16 of the City Code.

The City Commission has designated funds to create a bicycle boulevard along E. 13th Street adjacent to the subject property. Bike and pedestrian traffic exists between the Burroughs Creek Trail to the east and the Delaware Street Commons and Massachusetts Street to the west. A combination of street improvements along with vehicular volume and speed controls will likely result in an increase of bike and pedestrian traffic in and along E. 13th Street right-of-way upon completion. Bike An additional driveway opening will allow the applicant to exit the property directly onto E. 13th Street without reversing. This will increase visibility of oncoming bicycle, pedestrian, and vehicular traffic for traffic exiting the subject property. Staff does not predict an increase in vehicular traffic on E. 13th Street due to an additional driveway opening to the subject property.

The subject property is not encumbered by any FEMA mapped regulatory floodplain; therefore, the proposed driveway shall be comprised of an approved driveway surfacing material found in Section 20-913(e) of the Land Development Code. The applicant shall also receive a driveway construction permit from the Municipal Services and Operations Department prior to installation. The additional curb cut and driveway apron shall be constructed to approved city standards.



Image 3: Site plan of proposed driveway openings provided by the applicant.

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

Applicant response: "Other owners in our neighborhood do not have enough width to their lot to fit a circle drive on their property, so granting a variance for our property would not create an undesirable precedent. A second entrance on our lot would still be less entrances than are on the other side of 13th street, and so it would not create overly burdensome conflict points. It also would not create more traffic at our property".

In staff's opinion, the requested variance would not adversely affect the rights of adjacent property owners or residents. 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 received no public comment regarding the requested variance or subject property.

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

Applicant response: *"Strict application of the provisions would cause us to create an internal circular turnaround on our property with the single entrance, which would cause us to lose at least two trees, possibly more. It would also cause us to lose the better part of our front yard to driveway, which would be unsightly".*

In staff's opinion, strict adherence to the Development Code standard which requires 200 feet minimum lot frontage in order to be able to have a second residential driveway on a lot is an unnecessary hardship to the property owner. There currently exists a conflict in the City Code regarding the amount of street frontage needed on a residential lot to qualify for a second driveway access. According to the code standards in Chapter 16, Article 3 of the City Code, a residential lot may have a second driveway if the lot has a minimum of 100 feet of continuous street frontage. Staff has been preparing several text amendments concerning various parking and design standards in the Development Code including the code section that requires 200 feet of street frontage for a second driveway access. Staff's intent is to amend that Development Code standard to make the frontage requirement match the 100 feet lot frontage standard now existing in Chapter 16. Denying the variance is a hardship because it delays the applicant's ability to move forward with their building plans while awaiting the approval of the proposed text amendments by the City that will fix this code conflict.

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

Applicant response: *"The variance would help to improve safety along the bike boulevard. We'd be able to pull our cars our facing the street, so that we could see the pedestrians and bikers more clearly. It would also improve the orderly condition of our front yard and our own convenience".*

In staff's opinion, granting the requested variance will not create an adverse effect upon the public health, safety, morals, order, convenience, prosperity or general welfare. The addition of another driveway opening on the eastern side of the subject property is compatible with driveway spacing found in the block. No additional traffic increase on the local street should result from the addition of a second driveway opening on this residential property.

A portion of the subject property is encumbered by the locally listed John and Mina Madson House historic environs. A future driveway permit will be subject to review by the historic resources administrator. Staff will review how the proposed improvements interact with the locally listed historic environs.

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

Applicant response: *"Our property is much larger than the typical East Lawrence lot and the variance process seems appropriate to accommodate this sort of situation".*

In staff's opinion, granting the requested variance would not be opposed to the general spirit and intent of the Land Development Code. Granting the requested variance is consistent with the previous findings of the Board, and also consistent with the spirit of the Land Development Code. Staff recognizes the inconsistency that currently exists between the provisions in Chapter 16, Article 3, and the more restrictive provisions in Chapter 20, Article 9 of the City Code regarding the minimum lot frontage requirement needed for a second residential driveway. Staff is responding to this problem with a text amendment to the code provisions in Chapter 20 (Development Code) to make the code standard the same as found in Chapter 16, Article 3, of the City Code.

Conclusions:

Staff's analysis of this variance application finds the request meets 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 recommends approval of the driveway spacing variance based upon the findings in the staff report concluding that the request meets the five conditions outlined in Section 20-1309(g)(1). Staff recommends the Board grant the variance to reduce the required amount of continuous frontage for an additional driveway opening for a parcel along a local street or residential collector street from 200 feet to 100 feet at 830 E. 13th Street.



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.
 - c. Additional plans and an 11" x 17" reduction (if larger than 8.5 " x 11") may be requested prior to completion.



**APPLICATION FOR
VARIANCE FROM UNNECESSARY HARDSHIP**

OWNER INFORMATION

Name(s) Patrick Watkins
 Contact _____
 Address 830 E 13th Street
 City Lawrence State KS ZIP 66044
 Phone (785) 550-8794 Fax (____) _____
 E-mail patrwatkins@gmail.com Mobile/Pager (____) _____

APPLICANT/AGENT INFORMATION

Contact _____
 Company _____
 Address _____
 City _____ State _____ ZIP _____
 Phone (____) _____ Fax (____) _____
 E-mail _____ Mobile/Pager (____) _____
 Pre-Application Meeting Date _____ Planner _____

PROPERTY INFORMATION

Present Zoning District RS-5 Present Land Use Residential
 Proposed Land Use RS-5
 Legal Description (*may be attached*) Attached
 Address of Property 830 E 13th Street
 Total Site Area 0.52 Acres
 Number and Description of Existing Improvements or Structures House and Shed



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 conditions on our property are unique. We are particularly close to the Burroughs Creek Trail, which is increasingly busy with pedestrian activity. We are also close to the Delaware Street Commons, which is a very active neighborhood complex with many children which play in the area around our current exit. With the bike boulevard, we anticipate increased pedestrian and bike activity in front of our house.

Our lot width is also quite a bit wider than the standard lot width in this neighborhood.

From a design standpoint, we have enough space to make a circle drive possible.

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

Other owners in our neighborhood do not have enough width to their lot to fit a circle drive on their property, so granting a variance for our property would not create an undesirable precedent.

A second entrance on our lot would still be less entrances than are on the other side of 13th street, and so it would not create overly burdensome conflict points.

It also would not create more traffic at our property.



**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/>

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

Strict application of the provisions would cause us to create an internal circular turnaround

on our property with the single entrance, which would cause us to lose at least two trees,

possibly more. It would also cause use to lose the better part of our front yard to

driveway, which would be unsightly.

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

The variance would help to improve safety along the bike boulevard. We'd be able to pull

our cars out facing the street, so that we could see the pedestrians and bikers more

clearly. It would also improve the orderly condition of our front yard and our own

convenience.



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

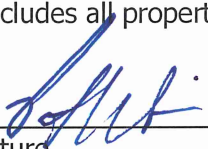
The Ownership list shall include the record Owner of the subject property and all Owners of property located within 400 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

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

4-10-19
Date

Patrick Watkins
Printed Name

LEGAL DESCRIPTION

Beginning at a point 200 feet West of the Southeast corner of Block 5 in EARL'S ADDITION to the City of Lawrence, Douglas County, Kansas; thence North 224.48 feet; thence West 100 feet; thence South 224 feet, more or less, to the South line of said Block 5; thence East 100 feet to the place of beginning.



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.



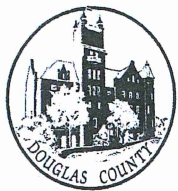
Extension – An extension may be granted by the Planning Director for good cause. A written request for extension must be provided to the Planning Director prior to the expiration of the original 24 month approval period.

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.



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044

Marni Penrod-Chief Deputy Clerk
Heather Dill-Deputy Clerk Elections

April 10, 2019

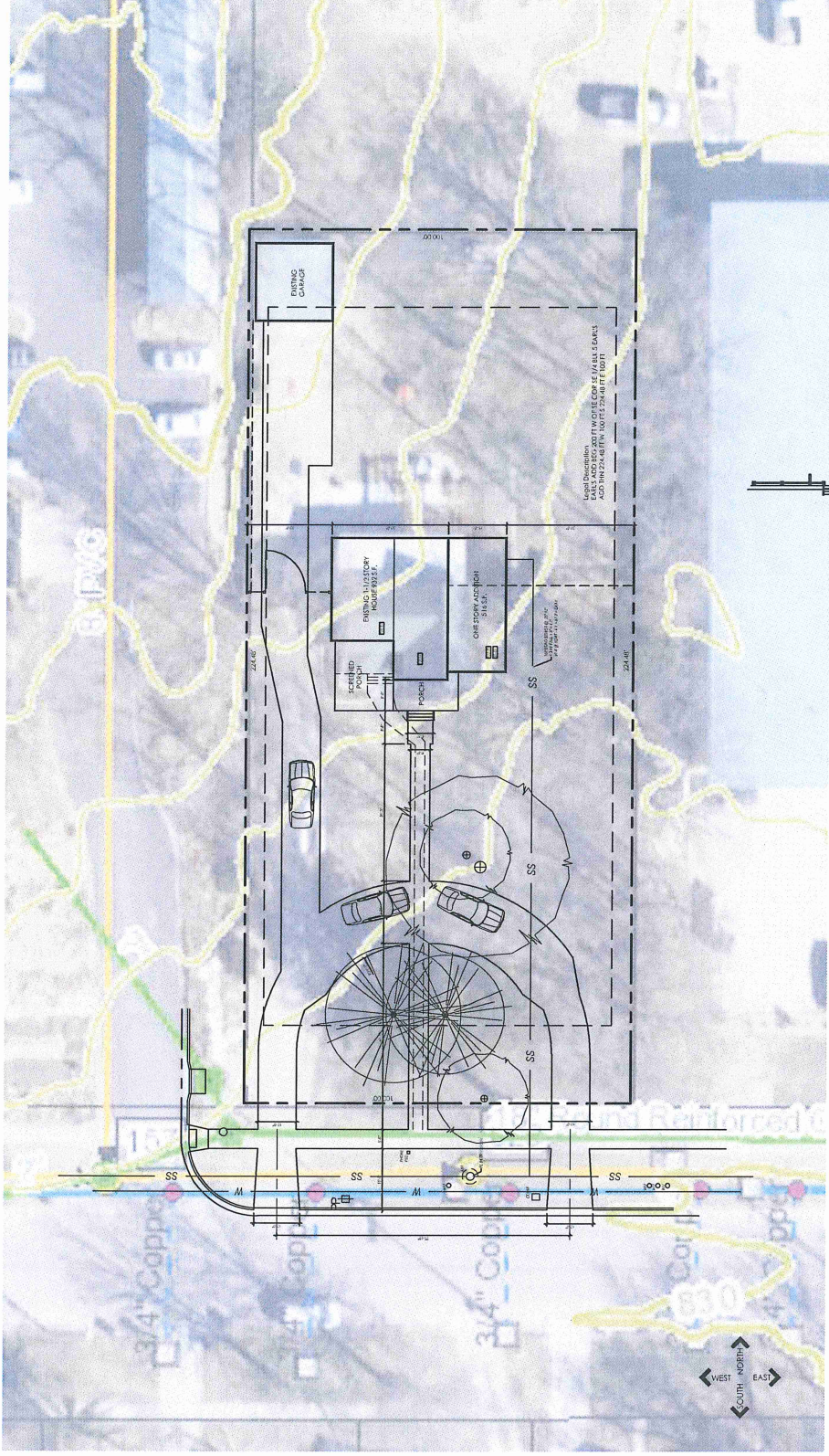
A CERTIFIED PROPERTY OWNERSHIP LIST WITHIN 400 FT OF 830 E 13TH ST
(U02583-01). 04/10/2019. REQUESTED BY PATRICK WATKINS.

JOHN R. NICHOLS
DOUGLAS COUNTY CLERK'S OFFICE
1100 MASSACHUSETTS ST
LAWRENCE, KS 66044

785-832-5147

jnichols@douglascountyks.org

Douglas County Real Estate Division
County Clerk's Office. I do hereby certify
the Property Ownership listed hereto, to be
true and accurate.



1 SITE PLAN
1" = 20'-0"

WATKINS RESIDENCE
830 E. 13th Street
Lawrence, Kansas

Henry ASSOCIATES

2700 Massachusetts
Lawrence, Kansas
785-749-5504
FAX: 785-749-1515

SITE PLAN

Date: 2/28/2020
Drawn by: MMRS
Checked by:
Revisions:

C1.0

ITEM NO. 4 VARIANCE FROM THE REQUIRED REAR YARD BUILDING SETBACK FOR A RESIDENTIAL STRUCTURE; 4829 TEMPE STREET [LRM]

B-19-00243: 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 30 foot rear 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 rear setback to a minimum of 22 feet to allow for the construction of an elevated deck connected to the existing residence. The property is located at 4829 Tempe Street. Submitted by Michael David Cobb, property owner of record.

B. REASON FOR REQUEST

Applicant's Request – "Problem: Our backyard deck is old and needs to be replaced. We have a plan to build a new deck, but our current old deck is not within the current code as defined in "City Land Development Code 20-602(E)(6)(viii) or (4). As it sits, our current deck (built in 1993) is 22' north from our rear property line. The code requires our RS7 property to not have a deck within 30' of the rear setback. If we were to rebuild the deck today, to code, the deck could only be 6' – 5' in length from the house. This presents our hardship and why we are respectfully requesting an exemption to build a new deck."

Proposal: our property may have been zoned differently prior to 2006, therefore a 20' setback requirement was adhered to in 1993, but currently violates code. We wish to expand our deck all the way across our home (east to west) but not any further south (toward the setback) than it already is. The deck would not push toward the required setback any more than it is right now, and the side setbacks would also stay within code. The deck would be 20' – 22' from the setback upon completion.

We respectfully request the city of Lawrence to grant our request to rebuild our deck with this variance request. Our deck goes our 14' from our residence, we would not exceed this length on the new build, and it would not impede the setback any more than it is right now. We would like to keep the deck space we currently have".

C. ZONING AND LAND USE

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

Surrounding Zoning and Land Use: RS7 (Single-Dwelling Residential) District in all directions; *Detached Dwelling Residential use in all directions.*

D. ZONING ORDINANCE REQUIREMENTS

Section 20-601(a), "DENSITY AND DIMENSIONAL STANDARDS; OCCUPANCY LIMITS, Residential Districts," provides the minimum building setbacks for each residential district. The code required minimum building setbacks in the RS7 (Single-Dwelling Residential) District and what is being requested by the applicant follow:

Southern setback (rear setback) – 30 feet required; 22 feet proposed for new deck.

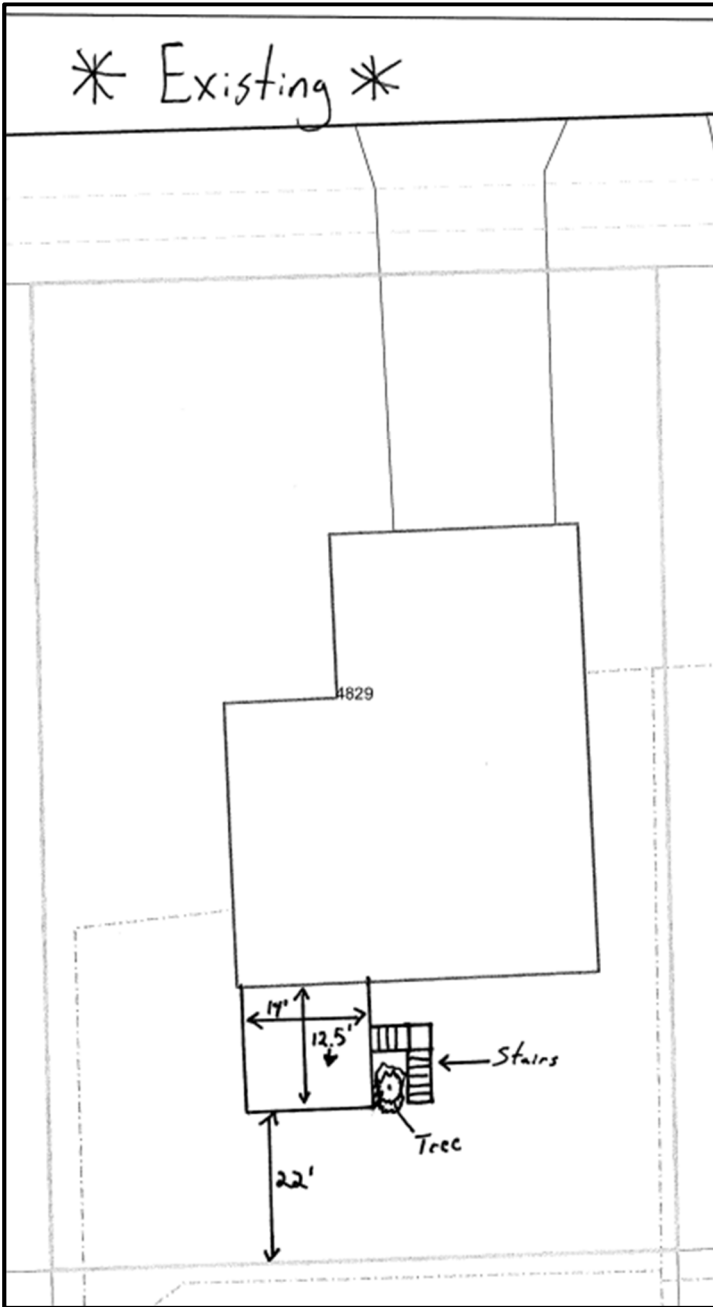


Image 1: Existing deck.

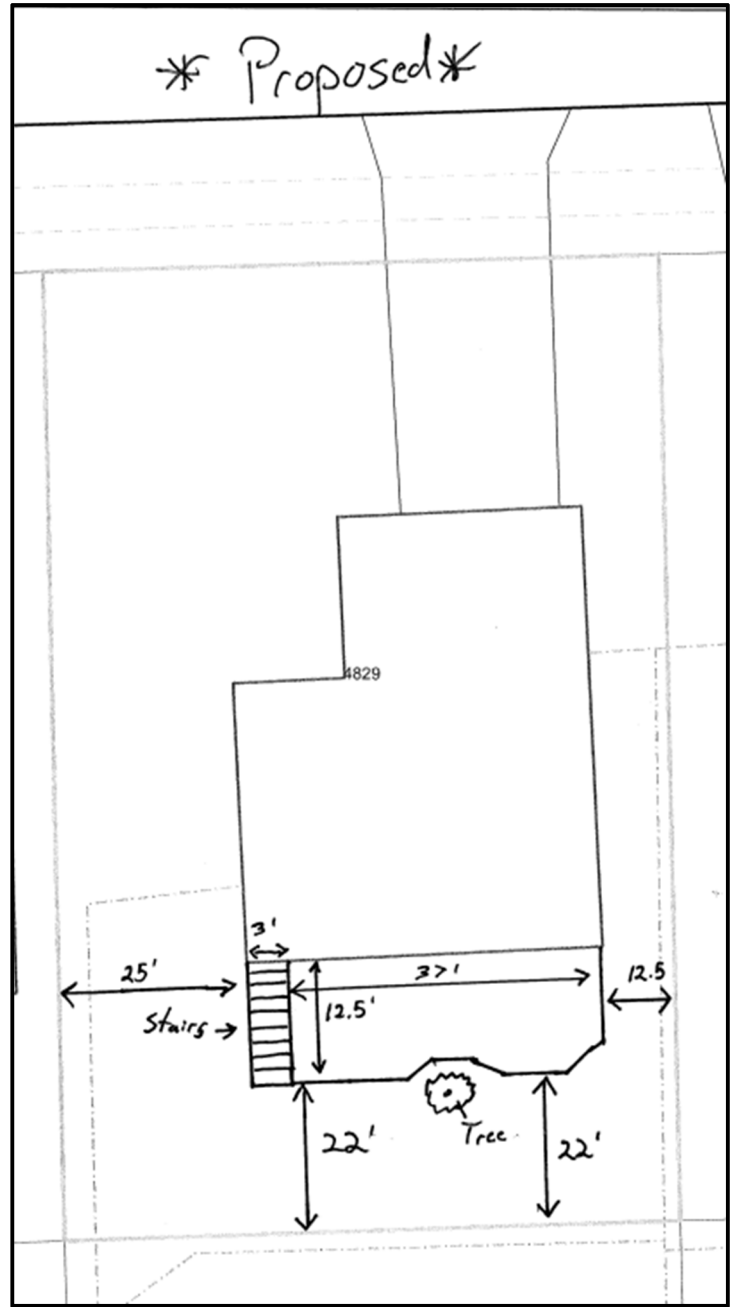


Image 2: Proposed deck.

E. SPECIFIC ANALYSIS

Section 20-1309(g)(1) in the Land 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 deck was built in 1993, possibly under a different residential code. As of 2006, our property was zoned RS7. RS7 requires a 30' rear setback for decks. The deck was built 22' from the rear property line. We believe this was to comply with a 1993 zoning code of 20' from the property line. The deck is now 26 years old and needs to be replaced. If we replaced it today it could only go 6' – 5' from the house to comply with the RS7 code. We did not create this hardship we simply want to build a new safe deck for our family, which will not stick out further than the current deck. A deck is needed due to walk out door which presently exists".*

The subject property was originally platted and recorded in 1993 as Block Four, Lot 8, part of Parkway West final plat. The subject parcel came into existence under the 1966 Zoning Code and was zoned RS-2 (Single-Family Residence) District. The 1966 Lawrence Zoning Code, adopted with Ordinance No. 3500, required a 30 foot rear yard building setback for structures in the RS-2 district.

The 1966 Zoning Code contained rear yard exemptions and modifications for certain zoning districts. Section 20-1504(c) states, *In the RS-1, RS-2 and RM-D Districts, a principal building may be located no closer than 20 feet to the nearest property line opposite the front lot line; provided the rear yard area is no less than 30 percent of the total lot area.*

The subject property's existing deck was built approximately 22 feet from the rear property line. The subject property's rear yard accounts for approximately 31% of the total lot area; therefore the subject property complied with Section 20-1504(c) of the 1966 Zoning Code.

Development Services staff were unable to locate a separate building permit for the deck; therefore, the deck was likely constructed with the existing residence, although staff were unable to find any notes about the deck on the residence's building permit. The existing residence was built in 1994, per Douglas County Register of Deed's records. The subject property's current owner was not the owner at the time of platting or construction. When the residence was built, in 1994, it utilized the Section 20-1504(c) rear yard setback exemption.

The rear yard exemption was not included in the 2006 Land Development Code. The required rear yard setback for the RS7 (Single-Dwelling Residential) District is 30 feet. A 30 foot rear yard setback would not permit any deck structure deeper than approximately five feet as the existing residence's rear wall is placed approximately 35 feet from the rear property line. The applicant is not looking to place the structure closer to the rear property line; rather, he is looking to continue to utilize the previously approved setback and depth of the existing deck. The proposed addition will be located the same distance from the rear property line but within the required 30 foot rear setback. The applicant is seeking to continue to utilize the existing depth measurement that was permitted via the Section 20-1504(c) exemption within the 1966 Zoning Code. If the 1966 Code's exemption existed within the current Land Development Code, a variance would not be required. If the proposed deck was lower than 30 inches, there would also be no variance required.

The proposed deck addition will not encumber the required 5 foot interior side yard setbacks or an existing, platted utility easement along the rear property line.

The removal of the required rear yard setback exemption from the Land Development Code is not a condition brought about by the applicant. The subject property remained the same while the zoning code and density and dimensional standards changed.



Image 3: Required setback area represented by red shading.

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

Applicant response: "Granting this variance would not adversely affect the rights of the adjacent property owners because we are not asking to move the deck closer to the rear setback. We are asking to fill the current space with a new deck and expand toward one side. The deck would have basically the same footprint and would not be an eyesore. Neighbors are aware we are attempting to build a new deck".

In staff's opinion, the requested variance would not adversely affect the rights of adjacent property owners or residents. 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 received two phone calls on this item. Both calls were from neighboring property owners seeking information about the neighbor notification letter. Neither expressed support or opposition. The applicant has notified neighbors of his intention to construct a new deck.

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: "20-602(E)(4)(i) Rear Setbacks – The 30' rear setback required would allow for a 6' – 5' deck on a new build, which has a walkout sliding glass door. The current deck is approximately 14' X 14', and sits 22' from the rear property line. The unnecessary hardship we face is that if we adhere to the 30' code we would have a considerably smaller, not practical deck and exit from our 2nd floor of our home. A 5' deck or landing would resemble an emergency exit from an apartment style residence and would not be in keeping with our neighborhood aesthetic. In essence, to make our deck new and safe we would have to downsize it to a non-deck, by following code".

In staff's opinion, strict adherence to the code required building setbacks may constitute an unnecessary hardship. The deck came into existence legally under the previous zoning code that permitted its placement within the required rear yard setback. The current Land Development Code's density and dimensional standards would not permit an elevated deck deeper than five feet. Since their construction, the existing deck and residence have remained the same. The zoning code and density and dimensional requirements changed. Requiring the subject property to comply with existing standards would not allow for a deck replacement or memorialization of a previously permitted setback and may constitute a hardship upon the property owner.

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

Applicant response: "The deck replacement will be made of wood and composite decking. It is not intended to harm, it is intended to make safe. Will not violate any of the above listed statements. A considerable amount of expense will be made to make sure this is a quality construction that increases values and quality of life".

In staff's opinion, granting the requested variances will not create an adverse effect upon the public health, safety, morals, order, convenience, prosperity or general welfare. The requests in question are contained within the parcel owned by the applicant. The existing structure and proposed addition would not create any spill-over noxious effects to the surrounding area.

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

Applicant response: *"we both truly believe this deck is in keeping with the best interests of the code. We are just trying to maintain the deck space we already have and make it new and safe. We respectfully request the variance to be granted. Thank you for your time and consideration to this matter."*

In staff's opinion, granting the setback variances would not be opposed to the general spirit and intent of the Land Development Code. Granting the requested variances is consistent with the previous findings of the Board, and is also consistent with the spirit of Land Development Code. Granting of the requested variance would permit the continued use of a previously permitted setback. The deck came into existence legally and the applicant is looking to continue to utilize it at the depth it was constructed originally. Finally, the existing, platted utility easement will not be encumbered and the remaining side and front yard setbacks will be maintained.

Conclusions:

Staff's analysis of this variance application finds the request meets 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 recommends approval of the rear yard setback variance based upon the findings in the staff report concluding that the request meets the five conditions outlined in Section 20-1309(g)(1). Staff recommends the Board grant the variance to reduce the required rear yard setbacks from 30 feet to 22 feet for proposed deck replacement at 4829 Tempe Street.



**APPLICATION FOR
 VARIANCE FROM UNNECESSARY HARDSHIP**

RECEIVED
 APR 26 2019

Planning & Development Services
 City of Lawrence/Douglas County, KS

OWNER INFORMATION

Name(s) Michael David Cobb, Lauren A. Cobb
 Contact " " "
 Address 4829 Tempe Street
 City Lawrence State KS ZIP 66047
 Phone (785) 760-0990 Fax () —
 E-mail mcobb@LKPD.org Mobile/Pager () —

APPLICANT/AGENT INFORMATION

Contact N/A
 Company _____
 Address _____
 City _____ State _____ ZIP _____
 Phone () _____ Fax () _____
 E-mail _____ Mobile/Pager () _____
 Pre-Application Meeting Date _____ Planner _____

PROPERTY INFORMATION

Present Zoning District RS7 Present Land Use Residential
 Proposed Land Use —
 Legal Description (may be attached) Attached
 Address of Property 4829 Tempe Street
 Total Site Area _____
 Number and Description of Existing Improvements or Structures 1

B-19-00243



Description of variance requested:

Problem: Our backyard deck is old and needs to be replaced. We have a plan to build a new deck, but our current old deck is not within the current code as defined in "City Land Development Code 20-602(E)(6)(vii)." or (4). As it sits, our current deck (Built in 1993) is 22' north from our rear property line. The code requires our R57 property to not have a deck within 30' of the rear setback. IF we were to rebuild the deck today, to code, the deck could only be 6'-5" in length from the house. This presents our hardship and why we are respectfully requesting an exemption to build a new deck.

Proposal: Our property may have been zoned differently prior to 2006, therefore a 20' setback requirement was adhered to in 1993, but currently violates code. We wish to expand our deck all the way across our home (east-west) but not any further south (toward the setback) than it already is. The deck would not push toward the required setback any more than it is right now, and the side setbacks would also stay within code. The deck would be 20'-22' from the setback upon completion.

We respectfully request the city of Lawrence to grant our request to rebuild our deck with this variance request. Our deck goes out 14' from our residence, we would not exceed this length on the new build, it would not impede the setback any more than it is right now. We would like to keep the deck space we currently have.



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 deck was built in 1993, possibly under a different residential code. As of 2006, our property was zoned R57. R57 requires a 30' rear setback for decks. The deck was built 22' from the rear property line. We believe this was to comply with a 1993 zoning code of 20' from the property line. The deck is now 26 years old and needs to be replaced. If we replaced it today it could only go 6'-5" from the house to comply with the R57 code. We did not create this hardship we simply want to build a new safe deck for our family, which will not stick out further than the current deck. A deck is needed due to walk out door which presently exists.

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

Granting this variance would not adversely affect the rights of the adjacent property owners, because we are not asking to move the deck closer to the rear setback. We are asking to fill the current space with a new deck and expand toward one side. The deck would have basically the same footprint and would not be an eye sore. Neighbors are aware we are attempting to build a new deck.



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:

20-602(E)(4)(i) Rear Setbacks - The 30' rear setback required would only allow for a 6'-5" deck on a new build, which has a walkout sliding glass door. The current deck is approximately 14' x 14', and sits 22' from the rear property line. The unnecessary hardship we face is that if we adhere to the 30' code we would have a considerably smaller, not practical deck and exit from our 2nd floor of our home. A 5' deck or landing would resemble an emergency exit from an apartment style residence and would not be in keeping with our neighborhood aesthetic. In essence, to make our deck new and safe we would have to downsize it to a non-deck, by following code.

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

The deck replacement will be made of wood and composite decking. It is not intended to harm, it is intended to make safe. Will not violate any of the above listed statements. A considerable amount of expense will be made to make sure this is a quality construction that increases values and quality of life.



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

We both truly believe this deck is in keeping with the best interests of the code. We are just trying to maintain the deck space we already have and make it new and safe. We respectfully request the variance be granted. Thank you for your time and consideration to this matter.

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): *[Signature]* Date 4/25/2019

[Signature] Date 4/25/19

_____ Date _____

STAFF USE ONLY

Application No. _____
 Date Received _____
 BZA Date _____
 Fee \$ _____
 Date Fee Paid _____



OWNER AUTHORIZATION

I/WE Mike Cobb & Lauren Cobb hereby referred to as the "Undersigned", being of lawful age, do hereby on this 25 day of April, 20 19, 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/We the undersigned, have previously authorized and hereby authorize _____ (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding _____ (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

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

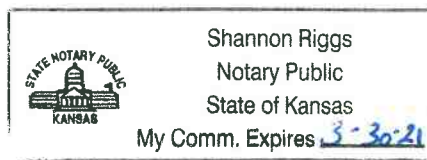
[Signature] Owner [Signature] Owner

STATE OF KANSAS
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this 25 day of April, 20 19, by Mike Cobb.

My Commission Expires:

[Signature]
Notary Public



Douglas County KANSAS

Property Search Results: Real Property

Please Note: This information is assumed current as of: **4/23/2019**. For more current information, please call the Appraiser's Office: (785) 832-5133.

Property Information

[Map this Property](#)

Year: 2018

Pin Number: 023-112-09-0-10-05-008.00-0

Plate/Record Id: U19000-51

Owner 1: COBB MICHAEL D

Owner 2: COBB LAUREN A

In-Care-Of: (no record)

Property Address: 4829 TEMPE ST, LAWRENCE, KANSAS

Mailing Address: 4829 TEMPE ST LAWRENCE, KS, 66047-9641

Delinquent Tax: No

Tax Unit: 041

School: USD 497

Sec-Twp-Rng: (no record)

Book: 1149

Page: 3602

Value Information

Class	Appraised			Assessed		
	Land	Improvements	Total*	Land	Improvements	Total
R	\$40,000	\$155,400	\$195,400	\$4,600	\$17,871	\$22,471

*Market or Ag use

Tax Information

Tax	Special Tax	Total Tax	Taxes Paid	Mill Levy
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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/>

Note to Applicant:

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



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