

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
TUESDAY, FEBRUARY 1, 2011
6:30 P.M.**

Council Chamber

- I. ROLL CALL
- II. APPROVAL OF MINUTES - October 5, 2010
- III. ACTION ITEM
BZA2011-01 Request for a Variance from P.V.M.C. 19.16.035
to construct covered patio reducing the rear yard
setback from 25' to approximately 13'6" at
5101 West 84th Street
Zoning: R-1a
Applicant: Matt Hohl
- IV. NEW BUSINESS
- V. OLD BUSINESS
- VI. ADJOURNMENT

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, OCTOBER 5, 2010**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, October 5, 2010 in the Council Chambers. Vice-Chairman Dirk Schafer called the meeting to order at 6:30 p.m. with the following members present: Bob Lindeblad, Nancy Vennard, Nancy Wallerstein and Ken Vaughn. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant, Dennis Enslinger, Assistant City Administrator; Jim Brown, Building Official and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Bob Lindeblad moved the minutes of November 3, 2009 be approved as written. The motion was seconded by Nancy Wallerstein and passed unanimously.

**BZA2010-05 Request for a Variance from P.V.M.C. 19.44.020(a) to
Reduce the front yard setback from 75 feet to approximately 68 feet at
5219 West 68th Street**

Vice Chairman Dirk Schafer reviewed the procedures for the public hearing. The Secretary confirmed that the Notice of Public Hearing was published in the Johnson County Legal Record on Tuesday, September 14, 2010 and all property owners within 200' were mailed notices of the hearing.

Dirk Schafer called upon the applicant to present the application.

Art Kennedy, 5219 West 68th Street, stated he and his wife have lived at this location since 2001. They recently demolished the existing home and are planning to build a new home on the site. Mr. Kennedy noted they have encountered several challenges in the process. The new home will have a two-car tandem garage which encroaches the front setback. In reviewing the plat, it was determined the front yard setback which was established in the restrictions on the plat had expired. Therefore, the front yard setback was determined by the zoning regulations.

Mr. Kennedy noted they are trying to protect several large existing trees including a large Oak located near the southwest corner of the proposed house with the construction of a retaining wall. The proposed house includes a large front porch that will set approximately at the 75 foot setback. Mr. Kennedy noted the houses in the neighborhood do not align consistently at the 75 foot setback, but vary five to ten feet.

They chose a tandem garage design to minimize the number of garage doors facing 68th Street. They met with the neighboring property owners and reviewed their plans. The neighbors did not have any significant objections to the proposed plans.

Chairman Dirk Schafer opened the hearing to public comment for those wishing to address the Board regarding this application.

Stan Sharp, 5209 West 68th Street, stated he had reviewed the detailed plans for the proposed house and was supportive of the requested variance.

Arthur Dick, 5116 West 68th Street, former President of the Homes Association stated at one time there was a petition going through the neighborhood opposing the requested variance primarily due to concerns that the issuance of the variance would open the door for future variances. The neighborhood is concerned with retaining its character. However, he noted the Kennedy's are the existing property owners seeking to improve their property and the neighborhood supports their application. He noted the association may seek to reinstated the platted setback.

With no one else wanting to address the Board, the public hearing was closed at 6:45 p.m.

Ron Williamson noted that since filing the application, the applicant has refined the site plan and reduced the request from 68 feet to 70 feet.

The subdivision of Sunset Heights View was platted in 1937 and restrictions were recorded with the plat. One of the restrictions established a 75 foot front yard setback and a 75 foot Building Setback Line was shown on the plat. The setback line was not dedicated on the plat but was controlled by the restrictions. The restrictions expired after 25 years (1962) and were not renewed. Therefore, 75 foot front yard setback expired at that time even though it was shown on the plat.

All nine lots on the south side of 68th Street between Nall Avenue and Fonticello Street were developed generally meeting the 75 foot front setback. Some of the homes set a little closer and some a little further back from 68th Street, but they are all close to 75 feet. The regulation that now applies to determining the front yard setback for new construction calls for a calculated setback based on existing setbacks within the area. The setbacks of the existing homes on this block do not vary more than 10 feet. The calculation for the average to determine the front setback was based on the Johnson County AIMS maps rather than a field measurement. The setback for the existing residences vary from 72 feet to 79 feet and the average setback for the block based on AIMS maps is 75 feet for the nine lots.

Mr. Williamson presented staff findings on the conditions necessary for the approval of a variance.

A. Uniqueness

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property or the applicant.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

There is a large oak tree located off the southwest corner of the proposed residence that the applicant wants to save, and since the lot is large the applicant would like to keep construction as far away from the tree as possible in order to protect it. Protection is needed during construction and fill over the root system needs to be minimized. The elevation of the tree base is 7' below the first floor elevation of the house.

Another unique factor of this property is that the platted setback expired with expiration of the restrictions. This is very unusual and had the platted setback been enforced, the applicant would have requested a setback line modification which is a much simpler process.

B. Adjacent Property

That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residences.

The house on the west side sets back from the side property line approximately 48 feet and the house on the east side sets back approximately 36 feet. The proposed dwelling sets back 9 feet from west property line and 20 feet from the east property line. These are large lots and there is more than ample area between the dwellings to protect adjacent properties. He also noted that the vegetation along the west property line is planned to remain to provide screening for the adjacent property.

C. Hardship

That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

The applicant is attempting to locate the house on the lot to have the least effect on the trees that are either mature or have been in place for several years. If the house is moved further to the south it could have a negative effect on the roots of the large oak tree. If the house was moved further east on the lot the new double driveway might adversely affect the street trees. If the floor plan is flipped, so the garage is on the east side, it does not appear that anything will be gained. The proposed house is the same depth on both ends and the living portion is squared where there is a notch behind the garage. Also a new set of issues would be created for the mature trees on the east side of the lot. The new house has proposed a large four car garage which is expected for new homes of this size on large lots. Rather than have four garage doors, the applicant has chosen a tandem garage design with only two doors. This minimizes the negative impact of multiple garage doors facing the street. It should be noted that several of the homes on 68th Street have side entry garages. Protection of the mature trees on the site

is of primary concern to the applicant and has dictated the placement of the new residence on the lot. The hardship would be the loss of mature trees.

D. Public Interest

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

Variance is only being requested for the garage portion of the house and it would setback approximately 70 feet from the street and 57 feet from the adjacent house to the west and therefore it will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

E. Spirit and Intent of the Regulation

The granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

The intent of this section of the ordinance is to preserve the character of an area that has been developed with a greater setback than normal. The setback in this instance is 75 feet and the intrusion of only the garage portion of the dwelling five feet into the setback is not significant and will not be opposed to the general spirit and intent of the zoning ordinance.

Mr. Williamson pointed out that in order to approve a variance, findings had to be favorable on all five conditions. The Board needs to address and act on each condition separately and then act on the variance.

Dirk Schafer led the board in consideration of the following required criteria:

A. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

Bob Lindeblad noted that although the typical uniqueness is found in a topographical feature, the situation with the expired setback is what he feels meets the criteria for uniqueness in this application. Therefore, Mr. Lindeblad moved that the Board find that the variance does arise from a condition unique to this property. The motion was seconded by Nancy Wallerstein and passed unanimously.

B. That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.

Bob Lindeblad stated there is no evidence that the proposed variance would adversely affect adjacent property owners. Therefore, Mr. Lindeblad moved that the Board find that the variance would not adversely affect adjacent property. The motion was seconded by Ken Vaughn and passed unanimously.

C. That the strict application of the provisions of these regulations of which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

Ken Vaughn noted the proposed variance complies with current regulations and denying the requested variance would constitute an unnecessary hardship and moved that the

Board find that a condition of hardship does exist. The motion was seconded by Nancy Wallerstein and passed unanimously.

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

Nancy Vennard moved that the Board find that the variance would not adversely affect the public interest. The motion was seconded by Ken Vaughn and passed unanimously.

E. The granting of the variance desired will not be opposed to the general spirit and intent of these regulations.

Bob Lindeblad noted the general spirit and intent of the zoning regulations is for established setbacks; however, with lots of this size a setback within 5 to 10 feet of the original platted setback is within the spirit of the regulations. Nancy Wallerstein added her appreciation of the applicant's efforts to save several of the existing trees on the lot and moved that the Board find that the variance is not opposed to the spirit and intent of the regulations. The motion was seconded by Bob Lindeblad and passed unanimously.

Bob Lindeblad moved that the Board having found all of the five conditions have been met approve BZA Application 2010-06 for the requested variance from PVMC 19.44.020(a) for a reduction in the front setback from 75 feet to 70 for the construction of the garage only as shown on the site plan submitted with this application and subject to the condition that the driveway be moved west to protect the existing maple tree adjacent to 68th Street. The motion was seconded by Ken Vaughn and passed unanimously.

OTHER BUSINESS

There was no Other Business to come before the Board.

ADJOURNMENT

Vice Chairman Dirk Schafer adjourned the meeting of the Board of Zoning Appeals at 6:52 p.m.

Dirk Schafer
Vice Chairman

STAFF REPORT

TO: Prairie Village Board of Zoning Appeals
FROM: Ron Williamson, Lochner, Planning Consultant
APPLICATION: BZA 2011-01: Request for a Rear yard Variance for Property
Located at
5101 W. 84th Street
DATE: February 1, 2011 Board Zoning Appeals Project # 01100240

Application: BZA 2011-01

Request: Variance of the rear yard setback from 25' to 13.5 feet to construct a covered patio

Property Address: 5101 W. 84th Street

Applicant: Matt and Gina Hohl

Current Zoning and Land Use: R-1A - Single - Family

Surrounding Zoning and Land Use: North: R-1a - Single-Family District - Single family dwellings
West: R-1a - Single-Family District - Single family dwellings
South: R-1a - Single-Family District - Single family dwellings
East: R-1a - Single-Family District - Single family dwellings

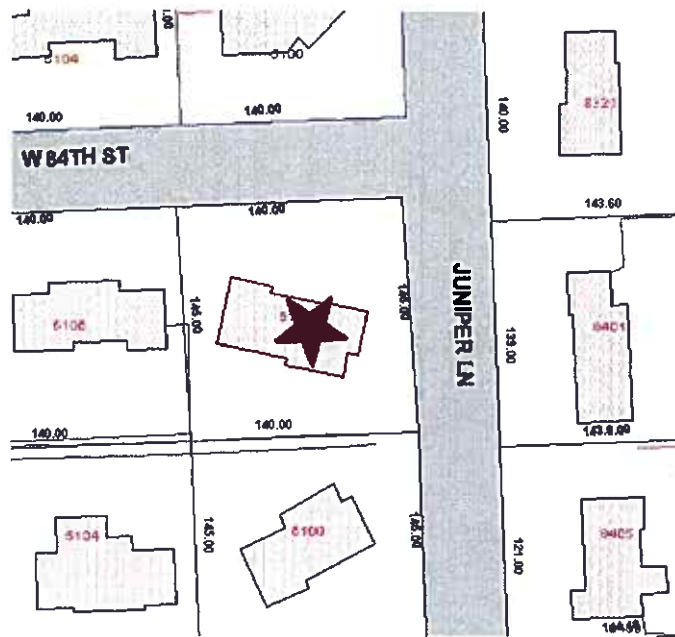
Legal Description: Lot 9, BLK 6 Normandy Square

Property Area: 140' x 145' = 20,300 sq. ft. or 0.47 acres

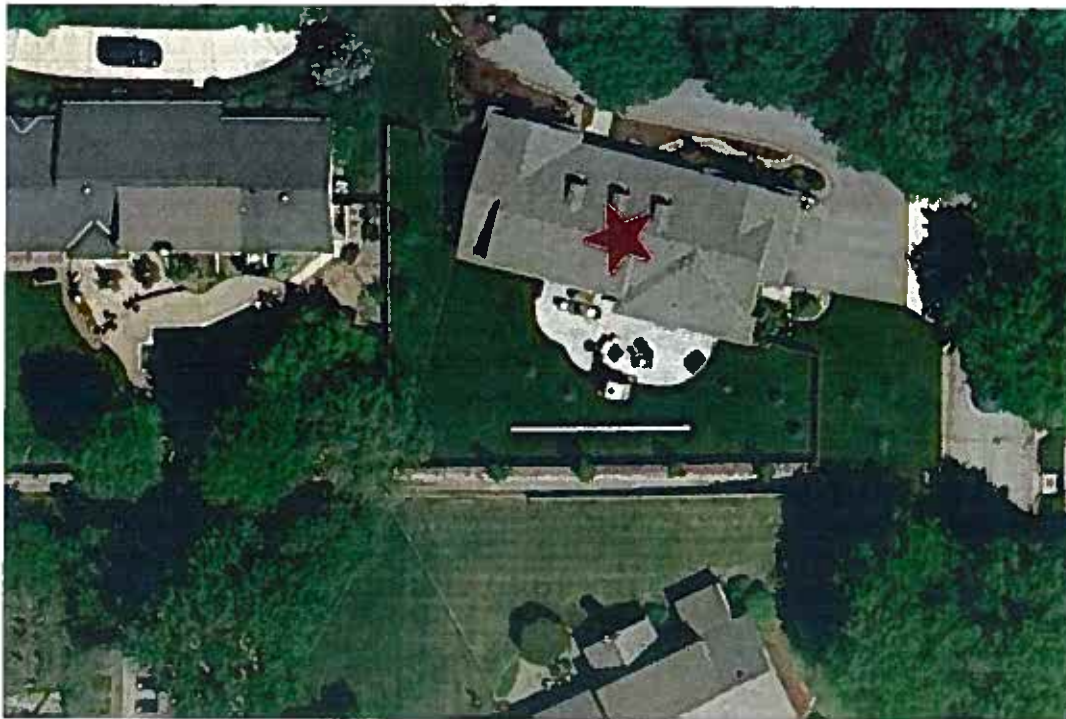
Related Case Files: None

Attachments: Application, Photos

General Location Map



Aerial Map



STAFF COMMENTS:

The applicant is proposing to build a covered patio approximately 36' x 18' that will be attached to the existing dwelling. According to the plan submitted, the covered patio is planned to extend far enough to incorporate the existing fireplace. The dimensions on the plan are to the columns so the roof will actually overhang another 1.5' to 2.0' into the setback area.

The lot is large—140' x 145'—which is nearly a half acre. The existing home covers approximately 18.5% of the lot so lot coverage is not an issue. Unfortunately when the dwelling was built on this lot in 1962, it was set on a diagonal. It sets back 45' from 84th Street on the west end and 75' on the east end. Therefore, a large portion of the lot is devoted to a front yard while the rear yard is minimal. The platted setback adjacent to 84th Street is 45'. There is a 30' setback platted adjacent to Juniper, but the house sets back 20'. From reviewing the AIMS map, it appears that several of the corner lots in this subdivision did not comply with the platted 30' setback.

It should also be noted that a 30' drainage and utility easement is centered on the south property line. The proposed expansion actually extends 1.5 feet plus the overhang into the easement. Private building construction cannot occur in or over easements.

In considering a request for a variance the Board may grant such a variance on the finding that all the five following conditions have been met:

A. **Uniqueness**

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

The lot is large; nearly square in shape; has minimal topographic issues and therefore is not a unique property. The dwelling was placed on a diagonal when it was built in 1962 which was not an action created by the current owners. However, it should be noted that the placement of the dwelling diagonally on the lot was done on many corner lots in this neighborhood so it is a common practice.

B. **Adjacent Property**

That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residences.

The dwelling to the south sets diagonally on the lot also and there is approximately 65' between the dwellings. The addition of the covered porch would reduce that separation to nearly 50'. The rear yard separation between the houses further to the west is approximately 100'. For houses on lots of this size, 50' of separation between houses does not appear to be in scale.

C. **Hardship**

That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

Since the fireplace is already constructed this is the logical location for the covered patio. Incorporating the fireplace into the covered area is a convenience

rather than a necessity. This proposed addition is approximately 800 square feet which is about a 20% increase in the size of the dwelling. It is the equivalent of adding a three car garage. There might be a way of meeting the applicants needs by reducing the size of the permanent structure and using retractable awnings for a portion of the patio.

D. Public Interest

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

The proposed addition of the covered portion would not impair the views of any of the adjacent residences or adversely affect the public health, morals prosperity or general welfare. Since the proposed structure extends into the easement, it could adversely affect the public safety, order and convenience.

E. Spirit and Intent of the Regulation

That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

The purpose of the rear yard setback is to ensure that there is adequate distance between the rear of abutting dwellings so an adequate open space is available and the living areas of individuals would not encroach on the living areas of their neighbors. The setbacks are also established so that the lots are not overdeveloped. This is a large lot and with the addition of the covered patio the lot coverage would increase to approximately 22% still within the maximum lot coverage regulation. Also the covered patio parallels the existing dwelling so the east end requires the 11.5 feet variance while the west end is nearly back to the required rear setback line. Typically, variance requests are for a small portion of the setback while this request is for approximately a 46% reduction. The ordinance does allow eaves to extend into a setback a distance of 4' which would allow a significant addition and still meet the ordinance. Granting of a variance to extend into the drainage and utility easement would be opposed to the spirit and intent of the regulations.

RECOMMENDATION:

It does not appear to Staff that the variance meets the five conditions, however, after consideration of the testimony during the public hearing, if the Board finds that all the five conditions can be met as required by state statutes, then it could grant the variance. If the Board does approve the variance, however, it should be only for the proposed covered patio as shown on the plan and should be constructed within one year of the date of approval by the Board.



VARIANCE APPLICATION
BOARD OF ZONING APPEALS

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No.: BZA2010-01

Filing Fee: _____

Deposit: \$500

Date Advertised: 1/11/11

Public Hearing Date: 2/1/11

APPLICANT: Matt and Gina Hohl PHONE: 616 289-9092
 ADDRESS: 5101 West Beth St ZIP: 66201
 OWNER: Matt and Gina Hohl PHONE: _____
 ADDRESS: 5101 West Beth St ZIP: _____
 LOCATION OF PROPERTY: _____
 LEGAL DESCRIPTION: Normandy Square Lot 9 Blk 5 PNC-0642

ADJACENT ZONING AND LAND USE:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>House</u>	<u>R-1a</u>
South	<u>House</u>	<u>R-1a</u>
East	<u>House</u>	<u>R-1a</u>
West	<u>House</u>	<u>R-1a</u>

Present Use of Property: Single Family Home

Proposed Use of Property: Single Family Home

Utility lines or easements that would restrict proposed development:

Please complete both pages of the form and return to:

Codes Administrator
 City of Prairie Village
 7700 Mission Road
 Prairie Village, Kansas 66208

Project Description

The Hohl's are proposing to build a covered patio approximately 36' x 18' that will be attached to their existing home. The patio will extend 11'-6" beyond the 25' rear yard setback line and will require a variance to construct as planned.

Criteria #1- *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by an action or actions of the property owner or applicant.*

The existing house is situated on a corner lot. The house is also laid out on an angle and to the rear of the property which severely compromises the Hohl's ability to build a usable covered patio without extending beyond the setback line.

Criteria #2 - *That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.*

The rights of adjacent property owners or residents will not be adversely affected by the construction of the covered patio.

Criteria #3 - *That the strict application of the provisions of this title of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

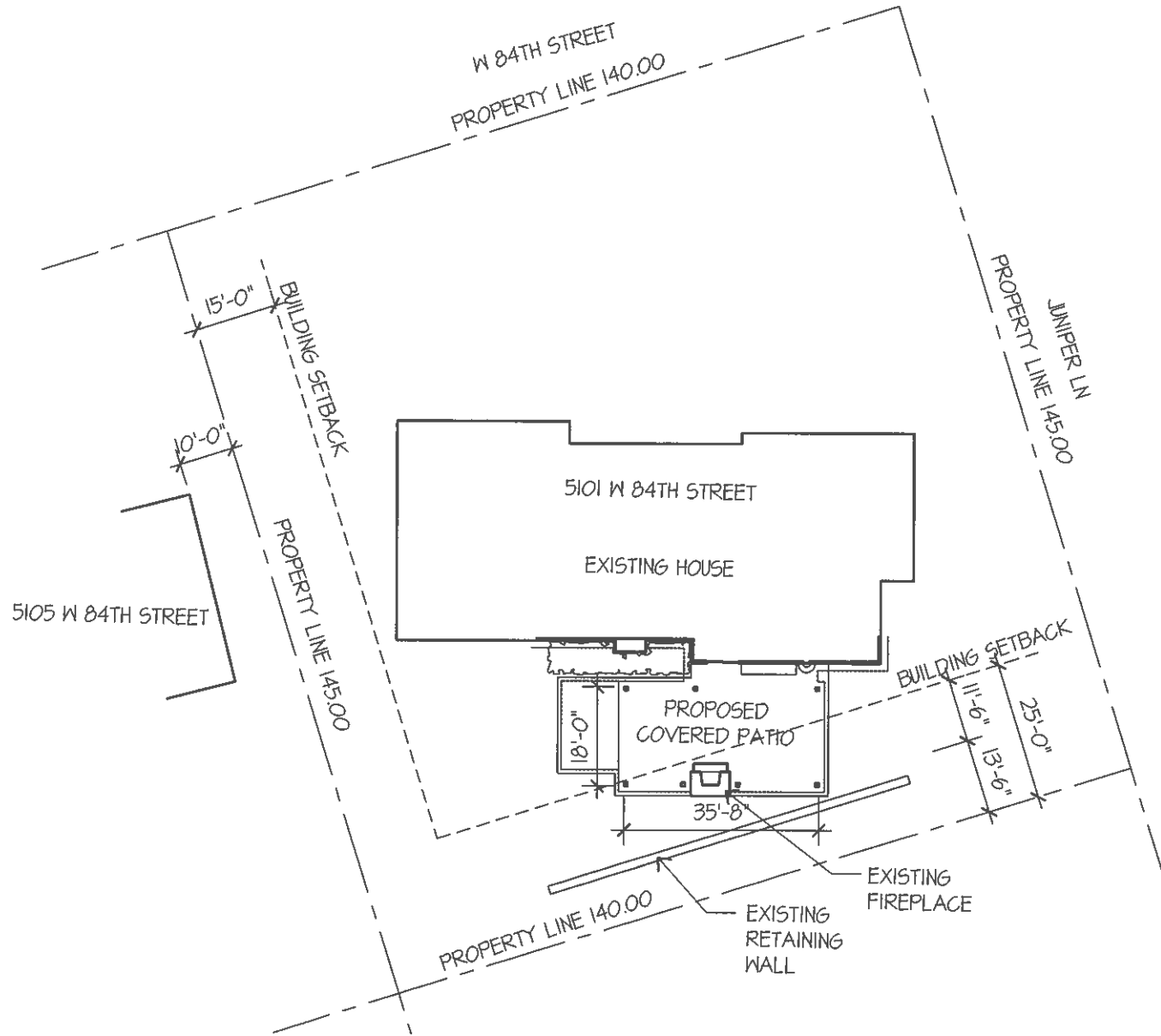
Building a covered patio within the existing setback line will result in an unusable triangular space that will not permit the placement of furniture and grill equipment. A smaller covered patio would also require the demolition and reconstruction of an existing outdoor fireplace which already represents a substantial investment.

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

The variance will not adversely affect the issues listed in this criteria.

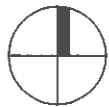
Criteria #5 - *That granting the variance desired will not be opposed to the general spirit and intent of this title.*

The covered patio will match the roofing materials and roof pitch found on the existing house and will be intended to be a seamless extension of the existing house that harmonizes with the existing neighborhood.



SITE PLAN

1" = 30'-0"

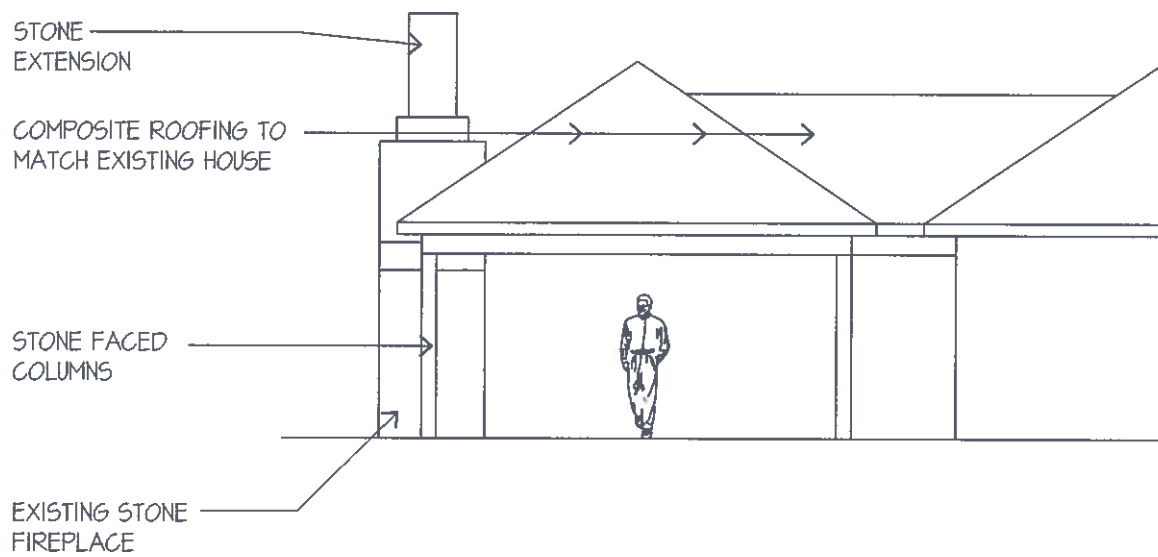


Matt and Gina Hohl
5101 West 84th Street

KEITH MUELLER **ARCHITECTURE**
404 WEST 61ST STREET
KANSAS CITY, MISSOURI 64113
TEL (816) 523-5954
KMARCHITECTURE.COM

HOHL RESIDENCE
PRAIRIE VILLAGE, KANSAS

December 29, 2010



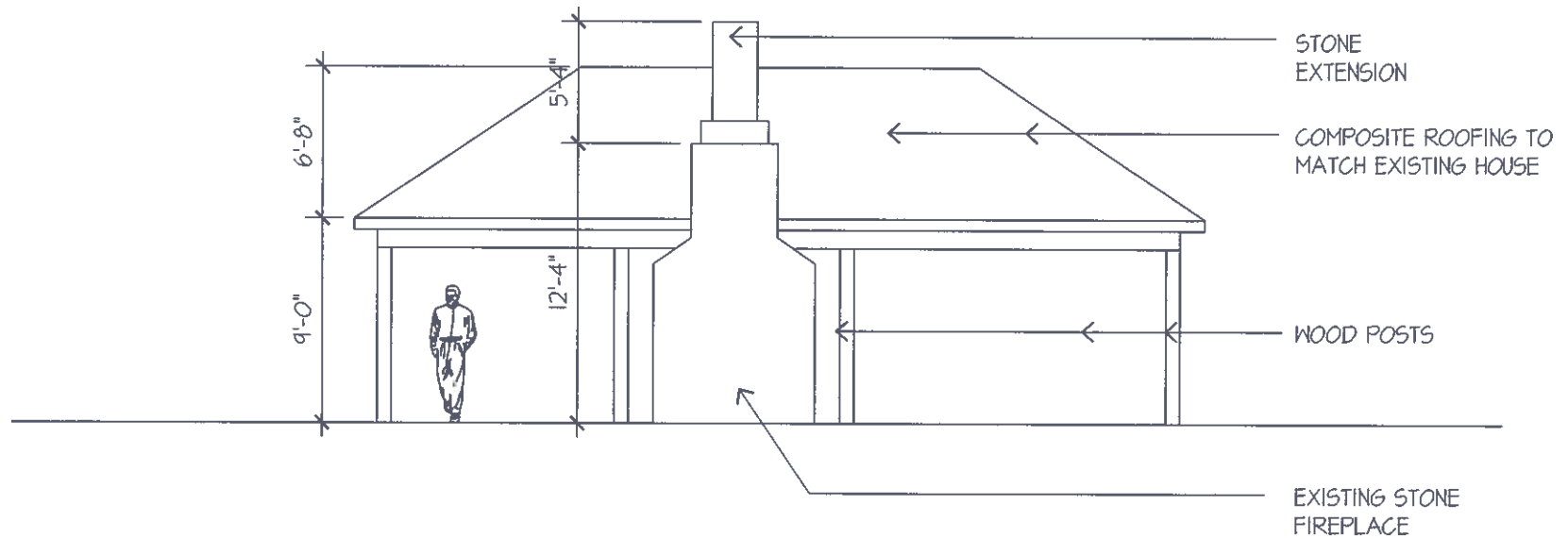
EAST ELEVATION

1/8" = 1'-0"

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HOHL RESIDENCE
PRAIRIE VILLAGE, KANSAS

December 29, 2010



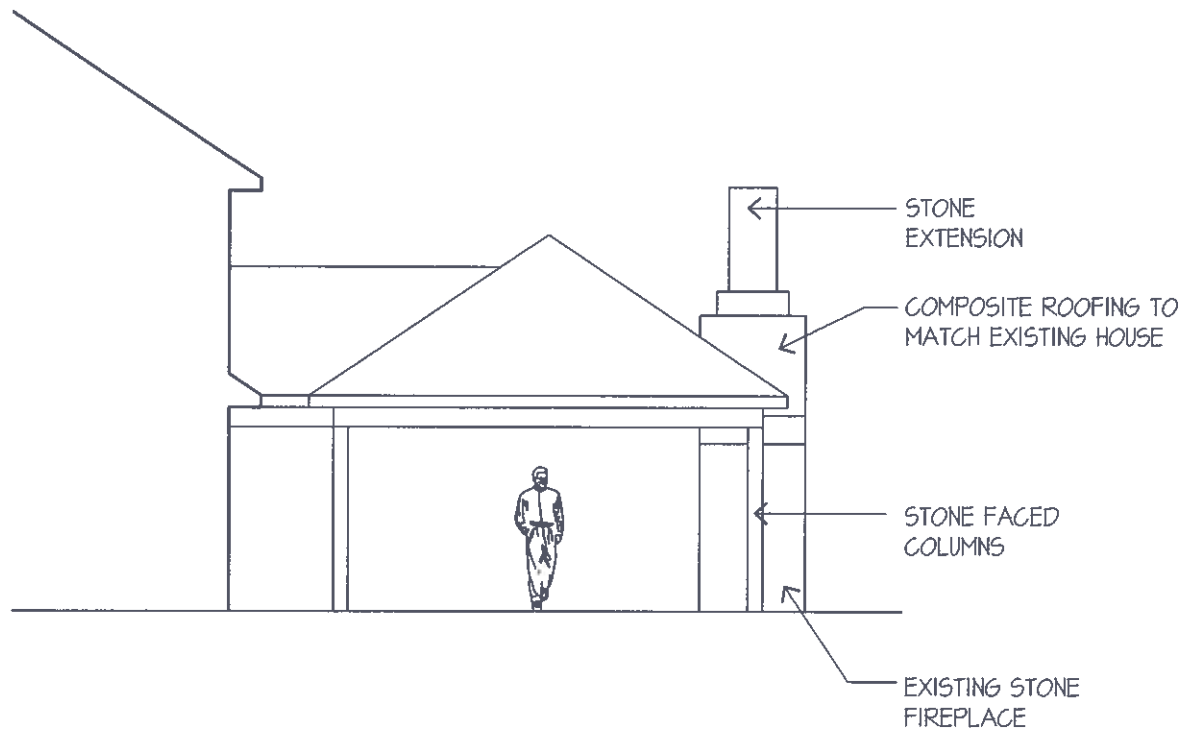
SOUTH ELEVATION

1/8" = 1'-0"

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HOHL RESIDENCE
 PRAIRIE VILLAGE, KANSAS

December 29, 2010



WEST ELEVATION

1/8" = 1'-0"

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