

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
TUESDAY, JUNE 5, 2012
6:30 P.M.**

Council Chamber

- I. ROLL CALL
- II. APPROVAL OF MINUTES - March 1, 2011
- III. ACTION ITEM
BZA2012-01 Request for a Variance from P.V.M.C. 19.16.035
reducing the rear yard setback from 25' to approximately 16' at
3704 West 71st Street
Zoning: R-1a
Applicant: Lauren Hickman
- IV. NEW BUSINESS
- V. OLD BUSINESS
- VI. ADJOURNMENT

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

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, MARCH 1, 2011**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, March 1, 2011 in the Council Chambers. Chairman Randy Kronblad called the meeting to order at 6:30 p.m. with the following members present: Bob Lindeblad, Dirk Schafer, Marlene Nagel, Nancy Vennard (arrived late), 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

Ken Vaughn moved the minutes of October 5, 2010 be approved as written. The motion was seconded by Nancy Wallerstein and passed 4 to 0 with Randy Kronblad and Marlene Nagel abstaining due to absence.

BZA2011-01 Request for a Variance from P.V.M.C. 19.16.035 to construct a Covered patio reducing the rear yard setback from 25' to Approximately 13'6" at 5101 West 84th Street

Chairman Randy Kronblad 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, February 8, 2011 and all property owners within 200' were mailed notices of the hearing.

Nancy Vennard joined the Board.

Randy Kronblad called upon the applicant to present the application.

Matthew Hohl, 5101 West 84th Street, stated he is seeking to build a covered patio approximately 36' x 18' that will be attached to his home. The covered patio is proposed to extend far enough to incorporate the existing fireplace. Mr. Hohl stated he had spoken with most of his neighbors regarding his plans and noted the angular placement of his house on the lot restricts his ability to construct the patio within the established setback. It was suggested that he constructed a retractable patio, but feels a building structure would be more aesthetically pleasing adding that the materials and design have been done to blend with the existing home.

Keith Mueller, architect for the project, noted the pitch of the roof on the patio matches that of the existing house both with both materials used and design.

Ron Williamson stated the lot is large –140' x 145'– which is nearly a half acre, with the existing home covering 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.

Mr. Williamson also 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.

Nancy Wallerstein confirmed the fireplace is not within the easement.

Chairman Randy Kronblad opened the hearing to public comment from those wishing to address the Board regarding this application.

Jim Breneman, 5104 West 84th Terrace, stated his home is directly behind Mr. Hohl's and expressed his concern with the massive roofline that would be created by the construction of the proposed patio. He did not feel it is out of scale for the area and would have a negative impact on the neighboring properties.

With no one else present to address the Board, the public hearing was closed at 6:40 p.m.

The Board considered the following findings required for the granting 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 owner or the applicant.

Bob Lindeblad noted this lot is large with 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, he noted that the placement of the dwelling diagonally on the lot was done on many corner lots in this neighborhood. 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. 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.

Nancy Vennard noted the massive roofline that would be created by the proposed patio would negatively impact adjacent property owners and moved the Board finds that the variance would adversely affect adjacent property. The motion was seconded by Nancy Wallerstein and passed by a vote of 6 to 1 with Dirk Schafer voting in opposition.

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. Bob Lindeblad stated he felt there are numerous other opportunities for outside activities on this lot within the established setbacks.

Nancy Wallerstein moved that the Board find that a condition of hardship does not exist. The motion was seconded by Bob Lindeblad and passed unanimously.

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. However, since the proposed structure extends into the easement, it could adversely affect the public safety, order and convenience.

Nancy Vennard moved that the Board find the variance would not adversely affect the public interest. Bob Lindeblad seconded the motion, which was withdrawn after discussion of the potential safety hazard created by building over an easement.

Dirk Schafer moved that the Board find that the variance could adversely affect the public interest in creating a potential safety hazard by constructing the patio over a utility easement. The motion was seconded by Marlene Nagel and passed unanimously.

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.

Ken Vaughn noted the general spirit and intent of the zoning regulations is for construction to remain within established setbacks and moved the Board find the granting of a variance would be opposed to the spirit and intent of the regulations. The motion was seconded by Nancy Wallerstein and passed unanimously.

Bob Lindeblad moved that the Board having found none of the five conditions have been met deny BZA Application 2011-01 for the requested variance from PVMC 19.16.035 to construct a covered patio reducing the rear yard setback from 25' to approximately 13'6" for 5101 West 84th Street. The motion was seconded by Dirk Schafer and passed unanimously.

Commission members advised the applicant to work with staff on a revised plan that will not encroach on the utility easement and is more in scale with the area. They strongly support residents making improvements to their property, but the scale of the proposed improvement needs to be reduced to be acceptable.

OTHER BUSINESS

There was no Other Business to come before the Board.

ADJOURNMENT

Chairman Randy Kronblad adjourned the meeting of the Board of Zoning Appeals at 6:55 p.m.

Randy Kronblad
Chairman

LOCHNER

STAFF REPORT

TO: Prairie Village Board of Zoning Appeals
FROM: Ron Williamson, Lochner, Planning Consultant
APPLICATION: BZA 2012-01: Request for a Rear yard Variance for Property Located at 3704 W. 71st Street
DATE: June 5, 2012 Board Zoning Appeals Project # 000005977

Application: BZA 2012-01

Request: Variance of the rear yard setback from 25 feet to 15 feet to construct a new dwelling

Property Address: 3704 W. 71st Street

Applicant: Lauren B. Hickman, Archetype Design Group

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

Surrounding Zoning and Land Use: **North:** Mission Hills – Indian Hills Country Club
East: R-1A – Single-Family District – Single family dwellings
South: R-1B – Single-Family District – Single family dwellings
West: R-1B – Single-Family District – Single family dwellings

Legal Description: Lot 1, BLK 3 Prairie Hills, except the west 75 feet

Property Area: 14,549 sq. ft. or 0.33 acres

Related Case Files: PC 2012-107 Site Plan Approval for a Building Height Elevation and Solid Wall

Attachments: Application, Photos

LOCHNER

903 East 104th Street | Suite 800 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027
engineering | planning | architecture

General Location Map



Aerial Map



STAFF COMMENTS:

The applicant is proposing to tear down an existing dwelling and replace it with a new one. The existing dwelling was built in 1951 and the rear of the dwelling at its closest point is approximately 14'2" from the rear property line. The dwelling was built on an angle across the lot and the east end of the dwelling is 40 feet from the rear property line. The City of Prairie Village had just incorporated in 1950 and perhaps there were no rear yard setback requirements at that time or it was somehow approved. There are no records available to document what happened.

The proposed dwelling will have an irregular rear building line and the building will vary from 15 feet to 19 feet from its closest points to the rear property line.

The lot is approximately one third of an acre but it is triangular in shape. The west 75 feet of the lot apparently was sold to the Indian Hills Country Club for access to the golf course. So the lot now is 200 feet wide at the rear property line while the east lot line is 129 feet and the west lot line is 23 feet.

The applicant held a neighborhood meeting on May 21, 2012, six neighbors attended the meeting and the applicant explained the project including the proposed rear yard variance, the floor variation change and the design of the residence. The neighbors apparently were not concerned about the variance or the floor elevation change, but one was concerned that although the design was good, it did not fit this area.

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 configuration of this lot is unique in its shape and is not like other lots in the area. The triangular shape reduces the usefulness of a large part of the western portion of the lot. This condition is unique and was not created by the property owner.

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 residence to the east is approximately 22 feet from the side property line. The proposed residence will be approximately 5 feet from the side property line. With the extensive tear down rebuild occurring on the north side of 71st Street, it is likely that the house to the east will be expanded or torn down and replaced with a large home at some point in the future. In order to maintain the required 14 feet between dwellings, the lot to the east will have a 9 foot side yard setback adjacent to the west property line. There is no residence to the west and the Indian Hills Country Club is to the north. The proposed variance should not adversely affect the rights of adjacent property owners.

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 footprint of the existing residence is 2,121 square feet while the proposed footprint of the new residence is 3,472 square feet which is approximately a 64% increase. The proposed size of the residence is typical of the rebuilds occurring in this area and the variance would allow the owners to build a residence that has all the amenities that are desired in today's market. It also should be noted that the existing residence was permitted to be built 14'2" from the rear property line so the proposed request will be slightly less in distance but more of the residence will be closer to the rear property line. In today's market it is highly desirable to have the living area on one floor, especially for seniors. Approval of the variance would permit that to occur.

D. Public Interest

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

The granting of the proposed variance would not adversely affect the public health, morals, prosperity or general welfare.

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.

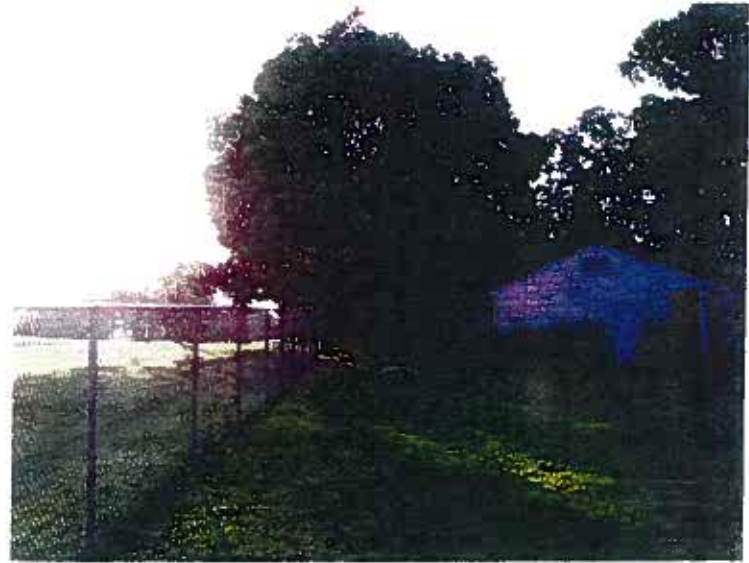
The purpose of the rear yard setback is to ensure that there is adequate distance between the rear of abutting dwellings so that adequate open space is available and the living areas of individuals would not encroach on the living areas of their neighbors. The setbacks are also established so that the lots are not overdeveloped. The lot coverage of the proposed residence would increase to approximately 23.5%, still within the maximum lot coverage regulation. The Indian Hills golf course abuts the property to the north and therefore the proposed variance would not adversely impact any other residential properties. It also should be noted that the existing dwelling is only 14'2" from the rear property line and the proposed residence will be 15 feet from the rear property line. Therefore the granting of the variance will not be opposed to the general spirit and intent of the zoning ordinance.

RECOMMENDATION:

It does appear to Staff that the variance meets the five conditions. 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, it can grant the variance. If the Board does approve the variance, however, it should be only for the areas as shown on the plans.



Adjacent Property to East



South Elevation



Setback between Houses



West Elevation

VARIANCE APPLICATION
BOARD OF ZONING APPEALS

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No: BZA 2012-01

Filing Fee: \$25

Deposit: _____

Date Advertised: 5/15/12

Public Hearing Date: 6/5/12

APPLICANT: Lauren B. Hickman PHONE: 913.341.2356
ADDRESS: 8010 State Line #150 Leawood, Ks ZIP: 66208
OWNER: JA & MCLighty PHONE: 913.789.7266
ADDRESS: 7020 Belinder Shawnee Mission, Ks ZIP: 66208
LOCATION OF PROPERTY: 3704 W 71st St P.V., Ks 66208
LEGAL DESCRIPTION: _____
Lot 1 Block 3 Prairie Hills

ADJACENT ZONING AND LAND USE:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>Country Club</u>	<u>D-1</u>
South	<u>Residential</u>	<u>R-1b</u>
East	<u>Residential</u>	<u>R-1a</u>
West	<u>Country Club</u>	<u>R-1a</u>

Present use of Property: Residential

Proposed Use of Property: Residential

Utility lines or easements that would restrict proposed development:

none

Please complete both pages of the form and return to:

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

Please indicate below the extent to which the following standards are met, in the applicant's opinion. Provide an explanation on a separate sheet for each standard which is found to be met.

1. **UNIQUENESS** Yes ___ No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

2. **ADJACENT PROPERTY** Yes ___ No

The granting of the variance will not be materially detrimental of adversely affect the rights of adjacent property owners or residents.

3. **HARDSHIP** Yes ___ No

The strict application of the provision of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be sufficient reason by itself to justify the variance.

4. **PUBLIC INTEREST** Yes ___ No

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

5. **SPIRIT AND INTENT** Yes ___ No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

6. **MINIMUM VARIANCE** Yes ___ No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

SIGNATURE:  DATE 5/3/12

BY: Lauren Hickman
TITLE: PM

Archetype

DESIGN
GROUP
INC.

Archetype Design Group, Inc.
8010 State Line Road, Suite 150
Leawood, Kansas 66208
913 341 2356 Fax 913 642 2847
adgi@adgiaia.com

03 May 2012

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

Planning Commission and Board of Zoning Appeals,

A new residence at 3704 West 71st Street proposes the attached plans, elevations and survey for Site Plan review and variance request. The new residence will require raising the existing residence's finish floor elevation from 935.56' to 940.33'. A property survey is attached for verification of existing building location and elevation. The variance request is to increase an existing 14'-2" setback to a 15' rear setback for the proposed structure where a 25' rear setback would otherwise be required.

The variance request is made consistent with statutory requirements that, due to no act of the owner, is necessary to maintain the public's interest in redevelopment of the property where literal enforcement of the rear setback will result in unnecessary hardships:

The rear setback request is due to the **uniqueness** of the property. In particular, the originally platted triangular shaped property in combination with the city's required 25' rear yard setback yields an unreasonably small building area, and at initial development in 1950 a 14'-2" rear yard setback was allowed.

No **adjacent property owner's rights** are adversely affected, as the requested setback is greater than the existing 14'-2" rear setback. Immediately adjacent to the property line of the nearest contiguous property, the 25' rear setback is maintained with the proposed design.

Strict application of a 25' rear setback, adopted in 1995 by the city (45 years after the initial plat) constitutes an **unnecessary hardship** on the current and future property owners that is not prevalent on other properties in the subdivision.

If granted, the requested 15' setback variance, will in no way negatively impact the public safety, health, morals, order, convenience, prosperity, or general welfare. Moreover, **public safety and health** will be enhanced by new construction compliant with current building and life safety codes. No positive or negative impact on **public morals** is readily identifiable. **Public order** is greatly enhanced by the general property improvement which are contingent upon this requested variance and which are unlikely to occur without it. No positive or negative impact on **public convenience** is readily identifiable, except that redevelopment of the property is very likely to improve storm water runoff conditions beyond the property itself. **Public prosperity** is rarely enhanced by declining properties and redevelopment is expected to result in a higher tax bill and

/ür-ki/tp: the original pattern or model of which all others of the same type are representations or copies.

improvement in adjacent property values. In a similar manner and with the effect on adjacent property drainage the **general welfare** of the public is positively impacted.

In every defining element of the city's **(spirit)purpose and intent** of its Zoning Ordinance as stated in paragraph 19.01.010 A-J, this request and the proposed development intended to result are consistent therewith. Denial of the request would be in clear opposition to the ordinance.

We are proceeding with the required citizen participation meeting, homes association approval and notice to proximate property owners of the public hearing. Check number 3913 is attached in payment of the required fees. We look forward to the hearings on these requests at 6:30pm and 7:00pm on June 6th, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren B. Hickman". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Lauren B. Hickman

MORTGAGEE TITLE INSPECTION (KANSAS)
SURVEYOR'S REAL PROPERTY REPORT (MISSOURI)
 (THIS IS NOT A BOUNDARY SURVEY)

DATE 4/30/12

ORDERED BY: Archetype

BORROWER: Lauren Hickman
 3704 W. 71st St.
 Prairie Village, Kansas



7133 West 80th Street, Suite 210
 Overland Park, KS 66204
 Phone: (913) 381-4488
 Fax: (913) 381-3048

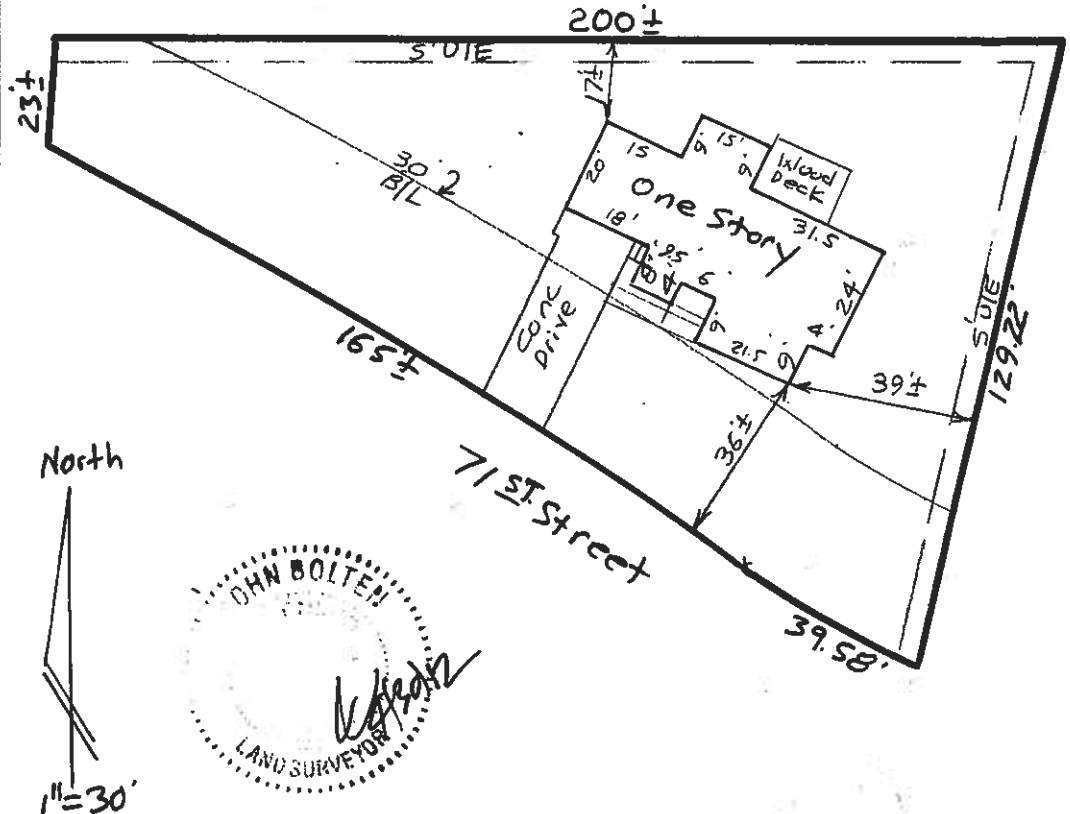
JOB NO. 2877.89

DESCRIPTION: Lot 1, Block 3, PRAIRIE HILLS, EXCEPT the West 75 feet, a subdivision in the City of Prairie Village, Johnson County, Kansas.

Note: No title report furnished.
 Not responsible for unplatted esm'ts.

Note: Finished Floor for 3704 is 935.56 feet
 Finished Floor for 3700 is 937.85 feet

Note: Reference bench mark is Johnson County BM 876



Liability is hereby limited to the above ordered by and to their assigns and _____ Title Company, Commitment No. _____

FUTURE USE (after the initial closing) IS PROHIBITED AND NO LIABILITY WILL BE ASSUMED.

0 = Accepted or adopted monumentation control point.

Property address and encroachments, if any, are shown on the above diagram.

Note: Positional tolerance of major improvements location shown is 2' unless otherwise noted. Said inspection and the accompanying sketch are true and correct to the best of our information, knowledge and belief and were prepared for mortgage title insurance only. This inspection is subject to any inaccuracies that a subsequent boundary survey may disclose; it is not to be used for the establishment of any fences, structures or other improvements. No attempt was made to locate fences, streams, ponds, lakes or waterways. The Flood Hazard Zone for this property has not been determined unless otherwise noted. No warranty is extended herein to the present or future owner or occupant. Do not scale drawings. This inspection was either conducted by or under supervision of the surveyor signing same.



INDIAN HILLS COUNTRY CLUB

May 30, 2012

Board of Zoning Appeals
Planning Commission
City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208

Re: BZA 2012-01 Variance from Section 19.06.035 of the Zoning Ordinance to reduce the rear yard setback from 25 feet to 15 feet for the property located at 3704 West 71st Street and zoned R-1 Single-Family Residential

Dear Chairman and Members of the Board of Zoning Appeals and the Planning Commission:

Please let this letter serve as the Indian Hills Country Club's ("IHCC") opposition to the variance request referenced above. It is our understanding that the new residential structure which is proposed at 3704 West 71st Street will require a 10 foot variance to the required rear setback.

We have many issues with this requested variance, not the least of which is our position that the applicant cannot meet the 5 factors required under state law for a variance to be granted. As you are well aware, these factors are listed in the City's zoning ordinance in Section 19.54.030, which states:

19.54.030 Variances.

The Board may authorize in specific cases a variance from the specific terms of this title which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this title will, in an individual case, result in unnecessary hardship, and provided that the spirit of this title shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by this title in such district. A request for a variance may be granted in such case, upon a finding by the Board that all of the following conditions have been met:

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;

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

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

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

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

In no case may a variance or exception for the width of a lot, or for a front, side or rear yard be granted on a lot created by a lot split.

While it is doubtful that the variance request in question can meet any of the five (5) factors, in particular we are certain that this property is not unique to Prairie Village, that this situation IS of the property owner's own making, that the variance will adversely affect the neighboring property, and that the variance is opposed to the general spirit and intent of the regulations.

We are also concerned that granting a variance in this situation will set a precedence for granting similar variances on 71st Street. If the variance is granted, the proposed home will be in close proximity to IHCC's existing #1 green and the #2 tee complex. This could cause numerous problems for both the homeowner and IHCC. The more houses follow the precedent, the more problems will occur.

There is no question that this lot is buildable without the variance, and we request that the variance be denied.

Sincerely,

A handwritten signature in cursive script that reads "Steve Kallemeier". The signature is written in black ink and is positioned above the printed name and title.

Steve Kallemeier
President