



AGENDA

BOARD OF ZONING APPEALS
CITY OF MERRIAM, KANSAS
9001 W. 62nd ST.
COUNCIL CHAMBERS
October 16, 2019
7 p.m.

- I. **CALL TO ORDER - PLEDGE OF ALLEGIANCE**
- II. **ROLL CALL**
- III. **APPROVAL OF MINUTES – April 18, 2018**
- IV. **BUSINESS TO BE CONDUCTED**
 1. Application BZA19-000001 – Nellie McCool –9516 W. 53rd St.
Variance from Section 74-219(4) b.1.- Minimum front yard: 30ft.
 2. Election of Officers.
- VI. **BUSINESS FROM THE FLOOR**

None
- VII. **UNFINISHED BUSINESS**

None
- VIII. **ADJOURNMENT**

Respectfully submitted,

Bryan P. Dyer, AICP
Community Development Director

BOARD OF ZONING APPEALS

**CITY OF MERRIAM, KANSAS
9001 W. 62nd ST.
COUNCIL CHAMBERS**

MINUTES

**April 18, 2018
7:00 pm**

The Board of Zoning Appeals meeting for the City of Merriam, Kansas, was called to order by Chair Bill Bailey on Wednesday, April 18, 2018, at 7:00 p.m. in the Council Chambers with the Chairman inviting everyone present to participate in the Pledge of Allegiance to the Flag.

I.

ROLL CALL

Members Present: William Bailey, Chair
Mitchell Fowler
Russ Harmon, Secretary
Joseph Kronawitter
Shawn McConnell
Terrie Stanker
Cole Stephens, Vice Chair

Members Absent:

Also Present: John Hollis, City Planner; Nancy Yoakum, Recording Secretary

II. APPROVAL OF MINUTES OF FEBRUARY 21, 2018

Chair Bill Bailey stated that the BZA board members had received a copy of the February 21, 2018 meeting minutes, and asked if there were any corrections or additions.

Hearing no comments, Chair Bill Bailey entertained a motion.

TERRIE STANKER MOVED THAT THE MINUTES OF THE BOARD OF ZONING APPEALS MEETING OF FEBRUARY 21, 2018 BE APPROVED. SHAWN MCCONNELL SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

III. ITEMS OF BUSINESS

1. Application BZA18-000001 – Jerry Speer – 5220 Hayes St.

Chair Bill Bailey presented to the BZA board members a request for a variance from Section 74-219 (4) b.3.-Minimum rear yard: 25 ft. from the Merriam Zoning Regulations.

City Planner John Hollis stated that Community Development Director Bryan Dyer is attending a conference, and that he would be presenting the application this evening.

Mr. Hollis stated that the subject property is located at 5220 Hayes St. Mr. Hollis stated there are two parcels and the subject properties are zoned R-1 (Single Family Residential) District. Mr. Hollis stated that the northern parcel is developed with a single-family house and the southern parcel is currently undeveloped. Mr. Hollis reviewed the surrounding zoning uses in the area.

Mr. Hollis stated the first parcel with the single-family house is seeking a variance for the rear yard setback, in section 74-219(4)b.3 . Mr. Hollis stated the applicant is seeking a variance request of 19 ft. since the city ordinance for a rear yard setback is 25 ft. Mr. Hollis stated the home was developed and constructed in 1950 which was prior to the adoption of the Merriam Zoning Regulations.

Mr. Hollis stated that the rear yard setback is only applicable to the developed property, and not to the corner lot. Mr. Hollis stated that the applicant has mentioned that eventually he would like to submit a final plat to adjust the property lines. Mr. Hollis reviewed the two (2) lots and pointed out there is a small sliver of property that goes behind the northern property lot that is developed and the applicant would like to clean that up with a plat. Mr. Hollis stated that will give the applicant two (2) lots that can be developed and room to potentially construct a single car garage addition on the lot with the existing residence. Mr. Hollis stated that the potential addition would be no closer than six (6) ft. to the existing property line, which is why the applicant is seeking the 19ft. variance for that parcel.

Mr. Hollis stated the State Law and Section 50-77(c) of the Merriam code specifies the authority of the Board of Zoning Appeals to grant variances to the zoning regulations.

Variance of 19 feet from Section 74-219(4)b.3 – Bulk Regulations. Yard requirements: minimum rear yard of 25 feet:

This variance request is only for the property on which the existing residence is located.

Staff offers the following findings regarding the applicant's request related to the criteria for consideration of approval of the rear yard variance request as outlined in applicable state statutes and Section 50-77 (c) of Merriam Code:

- (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;

Applicant's Response:

Yes.

Staff Comment

State law specifies that the variance request rises from a “unique condition” that is associated with the subject property which is not ordinarily found in the same zone or district. The original residence was constructed in 1950 prior to the city’s adoption of the current zoning setbacks creating a unique condition that is not ordinarily found in the same zone or district and was not created by the action of the current property owner.

Staff finds that the variance request arises from a condition that is unique to the property and which is not ordinarily found in the same zone or district, and the variance is not created by an action or actions of the property owner or applicant.

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

Applicant’s Response:
Yes.

Staff Comment

If granted, the variance will not adversely affect the rights of adjacent property owners or residents. The original residence was constructed in 1950. The garage and room addition between the existing detached garage and original residence was constructed in 2004 with a setback of 6.2 feet, greater than the existing residential structure’s rear yard setback of 6.0 feet. If the variance is granted the existing setback will remain the same.

Staff finds that the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents.

- (C) That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Applicant’s Response
Yes.

Staff Comment

The strict application of the zoning regulations will prevent the property owner from adding the possible future garage addition to the existing structure and prevent the properties from being replatted due to the existing, non-compliant rear yard setback of the existing residence.

Staff finds that the strict application of the provisions of the zoning regulations from which variance is requested will constitute an unnecessary hardship upon the property owner.

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

Applicant’s Response:
Yes.

Staff Comment

Granting the variance will allow the existing residence to remain in its current location and for the possibility of a future garage addition being constructed to the south of the existing

residence. Granting the variance will also address an existing rear yard setback non-conformity and allow the property owner to propose a replat of the properties.

Staff finds that granting the proposed variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

(E) That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulation;

Applicant's Response:
Yes.

Staff Comment

Merriam's Code bulk regulations for residential districts were written to create a uniform set of standards for development. The original residence was constructed prior to Merriam's adoption of these bulk regulations and the rear yard setback has been non-conforming since the city's adoption of the current rear yard setback requirements.

Staff finds that granting the variance will not be opposed to the general spirit and intent of the zoning regulations.

Mr. Hollis stated at this time it is up to the Chair for the Board Members to have a discussion, ask questions and make a motion on the first item.

Chair Bill Bailey stated that the two (2) items being presented this evening would need to be treated separately and inquired if there were any questions for Mr. Hollis.

Board member Shawn McConnell inquired since the currently house is six (6) ft. from the property line we typically do not allow construction closer than seven (7) ft. from a property line; is there anything that needs to be put into the language to protect from future issues regarding the setback.

Mr. Hollis stated that if the variance was granted for 19ft. that would create a condition where the owner meets the rear yard setback and currently the property is at six (6) ft., is non-conforming, and is one of the reasons why the variance is being sought. Mr. Hollis stated it would bring an existing non-conformity into conformance. Mr. Hollis stated this only applies to the developed property.

Board member Joseph Kronawitter inquired if there were any inquiries from the neighbors regarding the variance.

Mr. Hollis stated that staff had received three (3) inquiries from neighbors. The first call was from Nellie McCool at 9516 W. 53rd inquiring what the public hearing notice was about. The second call was from Ellen Werkowitch at 9406 W. 53rd St. also inquired about the notice. Ms. Werkowitch main concern was that the property line was not going to be moving. Mr. Hollis stated the third inquiry was from Dennis Burnley at 5218 Hayes St. came into city hall to look at the file and plans and did not indicate he had a problem with the variance, nor did it affect him.

Chair Bill Bailey inquired if there were any comments from the public. Hearing none, Chair Bill Bailey inquired if there were any additional questions for Mr. Hollis. Hearing none, he entertained a motion.

SHAWN MCCONNELL MOVED THAT THE BOARD OF ZONING APPEALS APPROVE APPLICATION BZA18-000001 FOR PROPERTY LOCATED AT 5220 HAYES ST. FOR SECTION 74-219(4)b.3, BULK REGULATIONS REAR YARD SET BACK VARIANCE OF 19FT. AS STATED IN THE STAFF REPORT. TERRIE STANKER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

City Planner John Hollis stated the 2nd variance applies to the corner vacant lot, which is south of the residence. Mr. Hollis stated this is a variance from Section 74-91 average setbacks in a residential district. Mr. Hollis stated that the variance request is for the applicant not to follow 74-91, average setback in residential districts, for specific reasons.

Staff offers the following findings regarding the applicant's request related to the criteria for consideration of approval of the average building line variance request as outlined in applicable state statutes and Section 50-77 (c) of Merriam Code:

- (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;

Applicant's Response:

Yes.

Staff Comment

State law specifies that the variance request rises from a "unique condition" that is associated with the subject property which is not ordinarily found in the same zone or district. The subject property is on a corner lot, which presents challenges for developments with respect to required setbacks. Additionally, the majority of the residences used to establish the average setback have very large front yard setbacks and were constructed prior to the city's adoption setback requirements.

Staff finds that the variance arises from a condition that is unique to the property and which is not ordinarily found in the same zone or district, and the variance is not created by an action or actions of the property owner or applicant.

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

Applicant's Response:

Yes.

Staff Comment

If granted, the variance will not adversely affect the rights of adjacent property owners or residents. The subject property is located on a corner lot where the residential structures to the west along W. 53rd Street are located greater than 50 feet behind the front property line. Utilizing the average setback in residential districts will place the new residence in the far back corner of the new lot. This will locate the new residence much closer to the existing residences and create an unappealing look for the neighborhood. Utilizing the standard R-1 District front yard setback will place the new residence further from the existing residences and provide a more appealing look for the neighborhood.

Staff finds that the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents.

- (C) That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Applicant's Response

Yes.

Staff Comment

The strict application of the zoning regulations will make it difficult for the property owner to construct a new residence that is marketable. The strict application of the zoning regulations will place the residential structure further into the northwest corner of the property and cause the structure to be located closer to neighboring residential structures to the north and west. The yard area behind the new residence would be greatly reduced as a result of the strict application of the zoning ordinance.

Staff finds that the strict application of the provisions of the zoning regulations from which variance is requested will constitute unnecessary hardship upon the property owner.

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

Applicant's Response:

Yes.

Staff Comment

Granting the variance will allow the proposed single-family residence to be located further from existing residential structures north and west of the corner lot, create more open yard area behind the residence, and create a more pleasing look for the neighborhood.

Staff finds that granting proposed variance will have not have an adverse effect on the public health, safety, morals, order, convenience, prosperity, or general welfare.

- (E) That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulation;

Applicant's Response:

Yes.

Staff Comment

Merriam's Code bulk regulations for residential districts were written to create a uniform set of standards for development. The property has remained undeveloped. The proposed location of the single-family residence on a corner lot, meeting the standard 30 foot front yard setback for an R-1 District, places the residence in a more appealing and marketable location for the developer and prospective owner.

Staff finds that granting the variance will not be opposed to the general spirit and intent of the zoning regulations.

Chair Bill Bailey inquired if there are any questions for Mr. Hollis.

Board member Terrie Stanker inquired if a new residence was built on the property if it would be placed in the center of the lot.

Mr. Hollis stated the proposed residence would be placed on the diagonal of the lot and would be within the 30-foot setback requirement. Mr. Hollis stated it does not have to be the placement for the proposed home, but it does need to fit the setback requirements.

Chair Bill Bailey inquired if there were any additional questions for Mr. Hollis. Hearing none, Chair Bill Baily inquired if the applicant would like to speak.

Mr. Speer stated from his seat he had nothing to add.

Chair Bill Bailey inquired if there were any public comments. Hearing none, Chair Bill Baily stated he would entertain a discussion or a motion.

SHAWN MCCONNELL MOVED THAT THE BOARD OF ZONING APPEALS APPROVE APPLICATION BZA18-000001 FOR PROPERTY LOCATED AT 5220 HAYES ST. TO NOT APPLY SECTION 74-91 AVERAGE SETBACK IN RESIDENTIAL DISTRICTS AS STATED IN THE STAFF REPORT. TERRIE STANKER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

IV. BUSINESS FROM THE FLOOR

None

V. UNFINISHED BUSINESS

None

VI. ADJOURNMENT

There being no further business, **MITCHELL FOWLER MOVED FOR ADJOURNMENT.** The meeting was adjourned at 7:22 p.m.

Respectfully submitted,

Bryan P. Dyer, AICP
Community Development Director

Approved:

Community Development Staff Report
Board of Zoning Appeals – October 16, 2019
BZA19-000001 – Variance for a 6-foot privacy fence in required front yard

<u>Application:</u>	Application BZA19-000001
<u>Request:</u>	Variance of 10 feet and 11 inches from Section 74-219(4)b.1 – Bulk Regulations. Yard requirements: Minimum front yard of 30 feet.
<u>Property Address:</u>	9516 W. 53 rd Street
<u>Applicant:</u>	Shane and Nellie McCool, Property Owners of Record

Current Zoning and Land Use	R-1 (Single-Family Residential) District; developed with a single-family residence.
Surrounding Zoning and Land Use	R-1 District to the north, south, east and west, developed with single-family residential structures;
Current Legal Description	GARNER HEIGHTS, LOT 14
Property Area	33,294.67 sq. ft. (0.76 Acres)

<p>Relevant State Law and Code Provisions Powers of the Board of Zoning Appeals to grant variances are stated in K.S.A. 12-759 and Chapter 50, Article IV of the Merriam Municipal Code.</p> <p>Sections of Merriam Code applicant is requesting variance: Section 74-219(4)b.1 – Bulk Regulations. Yard requirements: Minimum front yard of 30 feet (9516 W. 53rd Street).</p> <p>Related case files: None</p>

Vicinity Map
BZA19-000001 – Minimum required front yard of 30 feet
9516 W. 53rd St.



General Location Map



Aerial Map

Staff Comments:

The applicant and property owner is requesting a variance from the required 30 foot front yard setback for the purpose of constructing a six-foot privacy fence that will start at the northeast corner of the home and run parallel to Garner Lane to the north property line. The fence will be 19 feet 1 inch from the west property line. The subject property is a corner lot with Garner Lane to the west and W. 53rd Street to the south. Merriam Code defines both yards that front a public street as front yards. Additionally, Merriam Code does not allow six-foot privacy fences in a required front yard. Hence the applicant's request for a variance of 10 feet and 11 inches from the required front yard setback.

The subject property is zoned R-1 (Single Family Residential) District and developed with a single-family residence. The existing residential structure was constructed in 1948 and is located on the north side of W. 53rd Street in the Garner Heights subdivision. Garner Heights is a subdivision with platted setbacks of 35 feet along W. 53rd Street and 15 feet along Garner Lane. The Garner Heights plat was recorded in 1957. The residential structure and the Garner Heights plat precede the City of Merriam's adoption of bulk zoning regulations in December 1958.

The original residence location is a condition not created by the applicant. The residence is located in the required front yard setback and is considered to be non-conforming structure. The owner is not proposing to expand or enlarge the existing residence. This variance request is *only* for the construction of a six-foot privacy fence. Any enlargement of the residence that will increase the degree of the structure's non-conformity will likely require the approval of a separate variance request.

Staff have reviewed the proposed six-foot privacy fence location and finds the proposed location meets the intent of the Merriam Code.

State Law and Section 50-77(c) of the Merriam Code specifies the authority of the Board of Zoning Appeals to grant variances to the zoning regulations, as follows:

“When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided: (1) to authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where due to special conditions, a literal enforcement of the provision of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done.”

In addition, a variance request may only be granted upon a finding by the Board of Zoning Appeals 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 the zoning 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 the zoning regulation;*

Variance of 10 feet and 11 inches from Section 74-219(4)b.1 – Bulk Regulations. Yard requirements: minimum front yard of 30 feet:

Staff offers the following findings regarding the applicant’s request related to the criteria for consideration of approval of the rear yard variance request as outlined in applicable state statutes and Section 50-77 (c) of Merriam Code:

- (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;**

Applicant’s Response:

Yes.

Staff Comment

State law specifies that the variance request rises from a “unique condition” that is associated with the subject property which is not ordinarily found in the same zone or district. The original residence was constructed in 1948 prior to the city’s adoption of the current zoning setbacks creating a unique condition that is not ordinarily found in the same zone or district and was not created by the action of the current property owner. The corner lot configuration and platted setback are unique as it relates to standard lots within the Garner Heights subdivision and lots found elsewhere in Merriam.

Staff finds that the variance request arises from a condition that is unique to the property and which is not ordinarily found in the same zone or district, and the variance is not created by an action or actions of the property owner or applicant.

- (B) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;**

Applicant’s Response:

Yes.

Staff Comment

If granted, the variance will not adversely affect the rights of adjacent property owners or residents. The original residence was constructed in 1948, prior to the city adopting a zoning ordinance. The proposed six-foot privacy fence would be located approximately 19 feet 1 inch from the front property line along Garner Lane. The proposed privacy fence will not be located forward of the existing building line along Garner Lane.

Staff finds that the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents.

- (C) That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;**

Applicant's Response
Yes.

Staff Comment

The strict application of the zoning regulations will prevent the property owner from constructing the proposed six-foot privacy fence not forward of the established building line along Garner Lane.

Staff finds that the strict application of the provisions of the zoning regulations from which variance is requested will constitute an unnecessary hardship upon the property owner.

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

Applicant's Response:
Yes.

Staff Comment

Granting the variance will allow the construction of a six-foot privacy fence not forward of the existing building line previously established by the single-family residential construction along Garner Lane.

Staff finds that granting the proposed variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

- (E) That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulation;**

Applicant's Response:
Yes.

Staff Comment

Merriam's Code bulk regulations for residential districts were written to create a uniform set of standards for development. The original residence was constructed prior to Merriam's adoption of these bulk regulations and the front yard setback limits the ability to construct six-foot privacy fence due to the unique corner lot configuration and the existing location of the single-family residence. The front yard setback creates a condition that limits potential fencing installations for the lot. The corner lot and existing residence location are unique to neighboring lots within the subdivision.

Staff finds that granting the variance will not be opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation:

The Board of Zoning Appeals should consider the application as it pertains to the five (5) requisite criteria necessary for granting of the variance(s), as set forth in K.S.A. 12-759 and 50-77(c) of the Merriam Municipal Code. Per state statutes and Merriam Code, the variance request must meet all of the above criteria for the granting of a variance.

Based upon the above analysis, the Community Development staff finds that the application meets all of the requirements set forth in K.S.A. 12-759 and Chapter 50, Article IV of the Merriam Municipal Code.

Staff recommends approval of the front yard variance request for the construction of a six-foot privacy fence, not forward of the existing building line along Garner Lane on which the existing residence is located.

Variations:

Variance from Section 74-219(4)b.1 Bulk Regulations: Yard requirements, minimum front yard of 30 feet. **The request is for a 10-foot and 11-inch variance from the required 30 foot front yard setback for the construction of a six-foot privacy fence, not forward of the existing building line along Garner Lane on which the existing residence is located at 9516 W. 53rd St.**

Bryan P. Dyer, AICP
Community Development Director
October 16, 2019

DATE: July 11, 1960

JAMES L. BELL & ASSOCIATES
Surveyors and Engineers

JOB NO. 69089

LICENSE NO.

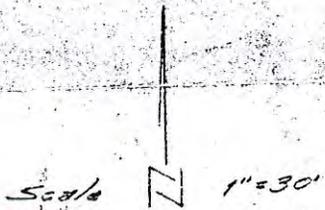
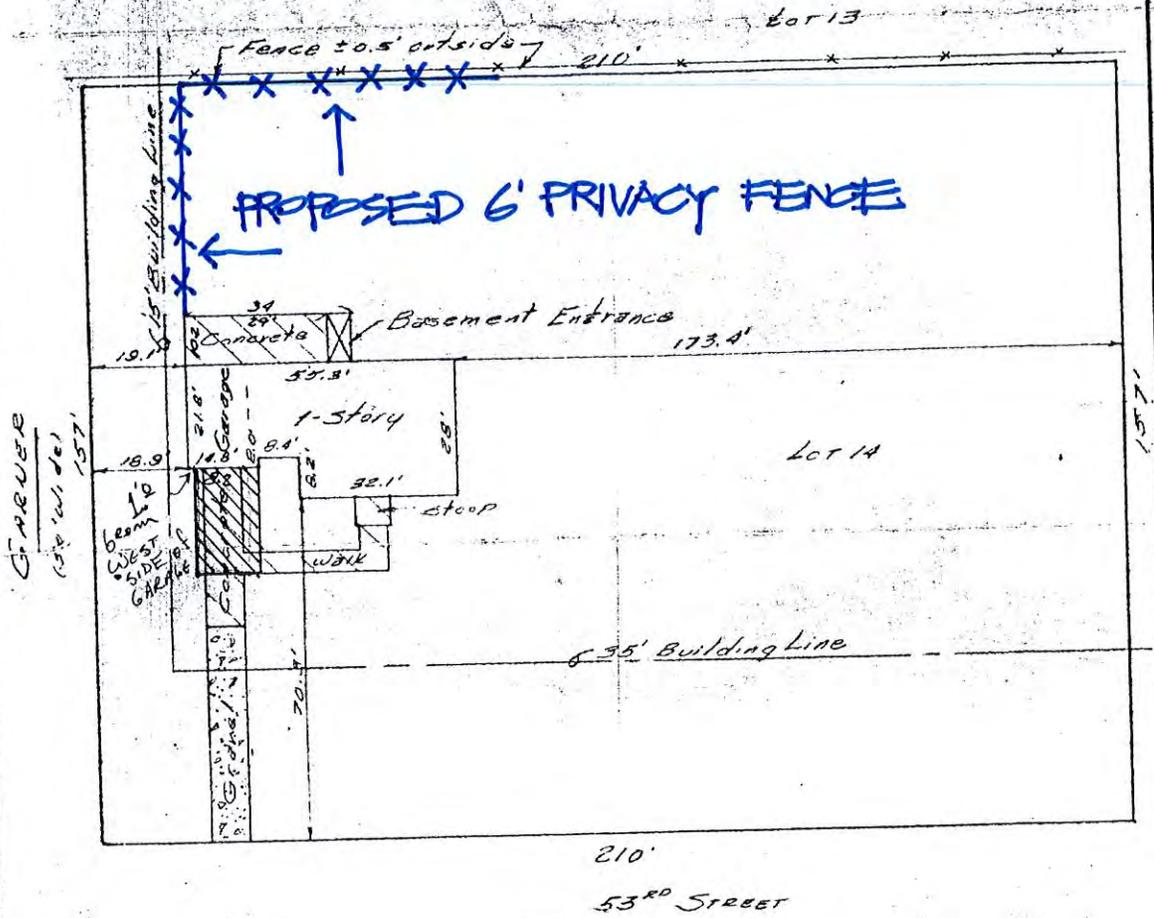
COLORADO	2765
MISSOURI	LS-76
KANSAS	PE 1291
WYOMING	288
UTAH	2167
NEW MEXICO	3200

ORDERED BY: City Wide Mortgage Company
Louis Ortez
9516 West 53rd Street
Merriam, Kansas



DESCRIPTION: SEC. TWP. RG. CO. Johnson STATE Kansas

Lot 14, GARNER HEIGHTS, a subdivision in Johnson County, Kansas.



No PROPERTY STAKES SET

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS IS THE TRUE RESULT OF THE SURVEY DESCRIBED ABOVE; THAT THE BOUNDARY LINES ARE AS SHOWN HEREON; THAT THERE ARE NO ENCROACHMENTS ON SAID PROPERTY; THAT THERE IS NO VISIBLE EVIDENCE OF EASEMENTS, RIGHT OF WAYS, PUBLIC OR PRIVATE PASSAGEWAY ACROSS SAID PREMISES, OR OF ANY DRIVEWAY WHOLLY OR PARTLY ON SAID PREMISES AND THAT THERE ARE NO STRUCTURES LOCATED ON SAID PROPERTY; EXCEPT AS INDICATED ON THIS PLAT, THIS SURVEY IS MADE FOR THE ABOVE STATED PURPOSES ONLY AND NO OTHER RESPONSIBILITY IS HEREBY ASSUMED.

James L. Bell
SURVEYOR