

AGENDA

TOPEKA BOARD OF ZONING APPEALS

Monday, August 10, 2015
5:30 P.M.

Holliday Building
620 SE Madison, 1st Floor Holliday Conference Room

MEMBERS OF THE BOARD

Tim Carkhuff
Aaron Classi
Helen Crow
Marty Hazen – Vice Chairman
Mike Morse – Chairman
Walter Schoemaker

- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
- The following agenda identifies and describes each proposal to be considered by the Board.
- Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
- Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
- Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
- Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.

A. Call to Order

B. Approval of Minutes from May 11, 2015 meeting

C. Items

BZA15A/1 by Patrick Habiger, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision rendered by the Zoning Administrator that the applicant, is in violation of the design standards applicable to a fence pursuant to Section 18.270.050(c)(14) Design Standards of the TMC by locating a fence in front of the front face of the residence located at 1314 SW Pembroke Lane, having a parcel ID number of 1410202010007000 and being in the City of Topeka, Kansas.

D. Adjournment



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF TOPEKA
BOARD OF ZONING APPEALS

MINUTES

Monday, May 11, 2015

5:30PM - Holliday Building 2nd Floor Sunflower Conference Room

Members present: Tim Carkhuff, Marty Hazen, Mike Morse, Walter Schoemaker (4)
Members Absent: Ryan Adams, Aaron Classi, Helen Crow (3)
Staff Present: Dean Diediker, Planner II; Mary Feighny, Deputy City Attorney; Mike Hall, Planner III; Becky Esopi, Zoning Inspector; Kris Wagers, Office Specialist

A) Call to Order

The meeting was called to order by Mr. Mike Morse, Chair.

B) Items

- 1) **BZA15V/1 by Stephanie Ann and Jeremy Blake Fassnacht**, requesting a variance to TMC 18.60.020(8) regarding the front yard setback requirements for a lot in the "R-1" Single-Family Dwelling District. The request is to allow a carport to remain, which was constructed in front of the residence and which encroaches into the required front yard zoning and platted building setback, at 4718 SW 18th Terrace within the City of Topeka, Kansas.

Mike Hall briefed the staff report as Dean Diediker had lost his voice.

Mike Morse asked the applicant if they would like to speak.

Stephanie Fassnacht (applicant) introduced herself and asked what the public safety issue is with the carport.

Mr. Hall stated it's not so much a safety issue as a general welfare issue. The carport has negative aesthetic impact on neighboring property owners. Mr. Hall reviewed the purpose of setbacks (see staff report) and stated that in theory, people purchase property with an understanding of the required standards, so if a neighbor does not comply with those standards it is an imposition on their property rights.

Mrs. Fassnacht stated she feels like we are in a city that claims to be progressive and wants to grow businesses and communities and bring people in, yet we are saying neighborhoods can't be changed. She stated her neighborhood was built in the 50's and life situations have changed over the years. Also, there are homes where grass goes un-mowed and homes that have been abandoned and have plywood over the windows. She stated that her carport looks nice and she doesn't understand why the carport is an issue and the other items are not.

DRAFT

Mr. Larry Payne (guest) of 4704 SW 18th Terrace spoke in support of the Fassnachts keeping their carport as it is. He stated that he was made to remove his carport 11 years after it was built. He stated that someone from the city had come out to talk to him about it and he asked if it would have been a problem if he lived in North or East Topeka. Mr. Payne stated the City employee's response was no.

Mr. Carkhuff explained that the applicants are asking to be treated differently than the standards that apply to everybody else. He stated that when a request comes before the BZA, there are 5 criteria that must be met in order to grant a variance. The first is that the property must be unique; it's not about the situation of the homeowner but the property. Unless the applicant can present something that's unique about the property, the first requirement cannot be met. Mr. Carkhuff stated that he and the other members of the BZA are not unsympathetic to the applicants' situation, but they must make certain findings in order to grant the variance.

Mr. Carkhuff, speaking to Mr. Payne, stated that if his case were before the current BZA, they would have to make the same findings. He stated that to say it doesn't happen on the East side is untrue. It is dependent upon front yard set-backs.

Mr. Classi stated that zoning enforcement is complaint driven. Mr. Payne asked what would happen if he went around and reported others who had carports and Mr. Morse stated that it is within his rights to do so.

Mr. Hazen stated that there have also been instances in East and North Topeka and Mr. Morse explained that it depends on how big the front yard set-back is.

Mr. Payne suggested that the zoning be changed and Mr. Morse stated that would need to go through the Planning Department. Mr. Hall stated that if interested, they could speak with him about it; there is a process and specific set of steps. He added that the neighborhood plans that have been drafted by or for other neighborhoods have been even more restrictive than City zoning.

Mr. Louis Williams asked if the code were specific to all of Topeka or to specific neighborhoods. Mr. Hall stated that set-backs change by zone and Mr. Diediker stated that R-1 is 30' setbacks, R-2 is 25' setbacks. Mr. Classi added that those are minimum standards and many neighborhoods have larger set-backs based on what developers called for in plats.

Mr. Williams stated that the purpose of a variance is a deviation from the standard and the reason the applicants are in attendance is to ask for a deviation from the standard. Mr. Carkhuff stated that was true, and the first finding the BZA must make is that there is something unique about the property in question. Mr. Classi gave an example of a creek that runs through a backyard that forced the front of the house to be further forward, that would be unique to that property. A large hill would be the same; something unique to the property that the property owner cannot control and did not cause. Mr. Diediker added that a key point to the first finding is that the uniqueness cannot be caused by an act on the part of the owner or applicant.

Mr. Classi stated that the BZA is semi-judicial. If appealed it would be to the court, and the court will rule against the BZA ruling if they do not follow the 5 findings.

Mr. Williams asked if the BZA had ever granted a variance from a standard and Mr. Morse replied yes. Mr. Carkhuff stated during his terms one had not been granted for a carport that encroaches on front set-backs. He added that variances granted by the BZA had been based on findings that the property is unique, etc., and that has been documented within the report.

Mrs. Dorothy Williams asked for and received confirmation from Mr. Carkhuff on the following: Even if the circumstance doesn't meet just 1 of the 5 criteria, the variance cannot legally be granted.

Mrs. Williams stated that it was a waste of the Board's time and the applicants' time. Mr. Carkhuff stated it is within their rights to appeal to the BZA. Mrs. Williams stated that if she had known a variance had never been granted they would not have made the appeal. Mr. Carkhuff stated that the 5 findings they must make are listed on the application.

Mr. Hall asked to re-address the question of re-zoning and stated that he wanted to point out that often there is a building line on the plat, so amending the zoning ordinance would not necessarily relieve someone of the building line on the plat.

Mr. Hall also stated that when staff discusses an appeal application with potential applicants, they take great effort to have a pre-application conversation with the potential applicants and explain the findings that must be made / the criteria that must be applied and the challenge of meeting the criteria.

Mr. Carkhuff stated he wanted the applicants to feel they had been fully heard and asked if there were anything they wanted to add.

Ms. Fassnacht stated no, they had nothing to add.

Mr. Hazen moved to adopt the findings and disapprove the application. Second by Mr. Carkhuff. APPROVED (4-0-0)

Mrs. Fassnacht asked what happens next. Ms. Esopi, Zoning Inspector, explained that she will work with them.

- 2) **BZA15V/2 by Louis R. Williams Jr. and Dorothy S. Williams**, requesting a variance to TMC 18.60.020(8) regarding the front yard setback requirements for a lot in the "R-1" Single-Family Dwelling District. The request is to allow a garage to remain, which was constructed in front of the residence and which encroaches into the required front yard zoning and platted building setback, at 2201 SE 36th Street within the City of Topeka, Kansas.

Mike Hall briefed the staff report as Dean Diediker had lost his voice.

Mr. Classi asked the applicant if they would like to speak.

Mr. Williams stated that he understands the code. He also stated he's lived in his neighborhood 27 years and seen houses sell and has talked to his neighbors, with none of them stating any objections to the garage.

Regarding Exhibit H1B, he stated he was not aware of the 30' set-back line and that part of the application was not in his handwriting. He stated he was not aware of the set-back requirement when they put the garage up 12 or so years ago.

He stated the staff report said the variance would be disallowed because he had applied for a variance before and the structures were the same, but in fact, he said, the structures aren't anywhere near the same. The structure referenced from before was a shed.

Mr. Williams stated the sole purpose for the garage being built was because his wife falls on the ice. He stated he knows the City is compassionate to their needs but also understands there is the code they most go by. Mr. Williams stated that if the City cannot approve the variance he'd ask that they allow them a couple years variance as, due to health, they'll need to be moving within that timeframe anyway. He stated that when they sell the property they will remove the garage.

Mr. Williams stated he read through the whole staff report; he stated he doesn't see any way the garage has adversely affected his neighborhood.

Mrs. Williams stated that she is disabled and the garage exit is the only one in the house she can use. She explained that the garage is very small and when they get the car in there, there's very little room to walk or open the car door with a walker or cane. She also stated that they had a contractor build the extra garage and assumed that because he was a professional he had gotten all the required permits.

Mr. Hazen stated it's clear the violation wasn't intentional.

Mr. Classi asked Mr. Diediker if there were anything unique about the land that would allow the BZA to grant the variance. Mr. Williams stated there's no place he could move the carport where it would serve the purpose it was put there for. If he put it in the backyard it would cease to serve its purpose.

Mr. Class asked if an awning could be placed that could provide cover for the applicant. Mr. Hall stated that because the house is set back 35' and only 30' is required, they do have 5'. Mr. Diediker explained that a variance lasts for perpetuity and is granted to the property, not the applicant per se.

Some options that would be in compliance with set-back requirements were discussed and applicants were invited to contact the Planning Department to discuss those.

Mr. Hazen moved to adopt the findings and disapprove the application. Second by Mr. Schoemaker. APPROVED (4-0-0)

C) Election of Officers

Mr. Carkhuff nominated Mike Morse as Chair; Mr. Morse nominated Mr. Hazen as Vice-Chair

Vote of acclamation – Motions passed

D) Adjournment at 6:20PM

**APPEAL EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT**

Date: August 10, 2015

Case No.: BZA15A/1

Applicant Name: Patrick Habiger

Address: 1314 SW Pembroke Lane, Topeka, Kansas

Zone for Property: R-1 NCD1 “Single Family Dwelling District; Westboro Neighborhood Conservation District”

Property Data:

Address of Property: 1314 SW Pembroke Lane, Topeka, Kansas

Property Size: Approximately 80' x 110' (8,800 sf)

Existing Land Use: Single Family Residence

Surrounding Land Uses: Single Family Residential Uses on all sides adjacent to property

Surrounding Zoning: R-1 NCD1

Ordinance Section Being Appealed: Topeka Municipal Code (TMC) 18.270.050 (a) (14) Design Standards for the Westboro Neighborhood Conservation District (Westboro NCD). TMC 18.270.050 incorporates the Westboro NCD design standards by reference. The design standards for the Westboro NCD stipulate that “*Fences shall not be allowed in front of the front face of the residence.*” The standards for fences in the Westboro NCD are included below.

Decision Being Appealed: At the direction of the Planning Director, the City of Topeka Zoning Inspector asserts that the appellant constructed a fence in front of the front face of the residence, in violation of the Westboro NCD design standards. As corrective action, the zoning inspector requires the appellant to move the installed fence in line with or behind the front face of the residence to comply with the design standards.

Action by Board of Zoning Appeals (BZA): Pursuant to TMC 2.45.050 Powers and duties, *“the board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning regulations in accordance with the general rules set forth in TMC Title 18, Division 4, including the power to hear and determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations and to permit exceptions to, or variations from, TMC Title 18, Division 4, in the classes of cases or situations, in accordance with the purpose, conditions and procedures specified in TMC Title 18, Division 4.”*

Therefore, the matter before the BZA for consideration is the appeal of a decision rendered by the zoning inspector regarding the inspector’s interpretation and enforcement of the specific sections of the Topeka Municipal Code (TMC). In its deliberations, the Board of Zoning Appeals must only consider whether the zoning inspector’s interpretation and required corrective action conforms to applicable regulations in Title 18, Division 4 (zoning code).

Exhibits 1 and 2 are the zoning inspector’s violation notice and letter sent to the appellant.

Chronology: The chronology of particular events, including adoption of the Westboro NCD design standards, fence permit, construction, and enforcement are pertinent to the BZA’s consideration of the appeal.

Westboro NCD design standards adopted by Topeka Governing Body February 11, 2014.
Ordinance published February 17, 2014.

Appellant applied for and received approval of permit for fence January 15, 2015.

The Planning Department received a citizen complaint April 24, 2015.

Zoning Inspector sent letter to appellant on May 11, 2015; spoke with owner (appellant) following the letter. The appellant stated he would not agree to moving the fence to comply. Zoning Inspector issued violation notice on June 11, 2015.

The appellant submitted appeal application June 22, 2015

Appellant’s Grounds for Appeal: In the June 22, 2015 letter appellant’s legal counsel states: “My understanding is that the Westboro Homeowner’s Association has lodged some sort of complaint that has led to this violation notice. However, it is also my understanding that, prior to approval, the fence permit must be taken to the homeowner’s association as part of the conservation district’s process. I am not certain how a permitted fence can now be found in violation. It is the same office approving the permit that now claims a violation.”

Planning Staff Review and Analysis: The procedure for approving a fence in the Westboro NCD includes the review of a fence permit application by staff using the standards for fences in both the base zoning district (R-1) and the NCD overlay district (Westboro NCD). By policy, Staff does not seek out comments of the Westboro neighborhood organization when a permit is clearly in compliance to NCD standards. In this case, no prior comment was sought and the

permit was issued based on the submitted Site Plan, which was deemed to be in compliance with NCD standards.

Staff asserts that the appellant constructed the fence in a manner that does not conform to the plans submitted with and approved as part of the fence permit. The site diagram submitted with the fence permit application indicates the fence to be set back at or behind the front face of the residence. Staff considers the outside edge of the portico as the “front face”. The fence was installed approximately 8 feet beyond the front face.

Findings:

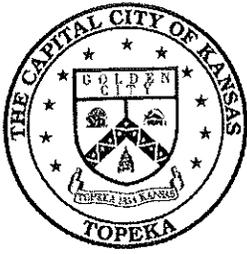
1. Planning staff approved a fence permit based on a site diagram in compliance with the Westboro NCD design standards.
2. The appellant constructed a fence that does not conform to the site diagram and fence permit. The constructed fence is located approximately 8 feet in front of the front face of the residence.
3. The Zoning Inspector's violation notice and required corrective action to relocate the fence are valid and appropriate.

Planning Staff's Recommendation:

1. Staff recommends that the Board of Zoning Appeals affirm the decision of the Zoning Inspector by concurring with Violation Notice No. 2015011 issued to Mr. Habiger on June 11, 2015.

Exhibits:

- Exhibit 1 – Zoning Inspector's May 11, 2015 Letter
- Exhibit 2 – Violation Notice No. 2015011
- Exhibit 3 - Photographs of Fence as Constructed
- Exhibit 4 - Fence Permit Application
- Exhibit 5 - Application and Letter of Appeal
- Exhibit 6 - Ordinance No. 19887 amending zoning map and incorporating Westboro NCD Design Standards by reference
- Exhibit 7 - Westboro NCD Application and Design Standards



CITY OF TOPEKA

Division Director
Property Code
Development Services
620 SE Madison Unit 6
Topeka, KS 66607-1118

Richard Faulkner, Director
Email: rfaulkner@topeka.org
Tel: (785) 368-3905
Fax: (785) 368-3915

May 11, 2015

Jason & Christina Habiger
1314 SW Pembroke Ln.
Topeka, Kansas 66604

Re: Fence beyond the front face of the residence – 1314 SW Pembroke Ln.
Property ID# **1410202010007000**

Dear Property Owners:

A concern has been brought to my attention regarding a fence that has been constructed at the above-referenced address. In checking our records, your home is in the Westboro Neighborhood Conservation District Boundaries. The Neighborhood Conservation Design Standard regarding fences and walls state that *fences shall not be allowed in front of the front face of the residence*. Your fence does appear to have been installed within this area.

Please contact Development Services at 785)368-3012 for the specifics and information to relocate your fence prior to my re-inspection on June 8th, 2015.

Sincerely,

Becky Esopi
Zoning Inspector II
City of Topeka



EXHIBIT 1



CITY OF TOPEKA

Division Director
Property Code
Development Services
620 SE Madison Unit 6
Topeka, KS 66607-1118

Richard Faulkner, Director
Email: rfaulkner@topeka.org
Tel: (785) 368-3704 #1
Fax: (785) 368-1650

VIOLATION NOTICE

No. 2015011

ISSUE TO:

Jason & Christina Habiger
1314 SW Pembroke Ln.
Topeka, Kansas 66604

LOCATION OF VIOLATION:

PID# 1410202010007000
1314 SW Pembroke Ln.
Topeka, Kansas 66604

DATE OF NOTICE June 11, 2015

On April 30, 2015 YOUR PROPERTY WAS INSPECTED AND FOUND TO BE IN VIOLATION OF THE TOPEKA MUNICIPAL CODE (TMC): 18.270.050 (a) (14) Design standards. An ordinance establishing an NCD shall incorporate by reference the design standards applicable to the district regarding fences and walls.

NATURE OF VIOLATION: Fence has been constructed in front of the front face of the residence which is in violation of the Westboro Neighborhood Conservation District Plan.

CORRECTIVE ACTION REQUIRED: Move section of fence back to approved location, not to extend past the front porch on the face of the house.

FAILURE TO COMPLY WILL RESULT IN REFERRAL TO THE CITY ATTORNEY'S OFFICE FOR PROSECUTION AS A CRIMINAL OFFENSE WITH A POTENTIAL FINE OF \$499 FOR EACH DAY THE VIOLATION EXISTS AND POSSIBLE JAIL TIME.

If you disagree that a violation exists, you have a right to appeal this notice to the Board of Zoning Appeals. The appeal must be made within 10 days of the receipt of this notice on a form provided by the City of Topeka Planning Department along with a filing fee of \$130.00.

If you have any questions contact me as soon as possible at 785)368-3012.

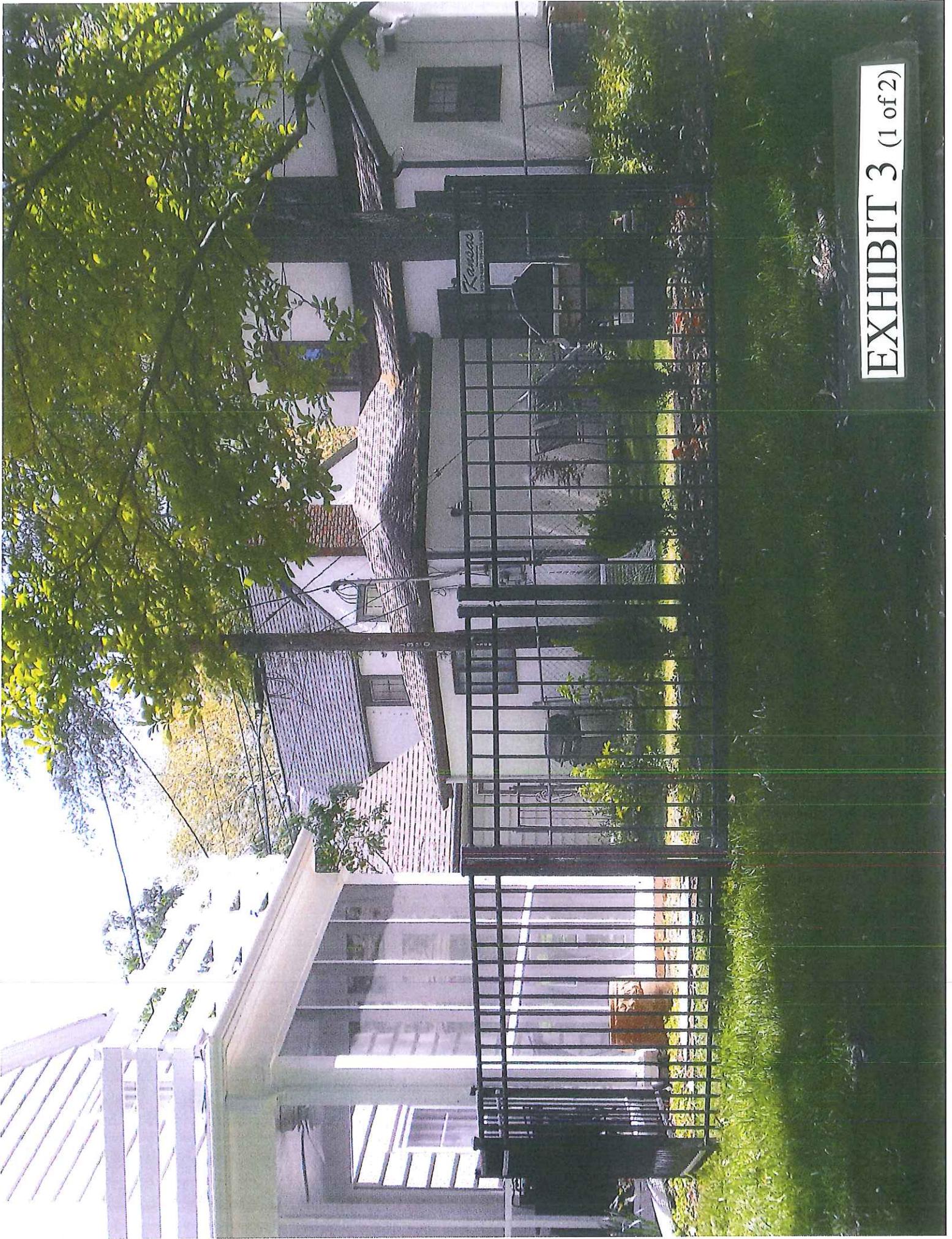
Becky Esopi

Becky Esopi
Zoning Inspector II



EXHIBIT 2

EXHIBIT 3 (1 of 2)



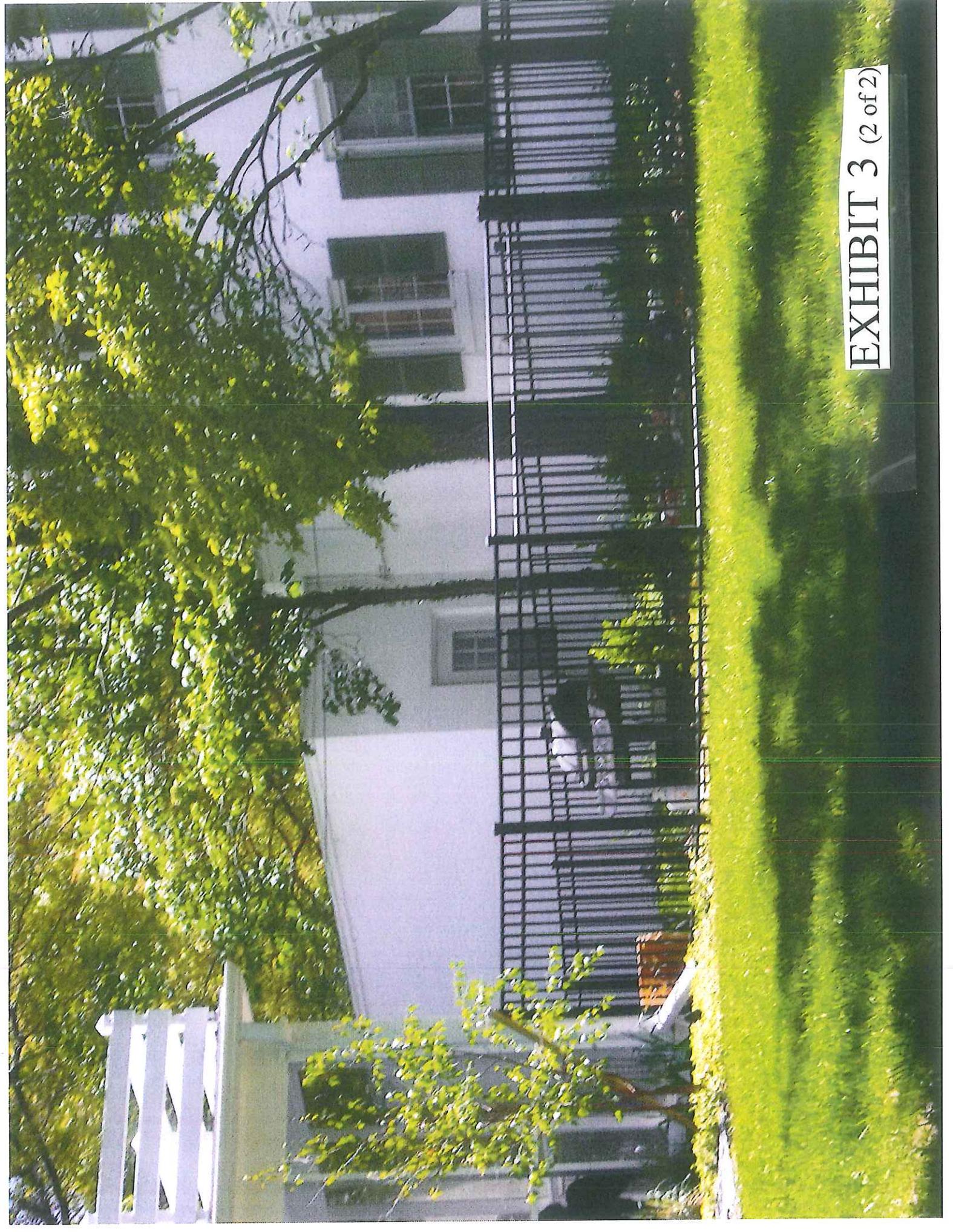


EXHIBIT 3 (2 of 2)

20150114190

\$330

FENCE PERMIT APPLICATION

Date: 1-14-15 Address: 1314 SW Pembroke Ln

Legal description: Lot _____ Blk. _____ Subdivision _____

Owner of property: Habigien [Signature]
Print Signature

Address of owner: 1314 SW Pembroke Ln Tel. # _____

Contractor: Kansas Fencing Inc. Tel. # 826-3180

Address: 620 NW Crofton Dr.

Type of fence material: Wood Chain link Plastic Split rail
Other - description of fence: Decorative

Proposed height of fence: Front 4 Side 4 Rear 4

Is this fence located on a corner lot? Yes No

PLEASE PROVIDE A SITE PLAN ON AN 8 1/2 X 11 SHEET OF PAPER INDICATING PROPERTY LINES, DIMENSIONS AND LOCATIONS OF FENCE, BUILDINGS, RIGHTS-OF-WAY, UTILITY, DRAINAGE OR OTHER EASEMENTS, SCALE AND NORTH ARROW.

MAXIMUM HEIGHT LIMITATION OF FENCE - FRONT - 4 FEET & REAR - 8 FEET
***FENCE TO BE PLACED ON PRIVATE PROPERTY AND MAY NOT BE PLACED IN THE CITY'S RIGHT-OF-WAY WHICH IS APPROXIMATELY 1 FOOT BACK OF AN EXISTING PUBLIC SIDEWALK**

- **ON CORNER LOTS FENCES CANNOT BE PLACED IN THE 40 FOOT SIGHT DISTANCE TRIANGLE.**

The City will require the immediate removal of any fence placed or located within drainage, utility or other easement, which materially interferes with the use of the easement. Upon notice by the City, the owner at the owner's expense shall remove the fence. If the owner fails to remove the fence, then the City shall cause its removal and the property owner shall be responsible for all removal costs.

The City shall not be responsible for any damage caused to a fence or its removal, which may result from the repair or maintenance of any drainage easement or the repair or maintenance of any utilities located in utility easement.

The property owner understands and agrees to indemnify and hold the City harmless for damage, claims, cost, suits, judgments and expenses specifically including attorneys fees of any nature whatsoever arising out of or in connection with the construction, repair or maintenance of a fence. The City's failure to immediately enforce its rights in relation to its easements shall not constitute a waiver of its right to do so and shall not prevent the City from causing the removal of a fence, which materially interferes with the use of a City easement.

IN CONSIDERATION FOR THE PERMISSION TO CONSTRUCT THE FENCE SPECIFIED IN THE FENCE APPLICATION, THE UNDERSIGNED PROPERTY OWNER HEREBY AGREES TO BE BOUND BY ALL THE TERMS AND CONDITIONS CONTAINED IN THIS FENCE APPLICATION:

APPROVALS

[Signature] of Kansas Fencing Inc. 230-2608
SIGNATURE OF OWNER

Traffic: approved
Engineer approved
Planning approved
Historical Society approved
(if applicable)

disapproved
 disapproved
 disapproved
 disapproved

date _____
date _____
date 7/15/15
date _____

RECEIVED
JAN 15 2015
TOPEKA PLANNING
DEPARTMENT

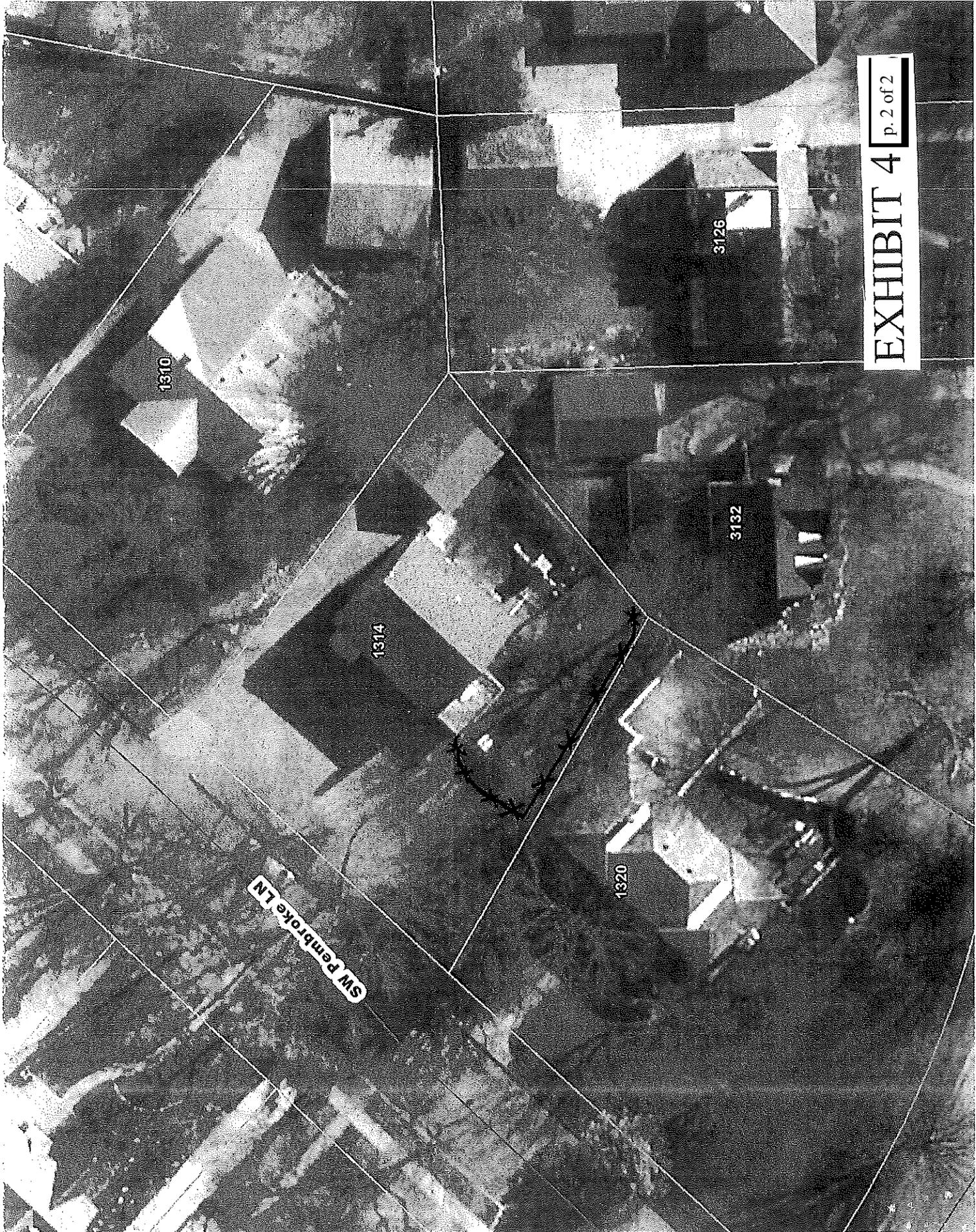


EXHIBIT 4 p. 2 of 2

LAW OFFICES OF
CAVANAUGH & LEMON, P.A.
2942A S.W. WANAMAKER DRIVE, SUITE 100
TOPEKA, KANSAS 66614-4479

STEPHEN W. CAVANAUGH*
THOMAS G. LEMON
VINCENT M. COX

JAMES B. BIGGS*
of counsel

*ADMITTED KANSAS & MISSOURI

RECEIVED

JUN 22 2015

TOPEKA PLANNING
DEPARTMENT

TELEPHONE
(785) 440-4000
FAX
(785) 440-3900
www.cavlem.com

Sender's email address
tlemon@cavlem.com

June 22, 2015

Via Hand Delivery

City of Topeka Planning Department
620 SE Madison St., 3rd Fl.
Topeka, KS 66607

RE: Patrick & Christina Habiger Zoning Appeal
1314 SW Pembroke Ln., Topeka, KS 66604

Dear Sir or Madam:

Enclosed please find as follows:

1. A letter from the City of Topeka to Patrick & Christina Habiger dated May 11, 2015 regarding their fence. The Habigers were quite surprised that their recently purchased home with a permitted fence was somehow now in violation.
2. A copy of a City of Topeka fence permit dated January 21, 2015 for the permitted fence that is now at issue.
3. A Violation Notice claiming that the Habigers have committed some criminal offense.
4. A Board of Zoning Appeals Appeal of Administrative Decision. The Habigers are appealing the Violation Notice #2015011 dated June 11, 2015. They were provided this document on June 13, 2015.
5. A check in the amount of \$130 made payable to the City of Topeka as the appeal fee.

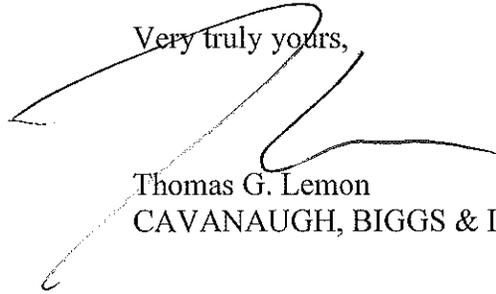
My understanding is that the Westboro Homeowner's Association has lodged some sort of complaint that has led to this Violation Notice. However, it is also my understanding that, prior to approval, the fence permit must be taken to the homeowner's association as part of the conservation district's process. I am not certain how a permitted fence can now be found in violation. It is the same office approving the permit that now claims a violation.

EXHIBIT 5 (1 of 3)

BZAISA/1

Once again, this is a request for an appeal of Violation Notice #2015011. A hearing is requested at your first earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Thomas G. Lemon', written over the typed name and firm name.

Thomas G. Lemon
CAVANAUGH, BIGGS & LEMON, P.A.

TGL:td
Enclosures
Cc: Patrick Habiger

RECEIVED
JUN 22 2015

CITY OF TOPEKA PLANNING DEPARTMENT	
620 SE Madison Street, 3 rd Floor Topeka, Kansas 66607	Office: (785) 368-3728 Fax: (785) 368-2535

**APPEAL OF ADMINISTRATIVE DECISION TO THE
BOARD OF ZONING APPEALS**

Planning Office Use Only	
Case No. <u>BA 15A/11</u>	Hearing Date: <u>Aug 10, 2015</u>
Filing Fee \$ <u>130</u>	

Make checks payable to "City of Topeka".

Applicant: Patrick Habiger Phone: 785-969-6080
 Address: 1314 SW Pembroke Ln. Topeka, KS 66604

Location of Property: 1314 SW Pembroke Ln.

Legal Description of Property:

Current Use of Property: Residential

Proposed Use of Property: Residential

Decision Being Appealed:

Explanation of Administrative Error:

See attached. I am appealing the notice dated June 11, 2015 dictating corrective action

Patrick Habiger
Applicant's Signature

6/16/15
Date

(Published in the Topeka Metro News February 17, 2014)

ORDINANCE NO. 19887

AN ORDINANCE introduced by Jim Colson, City Manager amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), by amending the district zoning classification to add a neighborhood conservation district zoning overlay pursuant to Section 18.270.020 TMC.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), be and the same is hereby amended, by reclassifying the following property from "R-1" Single Family Dwelling to "R-1/NCD" Single Family Dwelling/Westboro Conservation District (District):

All properties within the area bounded on the north by southwest Huntoon Street, on the east by southwest Oakley Avenue, on the south by 17th Street and on the west by Gage Boulevard, excluding all commercial properties located on the corner of Huntoon and Oakley.

Section 2. Pursuant to TMC 18.270.020, the individual purposes and design standards for the District are attached herein and incorporated by reference.

Section 3. This Ordinance Number shall be fixed upon the "District Map".

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Topeka, February 11,
2014.

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____
Not To Be Codified X



WESTBORO



EXHIBIT 7 (cover + 17 numbered pages)

NEIGHBORHOOD CONSERVATION DISTRICT

WESTBORO HOMEOWNERS ASSOCIATION

Neighborhood Conservation District Application

WESTBORO HOMEOWNERS ASSOCIATION

WESTBORO HOMEOWNERS ASSOCIATION

P.O. Box 3829

TOPEKA, KS 66604

EMAIL: WESTBORONEWS@GMAIL.COM

2013 BOARD MEMBERS

TONI BECK, PRESIDENT

JULIE FRIEDSTROM, VICE-PRESIDENT

RON FARRELL, TREASURER

KIM GILMORE, SECRETARY

KEVIN GOODMAN

NANCY KOHAKE

RHONDA LASSITER

ANNE MCINERNEY

BRENDA DICUS

LARRY DIMMITT

KATIE FLOTT

NANCY PERRY

MICHELLE BUTLER

LD NICOLAY

BRAD WALKER

ELAINE BRYAN

Neighborhood Conservation District Application

MISSION STATEMENT

The purpose of the Westboro Home Owners Association is to maintain a community designed to create a safe and healthy quality of life and harmonious beauty that was envisioned by the neighborhood's initial conception in 1926. With the preservation of its historic character in mind, homeowners are encouraged to continue to upgrade and modernize their homes for long-term marketability, thus ensuring that the Westboro neighborhood remains desirable for future generations. Balance between historic preservation and continued home improvements will ensure stable property values as promoted by the Westboro Homeowner's Association for the betterment of the neighborhood. Achieving this balance is the aim of the Westboro Neighborhood Conservation document.

NEIGHBORHOOD GOALS

- Protect the established character and property values of the Westboro neighborhood
- Ensure that any new development enhances the traditional feel of Westboro
- Maintain a standard of uniformity that extends to accessory buildings and outbuildings
- Utilize the historic architecture and layout of Westboro to create a "sense of place"
- Balance preservation and home improvements

WHY OUR NEIGHBORHOOD SHOULD BE A NEIGHBORHOOD CONSERVATION DISTRICT

The Westboro Neighborhood was established in 1926 and features a variety of housing styles. Predominant styles include classics such as English Tudor, French Eclectic, English Cottage, and American and Georgian Colonial Revival to name a few. The tie to English architecture is reinforced through the street names throughout Westboro—Canterbury Lane, Pembroke Lane, York Way, and Avalon Lane for example.

Our neighborhood wants to protect these traditional themes that are still present throughout and preserve the character of Westboro. Many of the homes were constructed in the 1920's and 1930's and have been attentively maintained by their owners. The architecturally detailed houses, combined with the street space defined by the house placement on the lots and the meandering street lanes, create an inviting and interesting environment for pedestrians and visitors. Our streets are lined with mature trees arching overhead, creating a beautiful corridor to walk or drive through. Not many neighborhoods in Topeka that were originally developed during this timeframe are still present or still have the integrity found in traditional elements still visible today in Westboro.

HOW AN NCD DESIGNATION AND OUR DESIGN GUIDELINES WILL IMPROVE OUR NEIGHBORHOOD

A Neighborhood Conservation Designation will protect the historic character and atmosphere in our neighborhood. While many of the existing houses reflect the architectural styles that complement the other residences, we want to make sure that any new or reconstructed structures also reflect these styles. Additionally, accessory buildings can complement or disrupt the harmony of the neighborhood. By identifying traits to protect and preserve our neighborhood, we will continue to be a showcase of traditional neighborhoods and architectural styles.

Neighborhood Conservation District Application

These design guidelines will help preserve our neighborhood and our property values by defining what we want to conserve and what needs to be done to do so. Rather than being an exhaustive list, these design guidelines highlight what we feel is essential to preserving the character of Westboro. These address key items and illustrate what we are trying to achieve. This will provide stability and continuity to the neighborhood and encourage new owners to invest in their new homes here.

EXAMPLES OF OUR UNIQUE CHARACTERISTICS

Originally platted in 1926, the homes within the Westboro Neighborhood have been built in a variety of distinct and representative architectural styles, using equally distinct materials, spatial relationships, and craftsmanship. The following are a collective sample of the styles of home built within the Westboro Neighborhood through the last 80 years.



Style: Italian Renaissance Revival

Time Period of Significance:
1890s to 1930s

Neighborhood Significance:
Employed as one of the specified styles of European architecture allowed under the original neighborhood covenants.

Architectural Description:
Italian Renaissance Revival features grouped or singular series of arches, a green or red tile roof, decorative crests on each façade, Palladian windows and door openings, and is usually constructed of a light colored brick. The roof typically employs a shallow, hipped character, with deep eaves, and is built of red clay tile.



Style: French Eclectic

Time Period of Significance:
1915 to 1945

Neighborhood Significance:
Employed as one of the specified styles of European architecture allowed under the original neighborhood covenants.

Architectural Description:
The French Eclectic style of architecture resembles Tudor Revival, except that its form is taller, with steeply pitched roofs, flared eaves, and often contains a round, prominently featured tower. Its exterior is typically constructed of brick, or a faded, or a washed painted brick.

Neighborhood Conservation District Application



Style: Prairie Style

Time Period of Significance:
1900 to the 1930s

Neighborhood Significance:
Exemplifies a uniquely American character, representing a major advancement in American architecture from the 19th to the 20th Centuries.

Architectural Description: This style features a low, spread-out appearance with wide, overhanging eaves, wide, horizontal bands of windows, and a shallow, hipped roof. Exterior construction material is usually a natural material, either wood or brick, occasionally combined with stucco to distinguish between lower and upper levels.



Style: English Tudor

Time Period of Significance:
1900 to 1935

Neighborhood Significance:
Employed as one of the specified styles of European architecture allowed under the original neighborhood covenants.

Architectural Description: English Tudor features combinations of half-timbered accents on its facades, casement windows, steep gables, prominent chimneys, often with decorative chimney pots, Tudor arched doorways, and is constructed of a combination of materials, consisting of brick, stone, wood, and stucco.

Neighborhood Conservation District Application



Style: English Tudor Cottage

Time Period of Significance:
1915 to 1940

Neighborhood Significance:
Employed as one of the specified styles of European architecture allowed under the original neighborhood covenants.

Architectural Description: Tudor Cottage is nearly identical in appearance to English Tudor Revival, only on a smaller, more refined scale.



Style: Georgian Colonial Revival

Time Period of Significance:
1910 to 1935

Neighborhood Significance:
One of the specified styles of Early American architecture allowed under the original neighborhood covenants.

Architectural Description: Georgian Colonial homes in America date to the mid to late 1700s, reflecting the prominent styles of homes built in England during the reigns of King George I and King George III. The Colonial interpretation of this style is more modest than its British origin, and is typified by a square, symmetrical shape, with a paneled front door at the center of the front façade. The entrance is also built with a decorative crown, and flattened or structural columns on each side. The second floor features a row of five windows across the front, and features paired chimneys, a medium pitched roof, with minimal roof overhang.

Neighborhood Conservation District Application



Style: Spanish Colonial Revival

Time Period of Significance:
1915 to 1940

Neighborhood Significance:
Employed as one of the specified styles of European architecture allowed under the original neighborhood covenants.

Architectural Description:
Similar to Italian Renaissance Revival, Spanish Colonial Revival also is typified by red tile roofs and arched doorways and entrances. However, this style differs with its primary use of light-colored stucco exterior, rustic wood, and wrought-iron window grilles.



Style: Ranch

Time Period of Significance:
1945 to present

Neighborhood Significance:
Represents a uniquely American character, highlighting a major era in residential development during the mid-20th Century.

Architectural Description:
This style of architecture is typified by single story, or split-level construction, a low pitched gable roof, deep-set eaves, horizontal orientation and low to the ground, rectangular, L-shaped, or U-shaped design, large double-hung and/or sliding windows, sliding glass doors leading out to patio, attached garage and built of either wood or brick exterior. Ranch style architecture also demonstrates a lack of detailing, aside from decorative shutters.

Neighborhood Conservation District Application



Style: American Federal Revival

Time Period of Significance:
Late 1780 to mid-20th Century

Neighborhood Significance:
One of the specified styles of Early American architecture allowed under the original neighborhood covenants.

Architectural Description:
This architectural style features a low-pitched roof, or a flat roof with balustrade, windows with shutters arranged symmetrically across the front façade, a center doorway flanked with narrow side windows and a semicircular fanlight positioned above, a decorative crown or roof over the front door, and tooth-like dentil moldings in the cornice. American Federal architecture homes are usually constructed of red brick, but can also use either rough or smooth cut native stone.



Style: Dutch Colonial Revival

Time Period of Significance:
1920 - 1940

Neighborhood Significance:
One of the specified styles of Early American architecture allowed under the original neighborhood covenants.

Architectural Description:
Dutch Colonial Revival homes are usually 1 ½ to 2 stories in height, with a distinguished shed, hipped, or gambrel roof, sometimes seen with flared eaves. Siding may be wood clapboard, shingle, brick, or stone. Its façade may be symmetrical, but it's common to see side entries and balanced asymmetry, often offset with a gable-end chimney. A porch may be present under the overhanging eaves, occasionally running the full width of the house. The entry may have a decorative hood with brackets or portico with classically-styled columns supporting the porch. Windows are multi-light such as six-over-one, six-over-six, or eight-over-eight.

Neighborhood Conservation District Application



Style: Colonial Revival

Time Period of Significance:
1870s to the mid-1950s

Neighborhood Significance:
One of the specified styles of Early American architecture allowed under the original neighborhood covenants.

Architectural Description:
Colonial Revival homes are very similar in appearance to Georgian Colonial Revival, duplicating the symmetrical façade, horizontal and rectangular footprint, the incorporation of fireplaces, 2 to 3 stories in height, and are also constructed using brick or wood siding. Colonial Revival homes often incorporate a steeper-pitched roof, pillars or columns alongside the front entrance, multi-pane, double-hung windows with shutters, and dormers built in to the top level. The front entrance is typically a paneled door with sidelights and topped with rectangular transoms or fanlights, leading to a central entry-hall floor plan with living areas on the first floor and bedrooms on the upper floors.



Style: Eclectic

Time Period of Significance:
1920s through the 1940s

Neighborhood Significance:
One of the specified styles of Early American architecture allowed under the original neighborhood covenants.

Architectural Description:
Eclectic architecture gained its name due to its inclusion of several other distinct architectural styles. It frequently displays a formal presence in its mass, front-pitched roof, and almost-centered, though asymmetrical entry. Other architectural features may include design elements from English Tudor Cottage, Colonial Revival, or Spanish Colonial Revival. The external façade can be constructed of stucco, brick, or wood, clapboard siding.

Neighborhood Conservation District Application



Style: Cape Cod

Time Period of Significance:
Mid-20th-Century

Neighborhood Significance:
Represents a uniquely American character, highlighting a major era in residential development during the mid-20th Century.

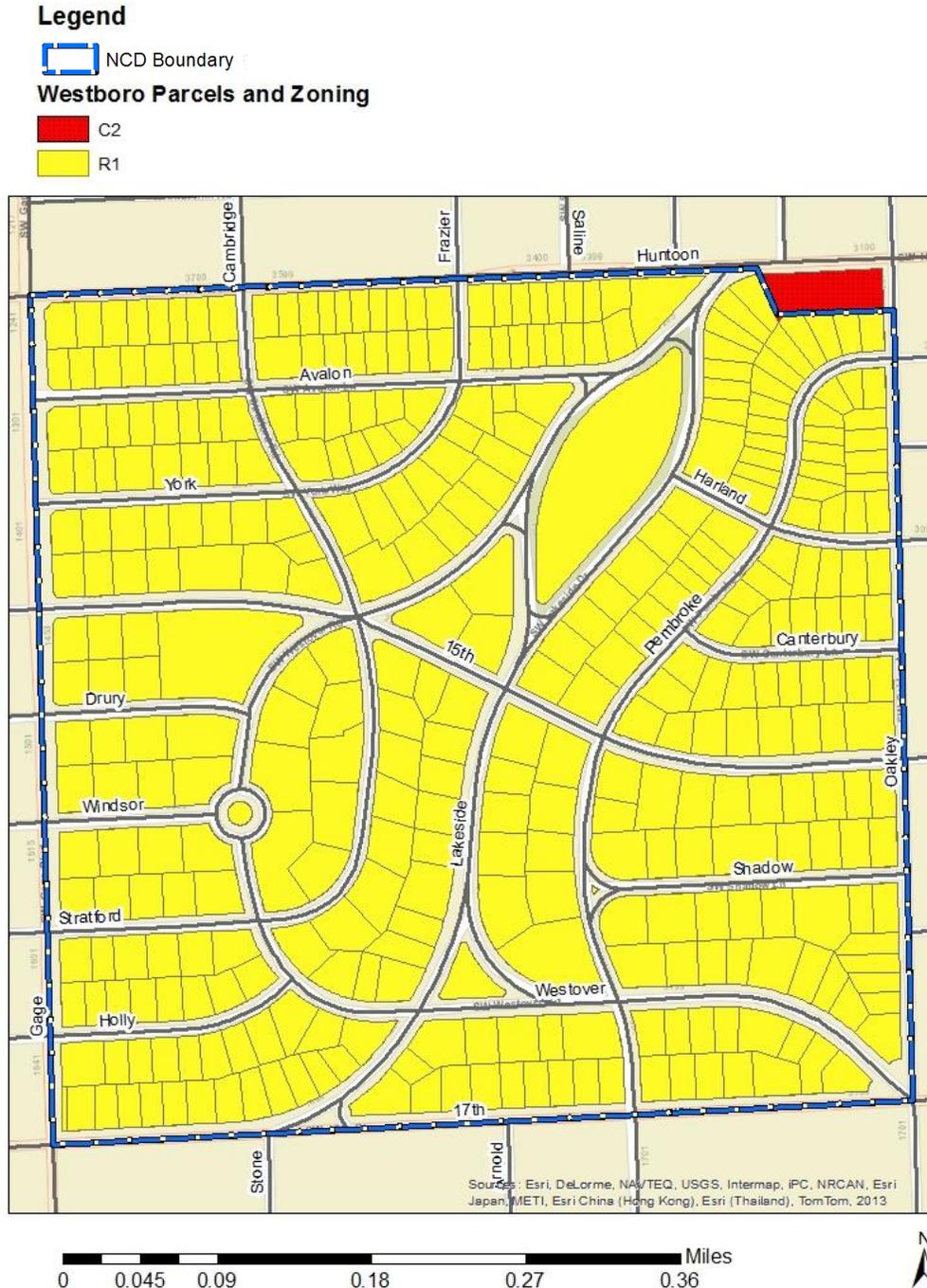
Architectural Description:
Cape Code homes are small and very efficient, built with a steep pitched roof with side gables, a narrow roof overhang, are typically limited to 1 or 1½ stories in height, and are typically sided in wood, shingle, or stucco. Cape Cod homes are also generally rectangular shape. The front door is typically placed at the center or, in some cases, at the side of the front façade. Use of this style during the middle of 1950s and 1960s added the feature of one, or two dormers to the upper floor, to allow for more functional upper living space.

Neighborhood Conservation District Application

MAP AND DESCRIPTION OF BOUNDARIES

The Westboro Neighborhood Conservation District encompasses all properties within the area bounded on the North by Southwest Huntoon Street, on the East by Southwest Oakley Avenue, on the South by 17th Street and on the West by Gage Boulevard. However, it does exclude the commercial properties located on the corner of Huntoon and Oakley.

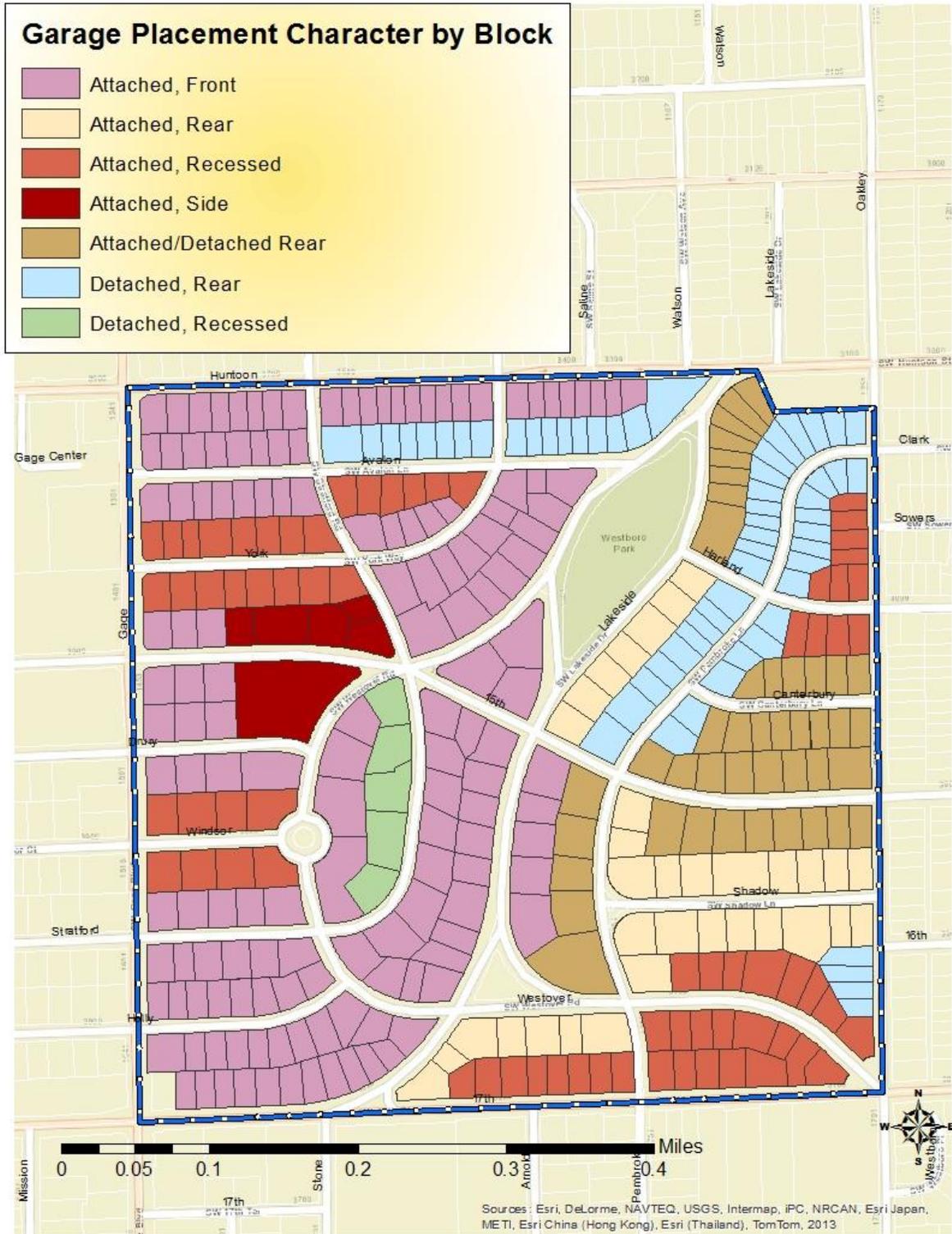
Map 1: Parcels and Zoning



Neighborhood Conservation District Application

Map 3: Garage Placement Character by Block

Garage Placement Character refers to the overall location of the majority of garages within the block. Examples of each of these can be found in Table 1 on the following page.



Neighborhood Conservation District Application

Table 1: Garage Styles and Locations

Attached, Recessed	Attached, Front	Attached, Side
Attached, Rear	Detached, Rear	Detached, Recessed

The relationship between the residence and the garage can define the character of a block. Based on the character of Westboro, garages not visible in the front of the house are preferred. Therefore, blocks with rear or side garage placement character should be considered interchangeable for meeting the NCD Design Standards.

Neighborhood Conservation District Application

- These design standards shall be applied to residential properties only. They shall address both new construction and substantial additions to existing residential properties. Substantial Additions shall mean any project visible from the public right-of-way whose square footage equals or exceeds 10% of the primary structure’s square footage.
- All lawfully existing structures and improvements made non-conforming by the City of Topeka’s adoption of this document shall be considered legal non-conforming (grandfathered).

RESIDENTIAL DESIGN STANDARDS

CHARACTERISTICS AND FEATURES	THE SCOPE OF THE RESIDENTIAL DESIGN STANDARDS	CURRENT ZONING CODE REQUIREMENTS *
PRIMARY BUILDINGS	<ul style="list-style-type: none"> • Only single-family residential housing shall be allowed. • No secondary dwelling units shall be permitted. 	<ul style="list-style-type: none"> • Primary permitted use is single family residential. However, other uses may be allowed with Provisional Use or Conditional Use permits.

CHARACTERISTICS AND FEATURES	NCD DESIGN STANDARD	CURRENT ZONING CODE REQUIREMENTS* (R1)	ILLUSTRATIVE EXAMPLES APPROPRIATE/INAPPROPRIATE
ACCESSORY BUILDINGS	<ul style="list-style-type: none"> • Rear attached or detached garages shall be preferred. If either of these styles is not chosen, the location and placement of the garage must fit the character of the block as defined in Map 3. • Detached garages and other accessory buildings visible from the public right-of-way shall be constructed in a complimentary architectural style as the residence. <ul style="list-style-type: none"> ○ Buildings that must deviate from this standard in order to accomplish their intended purpose (e.g., greenhouses, pools) shall be screened from the right-of-way. 	<ul style="list-style-type: none"> • Cumulative footprint of all accessory buildings shall not total more than 90% of the building coverage of the principal structure. • Accessory structure height: No greater than 15’ when the principle building is one-story or 20’ when the principle building is two-stories or more. • Detached accessory buildings rear yard setback 5’ • Detached accessory buildings side yard setback 3’ • Accessory structures shall not be located within a required front yard. 	<p style="color: blue; font-weight: bold;">Figure 2: Appropriate</p> 

Neighborhood Conservation District Application

CHARACTERISTICS AND FEATURES	NCD DESIGN STANDARD	CURRENT ZONING REQUIREMENTS* (R1)	CODE	ILLUSTRATIVE EXAMPLES APPROPRIATE/INAPPROPRIATE
ACCESSORY BUILDINGS, CONT.	<ul style="list-style-type: none"> • Accessory buildings not visible from the public right-of-way shall be stick-built or constructed with non-glaring or non-reflective materials. <ul style="list-style-type: none"> ○ Buildings that must deviate from this standard in order to accomplish their intended purpose (e.g., greenhouses) shall not exceed 12' in height. 			<p>Figure 1: Appropriate</p> 
BUILDING HEIGHT	<ul style="list-style-type: none"> • n/a 	<ul style="list-style-type: none"> • Primary structure: 42' maximum • Accessory structure: 20' maximum 		
BUILDING SIZE/MASSING	<ul style="list-style-type: none"> • New residences shall be of a similar size to the other houses on the block. The Floor-to-Area Ratio of a new residence shall fall between the smallest and the largest Floor-to-Area Ratio on the block, $\pm 10\%$. 	<ul style="list-style-type: none"> • n/a 		
BUILDING ARCHITECTURAL STYLE AND DETAILS	<ul style="list-style-type: none"> • New residences shall be constructed in one of the architectural styles identified in the "Representative Sample." • Architectural features that define the overall character of the existing residence such as walls, brackets, railings, cornices, windows, door pediments, steps, columns, finishes, and color shall be utilized for substantial additions • Siding and roofing materials shall be consistent with materials and style used in the original construction. 	<ul style="list-style-type: none"> • n/a 		

Neighborhood Conservation District Application

CHARACTERISTICS AND FEATURES	NCD DESIGN STANDARD	CURRENT ZONING REQUIREMENTS* (R1)	CODE	ILLUSTRATIVE EXAMPLES APPROPRIATE/INAPPROPRIATE
BUILDING SETBACKS	<ul style="list-style-type: none"> New residences shall be built to the front setback line that is $\pm 10\%$ of the average front setback on the block. 	<ul style="list-style-type: none"> Front yard setback: 30' Side yard setback: 7' Rear yard setback: 30' Unenclosed porch, deck or stoop may encroach not more than 10' into the front or rear yard. 		
BUILDING ORIENTATION AND SITE PLANNING	<ul style="list-style-type: none"> New residences shall be oriented towards the street on which they are addressed. 	<ul style="list-style-type: none"> n/a 		
LOT SIZE	<ul style="list-style-type: none"> Existing lots shall not be subdivided. 	<ul style="list-style-type: none"> Minimum 6,500 square feet 		
LOT COVERAGE	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Buildable envelope is subject to setback limits. 		
OFF-STREET PARKING REQUIREMENTS	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> 2 spaces per dwelling unit having more than 950 square feet of floor area. 		
ROOF LINE AND PITCH	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> n/a 		
PAVING, IMPERVIOUS, OR HARDSCAPE COVERAGE	<ul style="list-style-type: none"> Front yards shall be consistent with the character of the neighborhood. No more than 10% of the front yard, excluding the driveway, may be covered with gravel, concrete, asphalt, or other like materials. 	<ul style="list-style-type: none"> n/a 		
WINDOW OPENINGS	<ul style="list-style-type: none"> Window openings on the front façade shall be consistent with the architectural style of the home in appearance, size, design, or proportion. Shutters or awnings shall match the architectural style of the residence. 	<ul style="list-style-type: none"> n/a 		

Neighborhood Conservation District Application

CHARACTERISTICS AND FEATURES	NCD DESIGN STANDARD	CURRENT ZONING CODE REQUIREMENTS* (R1)	ILLUSTRATIVE EXAMPLES APPROPRIATE/INAPPROPRIATE
FENCES AND WALLS	<ul style="list-style-type: none"> Fences shall not be allowed in front of the front face of the residence. 	<ul style="list-style-type: none"> Shall be less than 8' in height Shall not extend into public right-of-way or closer than 1' to a public sidewalk. Fences in front of the front face of the primary structure shall not exceed 4' in height. 	<p style="color: blue;">Figure 3: Inappropriate</p> 
DRIVEWAYS, CURB CUTS, ALLEYS, AND SIDEWALKS	<ul style="list-style-type: none"> Driveways shall be hard surface and constructed of concrete, asphalt, in-laid stone, brick, decorative pavers, or porous hard paving material. Driveways shall not be constructed of gravel. Driveway width shall not occupy more than 25% of the lot width between the street and the front building line, except in properties with circular driveways. 	<ul style="list-style-type: none"> n/a 	<p style="color: blue;">Figure 4: Appropriate</p> 
TREE PRESERVATION	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> n/a 	
PRIVATE AND PUBLIC UTILITY STRUCTURES	<ul style="list-style-type: none"> Satellite receiving devices, antennas, and transmitters shall not be located on the front face of the residence. 	<ul style="list-style-type: none"> Satellite receiving devices, shall not be located in the front yard or the required side yards. 	
PUBLIC ART	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> n/a 	

* These are generalized code requirements from the Topeka Municipal Code. For specific zoning regulations, please see Chapter 18 of the Topeka Municipal Code or contact the Topeka Planning Department.