

AGENDA

TOPEKA BOARD OF ZONING APPEALS

**Monday, October 10, 2016
5:30 P.M.**

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

MEMBERS OF THE BOARD

**Marty Hazen – Vice Chairman
Mike Morse – Chairman
Toni Beck
Tim Carkhuff
Helen Crow
Carole Jordan
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.

AGENDA
Board of Zoning Appeals
Monday, October 10, 2016 at 5:30PM

A. Call to Order

B. Approval of Minutes from July 11, 2016 meeting

C. Items

BZA16A/2 by Lisa Corwin, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision by the Development Services Director that the 8 foot height of the side yard fence located on property at 3018 SW Lincolnshire Road Topeka, Kansas being measured from the nearest ground surface (emphasis added) complies with TMC Section 18.210.040 (1) regarding the maximum allowable fence height.

D. Adjournment



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CITY OF TOPEKA BOARD OF ZONING APPEALS

MINUTES

Monday, July 11, 2016

5:30PM - Holliday Building 1st Floor Holliday Conference Room

Members present: Mike Morse, Toni Beck, Tim Carkhuff, Helen Crow, Marty Hazen, Carole Jordan, Walter Schoemaker (7)

Members Absent: (0)

Staff Present: Dean W. Diediker, Planner II; Mary Feighny, Deputy City Attorney; Richard Faulkner, Dev. Services Director; Mike Hall, Planner III; Kris Wagers, Office Specialist

A) Call to Order

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

B) Approval of Minutes from May 11, 2015

Motion by Mr. Carkhuff to **approve as typed**; second by Mr. Shoemaker. **APPROVAL** (4-0-3) with Ms. Jordan, Ms. Beck and Ms. Crow abstaining

C) Approval of Minutes from August 10, 2015

Motion by Mr. Hazen to **approve as typed**; second by Mr. Carkhuff. **APPROVAL** (5-0-2) with Ms. Jordan and Ms. Beck abstaining.

D) Items

BZA16A/1 by Cynthia Bradshaw, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision rendered by the Director of Development Services that the concrete slab located in front of the property at 5531 SW 24th Street Topeka, Kansas is not found to be a building as defined by TMC 18.55.020 "B" or a porch as defined by 18.55.160 "P" and therefore, is not found to be in violation of TMC 18.60.020 Density/Dimensional standards as they apply to the "R-1" Single-Family Dwelling District 30' front yard building setback or TMC 18.230.030(g) regarding platted building setback lines.

Mr. Diediker reviewed the staff's appeal evaluation and staff's recommendation that the Board of Zoning Appeals (BZA) affirm the decision of the Director of Development Services by concurring with the findings as set forth in said evaluation. Exhibits A, B, C, and D were reviewed and Mr. Diediker responded to questions from BZA members, including confirming that Topeka Municipal Code referred to in the agenda item is the code followed by City of Topeka. Mr. Carkhuff referenced TMC 18.230.040 (i) as highlighted in handout provided by him.

DRAFT

The applicants, Cindy and Robert Bradshaw of 5523 SW 24th Street spoke in support of their appeal, referencing required setbacks, grade level vs. height of the concrete in question, and a dictionary definition of a porch. Mrs. Bradshaw referenced a porch the previous owners had installed and the City had found did not conform to TMC therefore requiring it be removed. Mrs. Bradshaw stated she believes the current slab does not conform either and is not in character with the neighborhood. Further, she believes the TMC's definition of a porch is incomplete and stated that she hopes BZA members would not go strictly by the TMC as written but rather the intent and purpose the codes.

Mr. Morse thanked the applicants for their comments and called for questions from the board. Ms. Feighny stated to board members that regardless of dictionary definitions, their decision must be based on definitions from the Topeka Municipal Code as it is written. Mr. Morse referenced TMC 18.55.160 as relating to porches.

Discussion and questions followed regarding zoning vs. platted setbacks, and Mr. Diediker confirmed that setbacks relate to the building, not the slab of concrete.

Regarding grade, Mr. Diediker explained that International Residential Code (IRC) 1013.1 refers to platforms, etc. located more than 30 inches above floor or the grade below requiring guard rails, which require permits. Since the slab in question is not raised 30" above the floor or grade below, it doesn't require a permit.

Additional discussion and questions followed, and Ms. Feighny explained the board's options as affirming, reversing, or modifying the verdict of the zoning official.

Motion by Mr. Carkhuff to **affirm the decision of staff and adopt the findings as presented in the staff report.** Second by Mr. Hazen. **APPROVAL** (7-0-0)

E) Election of Officers

Mr. Carkhuff moved **Mr. Morse** serve as the **2016 BZA Chair**, second by Mr. Hazen.
APPROVAL (7-0-0)

Mr. Morse moved **Mr. Hazen** serve as the **2016 Vice Chair**, second by Ms. Crow.
APPROVAL (7-0-0)

F) Other

Mr. Didieker announced to the BZA that he is planning to retire in December of 2016.

G) Adjournment at 6:19PM

**APPEAL EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT**

Date: October 10, 2016

Case No.: BZA16A/2

Applicant Name: Lisa K. Corwin
Address: 3024 SW Lincolnshire Road, Topeka, Kansas

Property Data:

Address of Property: 3018 SW Lincolnshire, Topeka, Kansas

Zone for Property: "R-1" Single Family Dwelling District

Property Size: Approximately 90' x 175'

Section to be Appealed: The allowable fence height pursuant to Topeka Municipal Code (TMC) TMC 18.210.040(1).

Decision Being Appealed: The decision of Mr. Richard Faulkner, City of Topeka Director of Development Services, that the existing fence height as measured from the nearest highest ground is compliant with the maximum fence height allowed pursuant to TMC 18.210.040(1) which states: *"(1) Except as provided in subsection (c) of this section, no portion of a fence shall exceed eight feet in height."*

The matter before the Board for consideration is the applicant's appeal of the above described decision and the interpretation by the Director of Development Services of the City of Topeka regulations in arriving at said determination. *In its deliberations, the Board of Zoning Appeals must only consider whether the interpretation in question conforms to what is actually written in the regulations.*

(BZA Exhibit "A") is a copy of Mr. Faulkner's memo explaining how he formed his decision.

(BZA Exhibit "B") is a copy of the letter Mr. Faulkner sent the applicant informing the applicant of his determination.

(BZA Exhibit "C") is a copy of the supporting documentation (6 pages total) received from the applicant in support of their position.

Discussion:

In listing the grounds for the appeal the applicant asserts the fence in question is approximately 9'-2" in height and not 8'. (BZA Exhibit "C" applicant submitted material consisting of copy of the appeal application upon which they gave the above explanation

of the administrative error. In addition, the applicant provided 5 copies of photographs in support of their claim). Aside from Exhibit "C" the applicant has not explained how the fence height was measured to be 9'-2". The applicant may want to address the BZA at the hearing.

It is staff's assertion that as the TMC does not describe specifically how to determine fence height but does address how to determine the height of a building it is reasonable for staff to apply the same process in determining the height of a fence.

Conclusion:

Based therefore on Exhibit "A", it is staff's determination there has been no violation of the fence height in this situation.

Findings:

As the TMC does not describe specifically how to determine fence height but does address how to determine the height of a building it is reasonable for staff to apply the same process in determining the height of a fence.

Planning Staff's Recommendation:

Staff recommends that the Board of Zoning Appeals affirm the decision of the Director of Development Services by concurring with the findings as set forth herein.

Reviewer Dean W. Diediker
Planner II
Secretary Board of Zoning Appeals



CITY OF TOPEKA

Planning Department
620 SE Madison, 3rd Floor
Topeka KS 66607

Development Services
Phone (785) 368-3711
Fax (785) 368-2546

MEMORANDUM

Date: September 19, 2016

To: Board of Zoning Appeals

From: Richard Faulkner, Division Director Development Services

Subject Height of Fence at 3018 SW Lincolnshire

I was contacted by Mr. Corwin because he was concerned about the height of the fence at the referenced location. The Topeka Municipal Code (TMC) does not explain how to determine the height of a "fence"; however it does address the height of a building. Section 18.55.080 of the TMC is as follows:

"Height of building" means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whatever yields a greater height of building:

(1) The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade.

(2) An elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in subsection (1) of this definition is more than 10 feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

Based on this definition I measured the height of the fence from the **nearest highest ground**. By doing this I measured the fence to 8 feet tall, which is permitted, and therefore did not find the fence in violation.

EXHIBIT "A"



CITY OF TOPEKA

Development Services
620 SE Madison Unit 6
Topeka, KS 66607-1118
Tel: (785) 368-3704 #1
www.topeka.org

Richard Faulkner, Division Director
Development Services
Email: rfaulkner@topeka.org
Fax: (785) 368-1650

August 29, 2016

Bill Corwin
3024 Lincolnshire Rd
Topeka KS 66614

Re: Fence height at 3018 Lincolnshire Rd

Dear Mr. Corwin:

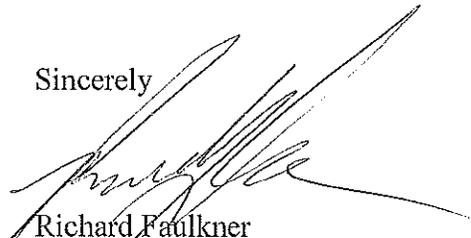
I am writing this letter to provide you with the determination that I have made regarding the height of the fence at the referenced location. On August 23, 2016 I inspected the height of the fence at the referenced location. Measuring from the nearest ground surface to the fence to the top of the fence, the fence is 8 feet tall. Therefore the fence is in compliance with section 18.210.040 (1) of the Topeka Municipal Code (TMC), which allows the fence to be 8 feet tall. It is my understanding that you do not agree with my determination and would like to appeal that decision.

18.50.120 Enforcement (TMC).

It shall be the duty of the code enforcement director of the city of Topeka or the Shawnee County zoning administrator to enforce these regulations within their respective jurisdictions through proper legal channels. Appeal from the decision of the code enforcement director or zoning administrator may be made to the board of zoning appeals as provided herein. Other officials of the various departments and divisions of the city of Topeka and Shawnee County shall have the duty and responsibility to report any apparent or alleged violations to the enforcement officer of the appropriate jurisdiction. (Code 1995 § 48-1.11.)

Section 18.50.120 of the Topeka Municipal Code provides you with an opportunity to appeal my decision to the Board of Zoning Appeals (BZA). I have put you in contact with Dean Diediker, Planner II (368-3011), he is the city's liaison to the BZA, and he shall be able to assist with your appeal.

Sincerely



Richard Faulkner
Division Director
Development Service

CITY OF TOPEKA PLANNING DEPARTMENT

620 SE Madison Street, 3rd 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.	Hearing Date:
Filing Fee \$	

Make checks payable to "City of Topeka".

Applicant: Lisa K. Corwin Phone: 785.438.7582

Address: 3024 SW Lincolnshire Rd Topeka, KS 66614

Location of Property: 3018 SW Lincolnshire Rd Topeka, KS 66614

Legal Description of Property:

Current Use of Property: Residential

Proposed Use of Property: _____

Decision Being Appealed: _____

Explanation of Administrative Error:

The fence is approx. 9'2" approx. max leg
not 8 Ft.

Lisa K. Corwin
Applicant's Signature

JAC.
9/8/10
Date



EXHIBIT "C" 2 of 6

EXHIBIT "C" 3 of 6



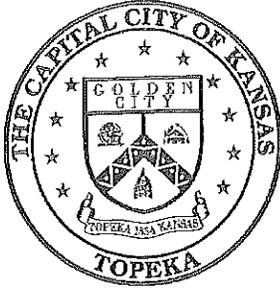


EXHIBIT "C" 4 of 6





EXHIBIT "C" 6 of 6



CITY OF TOPEKA

PLANNING DEPARTMENT
620 SE Madison Street, Unit 11
Topeka, Kansas 66607-1118
Tel.: (785) 368-3728

Bill Fiander, AICP, Director
Email: bfiander@topeka.org
Fax: 785-368-2535
www.topeka.org

September 20, 2016

RE: Board of Zoning Appeals Public Hearing

Please be advised that there will be a Public Hearing of the Board of Zoning Appeals on **Monday, October 10, 2016** at 5:30 p.m. at the Holliday Building, 620 SE Madison, Topeka, Kansas, 1st floor Holliday Conference Room to consider the appeal/variance request listed below. **You are being notified because you are a property owner within a 200-foot radius of the subject property.** You are welcome to attend the meeting to present any information or comments you may have.

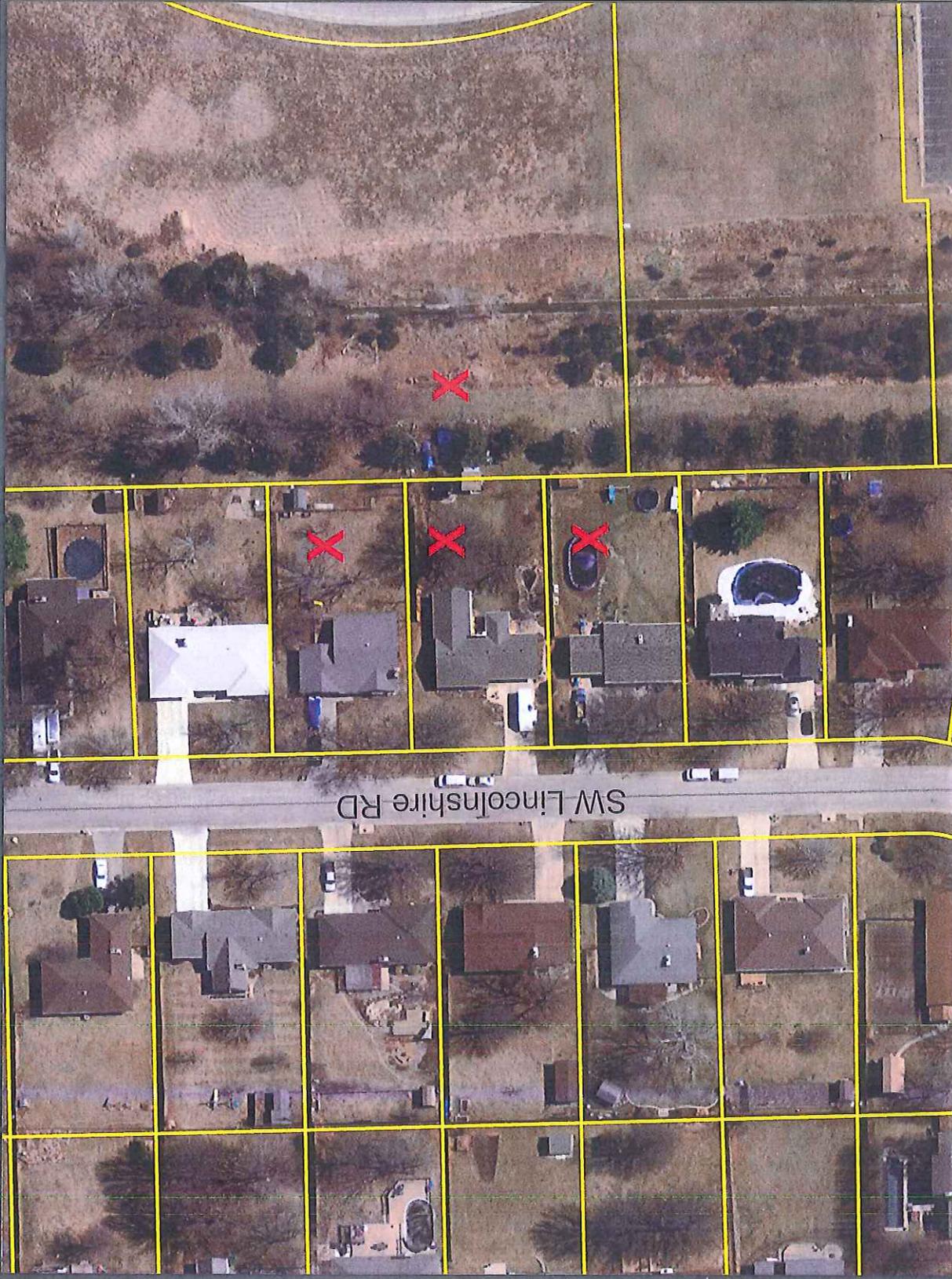
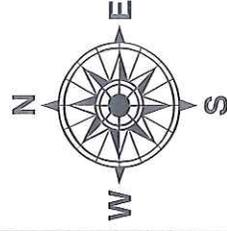
- 1) **BZA16A/2 by Lisa Corwin**, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision by the Development Services Director that the 8 foot height of the side yard fence located on property at 3018 SW Lincolnshire Road Topeka, Kansas being measured from the nearest ground surface (emphasis added) complies with TMC Section 18.210.040 (1) regarding the maximum allowable fence height.

Sincerely,

Dean W. Diediker, Secretary
Board of Zoning Appeals

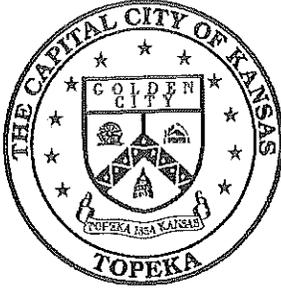


ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



BZA16A/2 Address Notifications

Name	Address	City State Zip
3012 SW LINCOLNSHIRE RD TRUST	PO BOX 19133	TOPEKA KS 66619
THEODORE R. KRUZEL	3018 SW LINCOLNSHIRE RD	Topeka, KS 66614
LISA K. WELCH	3024 SW LINCOLNSHIRE RD	Topeka, KS 66614
CHARLES WARDLOW C/O RICH BASSETT	2858 SW VILLA WEST #102	TOPEKA KS 66614



CITY OF TOPEKA

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To be published in the Topeka Metro News, Legal Section,
one time, no later than **Monday, September 19, 2016**

CITY OF TOPEKA BOARD OF ZONING APPEALS
NOTICE OF PUBLIC HEARING

Notice is hereby given that the **Topeka Board of Zoning Appeals** will hold a public hearing on **Monday, October 10, 2016 at 5:30 p.m.** at the Holliday Building, 620 SE Madison, 1st floor, Holliday Conference Room, Topeka, Kansas as provided in Section 2.45 of the Topeka Municipal Code (TMC) for the item listed below.

- 1) **BZA16A/2 by Lisa Corwin**, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision by the Development Services Director that the 8 foot height of the side yard fence located on property at 3018 SW Lincolnshire Road Topeka, Kansas being measured from the nearest ground surface (emphasis added) complies with TMC Section 18.210.040 (1) regarding the maximum allowable fence height.

CONFIRMATION

L63023

The Topeka Metro News

P.O. Box 1794
Topeka, KS 66601-1794
Phone: (785) 232-8600

Attention: Kris Wagers

Mailing Address:

KRIS WAGERS
CITY OF TOPEKA - TOPEKA PLANNING DEPARTMENT
620 SE MADISON UNIT 11
TOPEKA KS 66607-1118

Phone: 785-368-3003

We received the following legal notice for publication in The Topeka Metro News. Please look over the publication dates below and the contact information above. Let us know if you have any changes.

Received By: Patty Hammer

Date Received: 9/13/16

Publication: Public Hearing - BZA 16A/2

Case Number:

File Number:

Publication Dates: 9/19/16

EMAIL YOUR PUBLICATION TO US AT
legal@topekametro.com

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