



## BOARD OF ZONING APPEALS

Board of Zoning Appeals meetings will take place via Zoom until further notice. You can view the meetings at the Salina Media Connection YouTube channel:

<https://www.youtube.com/channel/UCdD-ujKcVEmidcSVbGbMS0A>

To participate in the meetings, citizens will need to use the Zoom link – <https://us02web.zoom.us/j/89836092276>

The Zoom meeting can also be accessed by phone at 1-346-248-7799. Enter Meeting ID: 898 3609 2276 when prompted.

If citizens wish to speak, either during the public forum or when the Chair requests public comment on an item, citizens must raise their hand so that the meeting host can allow them to speak.

Citizens can also send written comments or questions to Board of Zoning Appeals board members via email at [plangroup@salina.org](mailto:plangroup@salina.org)

In order for the Board Members to have an opportunity to review comments in advance of the meeting, please email your comments or questions by 12:00 p.m. Thursday, prior to the 4:00 p.m. meeting.



## AGENDA

### **BOARD OF ZONING APPEALS MEETING VIA ZOOM FEBRUARY 18, 2021 4:00 P.M.**

#### **1. CALL TO ORDER / ROLL CALL / KOMA CONFIRMATION**

- (1.1) Call to Order
- (1.2) Roll Call
- (1.3) Chair requests staff confirmation that Kansas Open Meeting Act required notice has been properly provided.

#### **2. APPROVAL OF MINUTES**

- (2.1) Approval of the Minutes of the January 21, 2021 regular meeting

#### **3. NEW BUSINESS**

*The applicant or an appointed representative must be present in order for the Board of Zoning Appeals to take action on an item.*

##### **Public Hearing Items**

- (3.1) Application #V20-9, filed by Bill Swendson, requesting a front yard setback variance of 21 ft. from 25 ft. (the minimum front yard building setback required in the R-1 [Single-Family Residential] zoning district) to 4 ft. to allow the construction of a 10 ft. x 12 ft. addition onto the rear of an existing nonconforming garage. The property that is the subject of this variance application is a double frontage lot that is legally described as Lot 7 in the Tenlawns Court Addition to the City of Salina, Saline County, Kansas and addressed as #7 Tenlawns Place. (Continued from the January 21, 2021 meeting to allow the applicant to be represented at the hearing).
- (3.2) Application #V21-1, filed by Sergio and Corina Chihuahua, requesting a front yard setback variance of 2 ft. from 17 ft. (the minimum front yard setback required for a covered porch) to 15 ft. to allow a front covered porch to extend out 10 ft. into the front yard setback area on a residential lot. The property that is the subject of this variance application is legally described as the South 69 ft. of Lot 27, Block 2 of the Cloud Addition to the City of Salina, Saline County, Kansas and addressed as 1610 Hickory Street.

## **Administrative Items**

None

4. UNFINISHED OR OTHER BUSINESS
5. PUBLIC FORUM
6. ADJOURNMENT

## **Record of this Meeting**

This public meeting will be recorded by Access TV of Salina and available to view online free of charge at <http://www.salinatv.org/index.php/city-of-salina>. To receive meeting packets by email, subscribe to *Email Notifications* at <http://www.salina-ks.gov/content/18160/23455/23473/default.aspx>. Meeting DVDs and paper copies of meeting packets are available upon request (retrieval and/or duplication fees may apply). Please contact the Community and Development Services Department at [building.services@salina.org](mailto:building.services@salina.org) or by phone at 785.309.5715 to request these open public records.

## ADDRESSING THE BOARD OF ZONING APPEALS

The public is invited to speak on any item under discussion by the Board of Zoning Appeals. Please raise your hand and after receiving recognition from the Chairperson, approach the podium, state your name, address and the purpose of speaking.

Generally speaking, the order of presentation after introduction of any item by the Chairperson will be:

1. Summary presentation by the Staff.
2. Comments by the applicant.
3. Comments by interested citizens.
4. Board of Zoning Appeals discussion and action.

Any person, official or governmental agency dissatisfied with any order or determination of the Board of Zoning Appeals may bring an action in the District Court of Saline County to determine the reasonableness of any such order or determination.



## MINUTES

**BOARD OF ZONING APPEALS**  
MEETING VIA ZOOM  
THURSDAY, JANUARY 21, 2021  
4:04 P.M.

### **1. CALL TO ORDER / ROLL CALL / KOMA CONFIRMATION**

#### (1.1) Call to Order

Chair Olson called the meeting to order at 4:00 p.m.

#### (1.2) Roll Call

##### **Commissioners Present:**

John Olson (Chair), Steve Dorzweiler (Vice-Chair), Richard Rodda, Cale Sharp

##### **Commissioners Absent:**

Madison Miles, Benjamin Kraft (YOB)

##### **City Staff Present:**

Dean Andrew, Zoning Administrator; Dustin Herrs, Assistant Planner (Meeting Monitor); Allison Hamm, Permit Technician

#### (1.3) Chair requests staff confirmation that Kansas Open Meeting Act required notice has been properly provided.

Mr. Andrew confirmed that the packet was posted and the required notice of today's meeting was provided.

### **2. APPROVAL OF MINUTES**

#### (2.1) Approval of the Minutes of the December 17, 2020 regular meeting.

A motion was made to approve the minutes of the December 17, 2020 regular meeting by Board Member Dorzweiler, seconded by Board Member Rodda and carried by vote.

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes). Motion carried 4-0.

### 3. NEW BUSINESS

#### Public Hearing Items

- (3.1) Application #V20-6, filed by Emmanuel Church, requesting a variance to Section 42-517(4) of the R-1 district sign regulations to allow an 150 sq. ft. wall sign on the church building which exceeds the maximum individual wall sign size allowed (32 sq. ft.) by 118 sq. ft. The subject property is legally described as Lot 2, Block 1 of the Lundberg Addition, plus a portion of vacated Claflin Avenue, City of Salina, Saline County, Kansas and is addressed as 1325 E. Cloud Street. (Rescheduled from November 19, 2020 to December 17, 2020 due to the lack of a quorum for the November meeting, Continued from the December 17, 2020 meeting to allow for additional public input)

Mr. Herrs presented the staff report with visual graphics which are contained in today's meeting packet.

Chair Olson invited the applicant or applicant's representative to address the Board.

Jeremy Hopkins, TMI Signs, 318 S. Osage, Wichita, KS, stated they have reason to believe this request falls under unique circumstances due to having retail to the east and residential to the north, south and west. He added that it creates a hardship having Dillons primarily covering the west side and blocking the view from Ohio, and the sign would make it more recognizable.

Deb Herron, Pastor with Emmanuel Church, 1325 E. Cloud Street, stated the sign would not change the overall look of the building or general welfare of the public. She then reiterated Mr. Hopkins' comments regarding the view being blocked by Dillons and the hardships it creates. She finished off by reading a few emails from other churches in the community that are supportive of the church having the proposed wall sign.

Chair Olson asked if there were comments or questions from members of the public in attendance. There were none.

Mr. Andrew added additional comments regarding the current zoning of the Dillons site and the length of time that property has been zoned commercial.

Chair Olson confirmed there were no comments or questions from members of the public (no members of the public were in attendance for this meeting item), closed the public hearing and brought this item back to the Board for discussion and action.

Chair Olson explained his reasoning for why he thinks this request does not meet the uniqueness or hardship criteria and would not be in favor of it.

Mr. Dorzweiler thanked staff for their great job at outlining the request.

MOTION: Board Member Dorzweiler made a motion to deny Emmanuel Church's sign variance request as presented in Application #V20-6

SECOND: Board Member Olson

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes).  
Motion carried 4-0.

Mr. Andrew requested that the Board move Item No. 3.2 to after Item No. 3.3 due to the applicant not being in attendance.

Chair Olson concurred and said we'll move to Item No. 3.3.

- (3.3) Application #V20-10, filed by Kat Alvarez, Esencia Architecture, on behalf of Chick-Fil-A Restaurant, requesting a front yard setback variance of 62 ft. from 80 ft. (the platted building setback line on the Amended Final Development Plan for the Central Mall Subdivision) to 18 ft. to allow the construction of a metal canopy / shade structure over the existing drive up window ordering stations in front of the restaurant building. The proposed 24 ft. x 52 ft. canopy would be located within the required front yard setback area and would extend to within 18 ft. of the front property line along South 9<sup>th</sup> Street. The property that is the subject of this variance application is legally described as Tract No. 11 on the Amended Final Development Plan for the Central Mall Subdivision and addressed as 2245 South 9<sup>th</sup> Street.

Mr. Andrew presented the staff report with visual graphics which are contained in today's meeting packet.

Chair Olson asked if there were questions of staff.

Chair Olson asked staff if the 80 ft. setback was only to allow room for the frontage road. Mr. Andrew stated that preliminary plans for the mall were to continue that frontage road, but due to amendments to the plan the mall owners decided to terminate the rest of it north of Saturn Avenue. He added that all buildings meet the 80 ft. setback or greater and the canopy will not affect visibility.

Chair Olson invited the applicants to address the Board.

Frank Gawdun, Project Manager with Esencia Architecture, requested approval of the proposed canopies. He added that 80-85% of business is now done through drive thru due to COVID-19 and the canopies would allow them to take more orders and reduce traffic backups with safety in mind for the employees.

Shawn Hubbard, owner and operator of the local Chick-Fil-A, thanked everyone for their time and reiterated the benefits of adding the canopies.

Mr. Gawdun provided an example of another Chick-Fil-A with a similar setup and explained the efficiency that resulted from the addition of canopies and the new ordering system.

Chair Olson asked if there were questions of the applicant.

Chair Olson asked if there were comments or questions from members of the public in attendance.

Chair Olson confirmed there were no comments or questions from members of the public (there were no members of the public in attendance for this meeting item), closed the public hearing and brought this item back to the Board for discussion and action.

Chair Olson stated he believes they will be very efficient and fit in well.

Mr. Andrew stated staff appreciates the drawings that were prepared by the applicant's architect and the help it provided to staff in presenting this item.

MOTION: Board Member Sharp made a motion to approve Chick-Fil-A's request as presented in Application #V20-10

SECOND: Board Member Dorzweiler

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes).  
Motion carried 4-0.

- (3.2) Application #V20-9, filed by Bill Swendson, requesting a front yard setback variance of 21 ft. from 25 ft. (the minimum front yard building setback required in the R-1 [Single-Family Residential] zoning district) to 4 ft. to allow the construction of a 10 ft. x 12 ft. addition onto the rear of an existing nonconforming garage. The property that is the subject of this variance application is a double frontage lot that is legally described as Lot 7 in the Tenlawns Court Addition to the City of Salina, Saline County, Kansas and addressed as #7 Tenlawns Place. (Continued from the December 17, 2020 meeting to allow the applicant to complete his application)

Mr. Andrew stated Mr. Swendson was not aware of the need to be present at the meeting and staff would recommend that his application be postponed until the February 18, 2021 meeting to allow time for the applicant to make arrangements to be present.

MOTION: Board Member Dorzweiler made a motion to postpone consideration of Application #V20-9 to the February 18, 2021 meeting to allow for the applicant to be present

SECOND: Board Member Olson

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes).  
Motion carried 4-0.

### **Administrative Items**

- (3.4) Presentation of 2020 Annual Report.

Mr. Andrew presented the 2020 Annual Report with visual graphics contained in today's meeting packet.

MOTION: Board Member Dorzweiler made a motion to forward the 2020 Annual Report to City Commission



SECOND: Board Member Sharp

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes).  
Motion carried 4-0.

#### 4. UNFINISHED OR OTHER BUSINESS

The next regularly scheduled meeting of the Board of Zoning Appeals will be on Thursday, February 18, 2021.

#### 5. PUBLIC FORUM

Mr. Herrs confirmed there were no members of the public in attendance to speak during the public forum.

#### 6. ADJOURNMENT

A motion was made to adjourn the meeting by Board Member Dorzweiler and seconded by Board Member Sharp.

VOTE: Dorzweiler (Yes), Olson (Yes), Rodda (Yes), Sharp (Yes). Motion carried 4-0.

The meeting adjourned at 5:19 p.m.

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John Olson, Chair

ATTEST:

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Dean Andrew, Zoning Administrator

#### **Record of this Meeting**

This public meeting was recorded by Salina Media Connection and available to view online free of charge at <http://www.salinatv.org/index.php/city-of-salina>. To receive future meeting packets by email, subscribe to *Email Notifications* at: <http://www.salina-ks.gov/content/18160/23455/23473/default.aspx>. Meeting DVDs and paper copies of meeting packets are available upon request (retrieval and/or duplication fees may apply). Please contact the Community and Development Services Department at [building.services@salina.org](mailto:building.services@salina.org) or by phone at 785.309.5715 to request these open public records.



Planning & Community Development

|                  |               |                 |              |
|------------------|---------------|-----------------|--------------|
| Publication Date | Nov. 25, 2020 | Application No. | V 20-9       |
| Hearing Date     | Dec. 17, 2020 | Date Filed      | Nov. 8, 2020 |
| Vicinity Map     | KG            | Filing Fee      | \$175.00     |
| Ownership List   | KG            | Receipt No.     |              |

**APPLICATION FOR VARIANCE OR APPEAL**

- Applicant's Name Bill Swendson
- Applicant's Address #7 Tenlawns Place Salina, KS 67401
- Telephone (daytime) 785-840-5715 E-mail billyswendson@yahoo.com
- Owner's Name Bill Swendson
- Owner's Address # 7 Tenlawns Place
- Legal Description of affected property (attach additional sheet if necessary) Lot 7 in the Tenlawns Court Addition to the City of Salina, Saline County, Kansas
- Approximate Street Address #7 Tenlawns Place
- Present Zoning R-1 Use Single family home with detached garage
- Proposed Use Addition to the detached garage
- Are there any covenants of record which prohibit the proposed development? YES  (attach copy) NO
- Nature of variance requested (for variance only) A front yard setback variance of 21 ft. from 25 ft. to 4 ft. from the Sherman Street property line
- Nature of appeal requested (for appeal only) \_\_\_\_\_
- Justification for requested variance or appeal: To allow a 10 ft. x 12 ft. addition to the rear of an existing detached garage to extend to within 4 ft. of the Sherman Street property line.
- List exhibits or plans submitted, including site plan Site Plan, Aerial Photo of the lot
- Present information in support of each of the (5) five conditions listed in Item No. 15, Page 2 of this application.**  
(See guide for completing Variance Applications for helpful definitions of terms)

I hereby certify that if this variance application is approved, I will complete construction in accordance with plans submitted and approved by the Board of Zoning Appeals and I agree to abide by all restrictions, conditions, and requirements lawfully binding upon me in this regard.

Applicant(s) Signature Bill Swendson Owner(s) Signature Bill Swendson

Date: November 8, 2020 Date: 12-11-2020

If the applicant is to be represented by legal counsel or an authorized agent, please complete the following in order that correspondence and communications pertaining to this application may be forwarded to the authorized individual.

Name of representative: \_\_\_\_\_ E-mail address: \_\_\_\_\_  
Mailing Address, including zip code \_\_\_\_\_ Telephone: \_\_\_\_\_

15. (Cont.)

A request for a variance may be granted only upon a finding by the Board of Zoning Appeals that all of the following 5 (five) conditions have been met. Present information on this form in support of each of the following criteria (Attach separate sheets if necessary):

- a. **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 and is not created by actions(s) of the property owner or applicant because:**

I built this shed believing I did not need a building permit because it was 120 sq. ft. in size.  
I have a double frontage lot which reduces my usable backyard.

- b. **Granting the variance will not adversely affect the rights of adjacent property owners or residents because:**

the storage shed is located behind the garage on my own property.

- c. **Strict application of provisions of the zoning ordinance of which the variance is requested, will constitute unnecessary hardship upon the property owner because:**

the 10 ft. x 12 ft. shed is already built and it would cost a great deal of money to move or remove it.

- d. **The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare because:**

in my neighborhood there are many houses and structures located closer to the road than mine.

- e. **Granting the variance will not be opposed to the general spirit and intent of the zoning ordinance because:**

I am only asking for 3 ft. and it will look like the rest of my neighborhood if it is allowed to remain.

# *Attachment*

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## **BOARD OF ZONING APPEALS NOTE**

The Board of Zoning Appeals' Rules of Procedure require that an applicant or an appointed representative be present when an application is presented for consideration and action. If the applicant cannot be present, arrangements shall be made to have someone else attend the meeting and represent the applicant and be available to answer questions.

In the event that neither the applicant nor a representative is present at an advertised public hearing, the policy of the Board of Zoning Appeals will be to postpone consideration of the application to the next regular meeting.

In the event that no one is present to represent the applicant at the next meeting, or if no arrangements have been made to reschedule the hearing for a different date, the policy of the Board of Zoning Appeals will be to deem the application as withdrawn due to lack of interest on the applicant's part.

STAFF REPORT  
SALINA BOARD OF ZONING APPEALS

Case #V20-9

Hearing Date: February 18, 2021  
Continued From: January 21, 2021

Item 3.1

Application #V20-9, filed by Bill Swendson, requesting a front yard setback variance of 21 ft. from 25 ft. (the minimum front yard building setback required in the R-1 [Single-Family Residential] zoning district) to 4 ft. to allow the construction of a 10 ft. x 12 ft. addition onto the rear of an existing nonconforming garage. The property that is the subject of this variance application is a double frontage lot that is legally described as Lot 7 in the Tenlawns Court Addition to the City of Salina, Saline County, Kansas and addressed as #7 Tenlawns Place. (Continued from the January 21, 2021 meeting to allow the applicant to be represented at the hearing)

Background

The Tenlawns Court Addition, a plat creating 10 lots facing Tenlawns Place, was platted in 1939. The lots in the plat are relatively small (50 ft. x 100 ft.) and the lots on the west side of Tenlawns Place are double frontage lots with frontage on both Tenlawns Place and Sherman Street. City building records indicate that the homes on Tenlawns Place were built in the early 1940s. On July 25, 1940, the City Commission approved a petition filed by the lot owners on Tenlawns Place requesting that the lots on Tenlawns Place be addressed as #1 through #10.

Nature of Current Request

Mr. Bill Swendson, the applicant, owns property on the west side of Tenlawns Place north of Frost Street. Mr. Swendson's lot (Lot 7) is a double frontage lot that measures 50 ft. x 100 ft. and has frontage on Tenlawns Place (front) and Sherman Street (rear). Existing improvements on the lot consist of an approximately 32 ft. x 32 ft. (1,024 sq. ft.) dwelling and a 12 ft. x 18 ft. detached garage. The existing dwelling has a nonconforming front yard setback of 20 ft. from Tenlawns Place and the existing garage has a nonconforming front yard setback of 16 ft. from Sherman Street. Both of these structures are grandfathered in their current location.

The City's Residential Building Inspector observed the applicant constructing an addition on to the rear of his garage and determined that he had not obtained a building permit for the work. The Building Inspector sent a Violation Notice to the applicant for doing work without a permit. One of the remedies for doing work without a building permit is to obtain a building permit, even after the construction is complete. In this case, Mr. Swendson submitted plans and a building permit application for what he

describes as a 10 ft. x 12 ft. shed and what staff describes as a 10 ft. x 12 ft. addition to the existing detached garage.

In his review of the permit application, the Zoning Administrator determined that the western edge of the addition was only 4 ft. from the west property line. The minimum front yard setback in an R-1 district is 25 ft. Mr. Swenson believed that the curb line of Sherman Street was his property line. (See attached site plan)

The Zoning Administrator informed Mr. Swenson that his options were to remove the addition and relocate it elsewhere in his yard or apply to the Board of Zoning Appeals for a building setback variance. He has submitted this variance application requesting that the Board of Zoning Appeals allow the storage shed / garage addition to remain in its present location.

The Board conducted a public hearing on this variance request on January 21, 2021. The applicant was not present or represented at the Board's January 21, 2021 meeting. The Board's Rules of Procedure require that the applicant or an appointed representative be present at the meeting in order for the Board of Zoning Appeals to take action on an item. The Board took no action on Mr. Swenson's request and continued the hearing to February 18<sup>th</sup>.

#### Zoning Ordinance Requirements

Tenlawns Court is zoned R-1 (Single-Family Residential). Section 42-160 Bulk regulations is the section of the Salina Zoning Ordinance that regulates the minimum setback requirements for structures in the R-1 Single-family residential zoning district. It reads:

(2)a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:
  - i. **Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.**

Mr. Swenson's detached garage and 10 ft. x 12 ft. storage shed are considered to be residential accessory structures. Section 42-58 of the Salina Zoning Ordinance that regulates the size and location of residential accessory structures.

#### Sec. 42-58. – Accessory uses.

- (a) *Permitted uses.* Permitted accessory uses include but are not limited to the following:

- (1) A storage building or structure incidental to a permitted use, provided that no such structure that is accessory to a residential dwelling (e.g. storage building, workshop, gazebo, greenhouse, etc.) shall exceed three hundred sixty (360) square feet and shall be no taller than the dwelling or more than sixteen (16) feet in height whichever is less;
  - (2) A detached garage or carport provided that no such structure that is accessory to a one- or two- family dwelling shall exceed seven hundred seventy (770) square feet, except in the A-1 or RS district it shall not exceed one thousand two hundred (1,200) square feet, shall be no taller than the dwelling or more than twenty (20) feet in height whichever is less, and shall be compatible with the residential dwelling in terms of design, appearance and materials;
- (b) *Bulk Regulations.* Accessory structures and uses shall comply with the bulk regulations applicable in the zoning district in which they are located, and:
- (1) Shall be set back at least five (5) feet from the rear lot line when no alley exists and ten (10) feet when an alley exists;
  - (2) Shall maintain a three-foot side yard, except that no part of any accessory building shall be located closer than three (3) feet in residential districts and ten (10) feet in all other districts to any principal structure, either on the same lot or an adjacent lot, unless it is attached to, or forms a part of, such principal structure;
  - (3) Shall, on corner lots, be set back from the side street a distance not less than that required for the principal structure; and

On his building permit application Mr. Swendson labeled his 10 ft. x 12 ft. building as a storage shed. In order to be considered a separate, freestanding storage shed it would have to be located at least three (3) feet away from the existing garage. Because Mr. Swendson attached the shed to the back wall of his garage, staff is treating it as a garage addition. Mr. Swendson is correct that a building permit is not required for a storage shed 120 sq. ft. or less in size. But this only applies to freestanding sheds and he has attached the shed to the existing garage which makes it an addition to an existing accessory building. The existing 16 ft. garage setback is grandfathered in because the garage was constructed prior to the current zoning ordinance taking affect. The "addition" extends another 12 ft. into the Sherman Street front yard.

Surrounding Zoning / Land Use

|       | <u>Zoning</u> | <u>Land Use</u>         |
|-------|---------------|-------------------------|
| Site  | R-1           | Single-family dwelling  |
| North | R-1           | Single-family dwellings |
| South | R-1           | Single-family dwellings |
| East  | R-1           | Single-family dwellings |
| West  | R-1           | Single-family dwellings |

Information / Analysis

1. Uniqueness – A Condition Unique to the Property

The need for a variance must be caused by a condition, which is unique to the property in question and not shared by other properties in the area. Some examples would be:

- Undersized lots;
- Uniquely shaped lots – pie shaped lots, two (2) or more front yards;
- Unusual slopes or topography;
- Need to protect existing improvements or trees;
- Easements or unusually large street right-of-ways.

The need for a setback variance must be caused by a condition or hardship that relates specifically to the applicant's property and is not shared by other property in the neighborhood or area.

The applicant states that he built the shed believing he did not need a building permit because it was less than 120 sq. ft. in size. He notes that he has a double frontage lot which reduces his usable backyard.

Staff would agree that storage sheds less than 120 sq. ft. can be put up without a building permit. However, although exempt from permit requirements, storage shed locations must still conform with zoning ordinance setback requirements and may not be located in required yard areas. This makes enforcement challenging for staff because the building permit review process allows staff to inform homeowners where their sheds can and cannot be located. In this case, staff's position is that because Mr. Swendson attached the shed to the existing garage it is a building addition which requires a building permit.

As to uniqueness, staff would agree that the applicant's lot is unique in that it has two front yards and two front yard setback requirements. This is compounded by the size and depth of the applicant's lot which is only 100 ft. All of the lots on Tenlawns Place are 100 ft. deep and this is shallower than most lots in the



surrounding area and in the community. This limits the applicant's usable lot area and restricts his options for locating a storage shed on his lot.

Staff would note that the prevailing setback on this block of Sherman Street is 15 ft. and not 25 ft. which gives lot owners on the west side of Tenlawns Place ten additional feet of usable area for locating accessory buildings.

## 2. No Adverse Effect on Neighbors

The variance must not cause any adverse effect on neighboring properties. Some examples of adverse effects would be:

- Restricting the flow of air or blocking light;
- Causing increased drainage or runoff problems for neighbors;
- Detracting from the appearance of the neighborhood (i.e. creating an eyesore)
- Reducing the property values of neighbors;
- Increasing the risk of fire spread.

The applicant states that the storage shed is located behind his garage on his own property.

From staff's observation, the neighboring properties potentially most affected by the west facing storage shed are the properties across the street on the west side of Sherman. The storage shed is very prominent and visible from Sherman Street and the lots on the west side of the street. All of the lots on the west side of Tenlawns Place are double frontage lots and several of these have privacy fences along their west property line. (The fence on the property to the north actually encroaches into the Sherman Street right-of-way). The applicant does not have a "rear" privacy fence which makes the shed more visible and noticeable.

## 3. Unnecessary Hardship

The applicant must show that not granting the variance will cause an unnecessary hardship by denying reasonable or beneficial use of the property.

This requires more than a showing of personal inconvenience or increased cost.

The applicant states that the 10 ft. x 12 ft. shed is already built and it would cost a great deal of money to move or remove.

Staff would agree that strict application of the 25 ft. front yard setback requirement in this case would eliminate most of the potential locations for placing a 10 ft. x 12 ft. shed on the applicant's lot. However, staff has determined the prevailing setback on the east side of Sherman between Brown and Frost to

be 15 ft. Staff cannot speak directly to the cost involved, but staff believes a code compliant solution exists in this case. The applicant could move the shed from its present location to the northwest corner of his yard and line the back wall of the shed up with the back wall of his garage this would eliminate the need for a setback variance and the need for a building permit.

#### 4. Effect on Public Health, Safety and Welfare

The requested variance must not adversely affect the health, safety and welfare of the public. Some examples would be:

- Creation of unsafe traffic conditions; (i.e. blocking sight);
- Encroachment on future right-of-way;
- Increasing the risk of fire spread or flooding.

The applicant states that in this neighborhood that there are many houses and structures located closer to the road than his shed.

Staff is not sure which houses and structures the applicant is referring to. There are a number of pre-existing nonconforming structures in the neighborhood but Mr. Swendson has increased the nonconformity of his nonconforming garage by adding onto the rear of it.

The shed does not obstruct the visibility from any driveway or street intersection. Staff believes that the visual impact of the shed location is localized and does not have any impact on the general public.

#### 5. Conformity with General Spirit and Intent of the Zoning Ordinance

The variance must conform to the general spirit and intent of the Zoning Ordinance.

A variance should not be granted which would undermine or defeat the purpose for which a regulation was adopted.

The intent of Section 42-255(2)a.1. of the Zoning Ordinance is to promote public health, safety and general welfare by establishing minimum setback restrictions. These setback restrictions reduce the potential for the obstruction of visibility along the street, reduce the risk of fire spread and reduce drainage or runoff problems for neighbors by maintaining open space. Front yard setback requirements insure that there is adequate separation between garages and abutting streets so that a vehicle can be parked in front of the garage without overhanging the street. That concern does not apply in this case where there is no driveway on Sherman either existing or being proposed.

The applicant states that he is only asking for three (3) feet and that it will look like the rest of the neighborhood if the shed is allowed to remain where it is.

Staff would note that the applicant is mistaken as to where his property line is. He believes that the setback is measured from the edge of the street instead of his actual property line. Sherman Street is a standard residential street with 60 ft. of right-of-way and 33 ft. of paving width. That means that there is about 13.5 ft. of public street right-of-way behind the curb line. Based on staff's measurements, the existing detached garage is 16 ft. from the Sherman Street property line and the shed addition is only 4 ft. from the Sherman Street property line. One means to confirm these dimensions would be for the applicant to have his property surveyed and to submit that with the permit application.

Accessory buildings (garages and sheds) are a permitted use in residential districts. Mr. Swendson is permitted to have a detached garage and a storage shed. The question is where the shed can be located. The minimum building setback for a backyard accessory building is five (5) feet on a conventional lot with front and rear yards. Mr. Swendson perceives Sherman Street to be his backyard and he doesn't believe placing a shed behind the garage is opposed to the spirit and intent of the Zoning Ordinance. Staff would note that the City's fence regulations allow the owner of a double frontage lot to designate one of his yards as a "rear yard" and to erect a solid fence up to 6 ft. in height along the property line of that yard. That same language is not in the Accessory Use section of the Zoning Ordinance. The Accessory Use regulations specifically address corner lots but not double frontage lots.

### Staff Comments

The applicant's lot is unique in that it is relatively shallow (100 ft.) and has two (2) front yards. This application is complicated by the fact that the applicant attached the shed to the rear of the existing garage (which triggered the need for a building permit), by the applicant's mistaken belief that his property line was the east curb line of Sherman Street and the fact that this is an after-the-fact, post-construction variance request.

On the one hand, the City has been fairly inconsistent in enforcing the building setback requirement on double frontage lots, particularly for storage sheds less than 120 sq. ft. that didn't require a building permit. There are a number of small storage sheds located within 5 ft. of the property line on the double frontage lots along Schilling Road west of Ohio Street. Most of these sheds are located behind privacy fences however, and the applicant's shed is highly visible.

On the other hand, there is a fairly simple, code compliant solution in this case that would not require approval of a setback variance or the issuance of a building permit. The applicant could relocate the shed to the northwest corner of his lot and line up the rear of the shed with the rear wall of the garage. The shed does not appear to be on a permanent foundation and if it is on skids it could be relocated fairly easily, although not

without cost. The question before the Board is whether leaving the shed in its present location would have a negative effect on neighboring properties or create an unfavorable precedent for future cases involving double frontage lots.

### Staff Recommendation

Staff would request that the applicant provide additional information as to why it's not feasible to separate the 10 ft. x 12 ft. shed from the garage and place it in his yard 15 ft. from the west (Sherman Street) property line. After hearing from the applicant, the Board would have the following options:

1. The Board could approve the requested front yard setback variance to allow the 10 ft. x 12 ft. shed to remain in its present location, with or without conditions, if the findings-of-fact in support of a variance can be made.
2. The Board could postpone consideration of this request until the applicant obtains a survey of his property.
3. The Board could postpone consideration of this request if the Board finds that additional information from the applicant or staff is needed to make a decision on this request.
4. The Board could deny the applicant's variance request, if findings in support of a variance cannot be made, and direct the applicant to relocate the shed to a location that lines up with the existing detached garage.

To whom it may concern,

We, Jerry & Greta Frank, have owned and lived at 760 Sherman since 1984. We have seen various properties in the neighborhood deteriorate and become less desirable to live in over the years. It might be lack of maintenance on some properties, more police presence in the neighborhood, more people moving in and out with less people becoming a permanent part of the neighborhood. It saddens us and has produced a loss of the sense of community. We realize the city has to have rules to govern and guide the citizens of Salina.

As a contractor, I, Jerry, realize we do need building codes. I realize the garage addition at #7 Tenlawns was not built according to the current building codes for the City of Salina. Hopefully there is a way that the building codes can serve the people and not the people serve the building codes. Anytime we see homeowners taking ownership in their home, improving their neighborhood, maintaining the value of their home as well as that of the neighborhood, it just seems like it is a "win\*win" for the City of Salina as well as the neighborhood that it is located in.

We own 3 properties on the west side of Sherman in that block (one that we live in) that can look out their front doors and see the #7 Tenlawns area in question. We do not see it as a negative in our neighborhood or in that block. It seems that if someone is willing to improve the neighborhood, they should receive as much support as possible. We would ask you to weigh each of these factors in your decision regarding this setback variance. We would love to see if there would be a way to allow Mr. Swendson to keep his property as it currently is.

Over our 30 plus years living in this neighborhood we have seen too many neighbors move out to greener pastures. We would like to see a decision that could help Mr. Swendson to remain content with his home and still live in this neighborhood. We would request that the setback variance of 25 feet be approved, thus allowing the addition on the rear of his existing garage to remain.

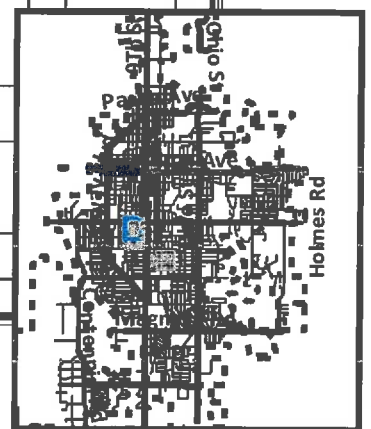
Sincerely,

Jerry & Greta Frank  
760 Sherman St.  
Salina, KS 67401

Jerry Frank Construction, Inc.  
785-819-3227 (Jerry)

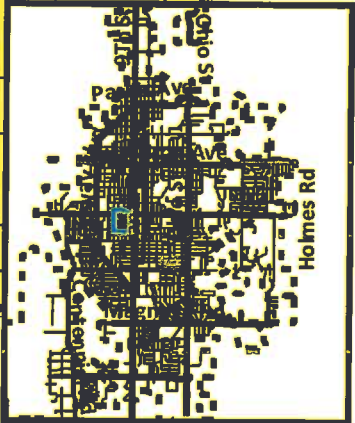
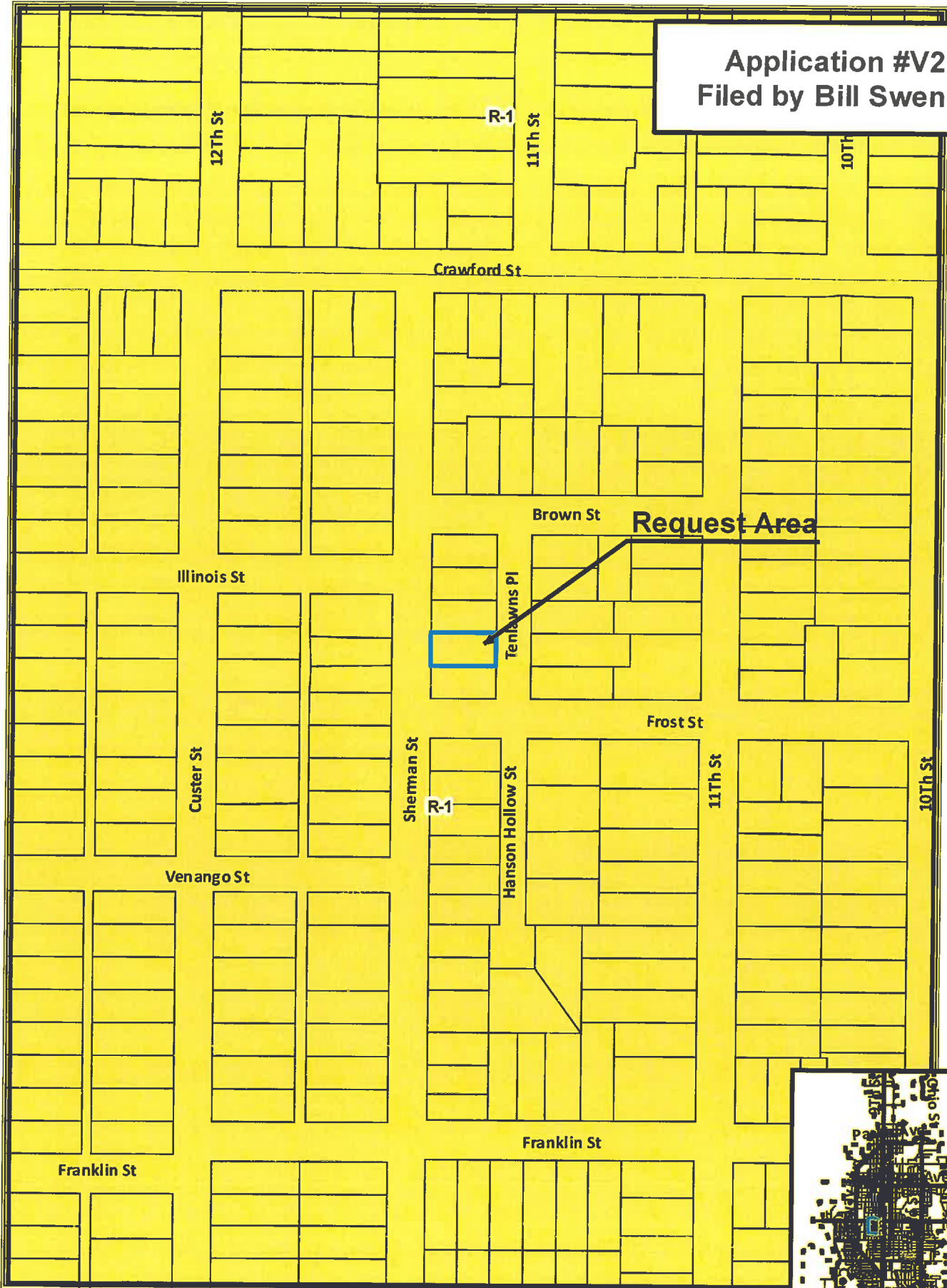
Jerry Greta Rentals, LLC  
785-452-1293 (Greta)

Application #V20-9  
Filed by Bill Swendson



1 inch = 200 feet

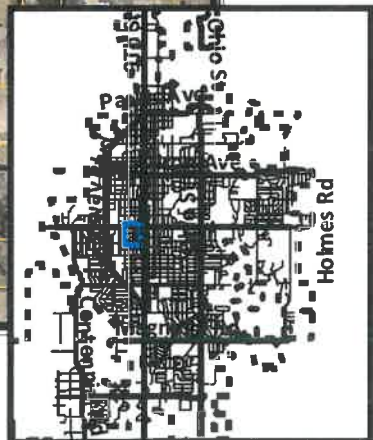
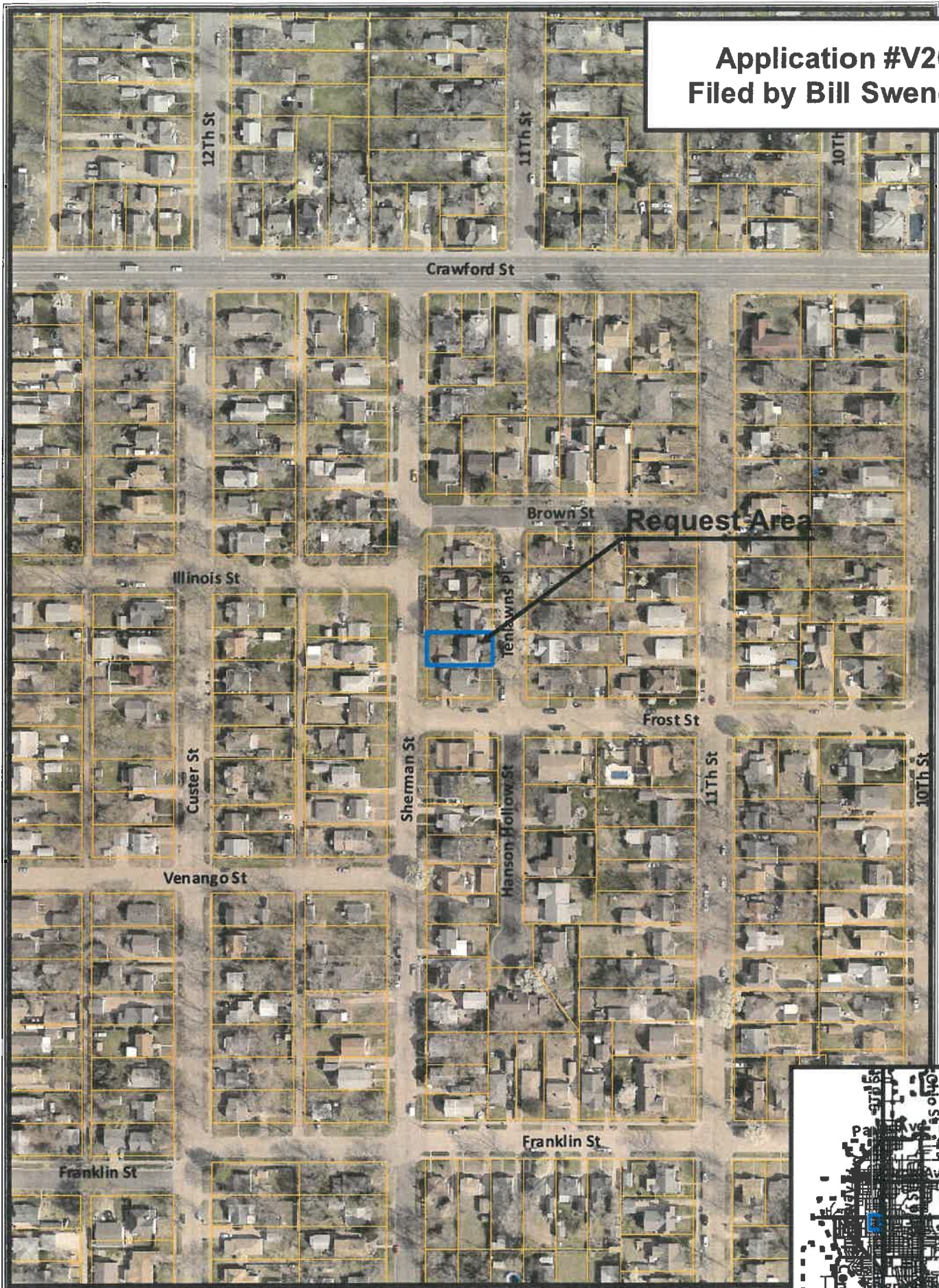
Application #V20-9  
Filed by Bill Swendson



1 inch = 200 feet



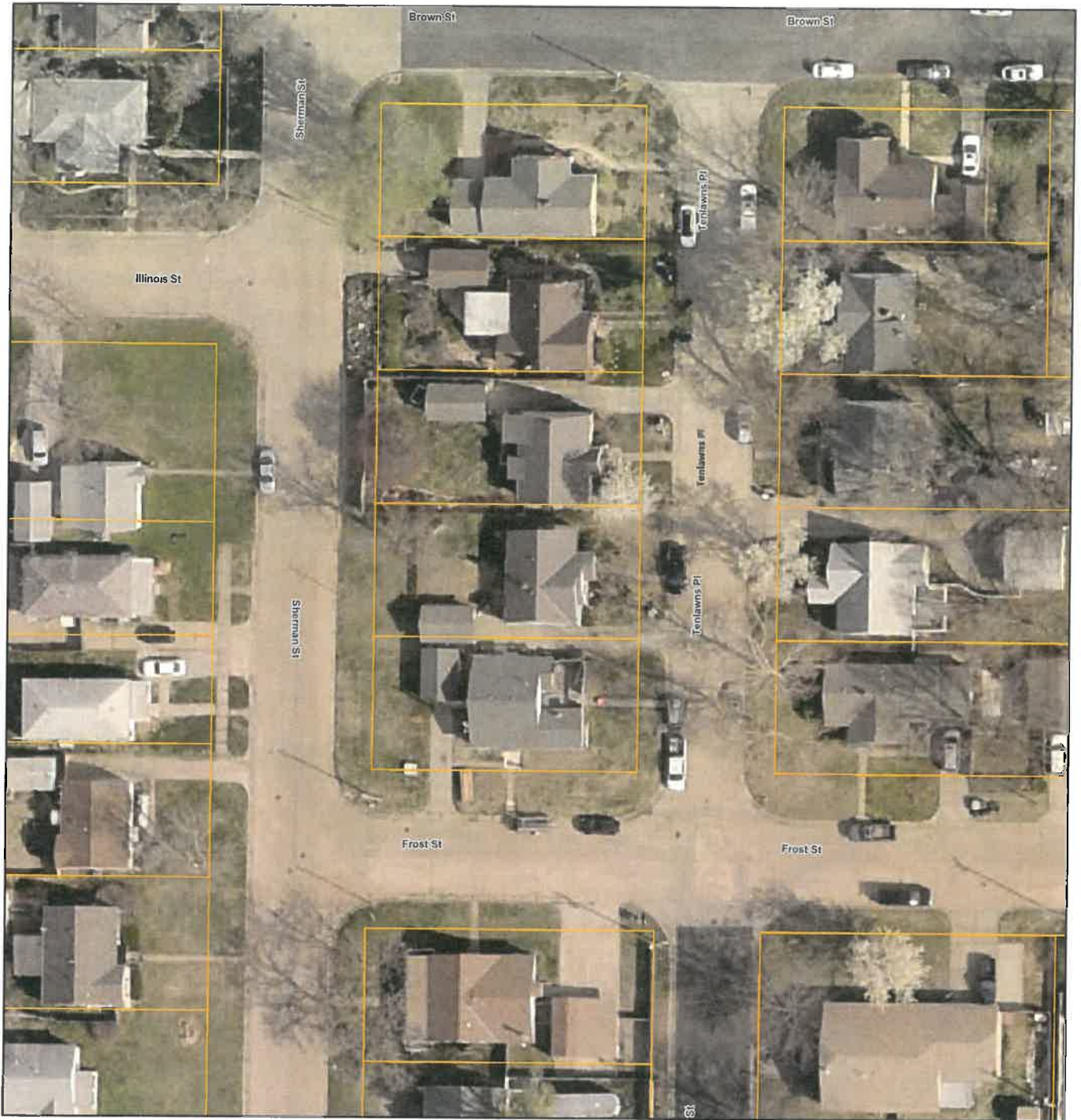
**Application #V20-9  
Filed by Bill Swendson**



**1 inch = 200 feet**

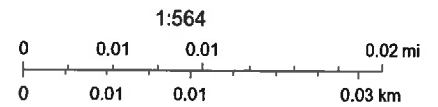


# City of Salina - Web Map



1/14/2021 6:01:30 PM

- |                    |                   |                   |
|--------------------|-------------------|-------------------|
| County Roads Names | Blue: Band_3      | Green: Band_2     |
| City Limits        | 14076E167640N.sid | Blue: Band_3      |
| Parks              | Red: Band_1       | 13284E167640N.sid |
| Parcels            | Green: Band_2     | Red: Band_1       |
| 14076E99000N.sid   | Blue: Band_3      | Green: Band_2     |
| Red: Band_1        | 13337E99000N.sid  | Blue: Band_3      |
| Green: Band_2      | Red: Band_1       | Parcels           |



Esri, HERE, Garmin, INCREMENT P, NGA, USGS, City of Salina, None

# Attachment

---

Building Permit  
Application



Application for **RESIDENTIAL** Building Permit, Building Services Division  
 PRINT CLEARLY OR TYPE - Complete Items #1 - #12

1. 7 TEN LAWN S Address (where work is to be done)      2. Lot 7 Tenlawns Court Add Legal Description

3. Applicant Information

|           |                          |                                   |                      |                     |
|-----------|--------------------------|-----------------------------------|----------------------|---------------------|
| APPLICANT | Applicant's Name         | <u>BILL SWENDSON</u>              | Applicant Represents |                     |
|           | Complete Mailing Address | <u>7 TEN LAWN S SALINA KANSAS</u> |                      |                     |
|           | Email                    | <u>Billyswendson@yahoo.com</u>    | Phone #              | <u>785-840-5715</u> |

4. Property Owner Information

|       |   |                                |   |                     |
|-------|---|--------------------------------|---|---------------------|
| OWNER | Name, as shown on deed                  | <u>BILL SWENDSON</u>           | Complete Mailing Address of Deed Owner: |                     |
|       | Name of Individual for Contact Purposes | <u>BILL SWENDSON</u>           | <u>7 TEN LAWN S SALINA KANSAS</u>       |                     |
|       | Email                                   | <u>Billyswendson@yahoo.com</u> | Phone #                                 | <u>785-840-5715</u> |

5. General Contractor Information

|                |  |  |  |  |           |
|----------------|--|--|--|--|-----------|
| GENERAL CONTR. | Company Name, as shown on City of Salina license |  | Complete Mailing Address of Contracting Company: |  |           |
|                | Name of Individual for Contact Purposes          |  |  |  |           |
|                | Email  |  | Phone #  |  | License # |

6. \_\_\_\_\_  
 Tenant's Name and Phone Number, if different from property owner

7. DESCRIBE WORK TO BE DONE - BE SPECIFIC

Build storage building

8. If described work will be done on the primary residential structure ("house & any additions/attachments thereto"), was that house built prior to 1978? Yes  No  (If yes, Kansas "PRE" applies; CRN & LPA Forms Required)

9. Will the owner-occupant be performing any of the work? Yes  No  Describe: BUILD STRUCTURE

10. If scope of work is renovation and repairs, indicate total value of labor and materials \$ 1,000

11. Will plumbing, mechanical or electrical work be performed? If yes, check box & indicate contractor company name.

MECHANICAL \_\_\_\_\_  ELECTRICAL \_\_\_\_\_

PLUMBING \_\_\_\_\_  Right of Way Concrete \_\_\_\_\_

- Permits for new residential dwellings are subject to a fee for the water meter pit and meter set. Other fees might also include, but may not be limited to, a park service area fee. All additional fees are due and payable with the building permit fee at time of issuance of the permit. Please consult with City staff to confirm the fees that apply to your project.
- I hereby certify that I have read and examined this application and know the same to be true and correct. I hereby certify that I have been authorized by the owner to act as his agent in applying for and obtaining this permit. All provisions of laws and ordinances governing this type of work will be complied with, whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

12. SIGNATURE OF APPLICANT Bill Swendson Date: 8/24/2020

Accepted by: AH Date: 8-25-20 Project Number 20-1281-DACC CRN&LPA Forms Rec'd N/A



Bill SWENDSON 7 TEN LAINS

HOUSE

100'

Existing GARAGE

(NEW) STORAGE SHED

18'

12'

22'

102'

3'-8"

101'

PERMIT NUMBER 20-1281-DACC

Date Received 9-10-20

50'

# #7 Tenlawns Proposed Garage Addition





#7 Tenlawns  
Proposed Garage Addition





## #7 Tenlawns

### Proposed Garage Addition





# Block of Tenlawns





# Block of Hanson Hollow



|  |                  |               |                 |             |
|--|------------------|---------------|-----------------|-------------|
| Planning &<br>Community<br>Development | Publication Date | Jan 27, 2021  | Application No. | V 21-1      |
|  | Hearing Date     | Feb. 18, 2021 | Date Filed      | Jan 8, 2021 |
|  | Vicinity Map     | KG            | Filing Fee      | \$ 175.00   |
|  | Ownership List   | KG            | Receipt No.     |             |

**APPLICATION FOR VARIANCE OR APPEAL**

- Applicant's Name Sergio A Chihuahua
- Applicant's Address 1610 Hickory St
- Telephone (daytime) 785-643-8520 E-mail Sergiochihuahua7@gmail.com
- Owner's Name Sergio A & Corina Y Chihuahua
- Owner's Address 1610 Hickory
- Legal Description of affected property (attach additional sheet if necessary) Cloud Add, S23, T14, R3, S 69 LT 27 BLK 2
- Approximate Street Address 1610 Hickory
- Present Zoning R-1 Use Single Family Home
- Proposed Use \_\_\_\_\_
- Are there any covenants of record which prohibit the proposed development? YES  (attach copy) NO
- Nature of variance requested (for variance only) Allow porch covering to extend into setback to allow for coverage handicap access
- Nature of appeal requested (for appeal only) \_\_\_\_\_
- Justification for requested variance or appeal: This will help the handicap residents of this home
- List exhibits or plans submitted, including site plan \_\_\_\_\_
- Present information in support of each of the (5) five conditions listed in Item No. 15, Page 2 of this application.**  
(See guide for completing Variance Applications for helpful definitions of terms)

I hereby certify that if this variance application is approved, I will complete construction in accordance with plans submitted and approved by the Board of Zoning Appeals and I agree to abide by all restrictions, conditions, and requirements lawfully binding upon me in this regard.

Applicant(s) Signature Sergio Chihuahua

Owner(s) Signature \_\_\_\_\_

Date: January 8, 2021

Date: \_\_\_\_\_

If the applicant is to be represented by legal counsel or an authorized agent, please complete the following in order that correspondence and communications pertaining to this application may be forwarded to the authorized individual.

Name of representative: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Mailing Address, including zip code \_\_\_\_\_ Telephone: \_\_\_\_\_

15. (Cont.)

A request for a variance may be granted only upon a finding by the Board of Zoning Appeals that all of the following 5 (five) conditions have been met. Present information on this form in support of each of the following criteria (Attach separate sheets if necessary):

- a. 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 and is not created by actions(s) of the property owner or applicant because:

2 Handicap people live in the home and would like the covered porch to line up with existing sidewalk.

- b. Granting the variance will not adversely affect the rights of adjacent property owners or residents because:

The covered porch is a nice added feature to the home and is a neighborhood improvement

- c. Strict application of provisions of the zoning ordinance of which the variance is requested, will constitute unnecessary hardship upon the property owner because:

2 handicaps people live in this home and need the covered porch and exit

- d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare because:

The overhang only hangs slightly into the porch setback

- e. Granting the variance will not be opposed to the general spirit and intent of the zoning ordinance because:

This help the disabled ~~been~~ residents of the home

STAFF REPORT  
SALINA BOARD OF ZONING APPEALS

Case #V21-1

Hearing Date: February 18, 2021

Item

Application #V21-1, filed by Sergio and Corina Chihuahua, requesting a front yard setback variance of 2 ft. from 17 ft. (the minimum front yard setback required for a covered porch) to 15 ft. to allow a front covered porch to extend out 10 ft. into the front yard setback area on a residential lot. The property that is the subject of this variance application is legally described as the South 69 ft. of Lot 27, Block 2 of the Cloud Addition to the City of Salina, Saline County, Kansas and addressed as 1610 Hickory Street.

Background

The final plat of the Cloud Addition in west Salina was approved and recorded in 1955. The applicant in this case owns the South 69 ft. of Lot 27 in Block 2 of the Cloud Addition which is located on the west side of Hickory Street north of Cloud Street and is addressed as 1610 Hickory Street. Lot 27 has a platted width of 73 ft. but the applicant's lot is only 69 ft. wide and 125 ft. deep and contains 8,625 sq. ft. The City's building records show that the dwelling on this lot was constructed in 1957. The original house was 24 ft. x 40 ft. (960 sq. ft.) and has an attached carport on the north side of the house. As constructed, the front of the house was set back 25 ft. from Hickory Street, the minimum front yard setback in the R-1 district.

In the fall of 2020, the Building Services Division observed that a covered front porch had been constructed at this address and that no building permit had been applied for or issued for the new construction. A Violation Notice was sent to the property owner, Sergio Chihuahua, for performing work without a building permit. Mr. Chihuahua subsequently applied for a building permit for the covered porch addition. Mr. Chihuahua was informed that a building permit could not be issued for the covered porch because the addition encroached 10 ft. into the front yard setback area on the east side of the house. He was given the option of modifying or removing the covered porch addition or applying to the Board of Zoning Appeals for a front yard setback variance.

The applicant informed staff he was unaware that a building permit was required for this construction and he would like to complete the project he had begun. Therefore, he chose to file an application for a front yard setback variance that was submitted on January 8, 2021 and scheduled for a February 18, 2021 public hearing.

### Nature of Applicant's Request

As noted by staff, the applicant's house is 24 ft. x 40 ft. and has a 25 ft. setback on the front of the house. The applicant has applied for a front yard setback variance to allow the construction of a 10 ft. x 20 ft. covered front porch that would extend 10 ft. into the front yard setback area. The applicant is requesting that the Board of Zoning Appeals approve a front yard setback variance to allow the covered front porch addition to be completed and remain in the current location and configuration. As justification for the requested variance, the applicant states that the covered porch will help the handicapped residents of this house (see attached photo).

### Zoning Ordinance Requirements

Section 42-160(2)a.1. is the section of the Zoning Ordinance that establishes the minimum front yard building setback in the R-1 (Single-Family Residential) district. That section reads as follows:

#### **Sec. 42-160. Bulk regulations.**

##### (2) Yard requirements:

##### a. Front yard:

1. Property located adjacent to the following various types of streets shall maintain the following yard requirements regardless of whether it is a front, side, or rear yard, or any combination thereof:
  - i. Residential street: twenty-five (25) feet from the property line or fifty-five (55) feet from the center line, whichever is greater.

Hickory Street is a residential street so the required front yard setback is 25 ft.

Section 42-79 of the Zoning Ordinance establishes an exception to the front yard setback requirement for front porches.

#### Sec. 42-79(3)

The following shall not be considered to be obstructions when located in a required yard:

- (3) In front yards, **Open, unenclosed porches projecting eight (8) feet or less** and fences on corner or double frontage lots in accordance with the requirements of section 8-1407(1).



The conflict in this case is that the covered front porch constructed by the applicant projects ten (10) feet into the front yard setback area and staff does not have the authority to approve a porch that extends beyond eight (8) feet.

The building permit application and review process is the means by which staff is able to inform property owners about the building codes and limitations applicable to their property.

Surrounding Zoning / Land Use

|       | <u>Zoning</u> | <u>Land Use</u>        |
|-------|---------------|------------------------|
| Site  | R-1           | Single-family Dwelling |
| North | R-1           | Single-family Dwelling |
| South | R-1           | Single-family Dwelling |
| East  | R-1           | Single-family Dwelling |
| West  | R-1           | Single-family Dwelling |

Information / Analysis

1. Uniqueness – A Condition Unique to the Property

The need for a variance must be caused by a condition, which is unique to the property in question and not shared by other properties in the area. Some examples would be:

- Undersized lots;
- Uniquely shaped lots – pie shaped lots, two (2) or more front yards;
- Unusual slopes or topography;
- Need to protect existing improvements or trees;
- Easements or unusually large street right-of-ways.

The applicant states that two handicapped people live in the home and would like the covered porch to line up with the sidewalk.

In its analysis of this variance request staff has not been able to find any unique physical conditions relating to the applicant's lot that are not shared by other properties on Hickory Street. The applicant's house is relatively small but not inordinately small compared to other homes in the neighborhood and while the house is pushed forward on the lot (76 ft. rear yard vs. 25 ft. front yard), the original construction lines up with the setback of other homes on Hickory Street. Staff has not been able to identify any condition that creates a need for a 10 ft. porch vs. an 8 ft. covered porch.

2. No Adverse Effect on Neighbors

The variance must not cause any adverse effect on neighboring properties. Some examples of adverse effects would be:

- Restricting the flow of air or blocking sunlight;
- Causing increased drainage or runoff problems for neighbors;
- Detracting from the appearance of the neighborhood; i.e. creating an eyesore;
- Reducing the property values of neighbors;
- Increasing the risk of fire spread.

The applicant states that the porch is a nice added feature to the house and a neighborhood improvement. The applicant does not believe the 10 ft. width will be that noticeable to the neighborhood or have a negative impact on neighboring properties.

Staff would agree that the incremental increase in the width of the porch (8 ft. to 10 ft.) is relatively small but it was noticeable enough to come to the attention of City staff. The applicant has furnished a number of letters of support from neighboring property owners and residents which are attached to this report. The letters indicate that these neighbors do not see the covered porch as having an adverse effect on the neighborhood. However, staff would point out that this case is not about whether the house at 1610 Hickory Street can have a covered front porch but rather about how much of a front yard a covered porch may occupy.

City staff is very supportive of property owners making investments and improvements to their property. Staff believes this is best accomplished through the building permit process. Building permit review helps ensure that building improvements are safely and properly built which helps preserve and protect neighborhood property values and public safety. The building permit process is the only means by which City staff can inform property owners what can and cannot be built on their property. While a 10 ft. wide porch may be perceived as not harming the neighborhood Planning staff did not have an opportunity to review the plans for this porch until after it was built.

3. Unnecessary Hardship

The applicant must show that not granting the variance will cause an unnecessary hardship by denying reasonable or beneficial use of the property.

- This requires more than a showing of personal inconvenience or increased cost.

The applicant states that two handicapped people live in the house and need the covered porch and exit. The applicant also believes it would be a financial hardship to have to remove the improvements that have already been made.

Staff would again note that this case is not about whether the house at 1610 Hickory Street may have a covered front porch. It may, it is a question of how large the porch can be and how far it can extend into the front yard. The applicant has tied the need for a 10 ft. x 20 ft. porch to the need to improve handicapped accessibility at this residence. Staff would point out that 8 ft. is more than adequate width for accessibility and that the porch has stairs and not a ramp. Staff is unable to see how the front porch as constructed improves handicapped accessibility. As to the financial hardship associated with removal of the construction that has already occurred, staff would note that if a building permit had been applied for to build this 10 ft. covered front porch the permit would have been denied and staff would have had an opportunity to explain why to the applicant. Staff believes that any hardship experienced by the applicant would to a degree be a self-created hardship.

4. Effect on Public Health, Safety and Welfare

The requested variance must not adversely affect the health, safety and welfare of the public. Some examples would be:

- Creation of unsafe traffic conditions, i.e. blocking sight;
- Encroachment on future right-of-way;
- Increasing the risk of fire spread or flooding.

The applicant states that the overhang only hangs slightly into the front setback area and any impacts from the extension in to the front setback area will be local to immediate neighbors and approval of the requested front yard setback variance will not impact the general public.

Front yard building setback requirements ensure that dwellings, porches and outbuildings are not placed too close to the street and also ensure that there is adequate visibility for vehicles backing out of residential driveways and into public streets. It does not appear that the covered front porch would reduce the visibility of drivers backing into Hickory Street. The porch addition would not block sunlight or air or increase the risk of fire spread to neighboring properties.

Staff would note however that because a building permit was not obtained it is not clear whether the foundation and supports meet residential building code requirements and this could result in the creation of unsafe construction.

5. Conformity with General Spirit and Intent of the Ordinance

The variance must conform to the general spirit and intent of the Zoning Ordinance.

A variance should not be granted which would undermine or defeat the purpose for which a regulation was adopted. Front yard building setbacks ensure that dwelling units and other structures are not placed too close to the public right-of-



way. This preserves the open space adjacent to the roadbed and sidewalks and maintains sight lines for visibility.

The applicant points out that the covered front porch will help the handicapped residents of the house but does not state exactly how the additional width benefits them.

Staff would note that an open, covered porch may extend up to 8 ft. into the required front yard setback area; however, the covered porch in this case extends 10 ft. into the front yard. The purpose of having a 25 ft. front yard setback line is to preserve adequate open space adjacent to public roadways. Open space adjacent to the roadway is important for maintaining adequate sight lines for both vehicular traffic and pedestrians using the roadway and adjacent public sidewalks. Having a uniform build to line also maintains the visual appeal and the appearance of the streetscape in residential neighborhoods. A variance to allow an additional building encroachment into a front yard should only be considered when the physical characteristics of the lot make that the only feasible option for expansion or new construction.

#### Staff Comments / Analysis

This variance application is unique in that it represents a request for a post-construction, after-the-fact variance. It is also significant that no building permit was applied for or issued for the work performed. Whether the property owner should have known that a building permit was required is a judgment for Board members to make. Because of these circumstances, it is important for the Board to make clear findings in support of its decision and clearly identify any extenuating circumstances so that the Board's decision does not create a potentially unfavorable precedent for future BZA decisions.

The intent of residential setback requirements is to promote public health, safety and general welfare. By establishing setback restrictions the risk of fire spread and drainage or runoff problems for neighbors is reduced as well as any obstruction or restriction of the flow of air or blocking sunlight is minimized. Conformity with the general spirit and intent of the ordinance helps ensure that the characteristics and use of a residential zoning district remain consistent as well as promote the wellbeing of its residents.

From staff's perspective the issue in this case is not whether the dwelling at 1610 Hickory Street should be allowed to have a covered front porch. The issue is whether there is justification under the circumstances to allow a 10 ft. x 20 ft. front porch instead of an 8 ft. x 20 ft. The Zoning Ordinance provides a front yard exception that allows a covered front porch to extend 8 ft. in front of the building setback line as long as it is open and unenclosed. The porch that has been constructed extends 10 ft. in front of the building setback line.

On the one hand, the additional front yard encroachment at 1610 Hickory Street is relatively minor (2 ft.) and not readily noticeable by neighbors and the neighbors are supportive of allowing the porch to remain in place as is. If the porch had to be modified or removed it would cause a substantial financial hardship on the property owner to perform that work with very little gain or benefit to surrounding neighbors. It would likely be more costly to modify the width of the porch than remove it.

On the other hand, staff believes the applicant has failed to demonstrate any relationship between the 10 ft. width of the porch and improvements to handicapped accessibility. In staff's view it is difficult to find any uniqueness to the applicant's property. As stated in the staff report this variance request is the result of a condition that was self-created. In other words, the applicant is requesting a variance from the Zoning Ordinance not because of some natural or unusual condition imposed on the lot but rather because of lack of knowledge and failure to follow the requirements of local building and zoning codes. An application for an after-the fact, post construction variance to allow an existing addition to remain on the property does not satisfy the intent of a variance when there is no unique physical condition present on the property that would justify relief from the 17 ft. front yard setback requirement. Any resulting hardship is a result of the action of the property owner.

#### Board Alternatives

Staff has identified the following alternatives for the Board's consideration:

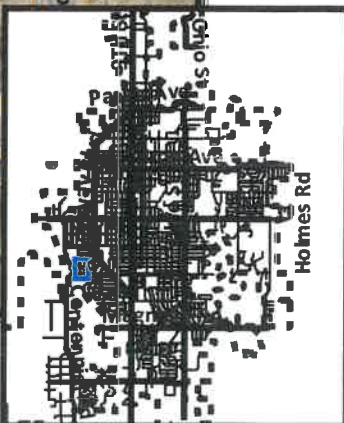
1. The Board could approve the requested 2 ft. front yard setback variance being requested, with or without any conditions, if the required findings-of-fact can be made.
2. The Board could postpone consideration of this application and direct the applicant to provide additional information to demonstrate that there are no practical alternatives to the dimensions of the covered front porch addition.
3. The Board could deny the applicant's request, if the required findings-of-fact cannot be made.

#### Staff Recommendation

Staff would request that the applicant provide additional information about the relationship between the porch and handicapped accessibility and why they were unaware that a building permit was needed. If that information is provided to the satisfaction of the Board, then staff recommends that the Board balance the relative benefit gained from achieving compliance when no neighbor objects to the porch against the cost and financial hardship associated with modifying the porch so it only extends 8 ft. into the front yard.

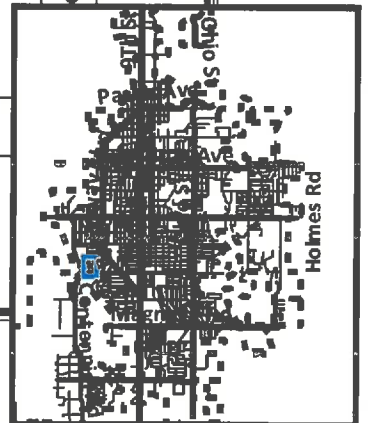
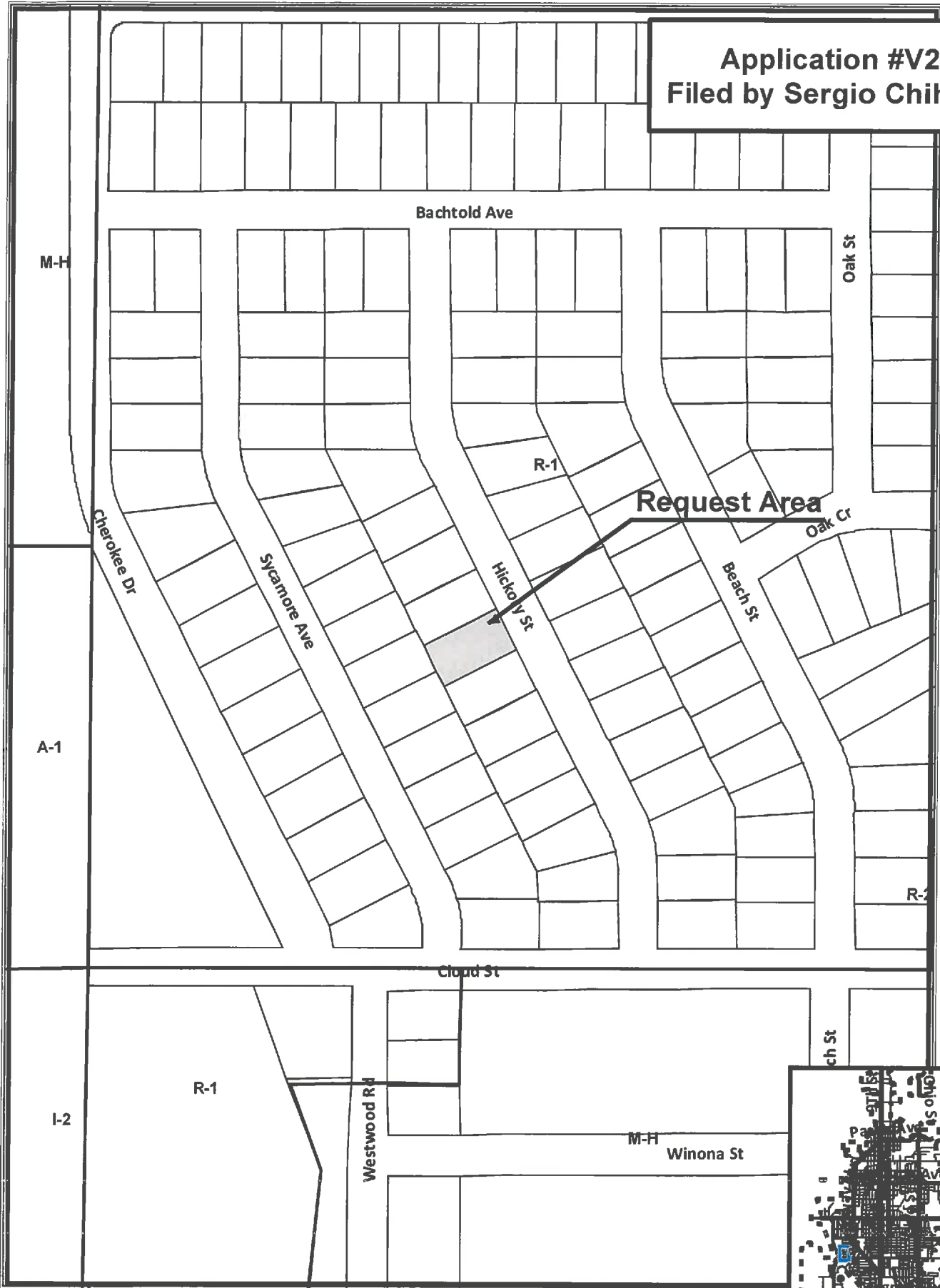


**Application #V21-1  
Filed by Sergio Chihuahua**



**1 inch = 200 feet**

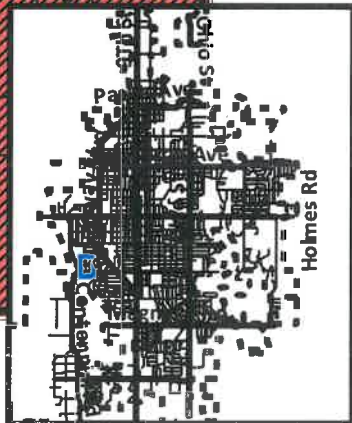
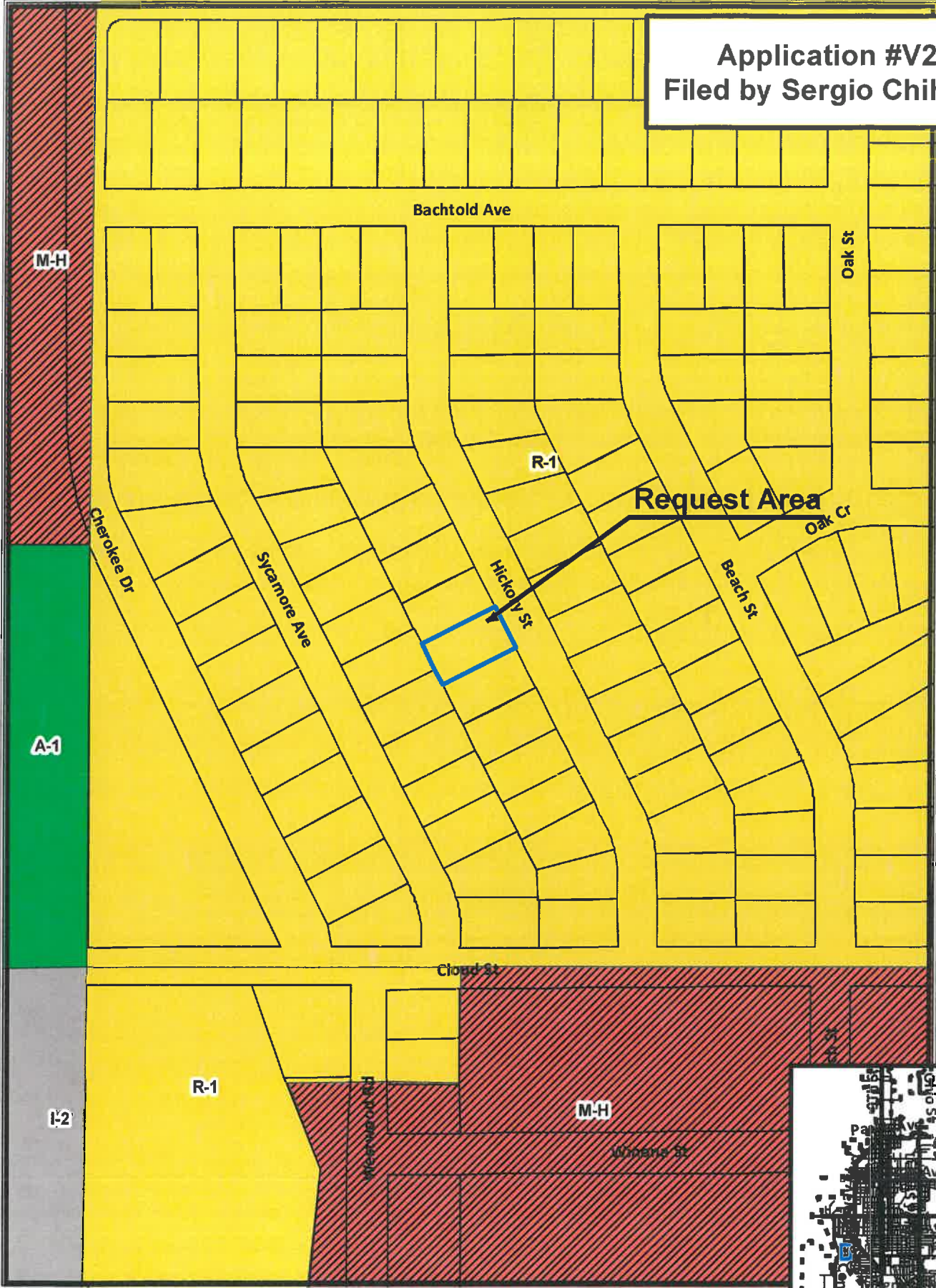
Application #V21-1  
Filed by Sergio Chihuahua



1 inch = 200 feet



Application #V21-1  
Filed by Sergio Chihuahua



1 inch = 200 feet

# BUILDING INSPECTION DEPARTMENT

Permit No. 12022

CITY OF SALINA, KANSAS

Application No. 7212

Application for Building Permit and Application for Building Occupancy Permit

Date March 16 1957

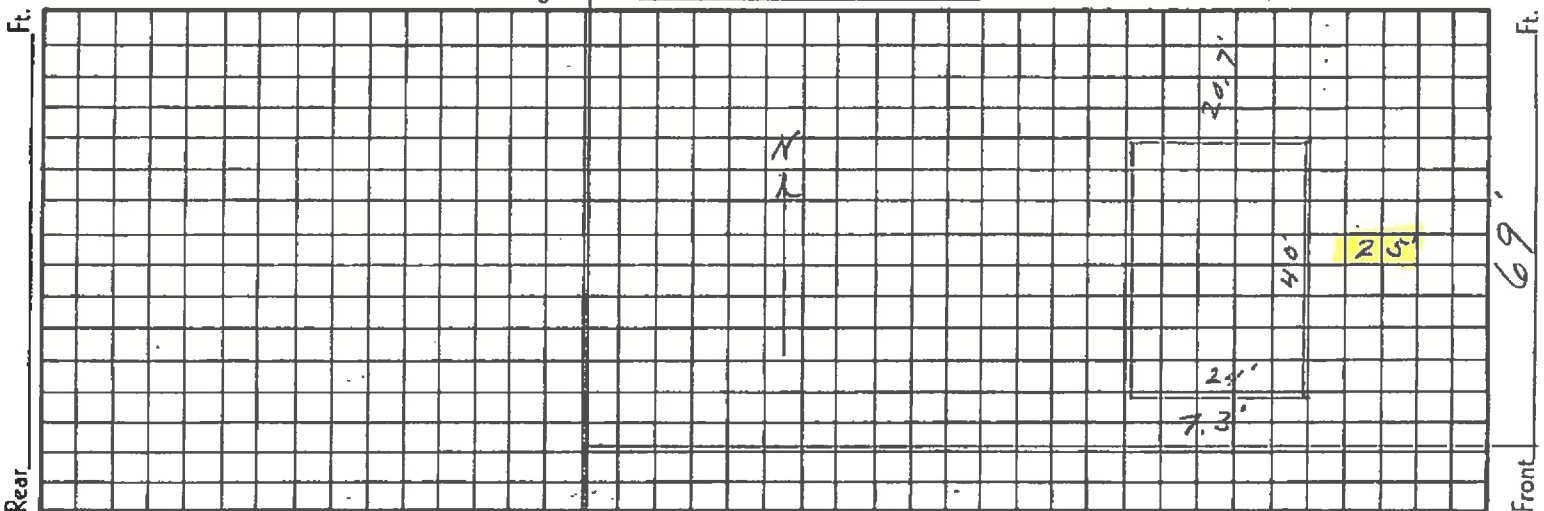
Application is hereby made for a permit to Erect  
(Erect, Remodel, add to)  
So. 69' of Lot  
 a structure located on lot No. 27 block No. 2 in Cloud Add

Addition to the City of Salina, Kansas. Said building to front on Maple Hickory Street, in accordance with the following description, and in conformity with the provision of all laws and ordinances now in effect pertaining thereto.

State specific use to be made of said structure: One Family Dwelling  
 Number of families provided for one, number of rooms, 6, stories high one  
 Overall dimension of building, feet front 40, feet deep 24, feet high 18'  
 Dimension of basement 40 by 24 feet, wall material conc inches thick 8"  
 Foundation material conc, thickness 8" inches, footings 8" x 16"  
 Material of exterior walls of building Frame inches thick 5"  
 Brick fire tile lined flues \_\_\_\_\_, patented pipe vents metal, roof material Comp Shingle  
 Private garage \_\_\_\_\_, material \_\_\_\_\_ size, \_\_\_\_\_ by \_\_\_\_\_ feet  
 Estimate cost of structure including plumbing, gas piping, wiring, \$ 8,000.00  
 Required off street parking for this permit 1 space Square feet of floor area \_\_\_\_\_  
 Building is to be located in A zone use zone, and located on the above described lot according to the following diagram, indicating the minimum distance from front and side lot lines to foundation of building.

Length of lot 125 feet

Zone "A"



(Indicate distance of building from front and side lot lines.)

I hereby affirm that the above statements are true and correct, and agree to comply with all ordinances and laws pertaining to, or governing the construction, alteration, or extension of building described in this application and to permanently maintain the offstreet parking facilities herein required.

Owner \_\_\_\_\_ Address \_\_\_\_\_  
 Contractor McFarland Const Co Address \_\_\_\_\_  
 By J. Anderson Address \_\_\_\_\_  
(Authorized representative)

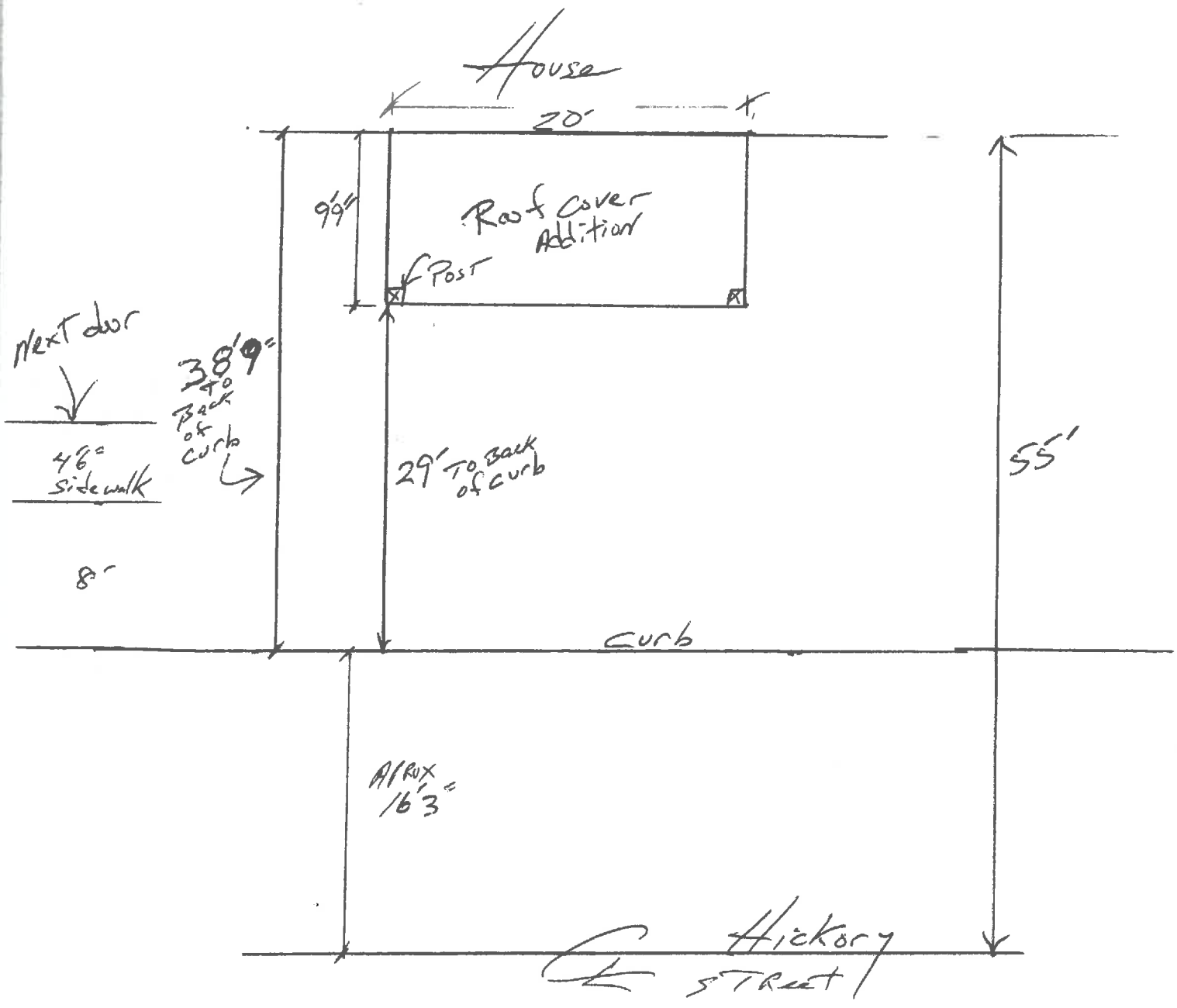
## INSPECTION DEPARTMENT RECORD

Application approved \_\_\_\_\_ Date permit was issued March 16 1957

Permit was refused, because \_\_\_\_\_  
1610 Maple St.  
Hickory  
Carl D. Johnson  
 Building Inspector

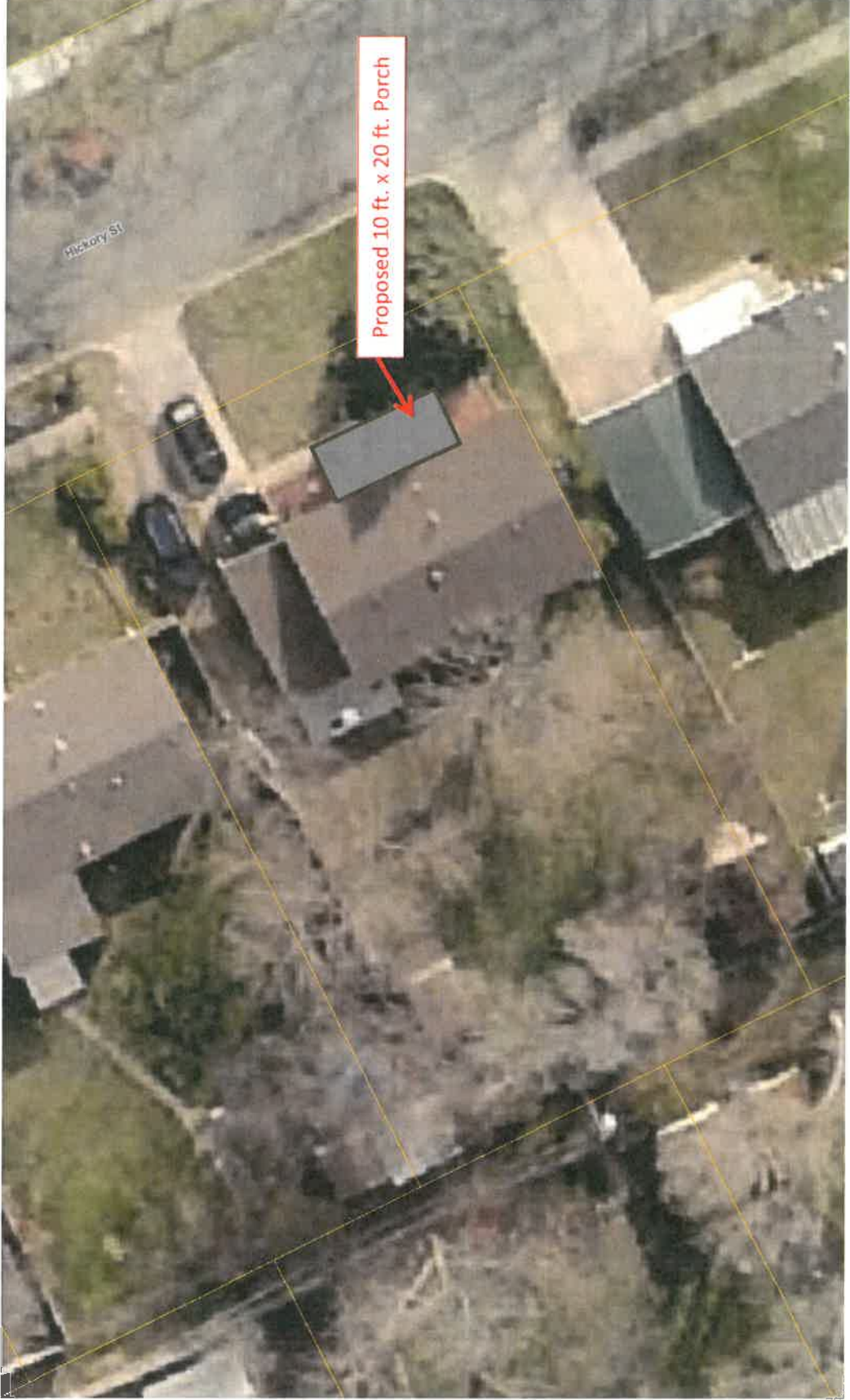


20-1658  
1610 Hickory St. Field measurements 11/4/20

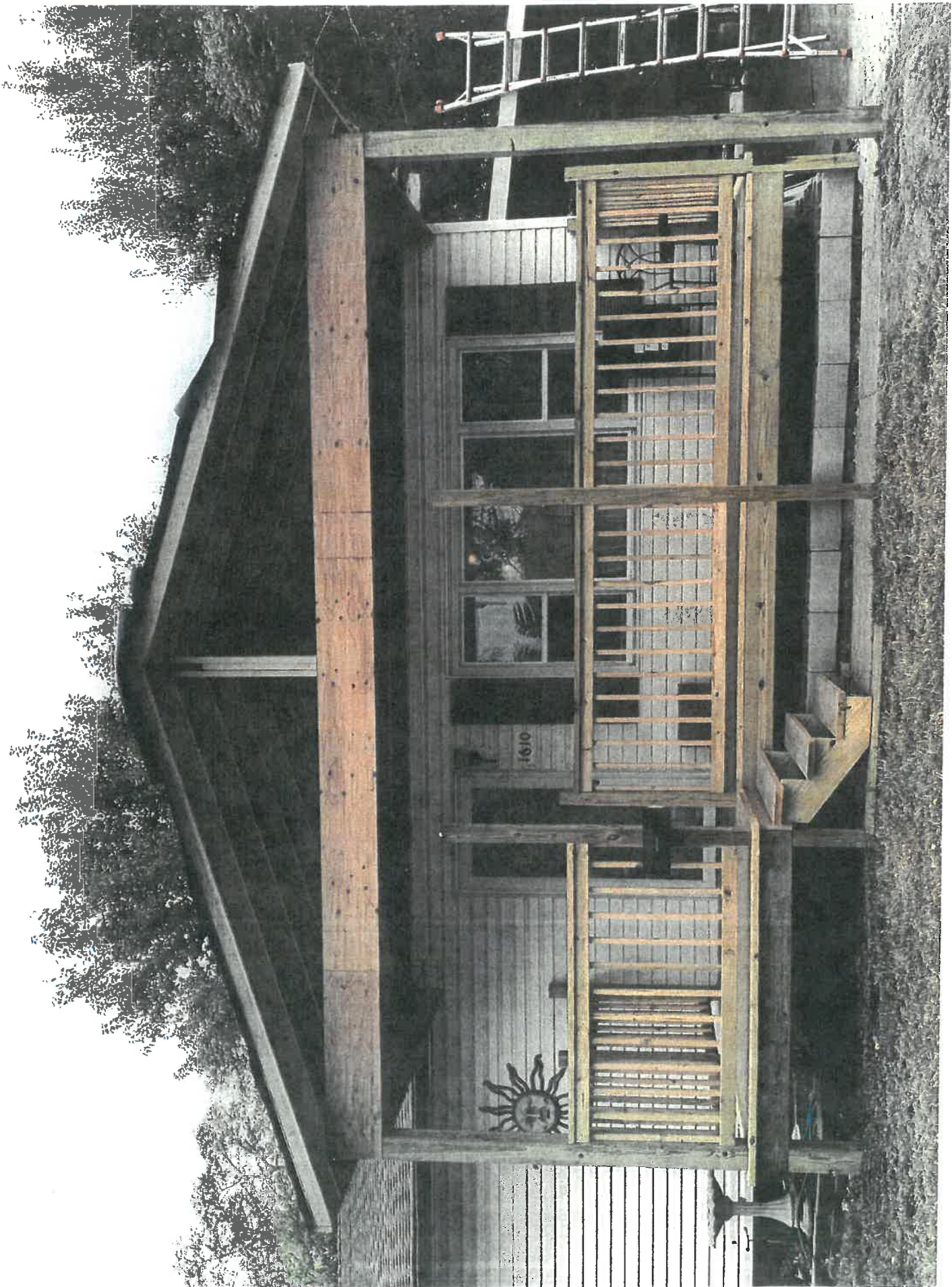


**1610 Hickory Street**

**Front Porch Encroachment**







# Attachment

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Letters of Support from  
Neighboring Property Owners



1/11/2021

To Whom It May Concern,

I, Scott Davis live at 1620 Hickory St

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

Scott Davis 1-11-21

1/11/2021

To Whom It May Concern,

I, Lynda Shupe live at 1613 Hickory

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

Lynda Shupe

1/11/2021

To Whom It May Concern,

I, Trevor Leppin live at 1603 Hickory

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

Trevor Leppin

1/11/2021

To Whom It May Concern,

I, Jeannie Grace live at 1606 Hickory St

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

Jeannie Grace



1/11/2021

To Whom It May Concern,

I, Albino Cervantes live at 1616 Hickory St

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

Albino Cervantes

1/11/2021

To Whom It May Concern,

I, Christopher Bennett live at 1607 Hickory St Salina, KS

located in Salina, KS, 67401 and am one of Sergio Chihuahua's neighbors located 1610 Hickory St Salina, KS 67401. Recently, he built a deck/porch at his home. We strongly believe that this addition looks very nice and it adds curb appeal to our community. It does not bother us at all.

Sincerely,

\_\_\_\_\_