AGENDA

TOPEKA
BOARD OF ZONING APPEALS

Monday, March 12, 2018
5:30 P.M.

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

MEMBERS OF THE BOARD

Mike Morse – Chairman
Marty Hazen – Vice Chairman
Toni Beck
Tim Carkhuff
Helen Crow
Carole Jordan
Walter Shoemaker

- 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.

Board of Zoning Appeals
Agenda Items for Monday, March 12, 2018

A. Call to Order

B. Approval of Minutes from June 12, 2017

C. Public Hearings

1. **BZA18A/01 by Scott Gales,** appealing, pursuant to Topeka Municipal Code (TMC) Section 2.45.070, a decision by the Planning Director that the proposed construction of a building to be located at 1605 SW Lakeside Drive, does not meet the Design Standards adopted in the Westboro Neighborhood Conservation District. (Ordinance No. 19887)

2. **BZA18V/1 by Scott Gales,** requesting variances with regard to the construction of a residence at 1605 SW Lakeside Drive. The variances requested include: 1) TMC 18.60.020(8) regarding required minimum building setbacks from the rear property line and front property line along SW Westover Drive; 2) required minimum building setbacks along SW Lakeside Drive and SW Westover Road pursuant to the Westboro Subdivision plat; 3) the requirement per the Westboro Neighborhood Conservation District that the front setback for new residences be within 10% of the average front setback on the block; and 4) the requirement per the Westboro Neighborhood Conservation district that fences on a corner lot not be allowed in front of the front face of an adjacent residence.

D. Election of Officers

E. Adjournment

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

CITY OF TOPEKA
BOARD OF ZONING APPEALS

M I N U T E S

Monday, June 12, 2017

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

Members present:	Tim Carkhuff, Marty Hazen, Mike Morse, Walter Schoemaker, Toni Beck, Carole Jordan, Helen Crow (7)
Members Absent:	(0)
Staff Present:	Mike Hall, Planner III; Mary Feighny, Deputy City Attorney; Richard Faulkner, Development Services Director; Kris Wagers, Administrative Officer

A) Call to Order

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

B) Approval of Minutes from October 10, 2016

C) BZA17A/01 by Rodney & Verna Hayes, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision rendered by the Zoning Administrator that the vehicle parked at 716 NE Grattan Street is in violation of TMC 18.210.020 (b)(2)(ii) restricting storage of commercial vehicles, equipment, etc. on a lot in the "R-2" Single Family Dwelling district.

Mike Hall presented the Appeal Evaluation, concluding with staff recommendation that the Board of Zoning Appeals affirm the findings of the Director of Development Services. PowerPoint slides were reviewed during the presentation.

Mr. Morse asked BZA members if they had questions for staff.

Mr. Carkhuff asked where Exhibit 2 came from and Mr. Hall replied that it was provided by the applicant.

Mr. Shoemaker asked who did the physical measurement in the field that was referred to in the Appeal Evaluation and was told it was done by Mr. Faulkner with a tape measure.

With no more questions from BZA members, Mr. Kevin Cook came forward to speak representing the applicant, Mr. Rodney Hayes. He explained that Mrs. Verna Hayes passed away about a year ago but her name is still on the title.

Mr. Cook explained some of the background of the case, which he stated originally began not as an appeal of the trailer but of the business Front Door Catering LLC, which was being run out of the owner's detached garage at 723 Freeman, an area that is not zoned for business. He reported that the

business has since moved to a space in the NOTO district in North Topeka. The trailer, which is part of the business, cannot be parked on the business lot so Mike Weibel, one of the owners of the catering business and the trailer, has been parking it on the property of Mr. Hayes, who lives across the alley from Mr. Weibel.

Mr. Cook presented photos of the neighborhood and the trailer, copies of which are attached. He stated that staff has said the trailer is a commercial trailer and all commercial trailers are prohibited in residential neighborhoods. Mr. Cook advised that a 'commercial vehicle' is defined by TMC 18.55.030 in terms of height (10 ½ feet), width (exceeding 8 feet), length (exceeding 25 feet) or weight (12,000 pounds) He stated that the applicant admits that the trailer in question exceeds the 8 foot width by six inches and asked that the BZA consider granting a variance.

Mr. Cook summarized his requests as follows: Not find that all trailers be outlawed from residential neighborhoods but rather apply the same standards as exist for vehicles and in this case, since the trailer is 6" over width, grant a variance. He added that the trailer is parked in the alley and is not obstructing access to the alley. He also added that the neighborhood has a history of entrepreneurial spirit and noted a number of businesses that have existed there through the years.

Mr. Shoemaker asked Mr. Cook about the length of the trailer, which Mr. Faulkner measured at over 25'. Mr. Cook stated that the actual body of the trailer is 25'; it's only longer if you include the hitch.

Ms. Beck asked if the other businesses he had referred to as having been in existence on that block were prior to the adoption of the International Property Maintenance Code and he replied that he did not know. He added that the purpose of the trailer in the neighborhood right now is simply to have it stored there. He added that the Weibels use it in a recreational sense as well, taking it to BBQ competitions an average of 12 times/year.

Ms. Beck asked Mr. Faulkner if there had been neighbor complaints about the vehicle being parked there, and he stated that was the original issue; when the commercial kitchen was onsite and they loaded the trailer to go to the site and they blocked the alley.

Mr. Cook noted that the preparation is now taking place at the business location on Laurent Street in NOTO, so the trailer is no longer being loaded while in the alley.

Ms. Crow asked why the commercial equipment inside the trailer was not being addressed. Mr. Cook stated that the the trailer is being used for a commercial endeavor and not solely for recreational use. Mr. Cook provided additional photos of the interior of the trailer; attached.

Mr. Hazen asked Mr. Cook if the vehicle could be stored on the owner's property in NOTO and he responded there is not sufficient space there. Mr. Carkhuff asked if they'd investigated storing the vehicle offsite and Mr. Cook stated cost is a concern, as well as the owners' desire to keep it close so they can keep their eye on it.

Mr. Carkhuff asked regarding the relationship between Mr. Hayes and the Weibels, and Mr. Cook responded that they're close friends. Mr. Hayes allows Mr. Weibel to park the trailer on his property for no cost.

Mr. Hazen asked where other food truck owners park their trucks and Mr. Cook replied he does not know; if he had to speculate, probably at their homes. Mr. Hazen stated that if the BZA determines this is not a commercial trailer, they'd be allowing all food trucks to be stored in residential alleys. Mr. Cook stated that in Oakland, there are recreational and professional race cars that are stored on trailers there.

Mr. Cook stated that this is an item of first impression; it's not come before any Board as to what constitutes a commercial trailer. He stated the question is whether it is the intent of the City of Topeka to outlaw all commercial trailers in residential neighborhoods, or rather to limit commercial trailers in residential neighborhoods, subject to the same requirements you would have for a truck.

Additional questions included whether property taxes were paid on the trailer as a personal or business vehicle and whether the vehicle would be an issue if it were parked inside a garage.

Mr. Cook stated in conclusion that if the original complaint were about blocking the alley, the issue has been addressed. The bigger question before the board is "what is the state of commercial trailers in the City of Topeka?" He asked that the same rules be applied that are applied to trailers for vehicles and a variance be allowed for the width restriction.

Ms. Beck stated that the International Maintenance Code and Neighborhood Conservation Districts in Topeka are in part meant to encourage people not to park commercial vehicles in their neighborhoods.

Mr. Cook noted that the Weibels had contemplated removing the signage from the trailer and are willing to do so. Mr. Hazen asked whether the vehicle would continue to be used for business even without the signage and Mr. Cook stated that it would.

Mr. Cook stated that the question is whether all commercial vehicles are prohibited, which seems to be the position of the Code, or if the desire is to place a reasonable restrictions on what trailers are allowed; a restriction rather than prohibition and if so, requesting a variance.

Mr. Carkhuff stated that the case before the BZA is not a variance case and based on the application which appeals the determination of Mr. Faulkner, the BZA has no authority to consider granting a variance of any kind.

Nobody else came forward to speak.

Mr. Hazen moved to uphold the findings of the staff and support their recommendation. Second by Mr. Carkhuff.

Discussion:

Mr. Carkhuff stated there is no question the vehicle is a commercial vehicle under City Code. Regarding intent, he believes the intent was absolutely to ban commercial trucks and trailers from beings stored in neighborhoods.

Mr. Shoemaker stated he agrees with Mr. Carkhuff and noted that, in addition, the trailer isn't stored on the trailer owner's property.

Mr. Carkhuff noted the Code does not require the vehicle to be used exclusively for business and the BZA did not even address whether the weight of the vehicle was more than allowed by City Code.

Upon roll call, the motion to uphold the findings of the staff and support their recommendation was APPROVED (7-0-0)

D) Election of Officers

Mr. Carkhuff nominated Mike Morse as Chair; Mr. Morse accepted the nomination and nominated Mr. Hazen as Vice-Chair.

Vote of acclamation – Motions passed

E) Adjournment at 6:10PM

APPEAL EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT

Date: March 12, 2018 **Case No.: BZA18A/01**

Applicant Name: Scott Gales
Address: 1605 SW Lakeside Dr., Topeka, Kansas

Property Data:
Address of Property: 1605 SW Lakeside Dr., Topeka, Kansas
Zone for Property: "R-1" Single Family Dwelling District, Westboro NCD
Property Size: 15,261 Sq. ft.

Notice of Hearing:
- Notice of the public hearing was published in the Topeka Metro News on February 19, 2018 in compliance with TMC 18.45.090.
- Notice of the public hearing was mailed to adjoining and adjacent property owners on February 19, 2018 in compliance with TMC 18.45.090.

Related Case: BZA18V/01 Variance Request for Setbacks and Fence

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

Section to be Appealed: Sec. 18.270-050 (c)(5) Westboro NCD Design Standard – Building Architectural Style and Details
- New residences shall be constructed in one of the architectural styles identified in the "Representative Sample."
    - The architectural character of the block where this property is located is "Mid-Century American. Facing Blocks also include Early American, European, and Tudor Revival.

Decision Being Appealed: The decision of Mr. Bill Fiander, AICP, Director of the Topeka Planning Department is that the proposed structure is a 21st Century Modern design that is not included within the representative sample of homes allowed within the Westboro NCD. Associated with this specific proposal, this proposal incorporates several other design elements that are deemed incompatible with the overall NCD Design Standards. These design features include roof materials, roof pitch, faux stone siding materials, stained v painted wood siding, and inappropriate scale of windows relevant to home styles within the surrounding neighborhood.

Basis for the Appeal: The property owner is appealing the Director's decision based on the following rationales: 1) The applicant is appealing the Westboro NCD Design Standards to allow construction of a home of 21st Century Modern design which is not identified within the Design Standards of the Westboro Neighborhood Conservation District. 2) The applicant alleges an error in the Director's decision that precludes the use of newer alternative modern building materials and construction techniques that result in quality development; 3) The applicant alleges an error in the language of the Westboro NCD Design Standards in its use of "Mid-Century American" as an architectural style.

Analysis and Findings: The analysis and findings will be presented according to each rationale presented in the basis for the appeal.

1) *Architectural Styles* - The purpose of the **Westboro Neighborhood Conservation District (NCD)** is similar to that of an historic district as listed on the National Register of Historic Places, or the Register of Historic Kansas Places. The principal difference between the district categorizations lies in the fact that, unlike State or National historic districts, an NCD is codified within local zoning regulations. As an element of Topeka's zoning regulations, the NCD design standards codify those physical characteristics and features of the Westboro Neighborhood that define its overall character. The design standards were established and codified through a public process, inclusive of the neighborhood, specifically for protection of the existing architectural character of the homes, and the overall historic character of the neighborhood, at large.

   Regarding the purpose of the Design Standards, the Westboro NCD states the following:

   > *"A neighborhood Conservation Designation will protect the historic character and atmosphere in our neighborhood. While many of the existing houses reflect the architectural styles that compliment the other residences, we want to make sure that any new or reconstructed structures also reflect these styles."*

   The vast majority of homes within the Westboro neighborhood were constructed during the 1920s through 1950s. Architectural styles of new homes were originally controlled through covenants that were placed on every property at the time of the filing of the original Westboro subdivision plat. During the 1950s, many of the homes constructed beyond the original platted boundaries reflected more Mid-Century American styles of architecture, predominantly being the American Ranch, Split-level Ranch, Prairie Style/Craftsman, and Cape Cod.

   All home construction during the 1960s, 1970s, 1980s, and 1990s within the Westboro neighborhood is consistent with the styles of architecture that are listed within the design standards of the Westboro NCD. No homes within the Westboro neighborhood incorporate predominant late 20th Century Modern or 21st Century Modern architectural design elements. The architectural style of the home proposed by the applicant would represent a unique departure from the character-defining features that encompass the entirety of the Westboro neighborhood. As such, it is the finding of Planning Staff that the proposed home design violates the purpose, intent, and design standards of the Westboro NCD and zoning regulations.

2) *Modern building materials, and construction techniques* – The Westboro NCD does not impose any restrictions on the use of modern building materials or construction techniques for the construction of new principal structures. The quality of the materials, design, and reasons why a certain style was used in the past are not codified and are not in question by the Planning Director.

3) "*Mid-Century American Architectural Style*" – The applicant correctly claims that the term of reference ""Mid-Century American" does not depict any known or established style of architecture. This term within the Westboro NCD is used to convey several various styles of architectural design that can be described as both mid-century, and American. Mid-Century architectural styles, as identified within the context of the design standards of the Westboro NCD include Ranch, Prairie, and Cape Cod. Each of these styles is also considered to be American in origin. Therefore, the term "Mid-Century American" incorporates both Mid-Century and American styles of architectural design that are deemed consistent with the character-defining features established within the Westboro neighborhood. The applicant's design, admittedly, does not reflect styles of the facing

blocks (Early American, European, Tudor Revival) either, as put forth in the NCD. These styles are all illustrated and codified within the design standards of the Westboro NCD.

The Applicant's assertion that he "disagrees with the notion that a home appropriate to modern Westboro has to be of a 'style' similar to the homes around it" is to disagree with NCD standards as they were written and adopted. The philosophical difference in how the NCD was written and how the Applicant thought they should be written is not appealable. What is appealable and germain to the findings is whether the zoning regulations (i.e., NCD Standards) as adopted were erroneously applied or enforced.

Conclusion and Recommendation:

Based on the analysis and findings of the stated basis for the appeal, Staff concludes that 1) there was no error in determining that the applicant's proposed construction of an admittedly 21st Century Modern architectural style home **does violate** the established design standards as codified within the Westboro Neighborhood Conservation District; 2) that there was **no error in the Director's decision** regarding the use of modern building materials used in the construction of new principle structures within the Westboro neighborhood; and 3) there was **no error in the use of the term "Mid-Century American,"** within the Westboro NCD, which refers to both Mid-Century and American architectural styles. Therefore, based on the Powers and **Duties of the Board of Zoning Appeals (Sec. 2.45.050),** Staff recommends that the Board of Zoning Appeals **AFFIRM** the decision of the Planning Director by concurring with the findings as set forth herein.

Staff: Timothy Paris
Planner II

Exhibits:

A. Appeal Application
B. Variance Application
C. Planning Director's February 2, 2018 Letter
D. Applicant's February 5, 2018 Response Letter
E. Applicant's Exhibit A & B
F. Applicant's Exhibits E1 & E2
G. Applicant's Exhibits E3 & E4
H. Applicant's Exhibits E7 & E8
I. Proposed Fence
J. Aerial Map 1
K. Aerial Map 2
L. Aerial Map of Comparative Home Sizes
M. Aerial Map of Sample Corner Lots / Lot Size and Dimension at Rear Property Line

N. Aerial Map of Existing and Proposed Setbacks
O. Photographs 1, 2, and 3
P. Citizen Comments
Q. Westboro NCD

VARIANCE EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS

Date: March 12, 2018 Case No.: BZA18V/01

Applicant Name: Scott Gales
Address of Property: 1605 SW Lakeside Drive
Zoning of Property: "R-1" Single-Family Dwelling District

Regulations from which a Variance is Requested: The applicant is requesting variances from building setback standards, and from a standard for the placement of fencing, applicable to the subject property which is located in the (Westboro NCD).

As proposed, the new residence has a front setback of 12' 10" (rounded up from what is shown on the applicant's exhibits) along SW Westover Road and a rear setback of 16' 6". These setbacks do not comply with 1) Topeka Municipal Code (TMC) 18.60.020 regarding required minimum building setbacks from the rear property line and front property line along SW Westover Drive pursuant to the property being located within the R-1 Single-Family Dwelling District; 2) required minimum building setbacks along SW Westover Road pursuant to the Westboro Subdivision plat; and 3) the requirement of the Westboro Neighborhood Conservation District (Westboro NCD) that "New residences shall be built to the front setback line that is ±10% of the average front setback on the block."

The Westboro NCD standards prohibit placement of fences in front of the front face of a residence and, as the property is a reverse corner lot, also prohibits placement of the fence in front of the front face of the residence on the adjacent lot to the west. As proposed, the fence will not be in front of the proposed house but will encroach 22' 2" in front of the adjacent residence.

More detailed information about the building and fence setbacks is provided below beginning on page 3.

Related Case: BZA18A/01 (Appeal) by Scott Gales appealing the decision of the Planning Director to withhold approval of a permit on the basis that the proposed structure is non-compliant because it is a 21st Century modern design that does not match any of the architectural styles identified in the "Representative Sample" in the Westboro NCD design standards.

Project:

Existing Residence:	2,629 square feet (1,352 sf first floor, 757 sf second floor, and 520 sf garage)
Proposed Residence:	5,657 square feet (1,944 sf first floor, 2,568 sf second floor, and 1,145 sf garage)
Proposed Fence:	5' high black powder coated aluminum ornamental fence

Property Data:

Property Size: (approximate)	15,260 square feet
Other Property Characteristics:	The property is an irregularly-shaped reverse corner lot, with the lot being relatively narrow (86 feet) at its rear. The west property line located at a right angle to Westover Road is the rear property line.
Existing Land Use:	Single-Family Residential
Surrounding Land Uses:	Single-Family Residential uses on all sides
Existing Zone for Property:	R-1 NCD1 (Single-Family Residential and Westboro Neighborhood Conservation District)
Surrounding Zone:	R-1 NCD1
Subdivision Plat:	Westboro Subdivision (approved in 1927); 50' building setback on SW Lakeside Drive and 40' building setback on SW Westover Rd.
Character of the Neighborhood:	Single-Family Residential
Comprehensive Plan Designation:	Urban Suburban Low Density Residential

Background: On January 8, 2018, the Planning Department (Development Services Division) received a building permit application for the demolition, reconstruction, and expansion of the existing residence. On February 2, 2018, Planning Department staff informed the applicant in writing (see exhibit) that the requested building permit is not in compliance with the City's zoning regulations and the building setback line on the Westboro Subdivision Plat. The applicant submitted correspondence response (see exhibit) providing information and rationale for variances from the City's standards.

Applicant's Stated Grounds for Variances

In his February 5, 2018 letter Mr. Gales addresses his reasoning and justification for the architectural design (subject of appeal application BZA18A/01) and for the proposed setbacks. The applicant's grounds for appeal are more succinctly stated in the variance application and are summarized as follows. Each of the findings from TMC18.45.110 on which a variance is justified is referenced in parentheses).

Conditions Unique to the Property and Hardship on the Owner (findings a and c): the lot is on a corner with an acute intersection, meaning only 9.75 percent of the lot is actually buildable within the required setbacks. The existing home is one of the smallest in the neighborhood and already substantially encroaches on required setbacks.

Effect of the Variances on Adjacent Property Owners (finding b): The size of the proposed residence is closer in size to most of the surrounding homes. The proposed structure increases lot coverage from 9.75 percent to 19.9 percent. The roof and façade heights of the proposed residence will be two stories like surrounding homes.

Potential for Adverse Effect on the Public Health, Safety, Morals, Order, Convenience, Property, and General Welfare (finding d): The proposed construction will increase the living space, will increase the value of the property and contribute to improvement to the neighborhood in terms of value, quality of life, and appearance.

Variances is not in Conflict with the General Spirit and Intent of the Regulations (finding e): The requested variances are consistent with the Purpose of the NCD standards and the plat, since the proposed structure will contribute to the value and quality of life in the neighborhood. The design of the proposed structure is of a high architectural order, with high quality materials and fits with the context of the neighborhood.

Analysis:

Front Building Setback along SW Westover Road

The required setback along Westover is determined by the R-1 zoning, the NCD overlay zoning, and the setback line on the plat. The following table illustrates the front setback requirements and the proposed setback.

	1605 SW Lakeside Dr. (Subject)	3315 SW Westover Rd.	3321 SW Westover Rd.	Average Setback
Required Front Setback per R-1 Standards (18.60.020)	30 feet	30 feet	30 feet	NA
Required Front Setback per Plat	40 feet	40 feet	40 feet	NA
Required Front Setback per NCD (+ or – 10% of Average Setback)	27.9 – 34.1 feet (27'11" to 34'1")	27.9 – 34.1 feet (27'11" to 34'1")	27.9 – 34.1 feet (27'11" to 34'1")	NA
Existing Front Setback From Westover	26 feet	35 feet	32 feet	31
Proposed Front Setback From Westover	12' 10" (12.8 feet)			NA

New construction is required to comply with all of the front setback standards. In general, in instances where there is a building setback on a plat and a setback required by zoning, development shall comply with the most restrictive of the two setback requirements. However, the NCD design standards stipulate a built-to line (within + or – 10% of the average) which, as shown in the above table, for this project conflicts with the building setback on the plat and potentially conflicts with the R-1 setback.

The existing residence has a front setback of 39.9 feet from SW Lakeside Drive, and thus conflicts with the 50 foot setback on the plat. The proposed expansion will be built to that existing setback. Because this is an existing legal non-conforming setback the Planning Director has concluded the residence may be expanded along that same setback without need for a variance per TMC18.230.030(i).

Rear Building Setback

Pursuant to TMC 18.60.020 the required rear setback is 30 feet. The subdivision plat and the NCD standards do not stipulate a rear setback.

The rear setback of the existing structure is 19' 2" and is thus non-conforming. Per TMC18.230.030(i) the rear of the existing structure may be expanded along

this existing setback. The applicant proposes a rear setback of 16' 6" thus encroaching 2'8" into the required rear setback.

Fence Setback

The Westboro NCD standards require the fence to be located no closer to the front property line than the adjacent residence at 3315 SW Westover, which has a 35 foot setback. The proposed fence does not extend beyond the front face of the proposed residence, but is located at the proposed building setback of 12.8 feet and, therefore, encroaches 22.2 feet into the required setback.

Past Variance Requests in Westboro Neighborhood

Staff assert that setback requirements for the Westboro NCD and subdivision have successfully maintained and preserved the "estate" appearance of the Westboro neighborhood. This assertion is bolstered by the fact that, although requests for variances have been approved for side and rear yard setbacks within Westboro, staff can find no case in which a variance from front yard setback requirements has been approved. In particular, in 2007 the BZA denied a request for a variance to the platted setback along SW 15th Street to accommodate a building expansion on a similarly configured corner lot located at 1444 SW Westover Road. In that case the BZA determined there are five lots within Westboro Subdivision that are of similar "tear drop" configuration rather than being "square corner." The Board concluded that while this lot design makes placement of a structure on the lot more challenging, this condition cannot be considered unique to the subject property since the condition is shared by other lots within close proximity. (Case BZA07V/2)

Findings

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that **all** of the following conditions are met before a variance may be granted.

1. **That the variance request arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by action of the property owner or applicant;** *(The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.)*

   Building Setbacks: Variances are potentially justified for a lot that is unusually small or irregular in shape (geometry). The buildable area (building envelope) is a function of lot size, lot dimensions, and required building setbacks. The shape of the building envelope is also important, as it is difficult to fully utilize a building envelope that does not have a square or rectangular shape.

A sample of twelve corner lots in the Westboro Neighborhood within one quarter mile (see exhibit, Aerial Map Sample Corner Lots) indicates the subject property is relatively small, has an irregular shape, and is narrow at the rear property line, making compliance with setback standards difficult. Of these 12 lots sampled, it is the third smallest at 15,260 sf and has the smallest rear lot line dimension at 86'. The lot sizes in the sample range in size from 15,260 to 23,217 sf. The mean lot size is 18,899 sf, and the median is 18,600 sf.

There are several smaller corner lots further north in the Westboro Neighborhood that are smaller than 1605 SW Lakeside but these smaller lots are more rectangular in shape, and some of these lots contain homes that do not meet current rear setback requirements.

As indicated in the applicant's Exhibits A and B, and as noted in the applicant's letter, at 1,487 sf the building envelope in compliance with setbacks is small, and its triangular shape makes it especially challenging to comply with setback standards. Therefore, building setback variances in some form are justified on the basis of lot size and lot geometry.

Fence Setback: To a lesser extent the same factors that make the lot unique for building setbacks also apply to fences. For a homeowner having a fence around a back yard for privacy and security is a reasonable expectation. As proposed, the fence will enclose an estimated area of 1,500 sf in the rear yard of the proposed residence. To meet the required setback the fence must be set back 35 feet from the property line. At that setback, the fence would enclose an estimated area of 650 sf at the rear of the proposed residence. While some relief from the fence setback might be warranted due to the lot's configuration, the requested variance is more than is necessary to relieve the owner from any hardship.

The BZA denied a similar request in 2007 (Case BZA07/V2, 1444 SW Westover Road) for which the applicant requested a variance to allow the corner of a proposed building addition to encroach 7 feet into the 40' platted setback. The BZA found that, while 1444 SW Westover Road is a corner lot with a "tear drop" configuration, there are similarly-configured corner lots within the Westboro Subdivision in which residential structures appear to comply with setback requirements and, therefore, found that the requested variance did not arise from a need unique to the property.

In conclusion, the variance request does not arise from such condition which is unique to the property and is ordinarily found in the same zone or district and is created by action of the applicant.

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

Any new development that does not comply with approved standards has much potential to have an adverse effect on the rights of adjacent property owners inasmuch as there is a level of public expectation that approved standards will be met. The required front building and fence setbacks are especially important because they were proposed by the Westboro Neighborhood as defining physical

elements of the neighborhood and its "estate" appearance which is a product of its inception and how it developed over its 90-year history.

Irrespective of its context and size in comparison to surrounding homes, the building is thoughtfully designed by an experienced architect and will be constructed with materials of high quality. Whether the architectural style has a positive effect is subjective and is the subject of a separate application for appeal by the owner.

For its relatively large size and minimal setback from Westover Road the proposed residence will tend to have a negative effect on its surroundings by casting a protruding "shadow" into the established front yard vista along Westover Road. The effect is exacerbated by the new home's design, which is a departure from architectural styles of the homes in the immediate vicinity and in the Westboro Neighborhood generally. The building will be conspicuously larger than most of the residences facing Westover between Lakeside and Holly Lane, and is also larger than the residences on Lakeside Drive southwest of Westover Road. The proposed residence is 5,657 sf in area, including its 1,145 sf three-car garage. The other homes on this block of Westover, from Lakeside Drive to Holly Lane, range in size from 2,200 sf to 4,176 sf (garages included). The two homes on Lakeside Drive west of the subject property are 2,154 sf and 1,813 sf. The three homes on Lakeside Drive across the street from the subject property and south of Westover Road range in size from 2,774 sf to 3,207 sf.

The proposed home may have a positive effect on neighboring property owners because its size and value. It is commonly believed that the addition of a large, high value home to a neighborhood block of relatively smaller and more modest homes raises the economic value of real estate on the block. However, this potential positive effect is largely economic and difficult to predict.

The proposed fence is a 5' high, black powder-coated aluminum ornamental type and, therefore, is of high quality and expected to be durable. But the proposed location of the fence is conspicuously intrusive and compromises the character Westboro, which is defined by its deep front yards.

In conclusion, granting the requested building and fence setback variances will have an adverse effect on the rights of neighboring owners and residents.

3. That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;

Setbacks promote the public health, safety, and general welfare by providing adequate distances between structures and uses for purpose of fire protection, light and ventilation, crime prevention, etc. Setbacks and fence requirements precluding placement beyond the front face of residences can also be used to create neighborhoods with greater visual interest thereby defining a sense of place within a given area.

Requiring strict compliance with setback standards is difficult mainly because of the dimensions and irregular geometry of the site, which provides for a triangular shaped building envelope of 1,487 sf. In fact, the existing home has a relatively modest footprint, including the ground floor and the garage, of roughly 2,400 sf and it encroaches 11 feet into the platted front setback on Lakeside, 14 feet into the platted front setback on Westover, and 11 feet into the rear setback.

However, the Kansas appellate courts have held that where the hardship is created by the property owner, it is not an "unnecessary hardship" deserving of a variance. *Hacker v. Sedgwick County, Kansas*, 48 Kan. App.2d 164 (2013). The owner is creating his own hardship by proposing the construction of a house that is more than twice the size of the existing 2,627 sf home and which encroaches further into the grandfathered front and rear setbacks on Westover.

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

The variances requested are not anticipated to have an adverse effect on the public health, safety, morals, order, or convenience. However, the proposed development is inconsistent with the established character and appearance of the neighborhood. The size of the proposed structure and its substantial encroachment on setback standards established based upon a consensus of the Westboro Neighborhood will have an adverse effect on the welfare of surrounding property owners, the Westboro Neighborhood, and set a precedent for future degradation of Westboro's established and unique character.

5. That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

Building and fence setbacks along streets and in relation to existing homes are a defining element of the Westboro Neighborhood. Wide-sweeping street vistas so common in Westboro due to its restrictive font yard setbacks are arguably the most distinctive feature of the neighborhood as originally envisioned and planned. Neighborhood residents requested, by consensus, the creation of particular standards and enforcement of these standards by the formation of the Westboro Neighborhood Conservation District (NCD). The NCD is intended to maintain maintain established character-defining setbacks so that the area remains relatively uniform with respect to its character and appearance in order to preserve the neighborhood's defining element. To grant the requested variance would be in opposition to the general spirit and intent of the regulations.

Planning Staff Recommendation

Based on the above findings staff recommend the Board of Zoning Appeals **DISAPPROVE** the requested variances.

Exhibits List on Next Page.

Staff Report by: Michael Hall, AICP, Current Planning Manager

Exhibits:

A. Appeal Application
B. Variance Application
C. Planning Director's February 2, 2018 Letter
D. Applicant's February 5, 2018 Response Letter
E. Applicant's Exhibit A & B
F. Applicant's Exhibits E1 & E2
G. Applicant's Exhibits E3 & E4
H. Applicant's Exhibits E7 & E8
I. Proposed Fence
J. Aerial Map 1
K. Aerial Map 2
L. Aerial Map of Comparative Home Sizes
M. Aerial Map of Sample Corner Lots / Lot Size and Dimension at Rear Property Line
N. Aerial Map of Existing and Proposed Setbacks
O. Photographs 1, 2, and 3
P. Citizen Comments
Q. Westboro NCD

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. BZA18A/01	Hearing Date: 3/12/2018
Filing Fee $ PAID W/APPLICATION	

Make checks payable to City of Topeka .

Applicant: Scott Gales Phone: 785.640.3058

Address: 1605 SW Lakeside Drive

Location of Property: 1605 SW Lakeside Drive, Topeka, KS

Legal Description of Property:

Lot 1 and the Easterly 8 feet of Lot 30, Block 11, in Westboro Addition to the City of Topeka, Shawnee County, Kansa

Current Use of Property: Single Family Residence

Proposed Use of Property: Single Family Residence

Decision Being Appealed:

Explanation of Administrative Error:

The Westboro Neighborhood recently adopted a Neighborhood Conservations District Design Standard.
The application of this prohibits me from renovating, remodling, and adding on to my house. The current house is
a Cape Code style home with Vinyl siding. According the NCD, i cannot change the style of the to a more
contemporary modern American style that is better suited to the midwest and will allow for more room.
The NCD design also restricts my use of modern high-quality architectural buiding materials since they do not match
the "historic" character of the neighborhood. See the attached Appeal exhibit letter that covers these items and my
request for an Appeal of this decision.

Applicant s Signature

2/6/18
Date

EXHIBIT A

CITY OF TOPEKA PLANNING DEPARTMENT

620 SE Madison Street, Unit 11
Topeka, Kansas 66607

Office: (785) 368-3728
Fax: (785) 368-2535

APPLICATION TO THE BOARD OF ZONING APPEALS

Variance/Exception

Planning Office Use Only	
Case No. BZA18V/01	Hearing Date: 3.12.18
Filing Fee $ Pd	
Zoning district: _____	Building height: _____ # of stories: _____
Parcel size: _____	Lot dimensions: _____
Planning Office Use Only	

Make checks payable to City of Topeka .

Applicant: Scott Gales Date: 2/6/18

Applicant Address: 1605 SW Lakeside Drive (Street) Topeka (City) Kansas (State) 66604 (Zip) Phone: 785.640.3058

Property Address: Same as Applicant Address

Legal Description: (use additional sheets if necessary)

Lot 1 and the Easterly 8 feet of Lot 30, Block 11, in Westboro Addition to the City of Topeka, Shawnee County, Kansas

Action Sought:

x A *variance* from a provision of the Zoning Ordinance (Section to be appealed: See Below)

____ An *exception* from a provision of the Zoning Ordinance (Section to be appealed: _____)

Description of Action Sought:

NCD Design Standard - Building Setbacks (Westboro has platted setbacks of 50' on Lakeside Drive, 40' Setbacks on Westover Drive, and 30' Rear Yard setbacks). See attached letter with comments that address the requested for setbacks / SEE EXHIBITS A, B, and D.

EXHIBIT B
P1 OF 3

Applicant offers the following as grounds for this action: (In accordance with Section 2.45.110 of the Topeka Municipal Code, the Board of Zoning Appeals must determine that ALL of the following conditions governing unnecessary hardship have been met before a variance may be granted.) *All items must be addressed or the application will be deemed incomplete.*

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action of the property owner or applicant *(The problem must relate to the land. Community needs or personal hardships do not qualify as legitimate grounds for issuing a variance.)*;

Due to the lot being located on a corner with an acute intersection, and thus a lot with an acute size, only 9.75% of the lot is actually buildable, or within the setbacks. The lot size is 15246 SF (0.35acres). This home is one of the smallest in the neighborhood, and already exceeds the platted setbacks on three sides

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

The scale and size of our home will be closer is size to most of the surrounding homes. The proposed remodel will only increase the size of the home so that it goes from 9.75% coverage of the lot, to 19.9% coverage of the lot. The new roof height will be 27'-7" at the peak and the facade will appear two stories like the surrounding homes.

3. That the strict application of the provisions of this chapter of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

Our home is one of hte smallest in the neighborhood. The platted setbacks combined with the accute shape of the lot create a small buildable area that limits the legal size of the home in a neighborhood that is full of larger homes with comfortable-sized rooms and garage additions. Our exhisting home already oversteps the setbacks by 26%

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

No. In fact, the proposed additions will increase the quality living space of the home by 50% and is designed by a reputable architect. The increased value of the property due to the improvements will contribute to the underlying improvements to the neighborhood, including value, quality of life, appearance, etc.

5. That granting the variance desired will not be opposed to the general spirit and intent of this chapter.

The purpose of the NCD Design Standards and the platting is to make sure the home in the neighborhood contribute to the value and quality of life in the neighborhood. The design is of a high architectural order, the quality of the materials will be of high quality, and the size of the lot means the home will still be in context with the other homes

Please attach additional sheet if necessary.

EXHIBIT B
P2 OF 3

Authorization:

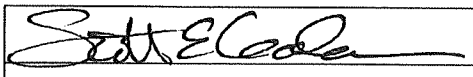
Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

Printed Name of Owner(s):

Scott Gales

Signature(s) of Owner(s):



Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Printed Name of Agent: _____

Signature of Agent: _____

Mailing Address: _____
(Street) (City) (State) (Zip)

Phone Number: _____

_____
Printed Name of Applicant

_____
Signature of Applicant

EXHIBIT B
P3 OF 3

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

February 2, 2018

Scott Gales
1605 SW Lakeside Drive
Topeka, KS 66604

RE: 1605 SW Lakeside Drive

Dear Mr. Gales:

Based upon information received to date for a new home building permit at 1605 SW Lakeside Drive, it is found not compliant with the zoning regulations of the City including the Westoboro Subdivision plat and the Westboro Neighborhood Conservation District (NCD) as described below.

NCD Design Standard - Building Architectural Style and Details

- *New residences shall be constructed in one of the architectural styles identified in the "Representative Sample"*
    - The architectural character of the block where this property is located is Mid-Century American. Facing blocks also include Early American, European, and Tudor Revival.
    - The proposed structure is a 21st Century modern design that does not match any of the architectural styles within Westboro or the architectural style surrounding it. The particular details of the design that are inconsistent include:
        - The standing seem metal roof material is not consistent with Westboro.
        - There is horizontal wood siding proposed, which is consistent. Although, wood siding in Westboro is painted. The wood siding will have a stain finish, which is not consistent.
        - The man-made stone NICHIHA panels are unique to Westboro and are not consistent.
        - The new design has a shallow flat roof. Homes in Westboro have much steeper roof pitch angles and many have dormers on the front façade. The proposed roof design is inconsistent.
        - The design has also multiple sized windows. Consistently sized and/or proportional windows are typical in Westboro. In the proposed design, the smaller windows are not proportional with the larger windows. In addition, very small multiple windows on the façade are not consistent with the neighborhood.

EXHIBIT C
P1 OF 2

NCD Design Standard - Building Setbacks

- *New residences shall be built to the front setback line that is ±10% of the average front setback on the block.*
    - As a corner lot, SW Westover Road is also considered a front yard. The NCD front yard setback requirement on SW Westover Rd. is 30'– 35'. The house is proposed to be setback 12'-9 3/4" from SW Westover Road, which is not consistent with the NCD front yard setback standard.

Zoning and Plat – Building Setbacks

- A 50' setback is platted along SW Lakeside Drive (Westboro Subdivision)
    - The existing house setback is not indicated with the permit but appears to be the same as the proposed house at 39'-11 ¼". This would be considered legal non-conforming with the platted setback IF the above is true.

- A 40' setback is platted along SW Westover Road (Westboro Subdivision)
- A 30' setback is required in the R-1 Zoning District along Westover Road
    - The existing house is setback 50' along Westover and considered conforming. The proposed setback of 12'-9 3/4" for the new house is not compliant.

NOTE: Staff was unable to determine the proposed side yard and rear yard setback since they were not noted with the permit. The outdoor patio setback also wasn't noted. A revised site plan must be submitted so that a final determination on those setbacks can be made.

NCD Design Standard - Fences and Walls

- *Fences shall not be allowed in front of the front face of a residence. See Appendix A for illustration.*
    - While the fence does not extend beyond the front face of the propose residence, this property is considered a reverse corner lot (per Appendix A: Westboro NCD Requirements). As such, a fence built along SW Westover Rd. should not extend beyond the front face of the residence to the west. The proposed fence is shown in front of the front face of the residence to the west and does not meet the Westboro NCD design standard for fences.

Appeal

You may appeal these findings of non-compliace to the Board of Zoning Appeals (BZA) as provided in Chapter 2.45 TMC. Please contact this office for assistance with any questions.

In addition, residential drives on a local street shall not have more than a 24' throat at property line and 34' curb openings. The proposed new 2nd drive entrance will need to be adjusted accordingly and resubmitted for review. This criteria cannot be appealed to the BZA.

If you have any questions or I can be of assistance, please let me know.

Sincerely,

Bill Fiander, AICP
Planning Director

Cc: Dan Warner, Mike Hall

EXHIBIT C
P2 OF 2

February 5, 2018

Mr Bill Fiander, AICP, Director
City of Topeka
Planning Department
620 SE Madison Street, Unit 11
Topeka, Kansas, 66607

RE: 1605 SW Lakeside Drive
Westboro Subdivision plat
Westboro Neighborhood Conservation District

Mr Fiander

Please see my RESPONSES below to the comments I received via email February 2, 2018. I have attached Exhibits for reference. Please advise if additional information may be needed to support my responses.

Should these Reponses, or simple follow up clarification, not allow for administrative approval of my project, I would request that my project be processed and forwarded to the BZA for further consideration per the instructions of your Feb 2 correspondence.

Below this sentence are the city staff comments as stated in your Feb 2nd 2018 letter with my responses **highlighted in bold:**

NCD Design Standard - Building Architectural Style and Details

- *New residences shall be constructed in one of the architectural styles identified in the "Representative Sample"*
  - *The architectural character of the block where this property is located is Mid-Century American. Facing blocks also include Early American, European, and Tudor Revival.*
    - **RESPONSE: I respectfully appreciate the intentions of the Westboro Neighborhood Conservation District that was adopted several short years ago. As Chairman of the Planning Commission at the time, I noted that while I thought it was well intentioned, it was incorrectly basing its uniqueness and exclusivity on the vintage building styles that are popular in the neighborhood, and not the expectation of high-design, quality construction, and other factors that didn't limit future development to dated style preferences that represent modern building science, and design methodologies. I also recall discussing how I considered these limitations to be mis-guided and possibly unconstitutional. I took the opportunity and googled "Mid-Century American" – I couldn't find a definition of this style. I looked thru every Architectural Style book, including one produced by the National Trust for Historic Preservation, I have acquired since college, and still, no use of "Mid Century American" to describe a residential style. However, the first reference every time is "Mid Century Modern." Nearly every home that I is represented from the 1920's thru the 1960's includes a reference to Mid-Century Modern. Ironically, these many styles have more in common with my proposed home design concept (Prominent low sloping rooflines, horizontal siding. Large windows, etc) than many of the**

EXHIBIT D

homes in the neighborhood. Mid-Century Modern homes are greatly reflective of the inspirations of many of the greatest architects of the era, including Frank Lloyd Wright, an American Architect who championed the mid-western influenced "Prairie School Design". Prairie School style was unique design that embraced the technology, materials, and modern living of its time, not some by-gone era.

- RESPONES: With all due respect.... *Early American* is not really an original style, but a collection of "faux" or "revival" versions that were popular in the late 1800's thru the 1930's. The origins of this Style are based on homes originally built in American and parts of Europe the 1700's and early 1800's. It is very broad in nature since is can cover homes that were built in the south and north, usually along the eastern part of the United States. It also included "European" or "Tudor Revival" since there were just variations of other European influences. None of these homes really reflect modern -midwestern living. Most of these homes had to be modernized via the floor plans or amenities to be popular but were adorned to create an impression of the style. In the 20th Century it was stylistically common make homes have features that resembled this era out of nostalgic popularity. Since there is no "one" style that makes up this design era (Colonial, Salt box, Federal, Greek Revival, Queen Anne, Cape Cod, Tudor Revival, Neo-Classical, etc) it is a eclectic collection most of it is based on the ornamentation that was popular then. What gives these homes value, like any era of style, is how well they were taken care of, or the quality of the construction. Due to all the unnecessary ornamentation popular then, these homes can be very expensive to maintain or to modernize to meet contemporary living preferences and amenities.

- *The proposed structure is a 21st Century modern design that does not match any of the architectural styles within Westboro or the architectural style surrounding it. The particular details of the design that are inconsistent include:*
  - *The standing seem metal roof material is not consistent with Westboro.*
  - *There is horizontal wood siding proposed, which is consistent. Although, wood siding in Westboro is painted. The wood siding will have a stain finish, which is not consistent.*
  - *The man-made stone NICHIHA panels are unique to Westboro and are not consistent.*
  - *The new design has a shallow flat roof. Homes in Westboro have much steeper roof pitch angles and many have dormers on the front fa9ade. The proposed roof design is inconsistent.*
  - *The design has also multiple sized windows. Consistently sized and/or proportional windows are typical in Westboro. In the proposed design, the smaller windows are not proportional with the larger windows. In addition, very small multiple windows on the fa9ade are not consistent with the neighborhood.*

    - RESPONSE: I disagree with the notion that a home appropriate to modern Westboro has be of of a "Style" similar to the homes around it. Quality Architecture by nature is not the art of mimicking the style of the architecture around it, quite the opposite. Quality Architect respects context when needed. This can be scale, massing, site orientation, climate, etc. Quality architecture can also contradict its context when necessary due to sub-par or dated style, design, technology, quality, etc. The style limitations you have listed are only per a recently adopted set of rules (Westboro Neighborhood Conservation District) that have only been in place in the last three years. They do not reflect modern, high design, architectural styles. The concept I have proposed is similar in size and massing with most of the homes in the neighborhood. The height of the home will not be substantially different than the adjoining homes. The amount

of window area compared to home exterior, will not be more than most of the surrounding homes. I have owned the current home for 14 years. It is a Cape Cod style home with vinyl siding. It is undersized for the neighborhood. The style was popular in New England for all the reasons that people living there experienced in weather and climate, which is very different than the mid-west. I have been working on this home design now for most of the last decade. The design concept I have proposed has a high -architectural style that is indicative of the traditional influence of modern architectural design found in the 20th Century in the mid-west. Dormers are common in high-roof homes to turn attics into living space and provide light. Dormers are unnecessary if the second floor had adequate light thru the perimeter walls. The lower-pitched roof lines with deeper overhands are representative of the opportunities that high-quality modern construction materials will allow with the design for the local mid-western climate. High-pitched roofs were built as a function to accommodate poor weatherization offered by wood shingles & to offset high-snow accumulation in northern climates. They are not indicative of modern high-architecture building methods. They are used in modern times, not due to the local climate or limits of building methods, but to create a style that is not native to the local climate.

I am requesting a variance to these items.

NCD Design Standard - Building Setbacks

- *New residences shall be built to the front setback line that is ± 10% of the average front setback on the block.*
  - *As a corner lot, SW Westover Road is also considered a front yard. The NCD front yard setback requirement on SW Westover Rd. is 30'- 35'. The house is proposed to be setback 12'-9 3/4" from SW Westover Road, which is not consistent with the NCD front yard setback standard.*
    - **RESPONSE: The current house doesn't meet any of the existing setbacks along Westover (front:40'), Lakeside (front 50'), or the west property line (rear yard:30') . Due to the corner lot having an acute angle at the intersection of Lakeside Drive and Westover, there is less than 10' of the lot that is actually developable when the platted setbacks are enforced (see lot size info below).**

EXISING LOT SIZE:	**15,246 SF**
EXITING BUILDABLE AREA (after setbacks):	**1,487 SF**
CURRENT HOME FOOTPRINT:	**2,024 SF**

The Existing residence is 2,024 SF on the main floor with the inclusion of the Garage. See attached Exhibit A. Thus, the house is existing, non-conforming to the extent that 24% of the existing home and garage are outside of the existing platted setbacks. Using information, I reviewed on the county GIS maps, it is safe to say that nearly every home in the immediate vicinity of my home exceeds these plated setbacks to some extreme or another.

Per attached exhibit A (Sheet A-001) the existing Garage at 1605 SW Lakeside exceeds the 40' setback along Westover by 14'+, the back of the house exceeds the 30' rear-yard easement by nearly 11' at one location and 7'+ at another. Lastly, at the front of the existing home, the main house exceeds the 50' front yard setback of Lakeside Drive by 10'+. In review of all of the adjoining Residential properties, they all

appear to encroach the 40' setback of Westover and 50' encroachment of Lakeside. Some of them appear to encroach more than my residence does.

My proposed work to the home will include removal of the undersized garage, the attaching enclosed breezeway/entry, and the rear addition to the home on the west. The current garage faces the rear yard (north) and the attached drive takes up most of my "backyard" in order to access Westover (see A-001) I propose to replace them with modern, adequately sized additions. On Westover, I plan to build closer to the property line by increasing the encroachment from 14'+ to 26'+. This is required to build an adequate., modern sized, three car garages. It will face Westover, like the neighbor's home across the street, at 3310 Westover, and 1612 SW Lakeside Drive, and next door at 1617 SW Lakeside Drive. The addition along the back is to expand the kitchen. The current design encroaches by 10.8'. The new addition will encroach by 13.5'. Most people will not notice the difference!! Along the front, I plan to add a front porch. The porch will be over the current 50' setback, but it will not encroach any more than the rest of the front of the house which currently encroaches it by 10.2'. The porch will bring much-needed living space to the currently baron, covered porch less, front design typical of "Cape Cod" homes.

ACTUAL BUILDABLE AREA due to setbacks: 1,487 SF
ACTUAL Existing main level enclosed area (w/ Garage): 2024 SF
Proposed New main level (w/Garage): 3046.45 SF

I am requesting a variance to these items.

Zoning and Plat - Building Setbacks

- *A 50' setback is platted along SW Lakeside Drive (Westboro Subdivision)*
  - *The existing house setback is not indicated with the permit but appears to be the same as the proposed house at 39'-11 ¼". This would be considered legal non-conforming with the platted setback IF the above is true.*

- *A 40' setback is platted along SW Westover Road (Westboro Subdivision)*
- *A 30' setback is required in the R-1 Zoning District along Westover Road*
  - *The existing house is setback 50' along Westover and considered conforming. The proposed setback of 12'-9 3/ 4" for the new house is not compliant.*

NOTE: Staff was unable to determine the proposed side yard and rear-yard setback since they were not noted with the permit. The outdoor patio setback also wasn't noted. A revised site plan must be submitted so that a final determination on those setbacks can be made.

- **RESPONSE: See BUILDING SETBACK information provided on attached sheets A-001 and A-002 with the information including in the preceding item response.**

NCD Design Standard - Fences and Walls

- *Fences shall not be allowed in front of the front* face *of a residence. See Appendix A for illustration.*
  - While the fence does not extend beyond the front face of the propose residence,

this property is considered a reverse corner lot (per Appendix A: Westboro NCD Requirements). As such, a fence built along SW Westover Rd. should not extend beyond the front face of the residence to the west. The proposed fence is shown in front of the front face of the residence to the west and does not meet the Westboro NCD design standard forfences.

- **RESPONSE: My neighbor's house across the street to the north, at 1565 SW Lakeside, is located on the corner. Their fence is a 5' tall+ black steel/iron fence that goes to within 3 feet of Westover Drive along the South side of their home. This is 15' beyond the property line, into the right-of-way. I am proposing my fence start at the corner of my new garage addition and extend to my rear property line to the west. It will not extend beyond the new face of my garage addition along Westover, and it will be no closer than 12' from the property along Westover. I am requesting a variance for the acceptance of this. The design of the fence in style will be city of Topeka fence style and appearance requirement.**

In addition, residential drives on a local street shall not have more than a 24' throat at property line and 34' curb openings. The proposed new 2nd drive entrance will need to be adjusted accordingly and resubmitted for review. This criterion cannot be appealed to the BZA.

- **RESPONSE – Regarding the 24' Throat requirement - See attached Exhibit C – I propose to reduce down the design width of the drive to meet the 24' Width. Proposed Drive is shown in RED.**

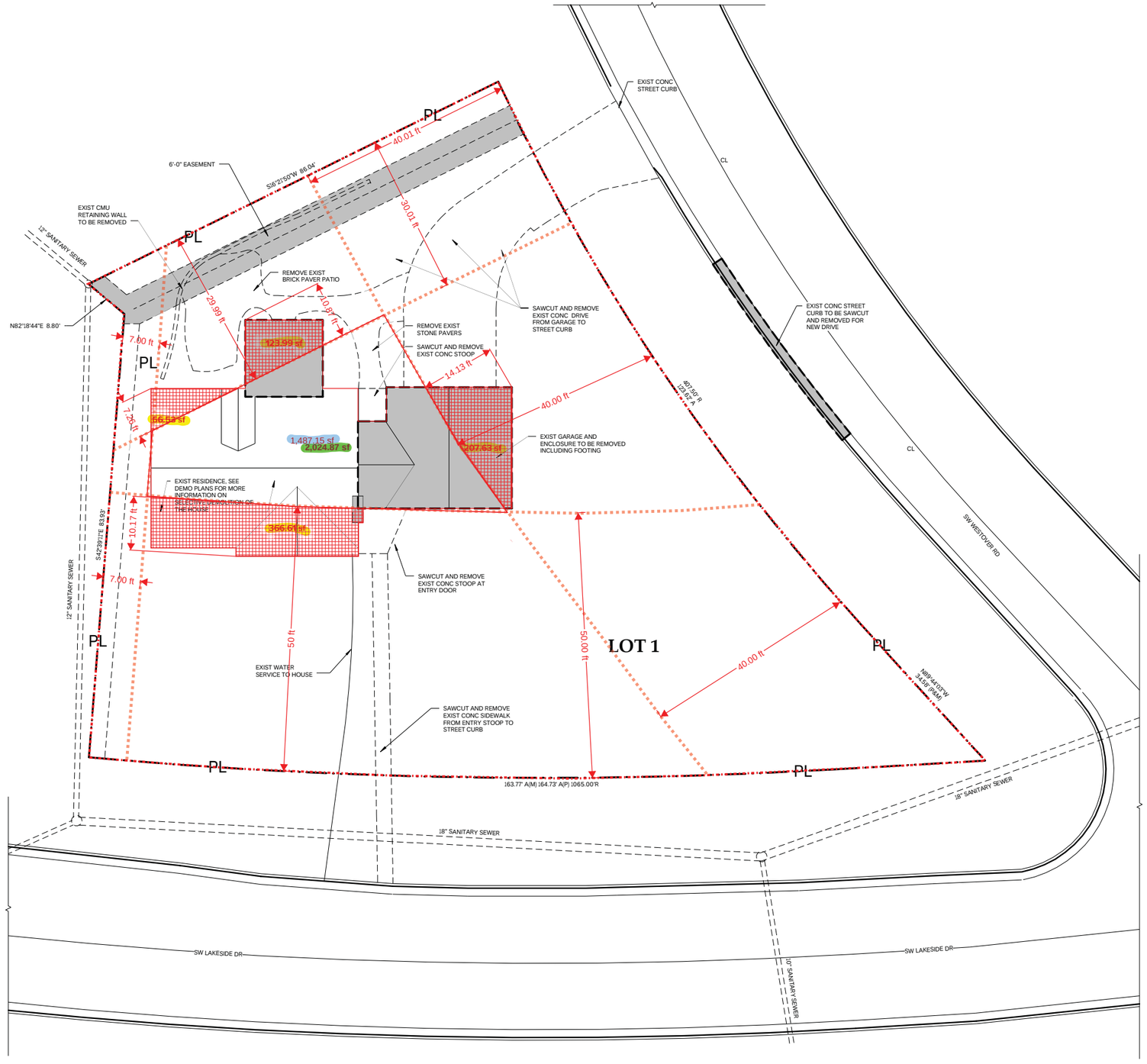
Again, please advise of any minor revisions that may grant administrative approval. In lieu of that, I am prepared to have this forwarded to the BZA per your Feb 2nd 2018 correspondence for further consideration

Thank you again for your consideration in this matter.

Respectfully,

Scott E Gales, AIA-LEED AP
Architect & Co-Owner of the Residence in question

12/21/2017 8:45:44 PM



SITE
Demolition Plan
SCALE: 1" = 10'-0"

EXHIBIT E
P1 OF 3

APPLICANT'S
EXHIBIT A

Gales House 2.0

REVISIONS

A Remodel and Addition to the:

The Gales Residence

1605 Lakeside Drive
Topeka, KS

SHEET TITLE

Demo Site Plan

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET

A-001

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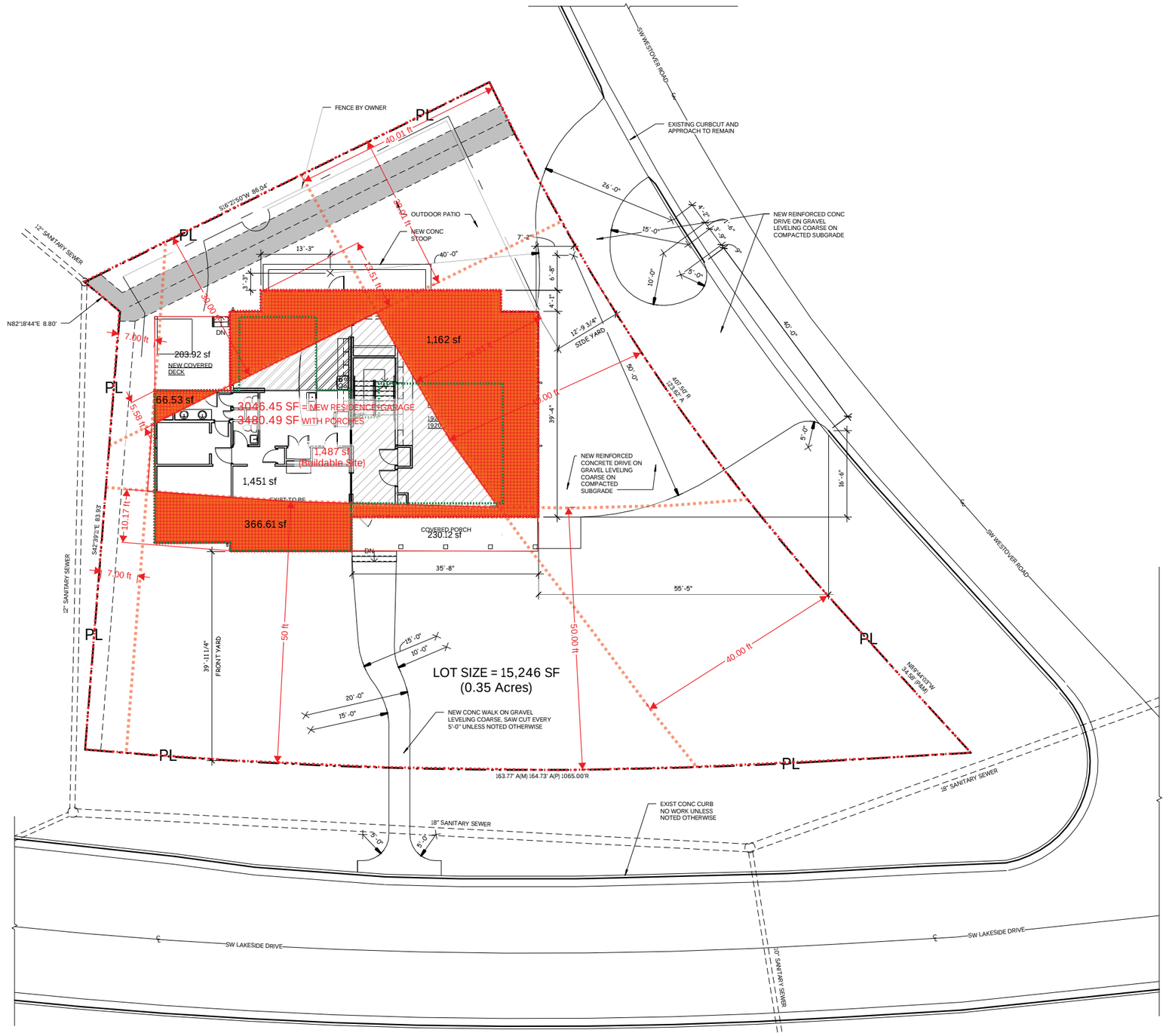

Site Notes

1. VIF UTILITY LOCATIONS BEFORE COMMENCEMENT OF WORK DESCRIBED HEREIN.
2. UPON FINISH GRADING, REMOVE EXCESS TOPSOIL AND EXCAVATED SUBGRADE MATERIAL FROM SITE.
3. FINISH GRADE WITH 6" MINIMUM OF SUITABLE, CLEAN TOPSOIL. SEED ALL AREAS DISTURBED BY PROJECT WITH 10 LBS OF K-31 FESCUE PER 1,000 SF - INSTRUCT OWNER TO WATER LIGHTLY FOR 15 MINUTES DAILY FOR 5 CONSECUTIVE DAYS.
4. CROSS SLOPE OF ALL WALKS TO BE 1:50 MAX. GRADE AT PARKING TO BE 1:20 MAX.
5. PROVIDE TROWELED JOINTS AT ALL CONC WALKS 5'-0" MAX UNLESS NOTED OR DIMENSIONED OTHERWISE.
6. SHOULD A GEOLOGIST DETERMINE THAT ADDITIONAL MATERIAL MUST BE REMOVED AND NEW MATERIAL IN EXCESS OF THAT SPECIFIED BE BROUGHT IN, PROVIDE A UNIT COST FIGURE PER CUBIC YARD OF MATERIAL REMOVED AND BROUGHT IN.
7. ALL APPROACHES, WALKS, DRIVES AND OTHER PAVED SURFACES INSTALLED IN PUBLIC RIGHT-OF-WAYS TO BE IN COMPLIANCE WITH THE STANDARDS OF CITY OF TOPEKA.
8. NO GEOLOGY PLAN HAS BEEN PROVIDED TO THE ARCHITECT - CONTACT THE ARCHITECT IF CONDITIONS APPEAR TO BE OTHER THAN INDICATED.

ARCHITECTURAL
Site Plan
SCALE: 1" = 10'-0"

EXHIBIT E
P2 OF 3

APPLICANT'S
EXHIBIT B

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Gales House 2.0

REVISIONS

A Remodel and Addition to the:

The Gales Residence

1605 Lakeside Drive Topeka, KS

SHEET TITLE

Architectural Site Plan

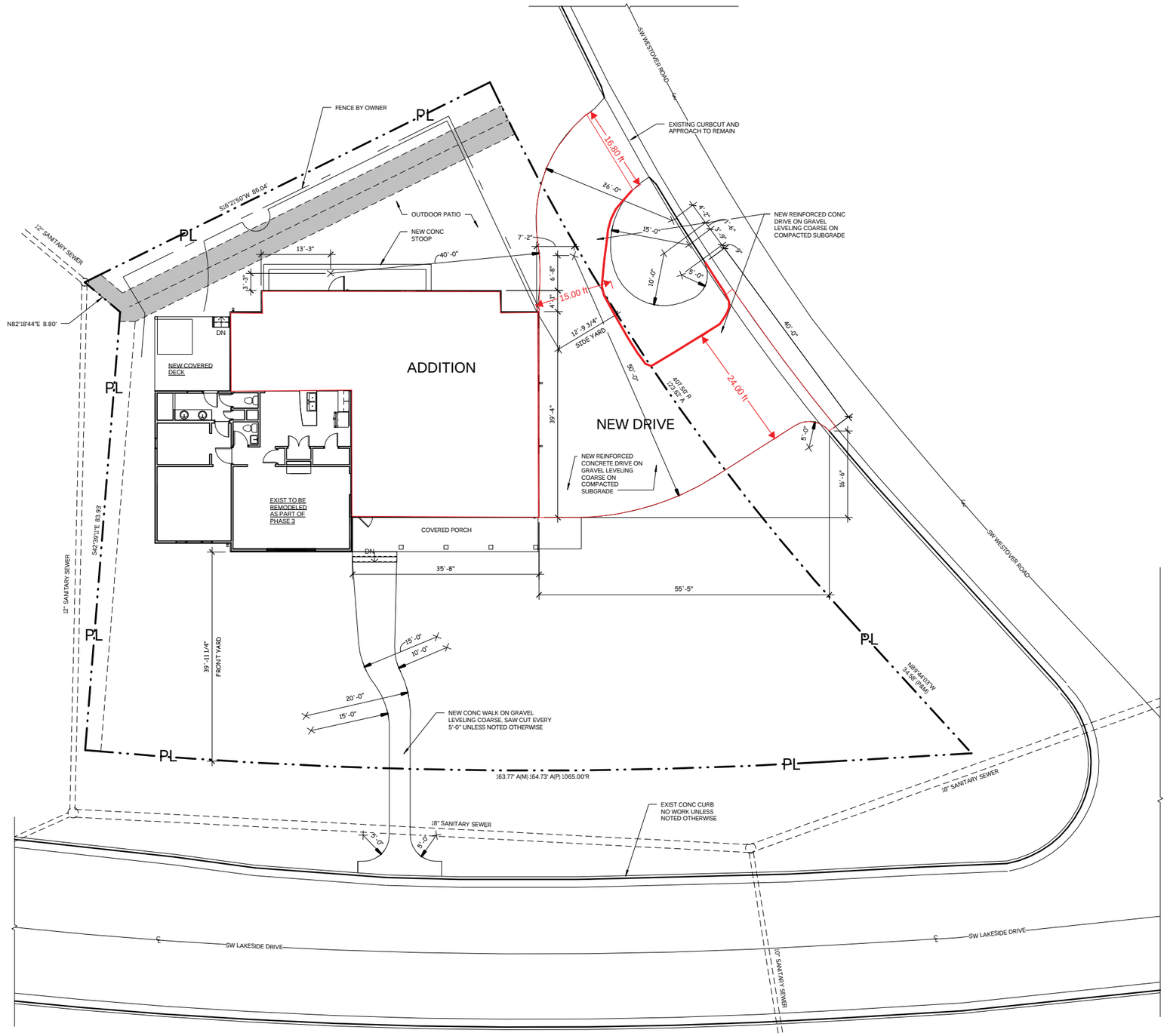
JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET

A-002

12/21/2017 8:45:51 PM



Site Notes

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8. NO GEOLOGY PLAN HAS BEEN PROVIDED TO THE ARCHITECT - CONTACT THE ARCHITECT IF CONDITIONS APPEAR TO BE OTHER THAN INDICATED.

ARCHITECTURAL
Site Plan
SCALE: 1" = 10'-0"

EXHIBIT E
P3 OF 3

Gales House 2.0

REVISIONS

A Remodel and Addition to the

The Gales Residence

1605 Lakeside Drive Topeka, KS

SHEET TITLE

Architectural Site Plan

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET

A-002

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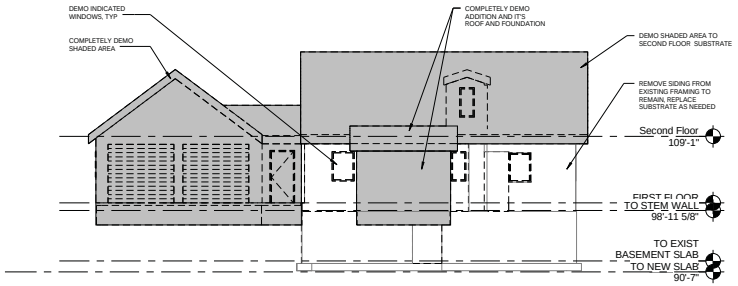
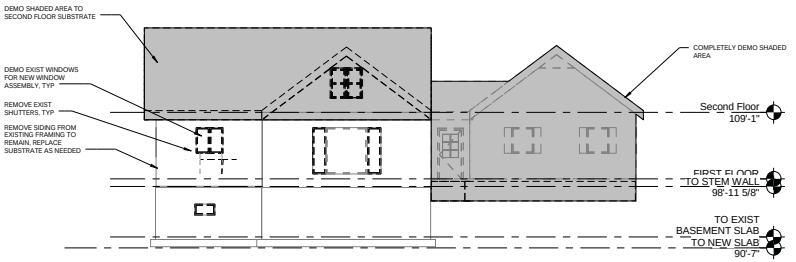
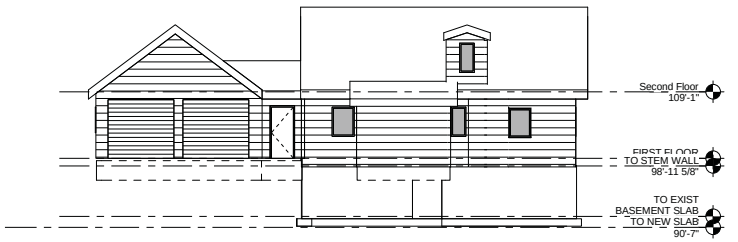


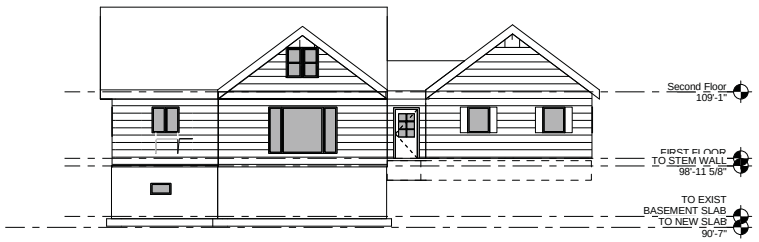
D DEMOLITION
North Elevation
SCALE: 1/8" = 1'-0"



C DEMOLITION
South Elevation
SCALE: 1/8" = 1'-0"



B EXISTING
North Elevation
SCALE: 1/8" = 1'-0"



A EXISTING
South Elevation
SCALE: 1/8" = 1'-0"

EXHIBIT F
P1 of 2

APPLICANT'S
EXHIBIT E-1

Gales House 2.0

REVISIONS

The Gales Residence

A Remodel and Addition to the:
1605 Lakeside Drive
Topeka, KS

SHEET TITLE
Existing Elevations

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET
A-401

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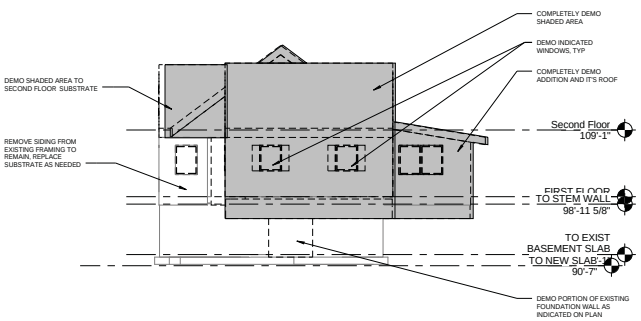
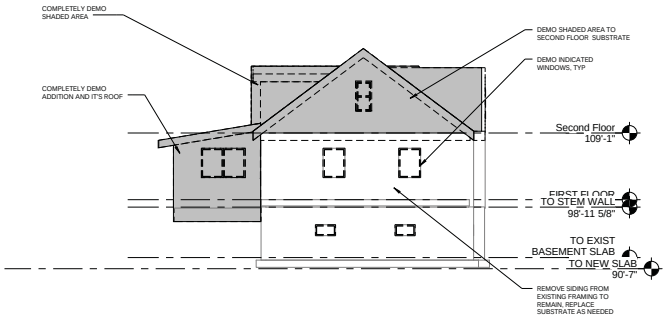
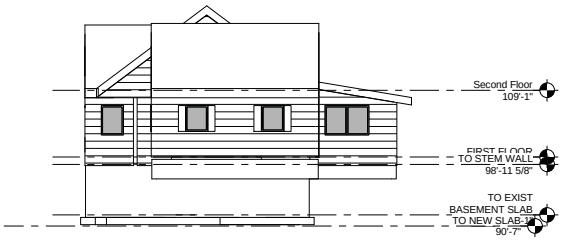


D **DEMOLITION**
East Elevation
SCALE: 1/8" = 1'-0"



C **DEMOLITION**
West Elevation
SCALE: 1/8" = 1'-0"



B **EXISTING**
East Elevation
SCALE: 1/8" = 1'-0"

A **EXISTING**
West Elevation
SCALE: 1/8" = 1'-0"

EXHIBIT F
P2 of 2

APPLICANT'S
EXHIBIT E-2

Gales House 2.0

REVISIONS

A Remodel and Addition to the:
The Gales Residence
1605 Lakeside Drive
Topeka, KS

SHEET TITLE
Existing Elevations

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET
A-402

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B East Elevation
SCALE: 1/4" = 1'-0"

A South Elevation
SCALE: 1/4" = 1'-0"

EXHIBIT G
P 1 of 2

APPLICANT'S
EXHIBIT E-3

Gales House 2.0

REVISIONS

The Gales Residence

A Remodel and Addition to the:
1605 Lakeside Drive
Topeka, KS

SHEET TITLE
New Elevations

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET
A-403

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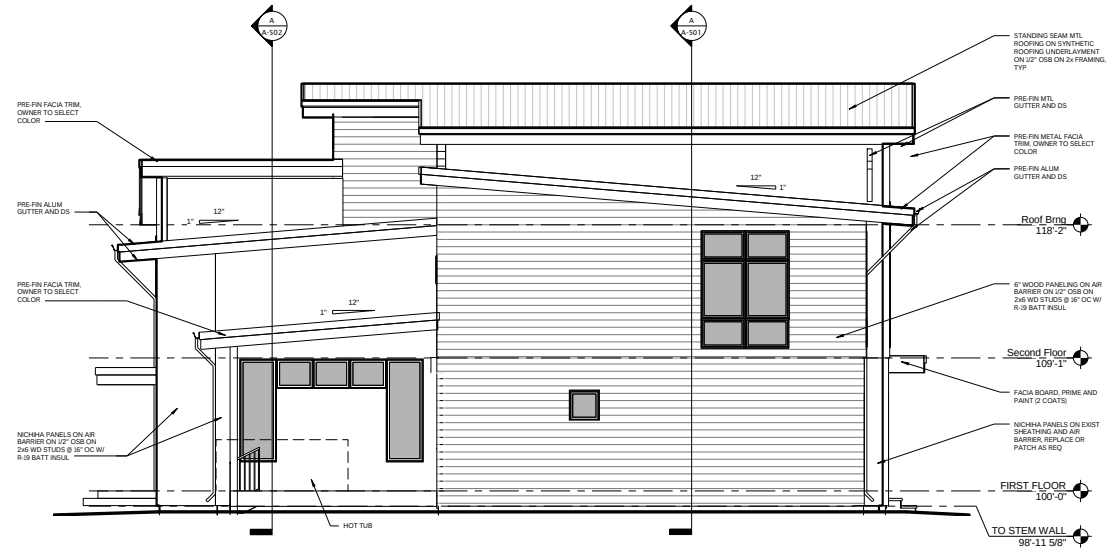

B West Elevation
SCALE: 1/4" = 1'-0"

A North Elevation
SCALE: 1/4" = 1'-0"

EXHIBIT G
P 2 of 2

APPLICANT'S
EXHIBIT E-4

Gales House 2.0

REVISIONS

The Gales Residence

A Remodel and Addition to the:
1605 Lakeside Drive
Topeka, KS

SHEET TITLE
New Elevations

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET
A-404

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Existing Axio
SCALE: NTS

New Axio 1
SCALE: NTS

New Axio 2
SCALE: NTS

New Axio 3
SCALE: NTS

EXHIBIT H
P1 of 2

APPLICANT'S
EXHIBIT E-7

Gales House 2.0

REVISIONS

A Remodel and Addition to the:

The Gales Residence

1605 Lakeside Drive
Topeka, KS

SHEET TITLE
Axio

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET
A-901

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12/22/2017 6:38:19 PM

New Axio 4
SCALE: NTS

New Axio 5
SCALE: NTS

EXHIBIT H
P2 of 2

APPLICANT'S
EXHIBIT E-8

Gales House 2.0

REVISIONS

A Remodel and Addition to the:

The Gales Residence

1605 Lakeside Drive Topeka, KS

SHEET TITLE

Axio

JOB:	16-001
DRAWN BY:	RHM
PROJECT MGR:	RHM
PRINCIPAL:	SEG
DATE:	12/21/17

Gales House 2.0

SHEET

A-902

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Ironcraft (Common: 5-ft x 5-ft; Actual: 5.08-ft x 4.92-ft) Black Powder Coated Aluminum Decorative Fence Gate

Item # 726105 Model # 838634

No reviews

BZA18V-01 Scott Gales, 1605 SW Lakeside Drive: Proposed Fence

EXHIBIT I

BZA18A-01 & BZA18V-01 by Scott Gales - 1605 SW Lakeside Dr.

EXHIBIT J

BZA18A-01 & BZA18V-01 by Scott Gales - 1605 SW Lakeside Dr.

EXHIBIT K


GFLA- 1,778 sq.ft.
TLA- 2,969 sq.ft.
Garage- 608 sq.ft.
GFLA- 896 sq.ft.
TLA- 1,760 sq.ft.
Garage- 440 sq.ft.
GFLA- 2,042 sq.ft.
TLA- 3,616 sq.ft.
Garage- 560 sq.ft.
Neighborhood Park
GFLA- 1,053 sq.ft.
TLA- 1,878 sq.ft.
Garage- 423 sq.ft.
SW Westover RD
GFLA- 1,199 sq.ft.
TLA- 2,545 sq.ft.
Garage- 380 sq.ft.
GFLA- 1,324 sq.ft.
TLA- 1,926 sq.ft.
Garage- 484 sq.ft.
SW Lakeside DR
GFLA- 1,346 sq.ft.
TLA- 2,734 sq.ft.
Garage- 473 sq.ft.
GFLA- 931 sq.ft.
TLA- 1,812 sq.ft.
Garage- 342 sq.ft.
GFLA- 790 sq.ft.
TLA- 1,777 sq.ft.
Garage- 360 sq.ft.
GFLA- 1,444 sq.ft.
TLA- 2,465 sq.ft.
Garage- (none)
GFLA- 1,221 sq.ft.
TLA- 2,404 sq.ft.
Garage- 370 sq.ft.
GFLA- 1,511 sq.ft.
TLA- 2,419 sq.ft.
Garage- 525 sq.ft.
LEGEND
GFLA- Ground Floor Living Area
TLA- Total Living Area (above grade)
Garage- garage size
Data Source: Shawnee Co.Appraiser
EXHIBIT L

Corner Lot Size / Dimension at Rear Property Line

Size and Dimension Approximate

1. 1605 SW Lakeside / 15,260 sf / 86’ at rear p/l
2. 1565 SW Lakeside / 15,246 sf / 141’ at rear p/l
3. 3321 SW Westover / 16,988 sf / 168’ at rear p/l
4. 3237 SW Westover / 21,344 sf / 112’ at rear p/l
5. 1620 SW Lakeside / 17,424 sf / 2 lot lines form 1 p/l
6. 3604 SW Stratford / 15,246 sf / 160’ rear p/l
7. 1561 SW Westover / 18,513 sf / 135’ at rear p/l
8. 1551 SW Westover / 19,297 sf / 159’ at rear p/l
9. 1541 SW Westover / 22,651 sf / 185’ at rear p/l
10. 1501 SW Lakeside / 18,687 sf / 154’ at rear p/l
11. 1500 SW Lakeside / 22,913 sf / 142’ at rear p/l
12. 1501 SW Pembroke / 23,217 sf / 140’ at rear p/l

EXHIBIT M

BZA18V-01 Scott Gales, 1605 SW Lakeside Drive: Existing and Proposed Setbacks

EXHIBIT N

On Westover Rd., west of subject property, facing east

EXHIBIT O
P1 OF 3

On Westover Rd., north of subject property, facing south

EXHIBIT O
P2 OF 3

On Lakeside Drive
east of subject
property, facing
west

EXHIBIT O
P3 OF 3

Kris Wagers

To: Michael Hall
Subject: FW: Davis Opposition to BZA18A/01 & BZA18V/01

From: Cliff Davis [mailto:cliffcdavis@gmail.com]
Sent: Thursday, March 01, 2018 1:59 PM
To: Bill Fiander
Cc: Kathi Davis
Subject: Davis Opposition to BZA18A/01 & BZA18V/01

EXHIBIT P
"Citizen Comments"

TO:
Mr. Bill Fiander, AICP
Topeka Planning Department
620 SE Madison Street
Topeka Kansas 66607

RE: BZA18A/01 & BZA18V/01 by Scott Gales

Dear Mr. Fiander:

My wife, Kathi Davis, and I reside in the Westboro neighborhood at
3521 SW York Way, Topeka, Kansas 66604. We have owned that home since June, 2003.

In late 2012 and into 2013, I served on a Westboro Homeowners Association subcommittee that compiled, organized, and submitted to City of Topeka a Draft of Standards that eventually became, after a number of carefully considered revisions and edits, the Westboro Neighborhood Conservation District, Ordinance No. 19887 (Westboro NCD). Considerable time was spent on this project by the members of the subcommittee and the Board of Directors of the Westboro Homeowners Association. Consequently, I am most familiar with not only the scope and details, but also the spirit and intent, of the Westboro NCD. (Of note, the Westboro NCD was set when, on February 11, 2014, Topeka City Council voted unanimously in favor of the Westboro NCD. This vote followed an overwhelming-majority vote, in favor, at a neighborhood public meeting of Westboro Homeowners. Clearly, the Westboro Homeowners and City of Topeka understand the reasoning behind, and value of, the Westboro NCD.)

As longtime residents of Westboro, and stalwart proponents of the Westboro NCD in general, Kathi and I are writing today to express our concerns with, and to state our opposition to, BZA18A/01 & BZA18V/01.

Regarding BZA18A/01- we agree with Topeka Planning Department's initial decision that the proposed construction of a building to be located at 1605 SW Lakeside Drive, Topeka, Kansas does not meet the Design Standards adopted in the Westboro NCD. We feel that any reasonable person would agree with the Topeka Planning Department's decision, as the Standards are precise and clear. In our opinion, the proposed building design flies in the face of the NCD.

Regarding BZA18V/01; Objectively, the several variance requests contained in BZA18V/01 are widely out of compliance with the Westboro NCD. What is more, subjectively, it seems to us that the proposed site plan is comparable to trying to fit an over-sized square peg in a small round hole.

In conclusion, the proposed building and associated variances are out of compliance with the Westboro NCD. We respectfully request that the Board deny the requests made in BZA18A/01 & BZA18V/01.

Mr. Fiander, it is Kathi's and my hope that this email message will be attached to the Planning Department's Staff Report regarding BZA18A/01 & BZA18V/01, of which, I understand, will be submitted to Members of the Board of Zoning Appeals for their review prior to the Hearing set for March 12, 2018.

Thanks for your attention to this matter. Please let me know if you have questions.

Sincerely,
Cliff and Kathi Davis

3521 SW York Way
Topeka, Kansas 66604
785-224-8224

Kris Wagers

To: Michael Hall
Subject: FW: BZA re: 1605 SW Lakeside Dr.

From: dcomfort <dcomfort@cox.net>
Date: 3/1/18 11:34 AM (GMT-06:00)
To: mghall@topeka.org
Subject: BZA re: 1605 SW Lakeside Dr.

Mr. Hall,

I would like to submit my comments for the BZA meeting on March 12th regarding the Scott Gales home at 1605 SW Lakeside Drive in Westboro. (We just became aware that we needed to have our written comments submitted by 530 pm today.)

My wife, Maureen, and I have been Westboro residents for 22 years and are well aware of the challenges for older central Topeka neighborhoods. Westboro is 92 years old this year. We love our neighborhood and it's historic home styles.

I was on the Westboro committee that worked with Bill Fiander to develop the Westboro NCD. The impetus was a quonset hut that had been erected on York Way.
City Manager Jim Colson met with the WHA board and suggested the NCD as a way to prevent more inappropriate additions or alterations to the neighborhood. It was a protracted process and we received final approval in 2013. Without the city's invaluable help and the strong support of Westboro residents this would have not been possible.

Maureen and I and a large number of Westboro residents attended the city council and planning commission meetings where the NCD was discussed and eventually approved unanimously. It was the first NCD in Kansas. Mr. Gales was on the planning commission at that time. I recall his comment to the effect that he may have to leave the neighborhood because he wouldn't be able to make the changes to his property he was planning. I suppose I remember "his comment" because it was unexpected and so unusual for someone who lived in the neighborhood and was in a power position (he was Vice Chairman at the time).

I was also the Westboro Endowment chairman, (the fund raising arm of WHA) at the time. Almost immediately after the adoption of the NCD we began a fund raising drive to restore several historic features within the neighborhood; the gazebo, the fountain, porcelain street name tiles, Westover circle park and the stone pillars at four street entrances to the neighborhood.
We were pleasantly surprised with the response. In five years time we received $70,000 in private donations from Westboro residents, which more than funded the restorations. I have to believe this would not have been possible without the NCD. Residents were beginning to believe in the viability of Westboro and that the city would stand with us in upholding the NCD code.

It is particularly disconcerting and galling that the party challenging the Westboro NCD, Mr. Gales, had previously been chairman of the planning commission that had approved it in first place. He had to know his plan would be provocative and an affront to his neighbors. We are well aware of his prominence and influence in the community and his connection to city planning and development.

We are obviously at a critical point now with Mr. Gales' "extremely" inappropriate design proposal before the BZA. There is no other home in Westboro that looks remotely like this. I have heard comments such as "dentist office", Genstler Eye Center", etc. It just doesn't fit in with the neighborhood. I've personally talked with many other Westboro residents and no one is happy about this development.

Thank you in advance for submitting my comments. Maureen and I will attend the meeting on March 12th.

Doyle Comfort
3410 SW Avalon lane

Sent via the Samsung Galaxy S7, an AT&T 4G LTE smartphone

Kris Wagers

From: Martha Underwood <underwoodm36@gmail.com>
Sent: Thursday, March 01, 2018 9:13 AM
To: Michael Hall
Subject: Westboro Appeal Meeting

Dear Mr. Hall,
I am writing to voice my concern for the 1650 Lakeside Drive project.
This project is in violation of the NCD on two levels non compliance and the property set back as I am sure you are aware.
As stated in the NCD "The objective is to protect the historic character and atmosphere in our neighborhood. Any new or reconstructed structures also reflect these styles."
I ask you to take this matter into serious consideration.
Respectfully,
Martha Underwood

Sent from my iPhone

Kris Wagers

From: Mike Powell <michael.powell@cox.net>
Sent: Thursday, March 01, 2018 1:43 PM
To: Michael Hall
Subject: Comments for Staff Report

Hi Mike,

Appreciate if you could attach this to the Staff report to the BZA.

Our names are Ann and Mike Powell. We have lived at 3510 SW York Way some 27 years. We love and revere the look, the atmosphere that has been Westboro since 1926. We believe it is evident to anyone driving through that it is a well-preserved, extremely charming neighborhood and, indeed, a rarity.

We believe the appeal before you and the variances sought by the owner of 1605 SW Lakeside Drive would, if approved, cause irreparable damage to the neighborhood in the form of a degraded appearance along a major portal of the neighborhood with resulting probable damage to the property values of nearby neighbors and, importantly for all residents of Westboro, damage to the integrity of the Neighborhood Conservation District (NCD) that overlays and protects the neighborhood. Further, given the outcome of other appeals and variances sought in Westboro during recent years, we believe an approval may raise confusion and questions of equity, thereby causing harm to the Board of Zoning Appeals (BZA).

We believe the language of the NCD document https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjBm9_ImsvZAhXKzFQKHZEdDfAQFggtMAE&url=https%3A%2F%2Fwww.topeka.org%2Fwp-content%2Fuploads%2Fplanning%2FWestboroNCD.pdf&usg=AOvVaw2A_KkKMGajFLCWWFlwkLCh is consistent and unambiguous in the intent to "conserve" the neighborhood. The language within the discussion of Design Guidelines is clear on its face and compelling, "***While many of the existing houses reflect the architectural styles that complement the other residences, we want to make sure that any new or reconstructed structures also reflect these styles***." Illustrations of those styles are then provided and explained in detail. The importance of this is given further emphasis "…***these design guidelines highlight what we feel is essential to preserving the character of Westboro***."

City Planning has found that the modern design for which the owner sought approval failed to meet these simple and clear guidelines. We concur absolutely with that finding. We do not believe the BZA can approve the appeal of such finding and in the process provide City Planning an explanation of how they might accordingly alter their future interpretation of the Design Guidelines, other than by advising City Planning to simply ignore the guidelines. There do not seem to us to be any arguable subtleties in these guidelines, any nuanced way they might be got around.

We believe the Design Guidelines are central to achieving the clear aims of the NCD. If these guidelines are reduced in strength of enforceability we believe that will harm the NCD irreparably. We cannot believe the BZA could ever intend for such harm to occur. If the belief existed that the Design Standards should be altered to allow the proposed design, we believe that alteration should be made only by following a process before the Planning Commission, the Board of the Westboro Homeowners Association and the residents of Westboro, just as occurred when the NCD was adopted.

The variances sought from front and back offsets are breathtaking. We are all aware the property suffers from existing intrusions, totaling some 755 square feet (SF). Now additional variances are sought that would more than double the amount of intrusion to some 1,590 SF. It is one thing to look at this extent of red ink on the plans. It will be another thing entirely to see a two-story structure astride it. Said simply, in our opinion the owner seeks to build more on this lot than it can reasonably bear. And the negative consequences of that overloading will be pushed off to the shoulders of the surrounding neighbors, permanently.

The variance sought for fence placement brings us to our summation. And please bear in mind that we are lay people; we are not architects, nor professional planners, nor zoning administrators, nor attorneys, just an older retired couple with a tendency to understand things in simple terms.

We all know there was the issue of the fence at 1314 SW Pembroke Lane which resolved in District Court in 2016. We had been out of town for an extended time when the issue first arose and, returning to the neighborhood, we learned of this and drove by to see the thing. We found a not unattractive wrought iron fence that protruded beyond the front line of the home. We looked at each other and said, "Well, this is a molehill in the grand scheme of things." But, molehill or not, we knew in our simple minds that rules unenforced are not rules at all. Further, we'd both supported the NCD and knew this was a clear violation so, when City Planning and then you good folks told that camel to take his nose out from under the tent we supported your decision absolutely.

Now, in comparison to that molehill we are faced with a mountain. If the BZA somehow finds within itself a decision that will allow Mr. Gales to raise up his mountain, we know there will be an explanation provided. On the one hand, there will be a fence variance. On the other, a design guidelines appeal and a welter of variances including another fence. Somehow it will be explained that the one, looked at in one reasonable light, was bad and the other, looked at in another reasonable light, is good. And we will probably glaze over. The only simple, imperfect understanding we will be able to make of it is, "Well the molehill was leveled and the mountain is raised up." In short, we're going to know two different outcomes occurred and be unlikely to understand in simple terms, the why of it. Our confusion on this, on how it could be equitable, is likely to be common in Westboro and in the city. And the unfortunate outcome of such confusion may be some degree of cynicism about the BZA.

Thank you for your consideration of our comments. We have some appreciation of the difficulties of the issues you are given to resolve and we are grateful for the wisdom you bring to bear.

Yours truly,

Ann and Mike Powell

Neighborhood Conservation Districts

Westboro

Neighborhood Conservation District

Westboro Homeowners Association

Westboro Homeowners Association

Westboro Homeowners Association
P.O. Box 3829
Topeka, KS 66604
Email: westboronews@gmail.com

2013 Board Members
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Julie Friedstrom, Vice-President
Ron Farrell, Treasurer
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Larry Dimmitt
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Michelle Butler
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Brad Walker
Elaine Bryan

Mission Statement

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

Neighborhood Goals

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

Why our Neighborhood should be a Neighborhood Conservation District

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

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

How an NCD Designation and our Design Guidelines will Improve our Neighborhood

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

neighborhood, we will continue to be a showcase of traditional neighborhoods and architectural styles.

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

Examples of Our Unique Characteristics

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

Style: Italian Renaissance Revival

Time Period of Significance:
1890s to 1930s

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

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

Style: French Eclectic

Time Period of Significance:
1915 to 1945

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

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

Style: Prairie Style

Time Period of Significance:
1900 to the 1930s

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

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

Style: English Tudor

Time Period of Significance:
1900 to 1935

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

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

Style: English Tudor Cottage

Time Period of Significance:
1915 to 1940

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

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

Style: Georgian Colonial Revival

Time Period of Significance:
1910 to 1935

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

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

Style: Spanish Colonial Revival

Time Period of Significance:
1915 to 1940

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

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

Style: Ranch

Time Period of Significance:
1945 to present

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

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

Style: American Federal Revival

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

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

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

Style: Dutch Colonial Revival

Time Period of Significance:
1920 - 1940

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

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

Style: Colonial Revival

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

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

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

Style: Eclectic

Time Period of Significance:
1920s through the 1940s

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

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

Style: Cape Cod

Time Period of Significance:
Mid-20th-Century

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

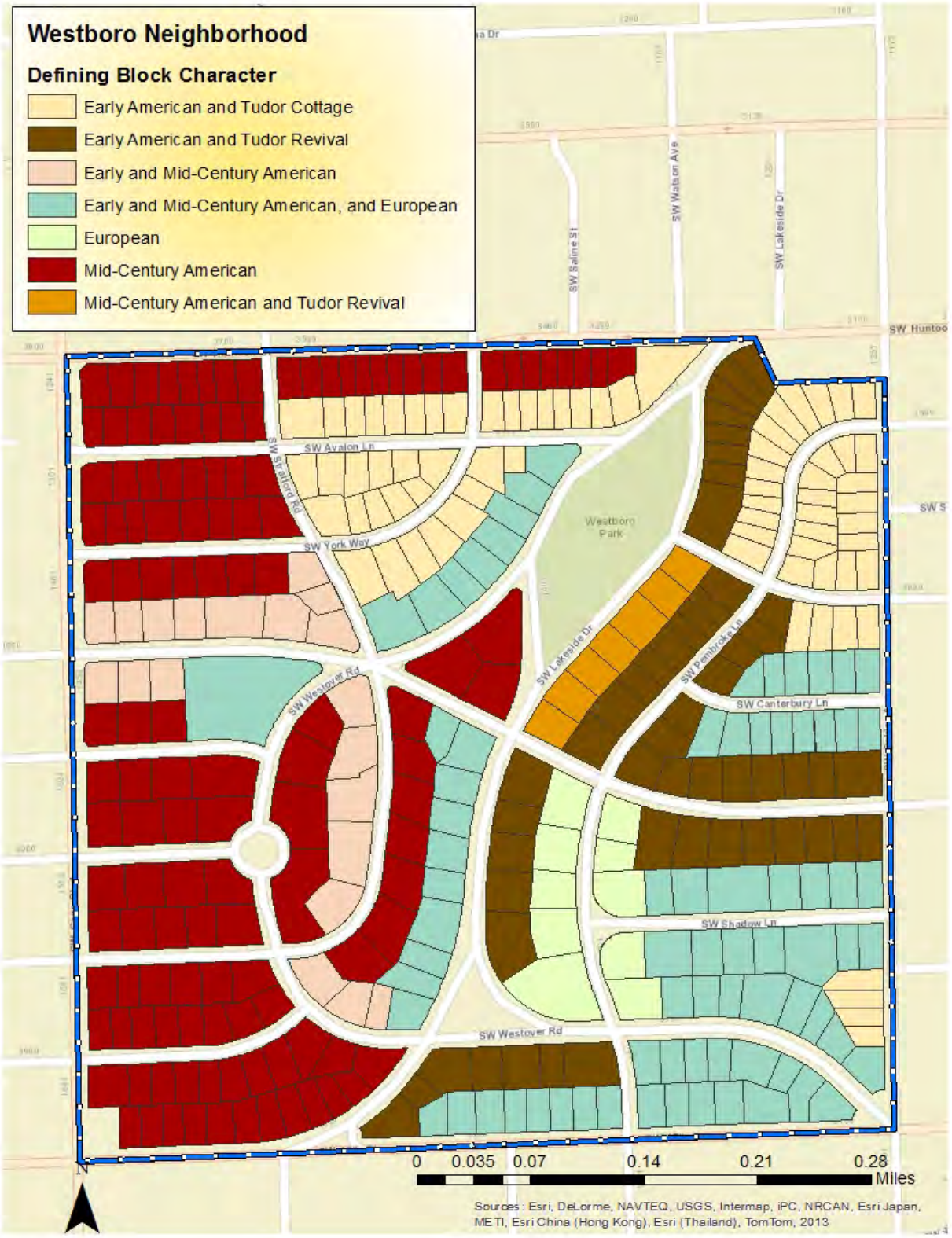
Architectural Description:
Cape Code homes are small and very efficient, built with a steep pitched roof with side gables, a narrow roof overhang, are typically limited to 1 or 1½ stories in height, and are typically sided in wood, shingle, or stucco. Cape Cod homes are also generally rectangular shape.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

Map and Description of Boundaries

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

Map 1: Parcels and Zoning

Map 2: Distinguishing Block Character



Map 3: Garage Placement Character by Block

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

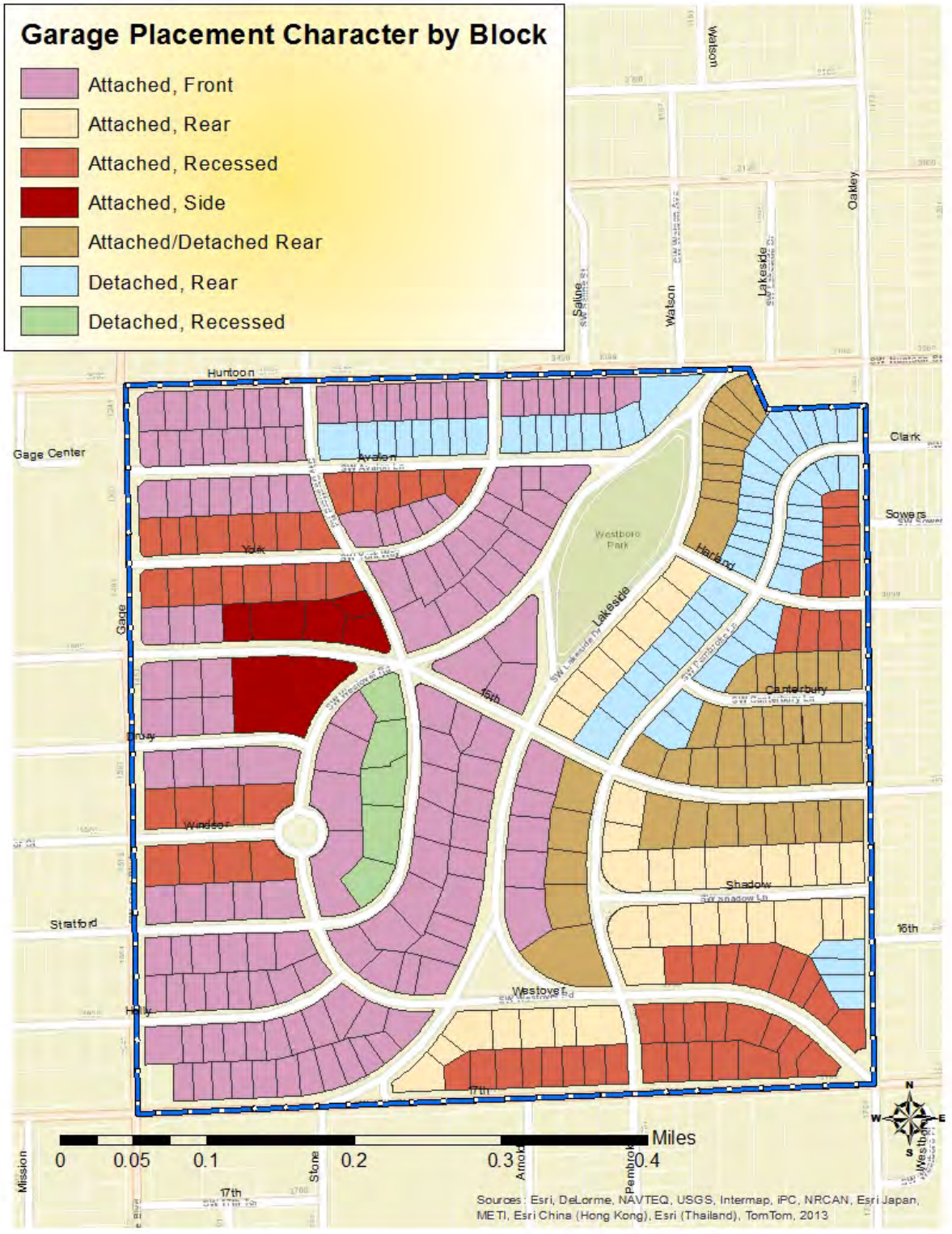
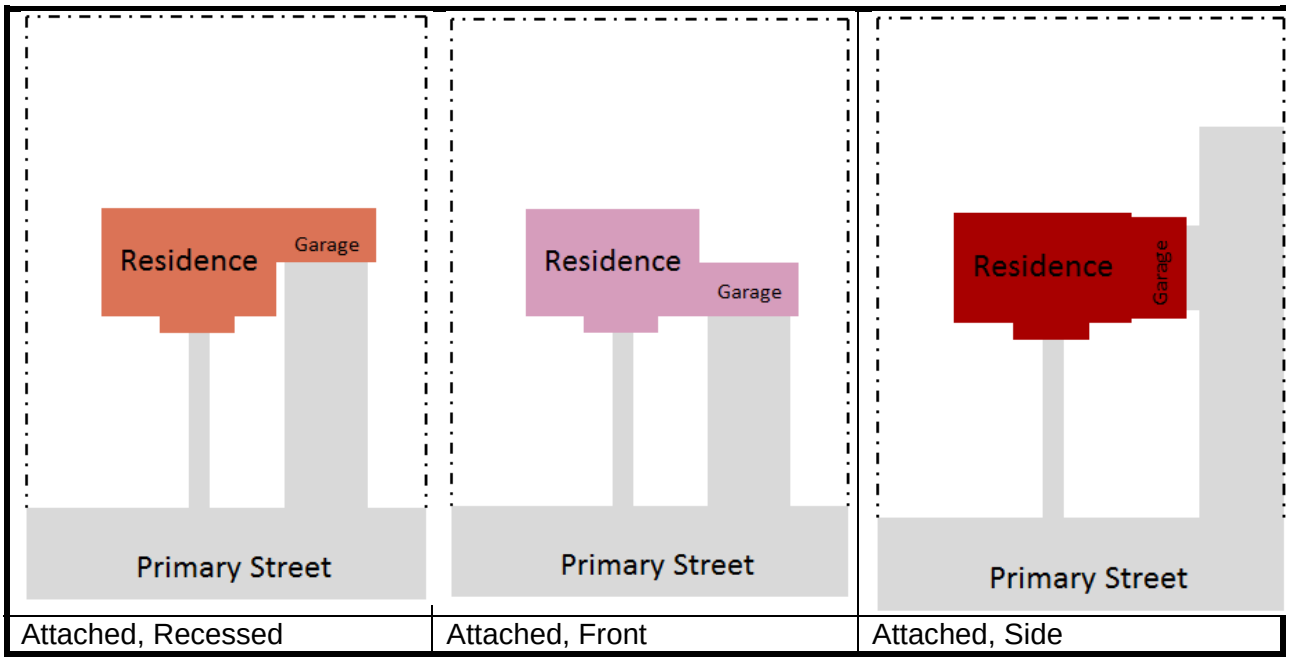
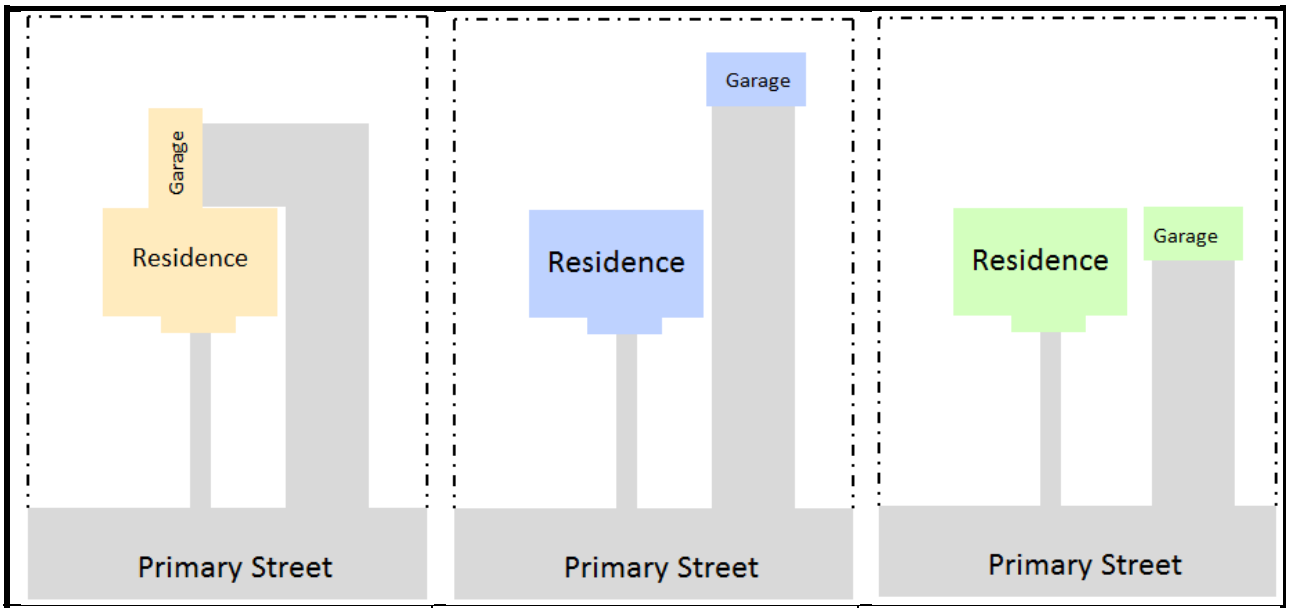


Table 1: Garage Styles and Locations



Attached, Recessed	Attached, Front	Attached, Side



Attached, Rear	Detached, Rear	Detached, Recessed

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

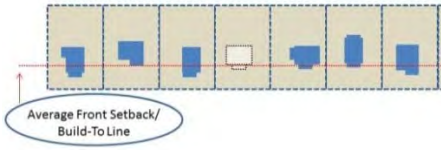
- These design standards shall be applied to residential properties only. They shall address both new construction and substantial additions to existing residential properties. Substantial Additions shall mean any project visible from the public right-of-way whose square footage equals or exceeds 10%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

Residential Design Standards

Characteristics and Features	The Scope of the Residential Design Standards	Current Zoning Code Requirements *
Primary Buildings	• Only single-family residential housing shall be allowed. • No secondary dwelling units shall be permitted.	• Primary permitted use is single family residential. However, other uses may be allowed with Provisional Use or Conditional Use permits.

Characteristics and Features	NCD Design Standard	Current Zoning Code Requirements* (R1)	Illustrative Examples Appropriate/Inappropriate
Accessory Buildings	• Rear attached or detached garages shall be preferred. If either of these styles is not chosen, the location and placement of the garage must fit the character of the block as defined in Map 3. • Detached garages and other accessory buildings visible from the public right-of-way shall be constructed in a complimentary architectural style as the residence. o Buildings that must deviate from this standard in order to accomplish their intended purpose (e.g., greenhouses, pools) shall be screened from the right-of-way. •	• Cumulative footprint of all accessory buildings shall not total more than 90% of the building coverage of the principal structure. • Accessory structure height: No greater than 15' when the principle building is one-story or 20' when the principle building is two-stories or more. • Detached accessory buildings rear yard setback 5' • Detached accessory buildings side yard setback 3' • Accessory structures shall not be located within a required front yard.	Figure 2: Appropriate 

Characteristics and Features	NCD Design Standard	Current Zoning Code Requirements* (R1)	Illustrative Examples Appropriate/Inappropriate
Accessory Buildings, cont.	• Accessory buildings not visible from the public right-of-way shall be stick-built or constructed with non-glaring or non-reflective materials. o Buildings that must deviate from this standard in order to accomplish their intended purpose (e.g., greenhouses) shall not exceed 12' in height.		Figure 1: Appropriate 
Building Height	• n/a	• Primary structure: 42' maximum • Accessory structure: 20' maximum	
Building Size/Massing	• New residences shall be of a similar size to the other houses on the block. The Floor-to-Area Ratio of a new residence shall fall between the smallest and the largest Floor-to-Area Ratio on the block, ± 10%.	• n/a	
Building Architectural Style and Details	• New residences shall be constructed in one of the architectural styles identified in the "Representative Sample." • Architectural features that define the overall character of the existing residence such as walls, brackets, railings, cornices, windows, door pediments, steps, columns, finishes, and color shall be utilized for substantial additions • Siding and roofing materials shall be consistent with materials and style used in the original construction.	• n/a	

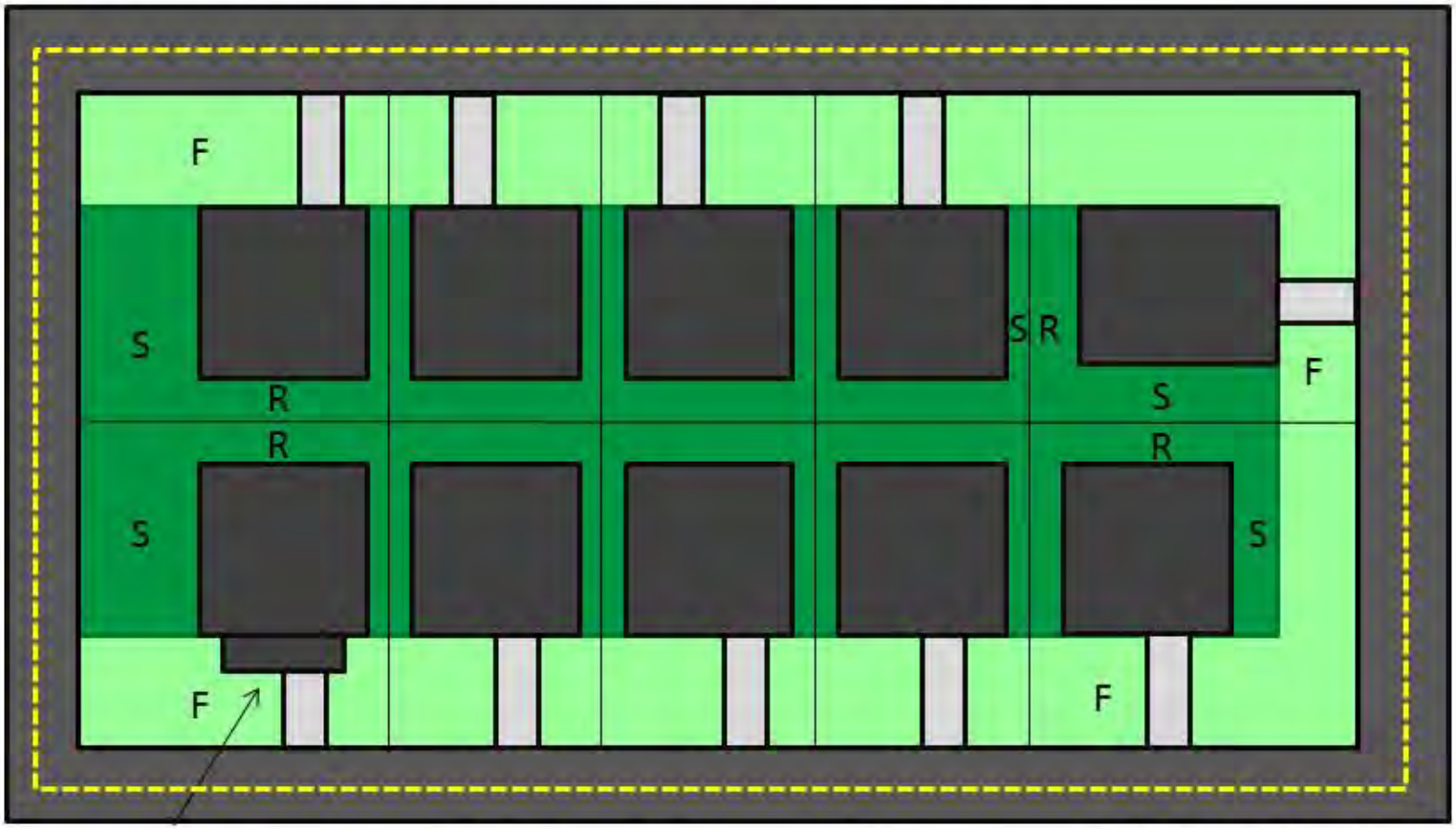
Characteristics and Features	NCD Design Standard	Current Zoning Code Requirements* (R1)	Illustrative Examples Appropriate/Inappropriate
Building Setbacks	• New residences shall be built to the front setback line that is ±10% of the average front setback on the block.	• Front yard setback: 30' • Side yard setback: 7' • Rear yard setback: 30' • Unenclosed porch, deck or stoop may encroach not more than 10' into the front or rear yard.	
Building Orientation and Site Planning	• New residences shall be oriented towards the street on which they are addressed.	• n/a	
Lot Size	• Existing lots shall not be subdivided.	• Minimum 6,500 square feet	
Lot Coverage	• n/a	• Buildable envelope is subject to setback limits.	
Off-Street Parking Requirements	• n/a	• 2 spaces per dwelling unit having more than 950 square feet of floor area.	
Roof Line and Pitch	• n/a	• n/a	
Paving, Impervious, or Hardscape Coverage	• Front yards shall be consistent with the character of the neighborhood. No more than 10% of the front yard, excluding the driveway, may be covered with gravel, concrete, asphalt, or other like materials.	• n/a	
Window Openings	• Window openings on the front façade shall be consistent with the architectural style of the home in appearance, size, design, or proportion. • Shutters or awnings shall match the architectural style of the residence.	• n/a	

Characteristics and Features	NCD Design Standard	Current Zoning Code Requirements* (R1)	Illustrative Examples Appropriate/Inappropriate
Fences and Walls	• Fences shall not be allowed in front of the front face of a residence. See Appendix A for illustration.	• Shall be less than 8' in height • Shall not extend into public right-of-way or closer than 1' to a public sidewalk. • Fences in front of the front face of the primary structure shall not exceed 4' in height.	Figure 3: Inappropriate 
Driveways, Curb Cuts, Alleys, and Sidewalks	• Driveways shall be hard surface and constructed of concrete, asphalt, in-laid stone, brick, decorative pavers, or porous hard paving material. • Driveways shall not be constructed of gravel. • Driveway width shall not occupy more than 25% of the lot width between the street and the front building line, except in properties with circular driveways.	• n/a	Figure 4: Appropriate 
Tree Preservation	• n/a	• n/a	
Private and Public Utility Structures	• Satellite receiving devices, antennas, and transmitters shall not be located on the front face of the residence.	• Satellite receiving devices, shall not be located in the front yard or the required side yards.	
Public Art	• n/a	• n/a	

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

Appendix A: Westboro NCD Fencing Requirements*

The NCD does not allow for fences in the light green shaded area.



**For illustrative purposes only.*
Please contact the Planning Department for help on your specific property and question.