



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, November 9, 2020
5:30 P.M.

VIA VIDEO CONFERENCE

MEMBERS OF THE BOARD

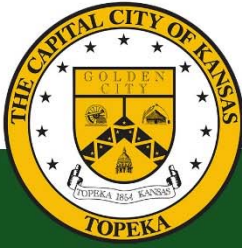
Tim Carkhuff – Chairperson
Walter Schoemaker – Vice Chairperson

Toni Beck
Barbara Boudreaux
Helen Crow
Carole Jordan
Travis Thomas

-
- 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.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, November 9, 2020

A. Call to Order

B. Approval of Minutes from May 11, 2020

C. Declaration of Ex Parte Communications

D. Public Hearings

- 1. BZA20V/05 by David Kaiser**, requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to principal building as restricted pursuant to section 18.60.020 of the Topeka zoning regulations for the construction of a greenhouse building at 2446 SE 29th Street.

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

MINUTES

Monday, May 11, 2020

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

Members present: Toni Beck, Barbara Boudreaux, Tim Carkhuff, Helen Crow, Carole Jordan, Walter Schoemaker (Chair), Travis Thomas (7)

Members Absent: (0)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Walter Schoemaker, Chair. Roll was taken with 7 members present for a quorum.

Approval of Minutes from March 9, 2020

Motion by Ms. Boudreaux to approve, **second** by Mr. Thomas. **APPROVAL 7-0-0**

Declaration of Ex Parte Communications

None. Mr. Schoemaker reported he had spoken earlier in the day with Mr. Hall.

Mr. Schoemaker explained the process of calling cases, staff reviews, opportunity for the applicant and others to speak, etc.

Mr. Schoemaker called the case, **BZA20V/03 by Nelda Henning**, requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to principal building as restricted pursuant to section 18.60.010 of the Topeka zoning regulations for the construction of an addition to an existing detached garage at 1610 NW Grove Avenue.

Mike Hall, Staff Planner, presented the Variance Evaluation (staff report) and findings, closing with staff's recommendation as included in the Evaluation.

Mr. Schoemaker asked how long TMC 18.60.010 has been in place, what is the intent of the regulation, and whether the applicant's request is consistent or inconsistent with that intent. Mr. Hall explained that 18.60.010 deals with the dimensional standards for each of the zoning districts. The 90% coverage limit has, Mr. Hall believes, been in the code for at least 7 years. He is uncertain of the reason for it but believes it was put there in response to something that happened and is in place to try to prevent problems in the future. He added that the concern was not, he's almost certain, to do with a lot that was over an acre in size.

Ms. Boudreaux asked for clarification regarding detached accessory dwellings and Mr. Hall confirmed that currently they are not allowed in R-1 and R-2 zoning districts. Ones that exist (legally) have been there a

long time and are likely grandfathered. The structure in question was built in 1948. Mr. Hall is uncertain as to the code at that time.

Mr. Carkhuff stated that he spoke earlier in the day with Mr. Hall. He stated he believes that what makes this property unique is the existing accessory dwelling and therefore condition "a" can be met. Regarding condition "c", Mr. Carkhuff explained that while tearing down the existing garage and re-building could negate the need for a variance, he sees that as an unnecessary hardship. In addition, the proximity of the property in relation to the Potwin neighborhood adds to its historic value.

Mr. Carkhuff stated he would support granting the variance for a 2-car garage without the storage area. He pointed to TMC 2.220.140 ("Variances not allowed") (c). Mr. Carkhuff answered questions from Mr. Boudreaux and Ms. Beck about his statement and then asked Nelda Henning (the applicant) to speak.

Ms. Henning stated she would answer any questions the board may have about the request or how she came up with the proposed design.

Mr. Carkhuff asked Ms. Henning how she came up with a number of 1,005 sq feet. Ms. Henning explained that the land slopes away drastically from the existing garage and rather than risk structural damage with excavation, she designed the proposed addition working around that. She said that the 10' storage area allows for a place to store holiday decorations as she takes part in the Potwin Neighborhood tradition of decorating for Christmas.

Ms. Beck asked for and received confirmation from Ms. Henning that the current garage is not visible from the street and the add-on would not be visible from Grove Ave.

Mr. Carkhuff **opened the public hearing** by asking if there was anyone from the public who would like to speak for or against the request. With nobody logged in to speak. Mr. Carkhuff declared the **public hearing section of the meeting closed** and asked for comments or questions from the board.

Ms. Beck stated she would be in favor of the variance if the building doesn't show from the street, adding that she didn't think the Potwin neighborhood would be concerned with the proposal if this is in fact the case.

Ms. Jordan asked for and received verification that the property is adjacent to but not part of an historic district. She asked if it would be reviewed by the Landmarks Commission. Ms. Henning stated she is a former member of the Landmarks Commission and from that understands that since the property is outside the historic district, the proposal does not require review by the Landmarks Commission.

Ms. Crow stated she believes there are certain angles from which the garage may be seen from Grove while walking, but not easily and she doesn't think it unsightly in any way.

Ms. Boudreaux asked if it might be possible to divide the lot. Mr. Hall explained that in order to split the lot the owner would need to apply for a minor plat. Though he hasn't fully analyzed it, he believes it would be difficult to do a lot split and would likely require shared access.

Mr. Carkhuff asked if a site plan is required with a variance application and Mr. Hall stated there is no absolute requirement for one. In this instance staff did not require a site plan because the applicant provided an aerial photo which they believed sufficient.

Motion by Mr. Thomas to approve the variance as requested, specifically noting that the garage addition is accessory to the primary residence and is not used for parking, storage, or any other purpose to support the nonconforming accessory dwelling on the property. **Second** by Ms. Crow. **APPROVED** (6-1-0 with Mr. Carkhuff dissenting).

Mr. Carkhuff called the next case, **BZA20V/04 by City of Topeka**, requesting variances to the minimum front, side, and rear building setbacks required pursuant to section 18.60.010 of the Topeka zoning regulations for construction of a wastewater pump station, to replace an existing wastewater pump station, at the southeast corner of NE Grant and NE Jefferson streets.

Mr. Hall presented the Variance Report and staff's recommendation of approval of the variances as requested and in accordance with the site plan and building plans provided in the agenda packet.

Ms. Crow asked if the neighbors had voiced any concerns or objections and Mr. Hall stated that they have not.

Mr. Carkuff declared the **public hearing open** and with nobody logged in to speak, declared the **public hearing closed**.

Motion by Ms. Beck to approve the variance; **second** by Mr. Thomas. **APPROVED** (7-0-0)

The meeting adjourned at 6:33PM

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

Date of BZA Meeting: November 9, 2020

Case No.: BZA20V/05

Applicant Name: David Kaiser
Owner of Record: David and Mary Kaiser
Address of Property: 2446 SE 29th Street
Parcel ID No.: 1320904002001010
Zoning of Property: "R-1" Single-Family Dwelling District

Regulations from which a Variance is Requested: The applicant is requesting a variance to exceed the maximum 90 percent building coverage ratio of accessory buildings to the principal building as restricted by section 18.60.010 of the Topeka zoning regulations. Granting the requested variance will allow construction of a 648 square foot (sf) greenhouse building.

The following table describes proposed and required building coverage. The calculations do not include AT&T's communication tower.¹

	Coverage Limits per Section 18.60.020	Coverage with Existing Buildings	Coverage with Proposed Greenhouse Building
% of Principal Building Coverage (sf of detached accessory buildings divided by sf of principal building footprint)	90% maximum	208%	254%
% Building Coverage (sf all building footprints divided by sf of zoning lot)	50% maximum	3.3%	3.8%

Project and Property Data:

(Existing building data by applicant and the Shawnee County Appraiser)

Proposed Greenhouse
Building:

648 sf; 50' setback from west/side property line
(minimum 3' required) and 105' from north/rear property
line (minimum 5' required).

Height not included on application but the photo indicates
it will be much less than the maximum 20' height allowed
for detached accessory buildings under the R-1 zoning
classification.

Size of Principal Dwelling:	1,889 sf residence built in 1930; 1,415 sf first floor (footprint)
Detached Accessory Buildings:	Six buildings, estimated cumulative total footprint of 2,950 sf. Total does not include the AT&T communication tower and related structures.
Size of Property:	3 acres (130,680 sf)
Subdivision Plat:	Not platted as a subdivision; owner responsible for identifying any easements.
Existing Land Use and Property Characteristics:	A large L-shaped tract containing a single family residence, a detached garage and several other detached accessory buildings. There is an AT&T communication tower on the northeast corner of the property. The site contains many large trees that obscure view of most of the buildings.
Surrounding Land Uses:	Detached Single-Family Dwellings to the west and southwest, open public park land to the north, small commercial buildings to the east and south.
Zoning of Property:	R-1 Single Family Dwelling District
Zoning of Surrounding Property:	R-1 Single Family Dwelling District
Neighborhood:	Located within the boundary of the Highland Acres Neighborhood Improvement Association.

Applicant's Stated Grounds for Variances

See page 2 of application attached.

Summary of Analysis:

Staff is recommending approval of the variance. The requested variance meets the findings required for a variance per Kansas statutes and the city code.

The zoning code's coverage limit on detached accessory buildings is intended to prevent adverse effects to adjacent property resulting from excessive accessory buildings and reduction in open space. The proposed 648 sf greenhouse building will have little or no negative impact on surrounding property owners and residents. The proposed building is set back a substantial distance from all property lines. Because of the conditions of the site and

the location of the proposed building and its location on the site it will hardly be visible from outside the property,

Conditions of the property are unusual if not entirely “unique”. The three acre residential parcel far exceeds the ¼ acre median size of residential lots in the surrounding neighborhood.

Strict adherence to the coverage limit is unnecessary to protect adjacent property owners and the community at large, and would prevent owner David and Mary Kaiser from fully enjoying their large residential property.

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.

- a. **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;**

There are unusual aspects of the property that together render the proposed greenhouse building inconspicuous and benign.

At 3 acres, the property is one of the largest residential parcels in the neighborhood along SE 29th Street between California Avenue on the west and I-470 on the east. The parcel is much larger than is typical in the neighborhoods on the east and west sides of California Avenue and Topeka as a whole. The large tract has a depth of approximately 420 feet and backs up to County park land.

Staff analyzed residential lot size data for the two areas shown on the attached map. The first area is the larger of the two and includes large underdeveloped tracts. The second area is smaller and excludes some of the largest parcels. Two areas are analyzed to guard against biases in these findings.

For the first area the median residential parcel size is 10,527 sf (.24 acre), mean parcel size is 25,230 sf (.58 acre), and 75% of the parcels (third quartile) are 20,930 sf (.48 acre) or less. For the second area the median residential parcel size is 10,090 sf (.23 acre), mean parcel size is 14,599 sf (.34 acre), and 75% of the parcels (third quartile) are 15,417 sf (.35 acre) or less. The subject property is 3 acres (130,680 sf), which is 12.5 times large than the median size of parcels in the neighborhood and much larger than 75% of the residential parcels in the neighborhood.

The unusual aspects of the property do not create the need for a variance but do set this property apart from residential lots and parcels in this neighborhood and in Topeka more generally. Presumably the 90% coverage limit on detached accessory buildings is intended to prevent the negative effects of excessive accessory structures on typical residential lots, with the typical lot in city neighborhoods estimated to be less than one third of an acre. The unusual conditions of the property cited above provide justification for the requested variance.

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

Granting of the variance will not adversely affect adjacent property owners or residences.

The addition to the garage will not be readily visible from 29th Street and the adjacent parcels as indicated by the “Views” attachment. The building will set back about 340 feet from the edge of the SE 29th Street roadway, and it will be set back a large distance from west, north, and east property boundaries. (Per the site plan the closest setbacks are 50 feet from the west and 105 feet from the north.) Furthermore, the property is surrounded by a high density of trees on all sides.

- c. 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;**

Adherence to the coverage ratio standard is unnecessary because it will have little or no effect on adjacent property owners and the general public. The building is set back a substantial distance from property lines and is not easily visible.

Whether adherence to the standard imposes a substantial hardship is less clear. Denial of the requested variance will prevent the owner from enjoying the property and their gardening hobby. As stated in the application, “the proposed greenhouse will enable retired couple to continue gardening hobby in a controlled environment with greater ease.”

Overall, strict application of the 90% coverage ratio and denial of the variance is “unnecessary” based on the conditions of the property and the benign use of the proposed structure. Denial of the variance is a mild “hardship” because it will prevent the property owner from practicing a gardening hobby in his intended manner. Additionally, the proposed greenhouse is of modest size as a use accessory to the principal residential use of the property and, therefore, granting of the variance is consistent with section 2.220.140 (c) of the City code which states that the Board of Zoning Appeals shall not grant a variance unless it is the minimum necessary to relieve the proven hardship.²

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

The requested variance and the proposed greenhouse building have no foreseen adverse effects on the public health, safety, convenience, prosperity, or general welfare. The greenhouse building does not threaten the physical character of the neighborhood since it will not be easily visible from adjacent properties.

The proposed greenhouse building requires a building permit, so City staff will review the building plans for compliance with all applicable codes to determine the building is structurally sound and safe prior to issuing permits. The City will inspect construction to ensure compliance.

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

The requested variance is not opposed to the general spirit and intent of the City's zoning regulations. The coverage limit on accessory buildings is intended to prevent adverse effects to adjacent property. The proposed greenhouse building is anticipated to have no adverse impact to adjacent property or to the broader neighborhood and community. The building is not expected to generate discernible noise or odor, and it is not likely to be visible from adjacent parcels.

The proposed greenhouse building complies with the zoning code's standard restricting coverage of all buildings to no more than 50% of the property. With the proposed building the coverage of all buildings is far below 50% of the three acre parcel.

Planning Staff Recommendation

Staff recommends approval of the requested variance subject to the following conditions of approval.

Condition of Variance Approval

1. The accessory building allowed by the variance will be used for gardening or other uses normally accessory to the primary residence on the property.
2. Construction of the accessory building allowed by the variance shall be generally consistent with the site plan included in the variance application.
3. The accessory building allowed by the variance shall not exceed a height of 20 feet using the definition for building height in Topeka Municipal Code, Section 18.55.080.
4. The owner is responsible for ensuring the greenhouse building does not conflict with easements, including but not limited to easements for utilities.

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

Exhibits:

- A. Variance Application
- B. Site Plan
- C. Photo of Proposed Greenhouse Building
- D. Zoning Map
- E. Aerial Map
- F. Views of Property (Google Maps Street Views)
- G. Maps for Analysis of Lot Size

¹ AT&T leases a 3,600 sf area at the northeast corner of the property. The lease area includes a 130' monopole tower and related equipment and structures. The Topeka Governing Body approved a conditional use permit (CU19/04) for the communication tower on April 2, 2019 (Resolution No. 9096).

² **2.220.140 Variances not allowed.**

In exercising its authority, the Board of Zoning Appeals shall not grant a variance that would create any of the following effects:

- (a) The effect of the variance on the specific property would adversely affect the land use pattern as outlined by any City land use plan or policy.*
- (b) The variance would be a material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.*
- (c) The variance is not the minimum variance that will relieve the proven hardship.*
- (d) The variance would allow a use not allowed in the permitted zoning district in which the parcel is located.*
- (e) The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.*
- (f) The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.*
- (g) The variance will modify one or more conditions imposed by the Governing Body as part of a conditional use permit or planned unit development.*



**APPLICATION
TO THE BOARD OF ZONING APPEALS
VARIANCE / EXCEPTION**

EXHIBIT A

P 1 OF 3

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118
PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

Applicant Information

Name: David Kaiser
Address: 2446 SE. 29th St. Topeka 66605
Phone: 785-266-8183 Email: kaiserdavid956@yahoo.com

**For Planning &
Development
Use Only**

Case #
BZA 20/05

Property Information

Location of property: 2446 SE. 29th St. Topeka KS 66605

Legal description of property: (attach additional sheets if necessary)

Hearing Date:
11.9.20

Legal Ad Date:
10.19.20

Action Sought:

☒ **A variance** from a provision of the Zoning Ordinance
(Section to be appealed: 18.60.020)

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

Description of Action Sought:

Zoning District:
B-1

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

Paid Check
9.29.20

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.*);

This property is an old farm house which pre-dates Lake Shawnee and I-470. It is 3 acres in size. It has no family housing on the north and east sides. North side will not be developed. South side is SE 29th St. with Fire Station #9.

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

No rights of adjacent property owners will be affected. Trees and shrubs will block view of structure.

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;

Proposed greenhouse will enable retired couple to continue gardening hobby in a controlled environment with greater ease.

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

Organic gardening will take place in greenhouse posing no threat to public health or safety.

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

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.

David A Kaiser

Owner Name (print)

David A Kaiser

Owner Signature

Mary T. Kaiser

Owner Name (print)

Mary T. Kaiser

Owner Signature

Owner Name (print)_____
Owner Signature**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.

Authorized Agent Name (print)_____
Signature – Authorized Agent

Mailing Address: _____

STREET ADDRESS

CITY

STATE

ZIP

Phone: _____

Email: _____

Applicant:David A Kaiser

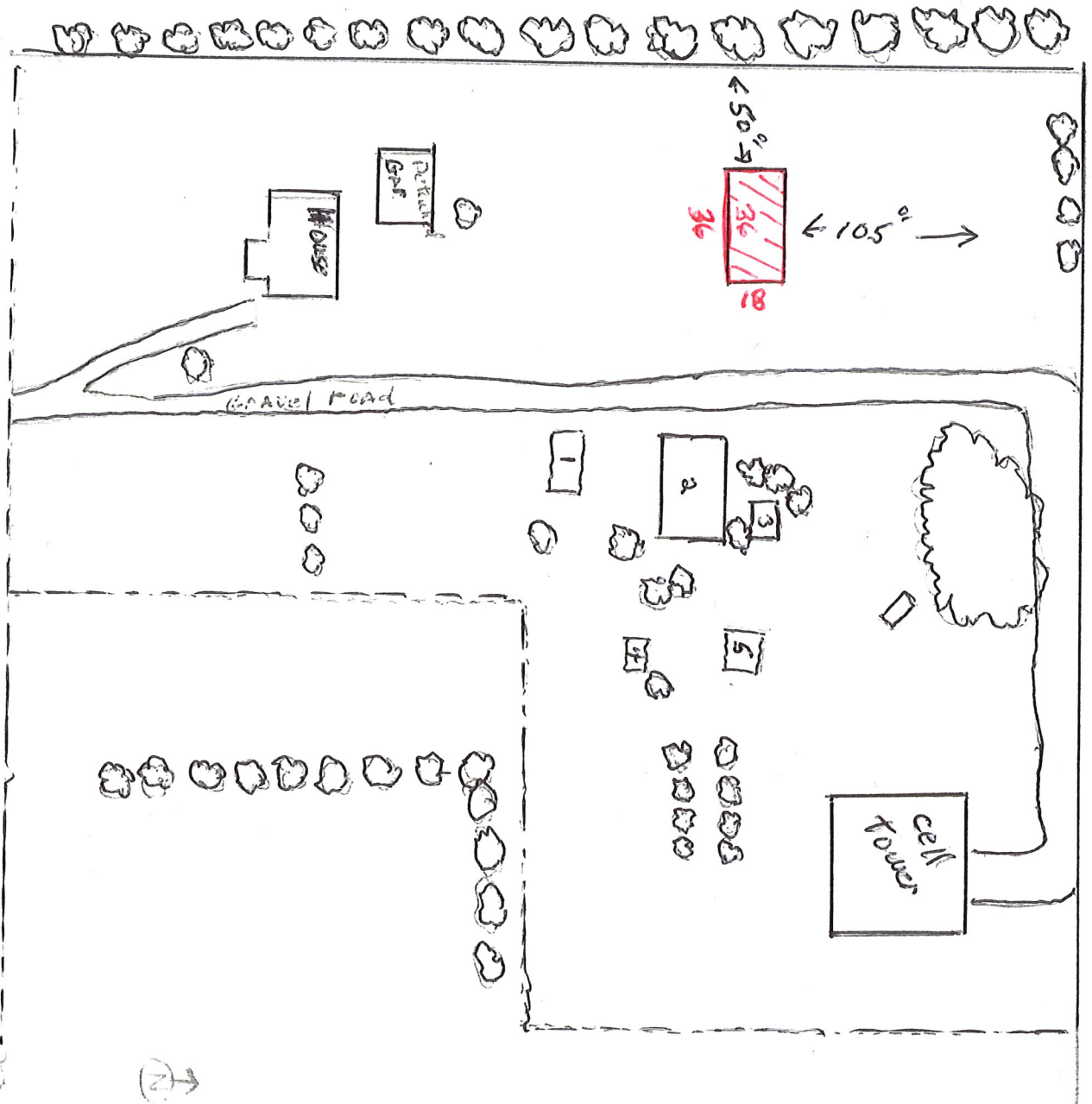
Applicant Name (print)

David Kaiser

Applicant Signature

EXHIBIT B

3



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SE

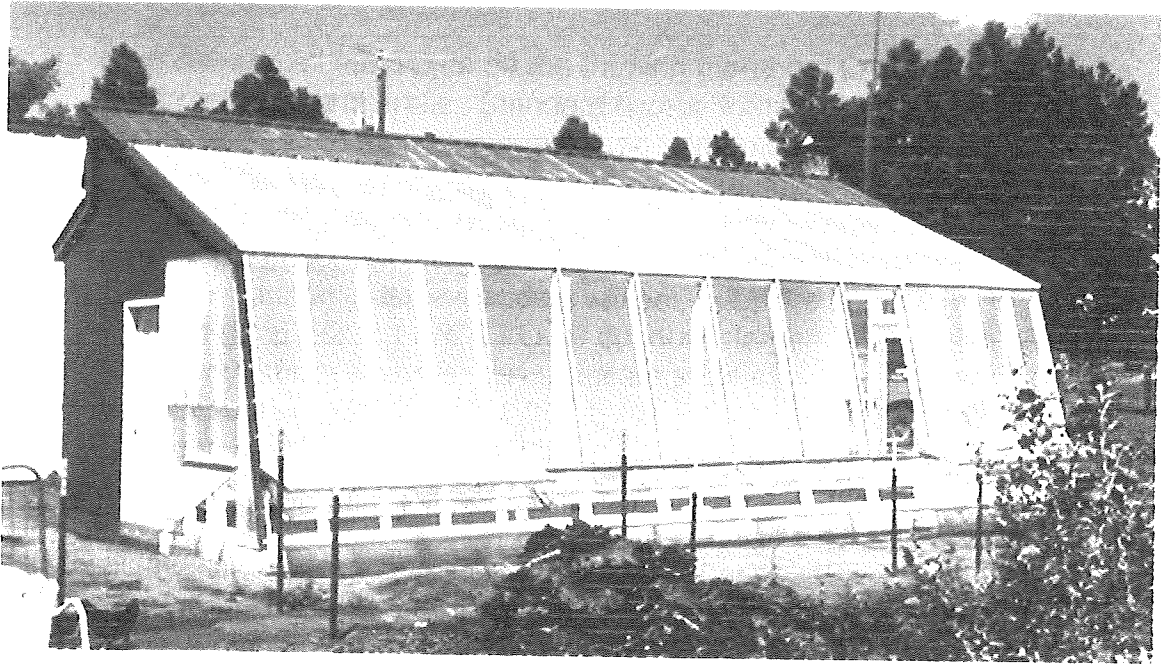
- EXISTING STRUCTURES
1. car garage 15x24
 2. hoop greenhouse 30x42
 3. shed 12x18
 4. chicken coop 10x12
 5. chicken coop 10x16

2446 SE 29th St

5

EXHIBIT

Glass Installation Packet for Smart Greenhouses LLC



BZA20/05 D. Kaiser

EXHIBIT



City of Topeka
Planning and Development
Department

Legend

 Subject Property

BZA20/05 D. Kaiser

EXHIBIT E



City of Topeka
Planning and Development
Department



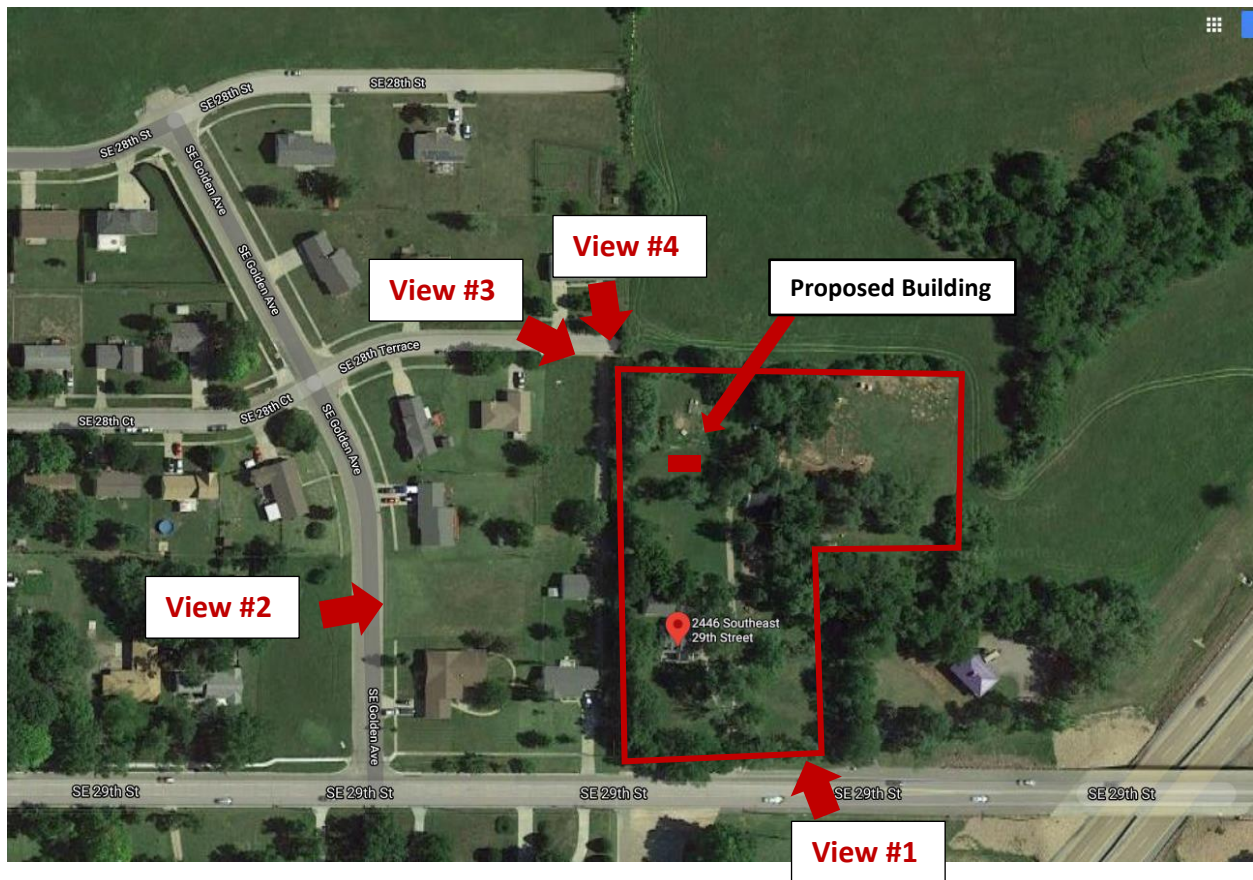
Subject Property

EXHIBIT F

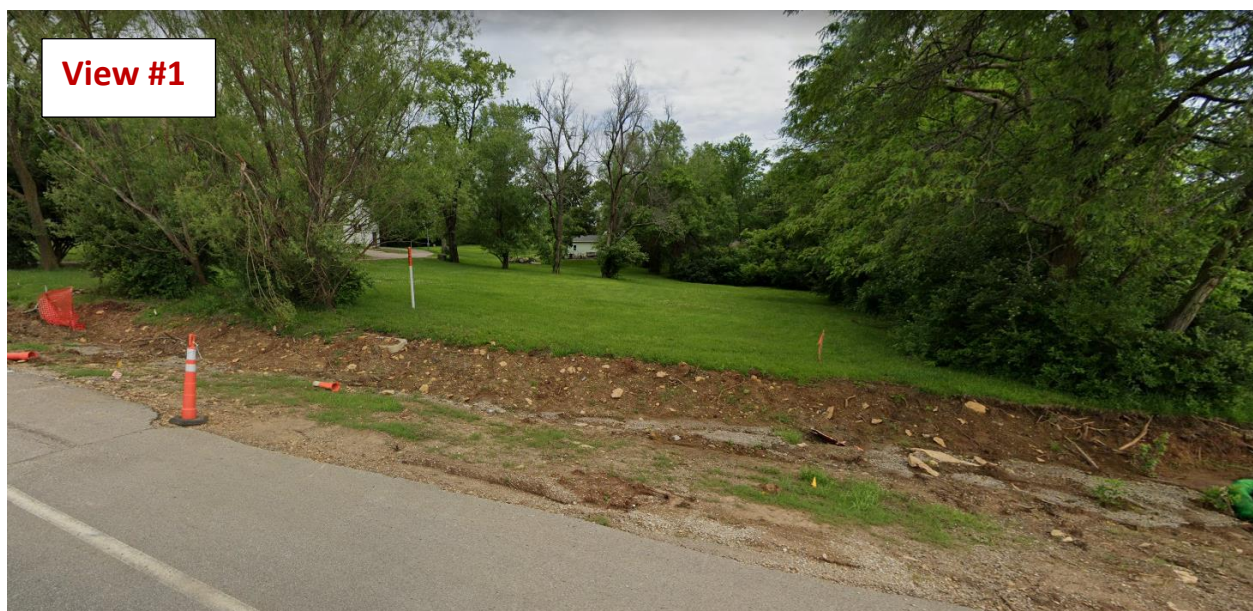
P 1 OF 2

Views / BZA20V-05

Source: Googlemaps



2020 Aerial Photo



Date of photo: May 2019

View #2



Date of photo: May 2019

View #3



Date of photo: September 2012

View #4



Date of photo: September 2012

