CITY OF TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, November 8, 2021
5:30 P.M.

VIA VIDEO CONFERENCE

MEMBERS OF THE BOARD

Tim Carkhuff (Chair)
Walter Schoemaker (Vice Chair)
Toni Beck
Helen Crow
Camille Nohe
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 8, 2021

A. Call to Order

B. Approval of Minutes from September 13, 2021

C. Declaration of Ex Parte Communications

BZA21V/07 by G. Kurt Koles requesting a variance to the minimum building setbacks required by section 18.60.020 of the Topeka zoning regulations for construction of an addition to a commercial building at 1949 NW Topeka Boulevard.

D. Communications

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, September 13, 2021

Via Video Conference

Members present:	Tim Carkhuff (Chair), Toni Beck, Camille Nohe, Walter Schoemaker (4)
Members Absent:	Helen Crow, Carole Jordan, Travis Thomas (3)
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 Tim Carkhuff, Chair, with 4 members present for a quorum.

Approval of Minutes from August 9. 2021

Motion by Ms. Beck to approve, **second** by Mr. Schoemaker. **APPROVAL** 4-0-0

Declaration of Ex Parte Communications –

Mr. Carkhuff reported that Jeff Russell, who he is acquainted with, contacted him making inquiries about BZA21V/05. Mr. Carkhuff stated he had not yet received the agenda packet so had no knowledge of the case at that time. They had a general discussion about requirements and procedures of the BZA. He feels he can make an un-biased decision.

Ms. Beck – None

Mr. Carkhuff – None

Ms. Nohe – None

Mr. Schoemaker – None

BZA21V/06 by Laura Gonzalez, Pedro Gonzalez, and Simon Quinonez, requesting a variance to exceed the maximum 4' fence height allowed beyond the front face of a principal structure as restricted by section 18.210.040 (a) of the Topeka zoning regulations. Approval of the requested variance will allow the owner to obtain a permit to erect a 6' high wooden fence within the setback between the existing house and the front property line at 1427 SE Indiana Avenue.

Mr. Carkhuff called the case and Mr. Hall presented the staff report with findings, noting first that Ms. Gonzalez and her daughter were logged in to the meeting.

Mr. Hall explained that the fence was being built without a permit and had been brought to the attention of the City via a SeeClickFix report. City staff asked the owner to apply for a permit, which they did, and the permit was denied. Mr. Hall noted that there is an approximate 6' fence next door that is at or near the property line and the city has no record of a permit for it. The fence has been there for a considerable amount of time so it is likely it would be considered legal non-conforming.

Mr. Hall concluded his presentation with staff's recommendation that the variance not be approved and reviewed the key findings noted in the staff report.

With no questions for staff, Mr. Carkhuff asked the applicant if she had anything to add. Ms. Gonzalez's daughter spoke representing Ms. Gonzalez and called attention to the "alternate" proposal included in the agenda packet that would allow Ms. Gonzalez to leave the gate and install wings from the corners of the house to the gate. Mr. Carkhuff noted that the wings do not comply with regulations.

Ms. Nohe asked why the applicant did not apply for a permit and the applicant's daughter explained that Mr. Gonzalez had gotten incorrect information from a neighbor. She further explained that when they got a permit to do work on the house they thought the fence was included.

Nobody from the public was logged in to speak regarding the requested variance.

Mr. Hall addressed the board and explained that the staff report was written in such a manner as to include both the fence as built and the alternate proposal. He also noted that it is questionable whether the gate needs to comply with the fence height restriction; he believes it may be possible to allow the property owners to keep the gate if the variance is not approved.

Motion by Ms. Beck to adopt the findings contained in the staff report and deny the requested variance; **second** by Ms. Nohe. Mr. Schoemaker commented that the spirit of the law supports improving a property in the city, however, based on the actuality and the scope, the BZA cannot approve the requested variance in this instance. Ms. Beck added that the board has heard numerous requests for similar variances but the board has had to deny them because their responsibility is simply to uphold the law(s). **APPROVE**D 4-0-0

Communications

Ms. Wagers reported that no applications had come in prior to the deadline so there will not be an October meeting of the BZA.

The meeting was adjourned at 5:53PM

VARIANCE EVALUATION

CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS

Date of BZA Meeting: November 8, 2021 Case No.: BZA21V/07

Applicant Name: G. Kurt Koles (Owner)
Address of Property: 1949 NW Topeka Blvd
Parcel ID No.: 1042002008001000
Zoning of Property: "C-4" Commercial District

Regulations from which a Variance is requested: The applicant is requesting a variance to the minimum setbacks as required by section 18.60.020 of the Topeka zoning regulations for a building addition.

The required minimum building setback from the side (west) property line is 10 feet; the requested variance will allow a side setback of 1 foot. Section 18.230.030 (i) allows expansion of buildings with nonconforming setbacks provided the nonconforming setback is not reduced or conforming setbacks are rendered nonconforming.

Required and Proposed Setbacks:

	Setback Required per Section 18.60.020	Setback Proposed
Front Property Line (From NW Independence Avenue right-of-way based on building orientation. See TMC 18.230.030)	25 feet	25 feet or greater, following setback of existing building
Side Property Line (east, from NW Topeka Blvd right-of-way)	25 feet (front setback applies)	20 feet (estimated per GIS)
Side Property Line (interior/southeast)	10 feet	1 foot
Rear Property Line (southwest)	25 feet	Less than 5 feet

Other Applicable Standards:

	Required	Existing / Proposed
% Building Coverage (sf all buildings footprint divided by sf of zoning lot)	60% maximum	35% / 41%
Off-street Parking	Estimated 7 spaces (1 per 200 sf for auto repair, and 1 per 85 sf for donut shop)	14 spaces / 14 spaces

18.230.030 General yard requirements.

(e) Yards for Corner and Double Frontage Lots. Front yard requirements included in the district regulations within which the zoning lot is located shall apply on both frontages. A double frontage lot shall have two front yards, two side yards, and no rear yard. A corner lot shall have two front yards, one side yard, and one rear yard. The corner lot's rear yard shall be opposite the front yard, which is the yard having the least street frontage, unless the applicant desires otherwise or doing so would create a reversed corner lot. The Planning Director may approve the creation of an alternative layout when doing so would result in a better development pattern based on existing and anticipated future development. A property owner may appeal the decision of the Planning Director by filing an appeal to the Planning Commission within 10 days of receiving written notification of the decision. Such appeal shall be made in writing to the Planning Director and shall be considered by the Planning Commission at its next regularly scheduled meeting.

(i) An owner of an existing improved property who desires to undertake further improvements to the property, but which property does not comply with the yard requirements, shall not be required to file a variance with the Board of Zoning Appeals for such further improvement, provided the following conditions are met:

(1) The additional improvement will not result in any less yard than that observed by the existing structure; and

(2) The original structure was in compliance with regulations existing at the time the original structure was built, or a variance was previously granted which allowed for the deviation from the dimensional requirements; and

(3) Applicable designated yard requirements with which the existing improvements are in conformance shall continue to be observed and conformed to, unless an official variance is granted by the Board of Zoning Appeals. (Ord. 20150 § 3, 10-23-18.)

Project and Property Data:

Proposed Development:	A proposed 14' x 65' (910 sf) addition to the west side of the building for the existing auto body repair business.
Size of Principal Dwelling:	Multi-occupancy commercial building with 5,080 square feet (includes 3,620 sf auto body repair)
Property Dimensions:	94 feet (north-south dimension) x 170 feet along north property line at Independence Avenue
Size of Property:	14,985 square feet (.34 acre)
Property Description:	Lot 11 E. V. Wilcox Subdivision
Existing Property Characteristics:	Small, trapezoid-shaped corner lot containing a commercial building for 2-3 commercial tenants. Original building is of an undetermined age; building addition in 1976.
Surrounding Land Uses:	Multi-tenant retail building on the south; retail bank to the east; office and storage building to the west; McDonald's restaurant to the north.

Zoning of Property:	C-4 Commercial District
Zoning of Surrounding Property:	I-1 Light Industrial to the south and west; C-4 Commercial to the north and east.
Neighborhood:	North Topeka West Neighborhood
Neighborhood Health:	"At Risk" per the 2020 Neighborhood Health Map.

Applicant's Stated Grounds for Variances

See applicant's statement relative to findings a – e (Application Exhibit A).

Analysis and 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;

Those physical characteristics related to the requested variance, while not unique, are unusual and limit the owner's options for expanding the building to accommodate the need of the auto body repair shop for additional interior space. The C-4 Commercial zoning of the property is intended to accommodate a wide variety of commercial uses, including retail sales and auto repair. Auto body repair and many of the other uses allowed under C-4 zoning require substantial interior space for the storage of materials and equipment requirements. The following conditions may justify the requested setback variance.

- At 14,985 square feet (.34 acre) the property meets the minimum lot area for a corner lot with the zoning classification of C-4 Commercial. However, the property is relatively small for a corner lot. The property's trapezoidal shape is also a hindrance to development.

- As a corner lot, development is constrained by 25' front setback requirements on north side (NW Independence Ave) and east side (NW Topeka Blvd).

- The current development of the site does not conform to required setbacks. The existing building is at or within a few feet of the rear (south) property line so encroaches on the 25' required rear yard setback (presuming the rear yard is the south property line).

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

The proposed addition will not have a substantial adverse effect on adjacent property owners. The adjacent parcels are zoned I-1 Light Industrial and no building setbacks are required under I-1 zoning. The proposed addition will not extend any further south than the existing building. The proposed addition will be set back 1 foot from the west property line. The building to west has a pedestrian door on its east wall. The building is estimated to be set back 4 to 5 feet from the property line and, therefore, the proposed addition will allow 4 feet or more clearance for pedestrian access to the adjacent building.

The City of Topeka has notified the owner of adjacent properties of the proposed variance by regular mail. As of the time of this report the City has received no calls or other communication from neighboring property owners in response to the notice.

c. That the strict application of the provisions of this chapter of which the variance is requested <u>will not</u> constitute an unnecessary hardship upon the property owner represented in the application;

Denial of the variance imposes a hardship because it prohibits the owner form expanding the building to accommodate the needs of the tenant, an auto body repair business that, according to the owner, is thriving and in need of more interior space. The business may be outgrowing the current building and so the owner could lose the tenant. However, the hardship imposed by denial of the requested variance is not sufficient to satisfy the "unnecessary hardship" finding.

The applicant's circumstances are in some ways similar to a case decided by the Kansas Court of Appeals in *Hacker v. Sedgwick County BZA, 2012*. In the Hacker case the Kansas appellate court overturned the Sedgwick County BZA's approval of a variance, concluding that self-created business growth is not a valid basis for granting a variance. According to the Hacker decision:

1. economic advantage or disadvantage does not in itself constitute 'unnecessary hardship.'
2. 'unnecessary hardship' may be found where strict application of zoning regulations would result in the complete loss of business at the location in question but not where strict application would merely prevent increased profitable use of the land; and
3. a hardship that is 'self-created,' cannot be deemed an 'unnecessary hardship.' A 'self-created hardship' occurs when a landowner purchases property with knowledge of the zoning restrictions.

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

Granting relief from the required rear setback is not likely to adversely affect adjacent property owners or the general public. The proposed addition is modest in size and impact in relation to the existing building and other conditions on and adjacent to the site. The proposed building addition allowed by the requested variance is of general benefit if it results in the growth of a business and continued occupancy of the building.

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

Granting a variance to the required setback from the alley is not opposed to the general spirit and intent of the City's variance provisions in Chapter 2.45 nor does such a variance conflict with the spirit and intent of the zoning regulations in Title 18 of the city code.

A primary purpose of building setbacks is to allow open space between buildings. The need for the protection setbacks provide is greatest for residential land uses and to a lesser extent for office and some commercial uses.

The properties affected by the requested variance are those bordering on the south and west of the subject property, and these bordering properties are zoned I-1 Light Industrial. Building setbacks are not required for land zoned I-1 except where they abut residentially zoned property. The buildings on the property adjacent to the subject parcel, to the south and west, are close to the property line. For these reasons, enforcing the setback requirements for the subject property is relatively unimportant.

Planning Staff Recommendation

Based on the above findings staff recommends the Board of Zoning Appeals **DISAPPROVE** the variance requested because K.S.A. 12-759 and TMC 2.45.110 require that all of the five conditions are met. There is insufficient evidence to support Condition (c).

However, in the event the Board of Zoning Appeals approves the variance, staff recommends approval be subject to the following conditions.

Conditions of Variance Approval

1. Development shall be consistent with the site plan received with the application on October 5, 2021 while recognizing the site plan was created without a survey and certainty of the location of the west property line.
2. The building shall be located entirely on the owner's property and be set back a minimum of 4 feet from the building on the adjacent lot to the east.
3. The owner shall conduct a survey of the property to locate the property line.
4. A building permit is required.

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

Exhibits:

1. Variance Application including "Proposed Addition Exhibit" (Site Plan)
2. Exhibit by Staff
3. Aerial Map
4. Zoning Map

EXHIBIT 1

APPLICATION
TO THE BOARD OF ZONING APPEALS
VARIANCE / EXCEPTION

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

Applicant Information

Name: G. Kurt Koles

Address: 2877 SW Knollwood Ct. Topeka, KS 66611

Phone: _____ Email: gkoles@yahoo.com

Property Information

Location of property: 1949 NW Topeka Blvd

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

Lot 11, E. V. Wilcox Subdivision, Except the North 6 feet thereof deeded to the City of Topeka for Street purposes in Book 1733, Page 541, in the City of Topeka, Shawnee County, Kansas

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:
Variance to Side yard setback from 10' to 0'

For Planning & Development Use Only

Case # BZA21V/07

Hearing Date: 11/8/2021

Legal Ad Date: 10/18/2021

Zoning District: C-4

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

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.)*;

   Requesting a variance to assist the existing tenant in expanding a growing business which has been very successful. Not forseen the anticipated growth.
   C-4 zoning does not allow for a lesser setback regardless of the adjacent zoning(s) and or use. This variance makes sense based on the way both this property and the adjacent properties are being used.

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

   Existing tenants to the west of my building would not be adversely affected. The two immediate tenants west of the building are in a line of business that in no way would be negatively impacted. The adjacent property is zoned "I-1" with a zero foot sideyard setback and the existing building is approximately 5 feet west of the common property line.

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;

   This would not create an unnecessary hardship for myself. However, the expansion would benefit my tenant and the community of Noth Topeka, which has supported this business.

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

   The variance would not affect the community in public health, safety or general health.

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

   The granting of the variance would not inhibit in anyway the spirit and intent of the chapter. However, the spirit of North Topeka and Topeka in general would be greatly enhanced.

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.

G. Kurt Kohles
Owner Name (print)

Owner Signature

Owner Name (print)

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.

Rick Schmidt SBB Engineering, LLC
Authorized Agent Name (print)

Signature – Authorized Agent

Mailing Address: 101 S. Kansas Ave (STREET ADDRESS) Topeka (CITY) Ks. (STATE) 66603 (ZIP)

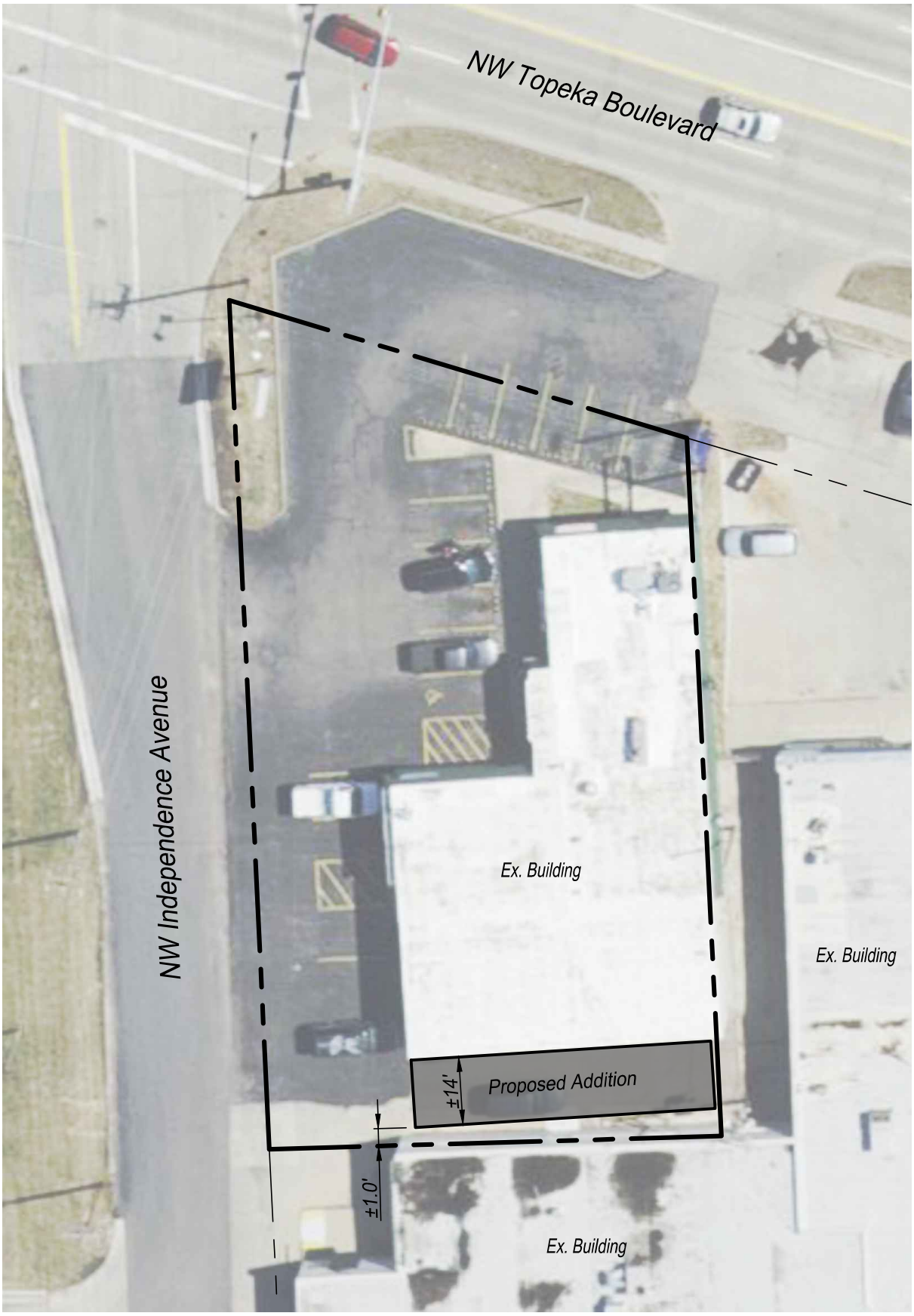
Phone: 785-215-8630 Email: rick.schmidt@sbbeng.com

Applicant:

G. Kurt Kohles
Applicant Name (print)

Applicant Signature

Proposed Addition Exhibit



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Scale: 1" = 30'

0 30'

Legal Description:

Lot 11, E V Wilcox Subdivision, City of Topeka, Shawnee County, Kansas.

Prepared for:
Kurt Koles
2877 SW Knollwood Court
Topeka, Kansas 66611

Job No.:
21-226

Date:
October 1, 2021

SBB Engineering, LLC
101 South Kansas Avenue / Topeka, Kansas 66603
Ph: (785) 215-8630 / www.sbbeng.com

EXHIBIT 2

EXHIBIT BY STAFF / BZA21V-07

November 8, 2017

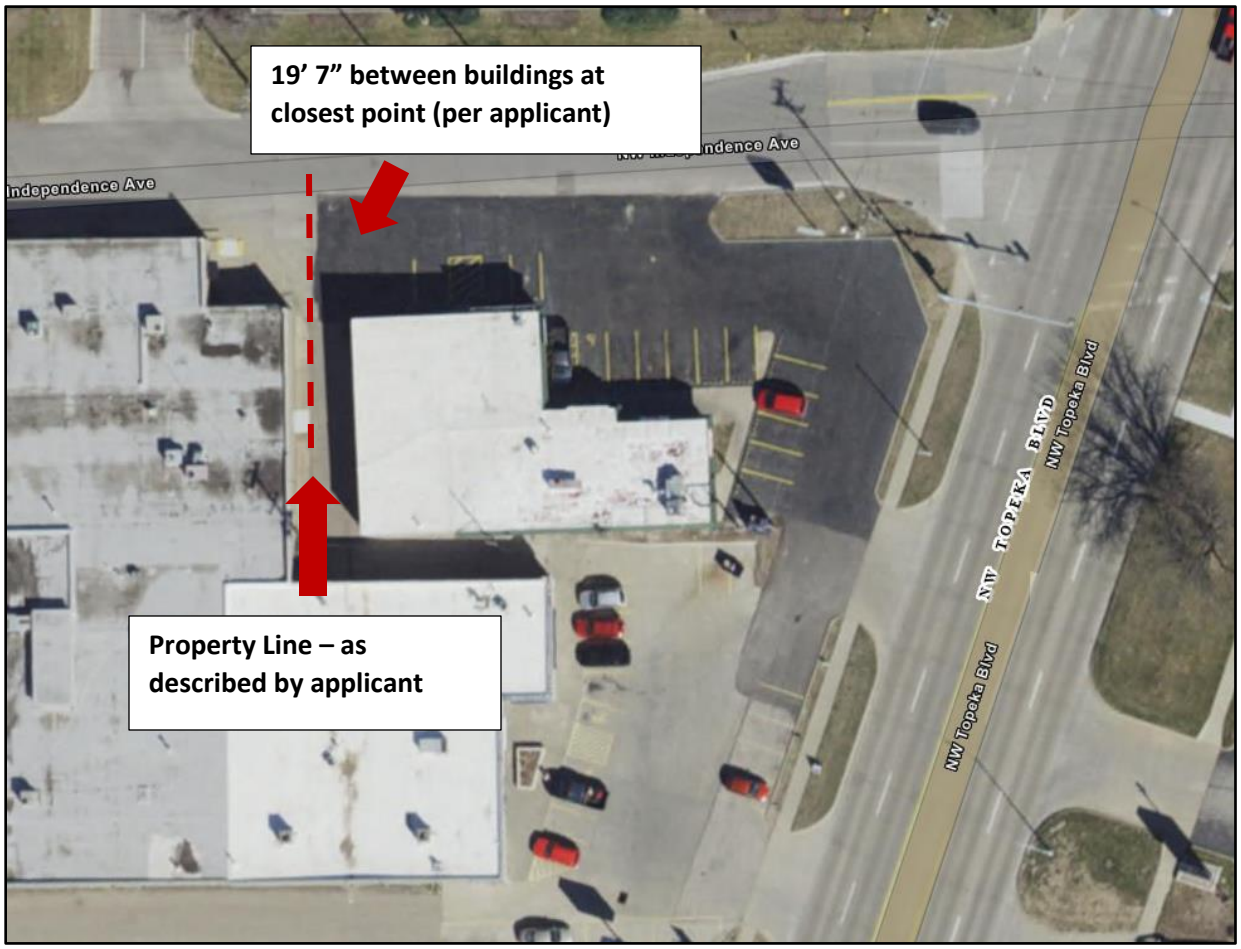
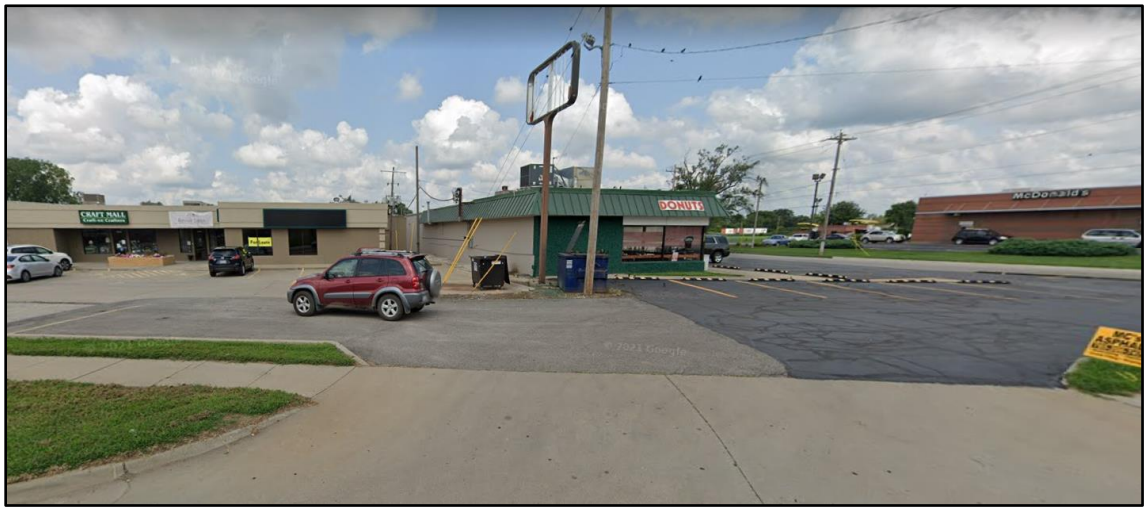
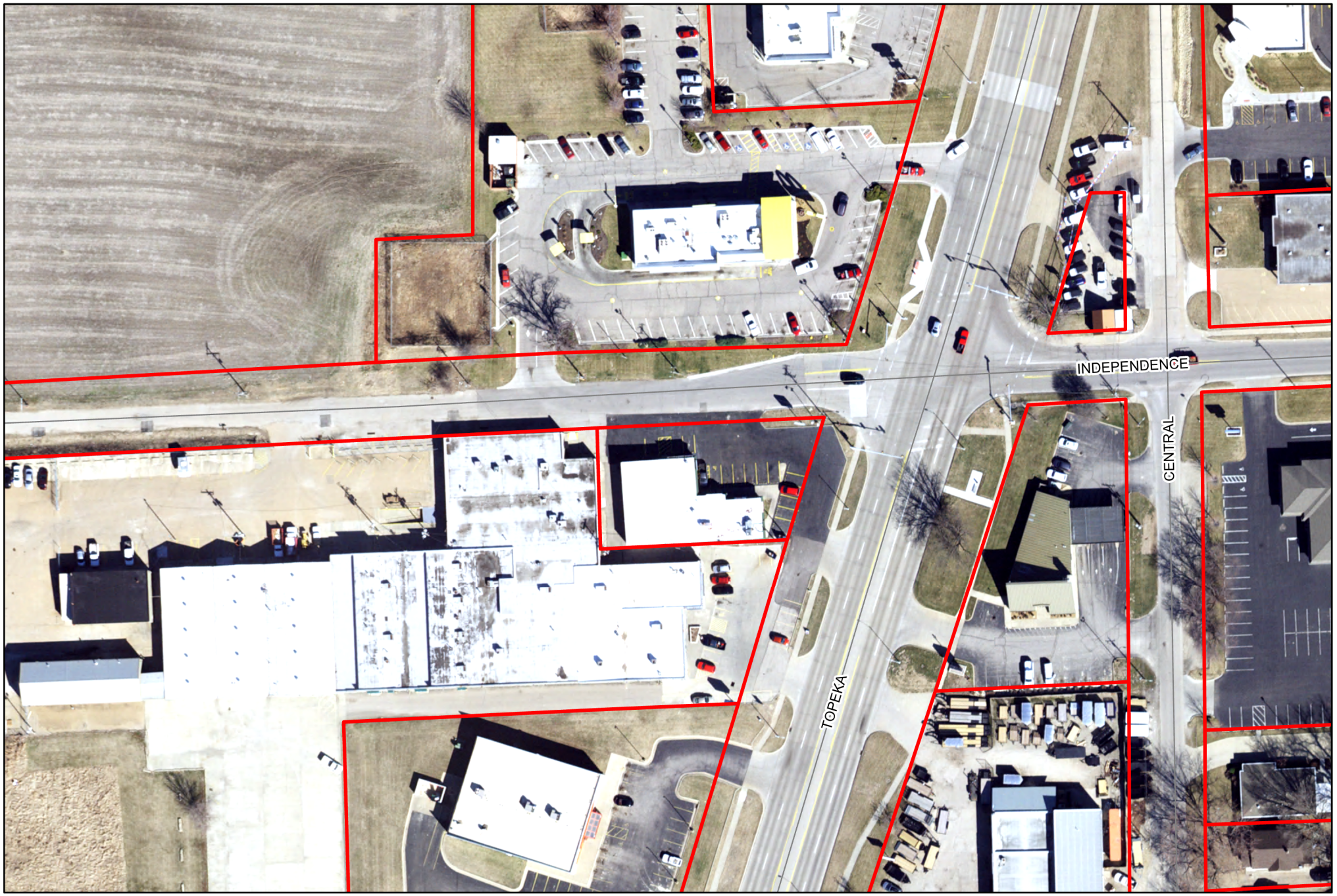


Photo from Google Maps, June 2019



View looking west from Topeka Blvd; Google Maps, July 2021



BZA 21V/07 By G. Kurt Koles

EXHIBIT 3

Legend

Subject Property

City of Topeka
Planning and Development
Department

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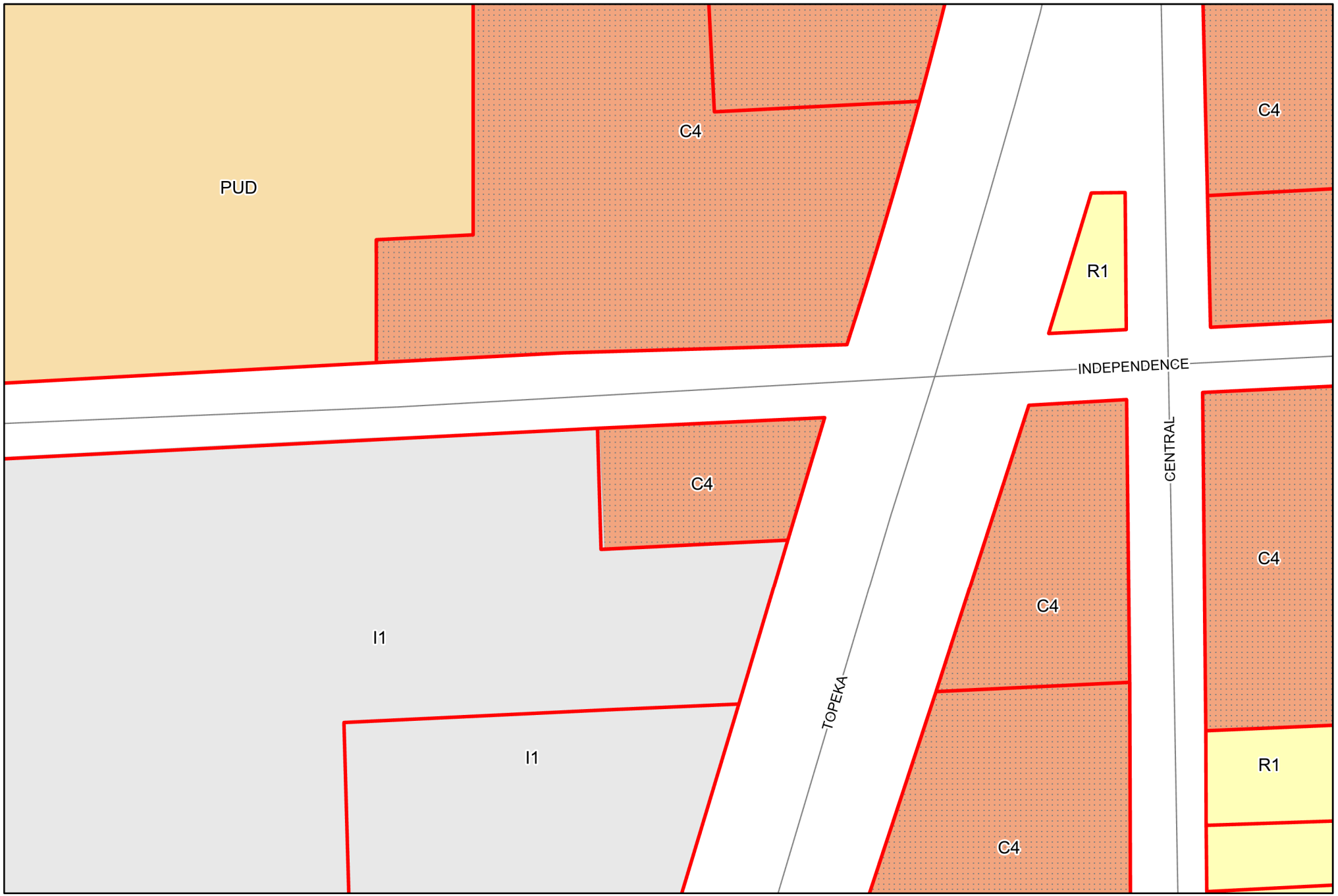

BZA 21V/07 By G. Kurt Koles
Zoning Map

EXHIBIT 4

Legend

Subject Property

City of Topeka
Planning and Development
Department

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