



## AGENDA

City of Roeland Park, Kansas

Board of Zoning Appeals

6:00 PM

February 27, 2023 Hybrid Format

Darren Nielsen

Brandon Gillet

Erik Hage

- I. Call the meeting to order
- II. Elect a chair
- III. BZA 2023-01 – Variance Request 5721 Birch
  - a. Open Hearing – Staff Report, Applicant Presentation, Public Comment
  - b. Close Public Hearing
  - c. Board Deliberation
  - d. Vote of the Board
- IV. BZA 2023-02 --- Variance Request 3523 W. 48th
  - a. Open Hearing – Staff Report, Applicant Presentation, Public Comment
  - b. Close Public Hearing
  - c. Board Deliberation

d. Vote of the Board

V. Adjourn



February 23, 2023

## STAFF REPORT

*Completed By: John Jacobson, Building Official*

**REQUEST:** The applicant, Spencer Thompson, 5300W. 58th Street is requesting variances to Fence height to accommodate the construction of a new 6' Privacy fence in the front yard.

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**RECOMMENDATION:** The applicant contends that due to the orientation of the house on the lot he has very little usable rear yard to for his pets.

Staff would agree orientation of the home does pose a unique condition. However, the size of the fence could certainly be noticeable in the neighborhood. Any accommodation that may be given should weigh this consideration.

**BACKGROUND:**

Mr. Thompson approached staff about construction of the fence and was informed of the requirements. After researching the neighborhood and existing conditions, staff recommended the variance process.

## **ANALYSIS:**

### **CHAPTER XVI – ZONING and SUBDIVISION REGULATIONS**

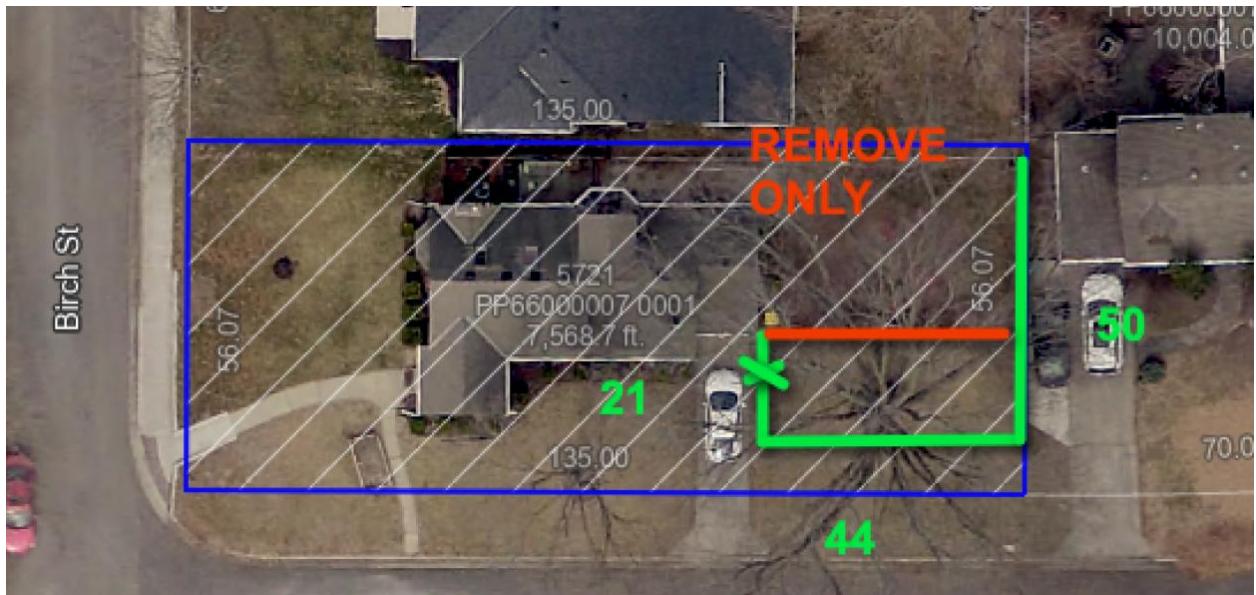
- **ARTICLE 6. – ZONING DISTRICTS**

#### **ARTICLE 6. - ACCESSORY USES AND STRUCTURES**

- **Sec. 16-613. - Accessory Uses and Structures; Development and Performance Standards.**
  - (b)
    - *Location.*
      - (1) *Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward.*

**IMPACTS:** As stated previously, the neighborhood does not currently have a similar situation near the applicant's home. The proposed condition as presented have the potential to impact adjoining properties but would allow the applicant to use his property at its highest and best use.

**POLICY ISSUES:** Current policy restricts these types of accessory structures (fences) to size limitations of 30" in the front yard area. This area being anything past the front building line of the primary structure. The regulations were intended to protect site lines for traffic safety purposes and to maintain relatively uniform appearance form the street view. The placement of the structure severely impedes the owner's ability to utilize the front yard area for anything other than open greenspace.







City of Roeland Park

4600 West 51<sup>st</sup> Street

Roeland Park, KS 66205

Ph: 913-722-2600 Fax: 913-722-3713

pd 1/20/23 -dd  
CS file# 23-600031  
CS permit B23-00000

To be filled in by City:

Date filled: 1/20/2023

Case no.:

### Application for Variance, Section 16-335.

Fee: \$100. (Free for residents/home owners in April and August) Proof of residency required.

Applicant Charles Camden Hanlick-Burton Phone 816-769-8116

Address 5721 Birch Street, Roeland Park, KS 66205 Email ccburton11@gmail.com

Property owner (if different than applicant): n/a

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

Location of Property: Subdivision Roeland Park

Lot 0001 Block 0007

Section of the zoning regulations for which variance is sought: (see attached)

Present use of property: Home residence

Description of requested variance(s): Building our south fence out 20 feet towards 57<sup>th</sup> Terrace. It will be wooden and stand 48 inches tall.

(The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property and of immediately adjacent properties.)

Reasons for requested variance(s): (see attached)

Utility lines or easements that would restrict proposed development: none

Adjacent zoning and land use:

#### Land Use

North

Single Family Dwelling

South

Single Family Dwelling

East

Single Family Dwelling

West

Single Family Dwelling

#### Zoning

Single Family Dwelling

Single Family Dwelling

Single Family Dwelling

Single Family Dwelling

I acknowledge receipt of the variance criteria and that the above information is true and accurate.

Applicant signature:

Date: 01/18/23

Fee Paid \$100

Date 1/20/23

Received by: (initials)

Date of Publication: 2-7-23

Date of Public Hearing: 2-21-23

Date Proof of Ownership and/or Authorization of Agent affidavit(s) submitted: 1-20-23

Written comments from City Engineer submitted: \_\_\_\_\_

Surrounding Property Owners Notified: 2-6-23

Planning Commission/BZA Notified: \_\_\_\_\_

### **Section of the zoning regulations for which variant is south:**

"Sec. 16-613. - Accessory Uses and Structures; Development and Performance Standards. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front plattec building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard."

### **Reasons for requested variance:**

1. **Uniqueness** - Our home is uniquely situated on a corner lot which makes the yard small and does not allow us to move our fence because we have two sides to our home that are counted as the "front". While our front door and address is on Birch street, we are not able to utilize our "side" yard facing 57th terrace so there is a large amount of space there which we cannot use or include within fencing.
2. **Adjacent Property** - This variance will not be materially detrimental or adversely affect the rights of adjacent property owners as it does not infringe on their property or rights.
3. **Hardship** - The zoning regulations only allow a 30 inch fence which is unnecessarily short, it would mean our pets could get out of our yard. Due to our entire yard being lower than our neighbor north of us (5719 Birch St) we also experience a large amount of runoff so expanding our yard would allow for us to adequately treat the northern end of our yard without losing a significant area.
4. **Public Interest** - The fence is not being increased in height, so it will not obstruct any lines of sight or functionality of any adjacent property. Also, our south-facing yard that we are asking to enclose by the fence previously had a fence several years ago, as there is evidence of old concrete and holes for a chain-link fence, so there is precedence that there was once a fence in this same area. This was also confirmed during an inspection by a licensed fence company. Our proposed fence would not go as far south towards the 57th terrace as the former fence, which will keep it far enough from the street that will prevent any line of sight issues that could cause an inconvenience, public safety, or concern of general welfare. The fence will be a wooden-picket fence of high quality installed by professionals so it should not lower the property value of our home or others in the neighborhood, preventing any moral, order, or monetary inconvenience.
5. **Spirit and Intent** - We are keeping in the general spirit and intent of the zoning regulations. The fence will be a wooden picket fence that will match the style already in our yard and the height will not increase. We have a quote from a licensed fencing company who will construct the fence. In our neighborhood there are several corner homes with fences that almost reach the sidewalks, so aesthetically, we would not "stand out" any differently than other yards in our neighborhood.

### Section 16-335. VARIANCES. (CRITERIA)

(a) When an applicant feels that the strict application of the requirements of the zoning regulations have created an undue hardship, such applicant may request a variance from the Board of Zoning Appeals.

(b) A variance should be issued only to the specific restrictions on physical construction; not to permissible land uses within a given district, and only if it reasonably constitutes the minimum variance necessary and the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

(c) To initiate a request for a variance the applicant or his authorized agent shall submit a completed application on the form provided by the City to the City Engineer and pay the appropriate fee as set forth in Section 16-333. The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties. The City Engineer may require applicant to submit photos of the subject property. No application shall be processed until it has been deemed completed by the City Engineer, the fee paid and all additional information submitted.

(d) When all requirements established in Subsections B and C have been complied with, the City Engineer shall notify the Chairman, and the Chairman shall schedule a regular meeting of the Board and send to the Board members copies of the application and all additional information submitted. At least 20 days prior to the Board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance. The form of the notice and the procedure for providing such notice shall be in accordance with Subsection 16-250(A).

(e) At the scheduled meeting of the Board, it shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the Board shall not grant a variance unless it finds, based upon the evidence presented, facts which conclusively support all the following findings.

(1) Uniqueness. The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. Such conditions include the particular physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

(2) Adjacent Property. The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents

(3) Hardship. The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

(4) Public Interest. The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

(5) Spirit and Intent. Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.

(f) The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in City Hall and shall be public record.

(g) The Board may either grant, grant conditionally, or deny the application for a variance. If the decision of the Board is not made at the meeting at which the hearing was held, a written decision shall be sent to affected parties and the Planning Commission.

16-334. APPEALS TO THE BOARD OF ZONING APPEALS.

(a) Appeals may be taken by any person aggrieved, or by any officer of the city or any government body or agency affected by any order, requirement, decision, or determination made by any administrative official of the City in the enforcement of Chapter 16, or of any ordinance adopted pursuant thereto.

(b) No appeal, pursuant to this Section, shall be heard by the Board until the individual appealing the order, requirement, decision or determination has met with the administrative official who made such determination to receive a full explanation of the zoning requirements in question as currently interpreted. No notice of appeal shall be processed until it has been deemed complete by the City Engineer, the fee paid, and all required additional information submitted.

(c) The appeal shall be taken within a reasonable time as provided by the rules of the Board. An appeal shall be initiated by filing with the person whose decision is being appealed and with the Board a notice of appeal specifying the decision being appealed from and a statement as to the reason of the appeal. The notice must be accompanied by the fee set by the Governing Body, pursuant to Section 16-333. City Engineer or the Board may require that drawings or photos of the property in question and a list of all surrounding property owners be submitted to the Board prior to consideration of the appeal by the Board.

(d) When all requirements established in Subsections b and c have been complied with, the City Engineer shall notify the Chairman and the Chairman shall schedule a meeting of the Board and shall send copies of the notice to the Board members. At least twenty days prior to the Board meeting, an official notice to the public shall be published in the official city newspaper explaining the appeal and the time and place of the scheduled hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. At the hearing, any party may appear in person or by an agent or by an attorney.

(e) An appeal stays all proceedings and furtherance of action appealed from unless the City Engineer certifies to the Board, after the notice of appeal has been filed, that, by reason of facts stated in the notice, a stay would cause imminent peril to life or property.

(f) At its next meeting, the Board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal shall be heard by the Board at the next meeting following compliance with the requirements established in Subsections b, c and d.

(g) In its deliberations, the Board must only consider whether or not the interpretation in question conformed to the specific language of the ordinance being enforced. The Board may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The Board may clarify ambiguities or resolve conflicts between opposing sections. Since the Board's decisions will affect future application of the regulation in question, the specific hardship of the applicant should not be considered when reaching a determination on an appeal filed pursuant to this Section.

(h) The Board may either affirm, reverse, or modify the order, requirement or interpretation at issue. If the decision of the Board is not made at the meeting where the hearing was held, a written decision shall be mailed to affected parties.

16-336. APPEALS FROM BOARD OF ZONING APPEALS. Any person or an official of a government agency dissatisfied with any order or determination of the Board may bring an action to determine the reasonableness of any such order or determination within thirty days after the making of such order or determination, in the District Court of Johnson County, Kansas

## PUBLIC NOTICE

The Board of Zoning Appeals will consider an application for variance to amend the interpretation of regulations limiting fence construction in the front yard. The Board of Zoning Appeals of the City of Roeland Park, Kansas will hold a public meeting on MONDAY, FEBRUARY 27, 2022 AT 6:00 P.M. The hearing will be conducted via a hybrid model. Those who are able to attend may do so in the City Council Chambers at 4600 W. 51<sup>st</sup> or remotely via zoom

<https://us06web.zoom.us/j/86162246473>

The public hearing is for a variance (BZA 2023-01) requested by the owner of 5721 Birch Roeland Park KS. The variance requested from Section 16-613(1) Accessory Uses and Structures; Development and Performance Standards of the Zoning Ordinance is seeking relief from the strict application of the City Code. To allow the construction of a fence in excess of 30" tall in the front yard.

The subject property is a corner lot with a primary structure placed. The applicant desires to build a new fence to capture front yard area due to the primary structure placement to the rear of the lot. The proposed fence height exceeds the size limitation and requirements established by ordinance.

If you have any questions, please contact John Jacobson, Building Official, at Roeland Park City Hall (913-722-2600).

*Please publish on February 6, 2023 and mail three copies of affidavits and costs of publications to the City of Roeland Park.*

## VERIFIED STATEMENT

I/We, Spencer Thompson (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

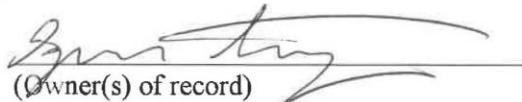
This request is to modify the fence to a point past the front building line to fence in yard for a dog. The code currently doesn't allow fences higher than 30' in the front yard.

The Public Hearing for this application is scheduled for Monday, February 27, 2023 at 6:00 p.m. The meeting will be conducted by the Board of Zoning Appeals (BZA) and will be held remotely. The link to the meeting is as follows:

BZA Variance Meeting Applicant – Homeowner 3523 W.48th Street  
Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:



(Owner(s) of record)

(Owner(s) of record)

**Address:** 5300 W. 58<sup>th</sup> St, Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, Evan Brown (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

  
(Owner(s) of record)

(Owner(s) of record)

Address:

5733 ~~100~~ Nall Ave  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, DeTommaso (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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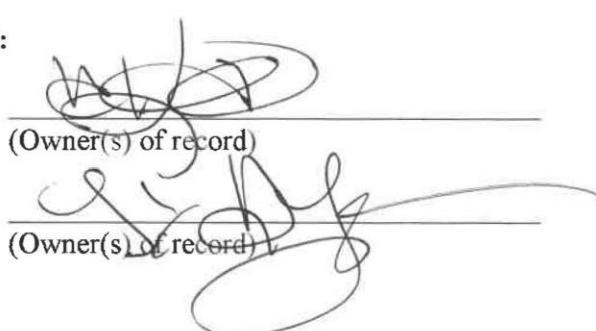
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Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:



**Address:** 5300 W 57th Terr.  
Roeland Park, KS 66205

## VERIFIED STATEMENT

I/We, Libby Brown, Jordan Burgess (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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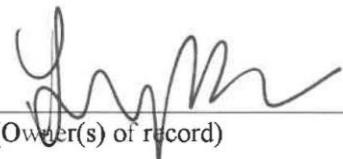
This request is to modify the fence to a point past the front building line to fence in yard for a dog. The code currently doesn't allow fences higher than 30' in the front yard.

The Public Hearing for this application is scheduled for Monday, February 27, 2023 at 6:00 p.m. The meeting will be conducted by the Board of Zoning Appeals (BZA) and will be held remotely. The link to the meeting is as follows:

BZA Variance Meeting Applicant – Homeowner 3523 W.48th Street  
Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:



(Owner(s) of record)

(Owner(s) of record)

**Address:** 5716 Birch Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/we, Anne Bloos & Mark Wiebe (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Anne Brady Bloos  
(Owner(s) of record)

Mark D. Wiebe  
(Owner(s) of record)

Address: 5229 W. 57th Terr  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

## VERIFIED STATEMENT

I/We, RONNIE STILES (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

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BZA Variance Meeting Applicant – Homeowner 3523 W.48th Street  
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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Ronnie Stiles  
(Owner(s) of record)

\_\_\_\_\_  
(Owner(s) of record)

**Address:** 5701 Birch Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

### VERIFIED STATEMENT

I/We, Ashleigh Bachwell (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

#### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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BZA Variance Meeting Applicant – Homeowner 3523 W. 48th Street  
Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Ashleigh Bachwell  
(Owner(s) of record)

\_\_\_\_\_  
(Owner(s) of record)

Address:

5313 W. 57th TERRACE  
ROELAND PARK, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

## VERIFIED STATEMENT

I/We, Jason & Cayli Mullings (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

**Signed:**

Cayli  
(Owner(s) of record)

Cayli  
(Owner(s) of record)

**Address:**

5319 W. 57th Terrace  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, Sara Henning (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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This request is to modify the fence to a point past the front building line to fence in yard for a dog. The code currently doesn't allow fences higher than 30' in the front yard.

The Public Hearing for this application is scheduled for Monday, February 27, 2023 at 6:00 p.m. The meeting will be conducted by the Board of Zoning Appeals (BZA) and will be held remotely. The link to the meeting is as follows:

BZA Variance Meeting Applicant – Homeowner 3523 W.48th Street  
Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Sara Henning  
(Owner(s) of record)

(Owner(s) of record)

**Address:** 5228 W 57<sup>th</sup> Terrace  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

## VERIFIED STATEMENT

I/We, Justine + Spencer Hurst (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –

*Location. Front yard.* A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward

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**BZA Variance Meeting Applicant – Homeowner 3523 W.48th Street  
Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)**

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Sybil  
(Owner(s) of record)

(Owner(s) of record)

**Address:** 5301 W 57<sup>th</sup> Terr.  
Roeland Park, KS 66205

## VERIFIED STATEMENT

I/We, Kyle L. Mowry (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

### **Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

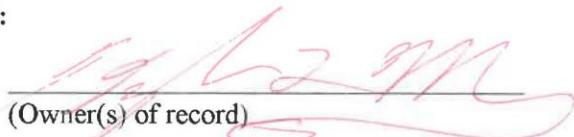
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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

  
(Owner(s) of record)

---

(Owner(s) of record)

**Address:** 5321 West 95th Terr  
Roeland Park, KS 66203

VERIFIED STATEMENT

I/We, John L. Massa (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 -**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

  
(Owner(s) of record)

---

(Owner(s) of record)

**Address:** 5719 BMEA Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, Joseph L. Jacobson (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

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Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Joseph L. Jacobson  
(Owner(s) of record)

(Owner(s) of record)

Address: 5700 Birkay Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, DUSTIN WADE (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard. A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward*

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Mon, Feb. 27, 2023 6:00 PM - 7:30 PM (CDT)

If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

  
(Owner(s) of record)

(Owner(s) of record)

**Address:** 5306 W. 58th St. Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, Carole Tomlinson (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

*Location. Front yard.* A fence or wall in excess of 30 inches high may not be constructed in the front yard or in front of the front platted building line, whichever is more restrictive. A decorative wall or fence 30 inches high or lower may be constructed in a front yard, provided that no fence or wall may be located in public right-of-way. For purposes of this subsection, a "decorative" wall or fence shall be limited to structures constructed of wood rail, masonry, wrought iron, or spaced wooden pickets; where the construction has both a finished and an unfinished surface, the finished surface shall face outward

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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

Carole Tomlinson  
(Owner(s) of record)

\_\_\_\_\_  
(Owner(s) of record)

**Address:** 5722 Birch Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, MaryEllen Gillespie (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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If you have any questions, please contact John Jacobson, Building Official, at the Roeland Park City Hall (722-2600).

Signed:

MaryEllen Gillespie  
(Owner(s) of record)

\_\_\_\_\_  
(Owner(s) of record)

**Address:** 5728 Birch St.  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, MARK MAC Y (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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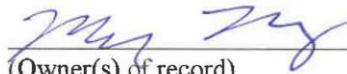
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Signed:

  
(Owner(s) of record)

---

(Owner(s) of record)

**Address:**

*5712 Birch Street  
Roeland Park, KS 66205*

*Must be signed by at least one owner of records (over 18 years of age).*

## VERIFIED STATEMENT

I/We, \_\_\_\_\_ (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

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Signed:

Holly Crumpton  
(Owner(s) of record)  
Holly S. Crumpton  
(Owner(s) of record)

Address: 5709 Birch Street

*Must be signed by at least one owner of records (over 18 years of age).*

VERIFIED STATEMENT

I/We, Kathryn Mayhew (owner(s) of record), hereby state that I/we received the letter regarding BZA Application 2023-1 for variance from:

**Roeland Park Municipal Code Chapter XVI; Article 6; Sec. 16-613(b)1 –**

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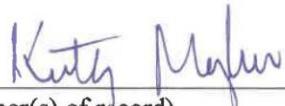
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Signed:

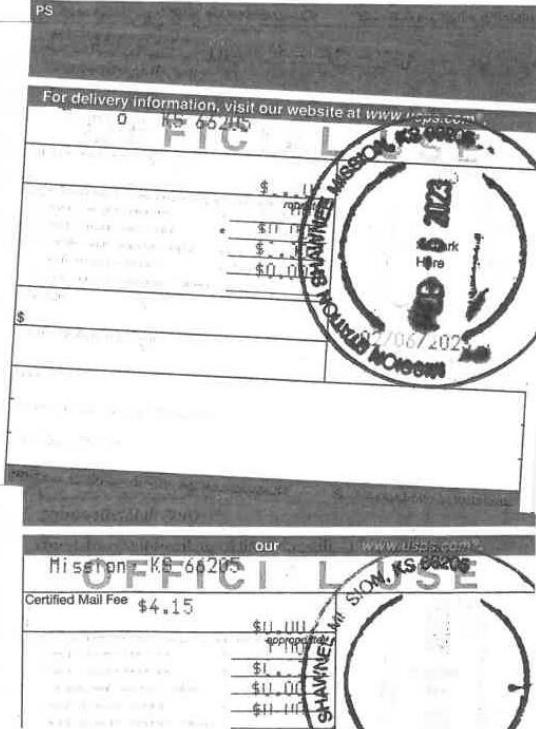
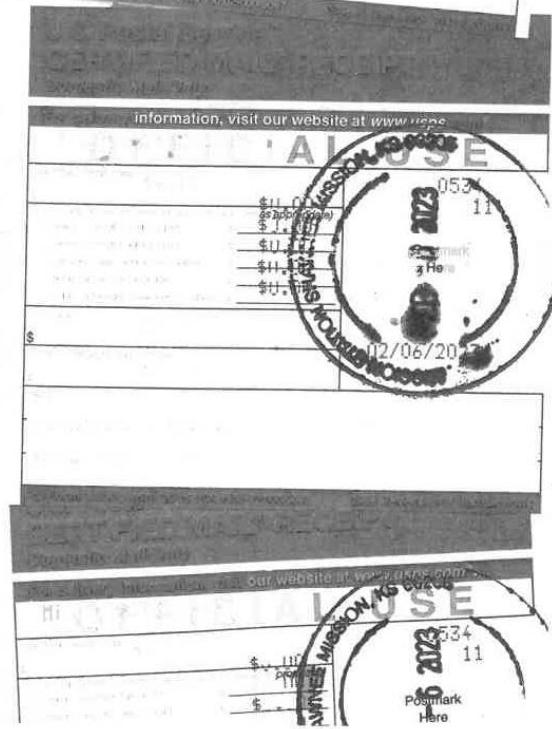
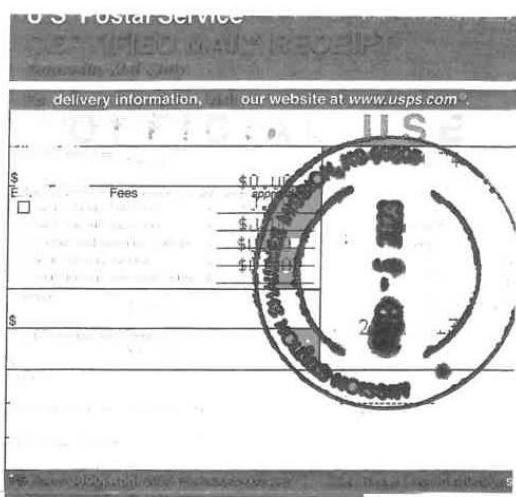
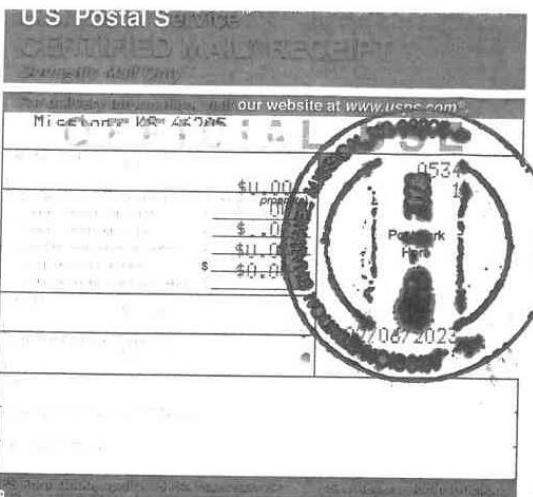
  
(Owner(s) of record)

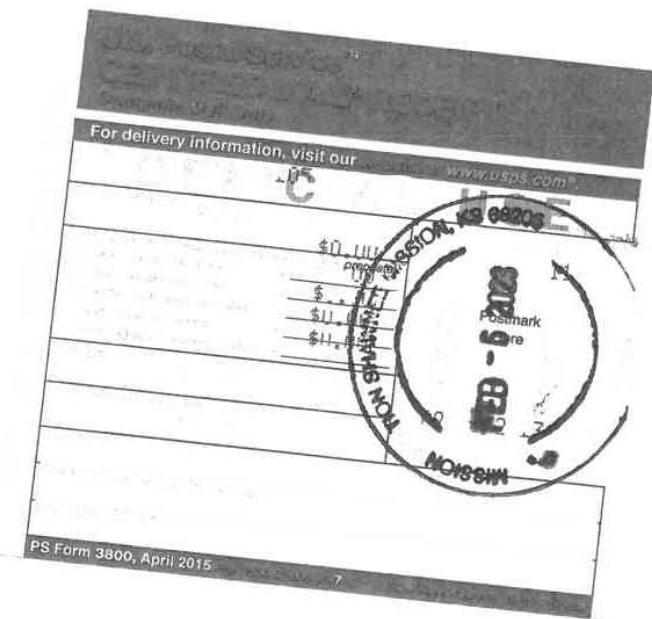
(Owner(s) of record)

**Address:** 5706 Birch Street  
Roeland Park, KS 66205

*Must be signed by at least one owner of records (over 18 years of age).*

delivery information, visit our website at [www.usps.com](http://www.usps.com).









February 23, 2023

## STAFF REPORT

***Completed By: John Jacobson, Building Official***

**REQUEST:** The applicant, Bill Voght, 3523 W. 48th Street is requesting variances to the existing side 20' setback to allow for improvements to the structure.

---

**RECOMMENDATION:** The applicant that an addition to the existing structure is necessary to accommodate his family's living needs to maintain residence in Roeland Park. As a longtime resident of the community, he and his family would prefer to stay in the area and the home. Further, that there are several structures in the immediate neighborhood with similar conditions as to the variance he is proposing. He has included the addresses in the application paperwork.

Staff would agree that the area in which the home is located is a unique condition. Clearly there have been previous actions that allowed setbacks to be encroached on. No current formal record exists that can be located. None the less, there are multiple instances in which current setbacks are not in place. From a staff perspective, the ability to use the home to highest and best use without significant impact to the immediate neighborhood and/or traffic safety is a prerequisite for support. In this instance, staff doesn't believe either components are significantly impacted.

Staff would recommend variance approval as submitted.

## **BACKGROUND:**

Mr. Voghts designer approached staff about construction of the improvements and was informed of the requirements. After researching the neighborhood and existing conditions, staff recommended the variance process.

## **ANALYSIS:**

### **CHAPTER XVI – ZONING and SUBDIVISION REGULATIONS**

- **ARTICLE 4. – ZONING DISTRICTS**

- **Sec. 16-407. Single-Family Residence Districts; Dimensions.**  
(a)

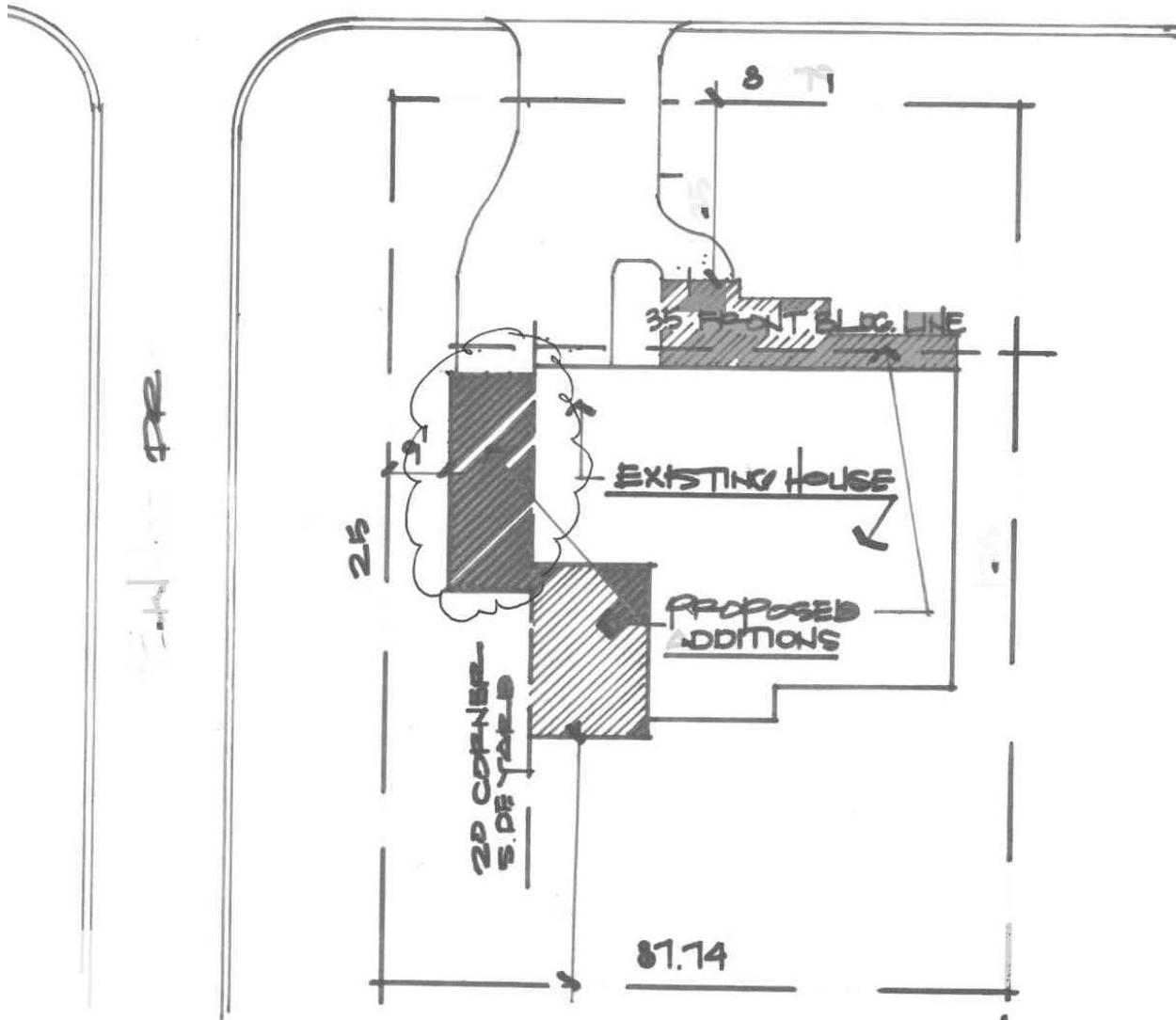
- (2) *Side yard Setbacks*

No residence (including attached or semi-attached garages and porches, enclosed or unenclosed) shall be located within five feet of either side of the lot, tract or parcel of land upon which it is erected; nor shall any residence, including the above enumerated appurtenances, occupy more than 80 percent of the width of the lot, tract, or parcel of land upon which it is erected, measured along the front set-back line. In addition, if the side yard abuts on a street or highway, **no residence (including attached or semi attached garages and porches, enclosed or unenclosed) shall be located within 20 feet of the street or highway right-of-way line.** A minimum distance of ten feet shall be provided and maintained between the residence and any building located upon adjacent premises.

**IMPACTS:** As stated previously, the neighborhood does currently have a similar encroachments near the applicant's home. The proposed condition as presented should have minimal impacts to adjoining properties but would allow the applicant to use his property at its highest and best use.

**POLICY ISSUES:** Current policy restricts structures to a 20' side yard setback from the right of way line. The proposed variance would impact that setback by 11 feet. That being said, no line of sight issues are present when observed in the field and the proposal is in line with existing conditions in the neighborhood.

18<sup>th</sup> St



SITE PLAN

SCALE: 1" = 20'

## PUBLIC NOTICE

The Board of Zoning Appeals will consider an application for variance to amend the interpretation of regulations limiting construction in the platted setback. The Board of Zoning Appeals of the City of Roeland Park, Kansas will hold a public meeting on MONDAY, FEBRUARY 27, 2022 AT 6:00 P.M. The hearing will be conducted via a hybrid model. Those who are able to attend may do so in the City Council Chambers at 4600 W. 51<sup>st</sup> or remotely via zoom

<https://us06web.zoom.us/j/86162246473>

The public hearing is for a variance (BZA 2023-01) requested by the owner of 3523 W 48<sup>th</sup> Street Roeland Park KS. The variance requested from Section 16-407(b) SIDE YARD SETBACKS of the Zoning Ordinance is seeking relief from the strict application of the City Code. To allow the construction of a small addition within the platted setback.

The subject property is a corner lot with a primary structure placed. The applicant desires to build a new addition that will encroach in the platted setback. The proposal seeks relief from strict application of the code to accommodate construction consistent with the character of the neighborhood.

If you have any questions, please contact John Jacobson, Building Official, at Roeland Park City Hall (913-722-2600).

*Please publish on February 6,2023 and mail three copies of affidavits and costs of publications to the City of Roeland Park.*



City of Roeland Park  
4600 West 51<sup>st</sup> Street  
Roeland Park, KS 66205  
Ph: 913-722-2600 Fax: 913-722-3713

To be filled in by City:

Date filed:

Case no.:

### Application for Variance, Section 16-335.

Fee: \$100. (Free for residents/home owners in April and August) *Proof of residency required.*

Applicant Bill Voght Phone 816 8065 3635

Address 3523 W. 48th Email bvogt@allstaryeswecan.com

Property owner (if different than applicant): " \_\_\_\_\_

Address " \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

Location of Property : Subdivision Fairway Mandot 1 Block 7

Section of the zoning regulations for which variance is sought:

Chapter 16 Sec. 16-407(b) side yard setbacks

Present use of property: Single Family Residential

Description of requested variance(s) Side setback variance to allow construction of home improvements  
Reduce side setback to 9' from the platted 20' requirement

*(The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property and of immediately adjacent properties.)*

Reasons for requested variance(s) To accommodate current living needs in the current existing structure to remain in Roeland Park

Utility lines or easements that would restrict proposed development None

Adjacent zoning and land use:

	Land Use	Zoning
North	Single Family	SFR
South	Single Family	SFR
East	Single Family	SFR
West	Single Family	SFR

I acknowledge receipt of the variance criteria and that the above information is true and accurate.

Applicant signature:

Date: 1-31-23

Fee Paid \$ 100	Date 1-31-23	Received by: D.C.
Date of Publication: 2-7-23	Date of Public Hearing	2-27-23
Date Proof of Ownership and/or Authorization of Agent affidavit(s) submitted 1-31-23		
Written comments from City Engineer submitted: <u>      </u>		
Surrounding Property Owners Notified 1-31-23		Planning Commission/BZA Notified

Section 16-335. VARIANCES. (CRITERIA)

- (a) When an applicant feels that the strict application of the requirements of the zoning regulations have created an undue hardship, such applicant may request a variance from the Board of Zoning Appeals.
- (b) A variance should be issued only to the specific restrictions on physical construction; not to permissible land uses within a given district, and only if it reasonably constitutes the minimum variance necessary and the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.
- (c) To initiate a request for a variance the applicant or his authorized agent shall submit a completed application on the form provided by the City to the City Engineer and pay the appropriate fee as set forth in Section 16-333. The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties. The City Engineer may require applicant to submit photos of the subject property. No application shall be processed until it has been deemed completed by the City Engineer, the fee paid and all additional information submitted.
- (d) When all requirements established in Subsections B and C have been complied with, the City Engineer shall notify the Chairman, and the Chairman shall schedule a regular meeting of the Board and send to the Board members copies of the application and all additional information submitted. At least 20 days prior to the Board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance. The form of the notice and the procedure for providing such notice shall be in accordance with Subsection 16-250(A).
- (e) At the scheduled meeting of the Board, it shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the Board shall not grant a variance unless it finds, based upon the evidence presented, facts which conclusively support all the following findings.
  - (1) **Uniqueness.** The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. Such conditions include the particular physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.
  - (2) **Adjacent Property.** The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents
  - (3) **Hardship.** The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.
  - (4) **Public Interest.** The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
  - (5) **Spirit and Intent.** Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.
- (f) The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in City Hall and shall be public record.
- (g) The Board may either grant, grant conditionally, or deny the application for a variance. If the decision of the Board is not made at the meeting at which the hearing was held, a written decision shall be sent to affected parties and the Planning Commission.

16-334. APPEALS TO THE BOARD OF ZONING APPEALS.

- (a) Appeals may be taken by any person aggrieved, or by any officer of the city or any government body or agency affected by any order, requirement, decision, or determination made by any administrative official of the City in the enforcement of Chapter 16, or of any ordinance adopted pursuant thereto.
- (b) No appeal, pursuant to this Section, shall be heard by the Board until the individual appealing the order, requirement, decision or determination has met with the administrative official who made such determination to receive a full explanation of the zoning requirements in question as currently interpreted. No notice of appeal shall be processed until it has been deemed complete by the City Engineer, the fee paid, and all required additional information submitted.
- (c) The appeal shall be taken within a reasonable time as provided by the rules of the Board. An appeal shall be initiated by filing with the person whose decision is being appealed and with the Board a notice of appeal specifying the decision being appealed from and a statement as to the reason of the appeal. The notice must be accompanied by the fee set by the Governing Body, pursuant to Section 16-333. City Engineer or the Board may require that drawings or photos of the property in question and a list of all surrounding property owners be submitted to the Board prior to consideration of the appeal by the Board.
- (d) When all requirements established in Subsections b and c have been complied with, the City Engineer shall notify the Chairman and the Chairman shall schedule a meeting of the Board and shall send copies of the notice to the Board members. At least twenty days prior to the Board meeting, an official notice to the public shall be published in the official city newspaper explaining the appeal and the time and place of the scheduled hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. At the hearing, any party may appear in person or by an agent or by an attorney.
- (e) An appeal stays all proceedings and furtherance of action appealed from unless the City Engineer certifies to the Board, after the notice of appeal has been filed, that, by reason of facts stated in the notice, a stay would cause imminent peril to life or property.
- (f) At its next meeting, the Board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal shall be heard by the Board at the next meeting following compliance with the requirements established in Subsections b, c and d.
- (g) In its deliberations, the Board must only consider whether or not the interpretation in question conformed to the specific language of the ordinance being enforced. The Board may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The Board may clarify ambiguities or resolve conflicts between opposing sections. Since the Board's decisions will affect future application of the regulation in question, the specific hardship of the applicant should not be considered when reaching a determination on an appeal filed pursuant to this Section.
- (h) The Board may either affirm, reverse, or modify the order, requirement or interpretation at issue. If the decision of the Board is not made at the meeting where the hearing was held, a written decision shall be mailed to affected parties.

16-336. APPEALS FROM BOARD OF ZONING APPEALS. Any person or an official of a government agency dissatisfied with any order or determination of the Board may bring an action to determine the reasonableness of any such order or determination within thirty days after the making of such order or determination, in the District Court of Johnson County, Kansas

## Criteria for a Variance for Roeland Park

Please describe how your request meets the following criteria necessary for a variance.

1. **Uniqueness.** The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. These conditions include the particular physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

*Our home is uniquely situated on a corner lot which makes the useable area of the lot considerably smaller than standard adjoining lots. Further, the neighborhood in which we have been a part for more the 14 years is unique. There is an argument to made that Roeland Park and similar aging communities are unique due to the evolution of zoning regulations and their enforcement over the decades. The enforcement of setback criteria over the years has varied and along with previous variances have resulted in setback encroachment on a multitude of neighborhood lots that either meet or exceed this request. A list of addresses for the board to review has been attached to the application. With near community wide build out occurring decades ago the logical enforcement of zoning regulations becomes paramount in ensuring that the housing stock does not become obsolete with today's housing needs. In our view it is the BZA's role to determine if that unique condition is enough to accommodate modest setback variances to allow structures to be remodeled to current needs*

2. **Adjacent property.** The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.

*This variance will not be materially detrimental or adversely affect the rights of adjacent property owners as it does not infringe on their property or rights. The condition has resulted in large number of lots in the immediate neighborhood that while meeting the owner's needs, are not compliant with today's interpretation of the setback limitations. Granting this variance would allow the owner to make modest improvements that complement the existing conditions of neighborhood without impacting adjacent property.*

3. **Hardship.** The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

*The strict application of the setback criteria would limit the owner's ability to modify the structure and would require the owner to relocate to another community to accommodate their living needs. If strict application is enforced it creates a condition in which it is nearly impossible to accommodate modern home needs in this existing structure.*

4. **Public interest.** The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

*This variance will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood. The request if granted, maintains a cohesive neighborhood identity while utilizing the property for its highest and best use.*

5. **Spirit and Intent.** Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.

*This request for variance is not opposed to the general spirit and intent of the zoning regulations.*

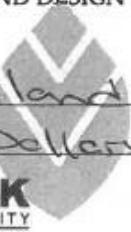
The following are a few other properties on corner lots ect. in close proximity to our home, which have setbacks in line with our request.

3612 W. 50th St. front yard setback  
3606 W. 50th St. front yard setback  
3500 W. 50th St. side yard setback  
3312 W. 50th Terr. side yard setback  
5001 W. 50th Terr. side yard setback  
5017 W. 50th Terr. side yard setback  
4801 W. 48th St. side yard setback  
4770 Canterbury front yard setback  
4778 Reinhard Dr. front and side yard setback

JOSEPH ELDER  
DBA ELDER CUSTOM HOMES AND DESIGN  
2705 W 51ST TERR  
WESTWOOD, KS 66205

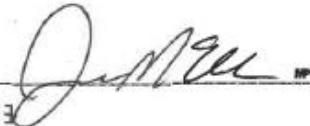
18-92  
1010 204

3133

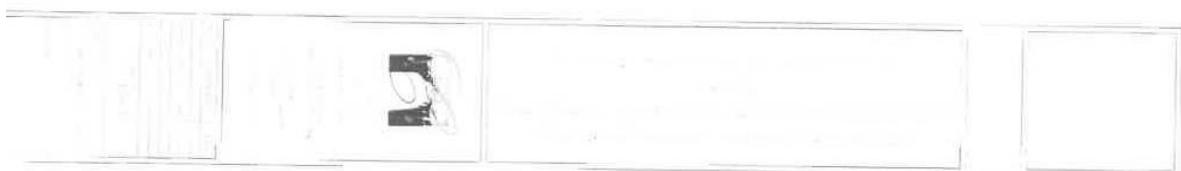
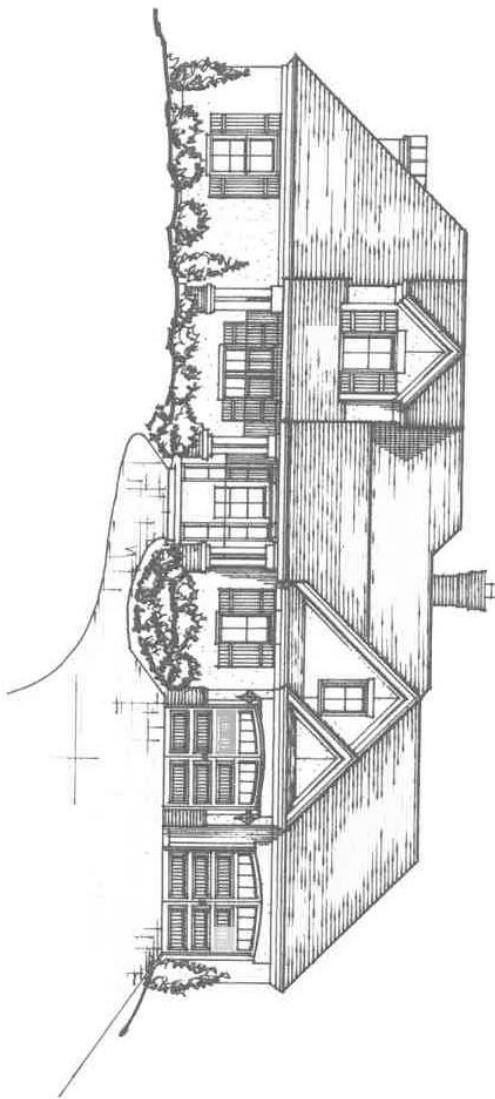
PAY TO City of Roeland Park \$ 100<sup>00</sup>  
THE ORDER OF  
One Hundred Dollars and 00/100 Dollars   
MEMO 3523 W48

DATE 1/31/23

**SECURITY BANK**  
OF KANSAS CITY  
701 Minnesota Ave. / Kansas City, KS 66101 MEMBER FDIC

  
10 1000925 12000156864 7133

18-92  
1010 204



## The Legal Record

1701 E. Cedar St., Ste. 111  
Olathe, KS 66062-1775  
(913) 780-5790

ATTN:  
KELLEY  
NIELSEN  
CITY OF  
ROELAND  
PARK 4600 W  
51ST STREET  
ROELAND **PARK** KS 66205-3500

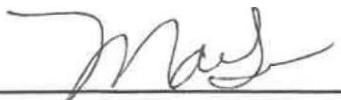
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## Proof of Publication

STATE OF **KANSAS**, JOHNSON COUNTY, SS;

Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

PUBLIC NOTICE - BZA - 3523 W. 48TH STREET  
27/23



Maureen Gillespie, Legal Notices Billing Clerk

DEBRA VALENTI

Notary Public-State of Kansas

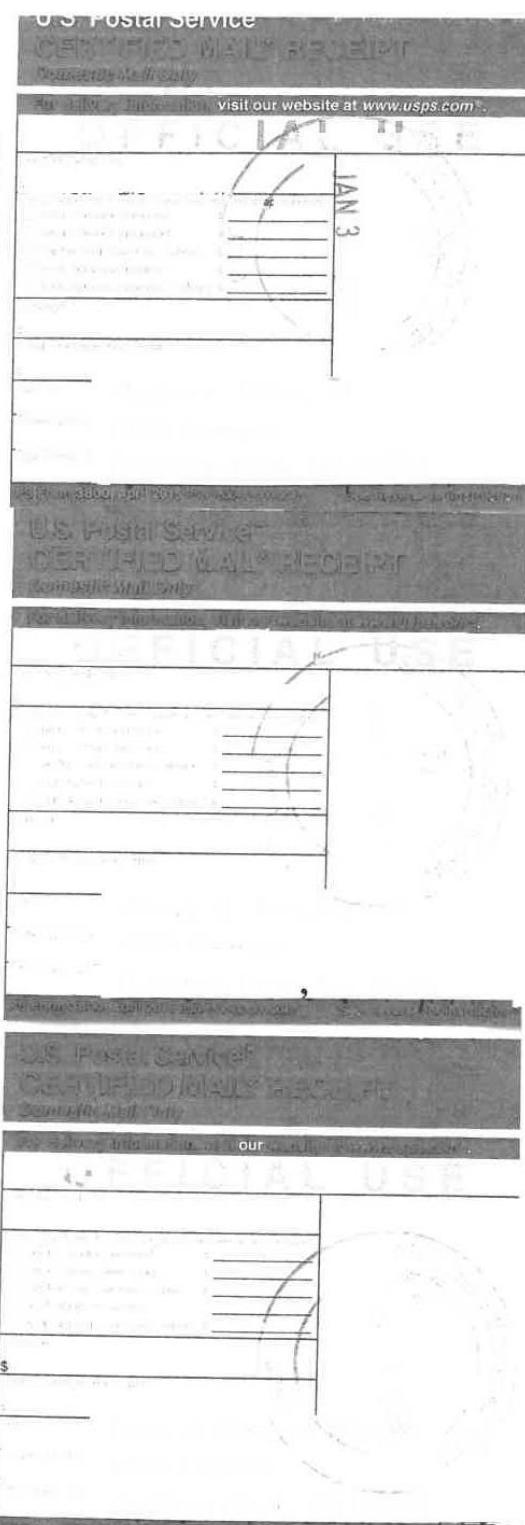
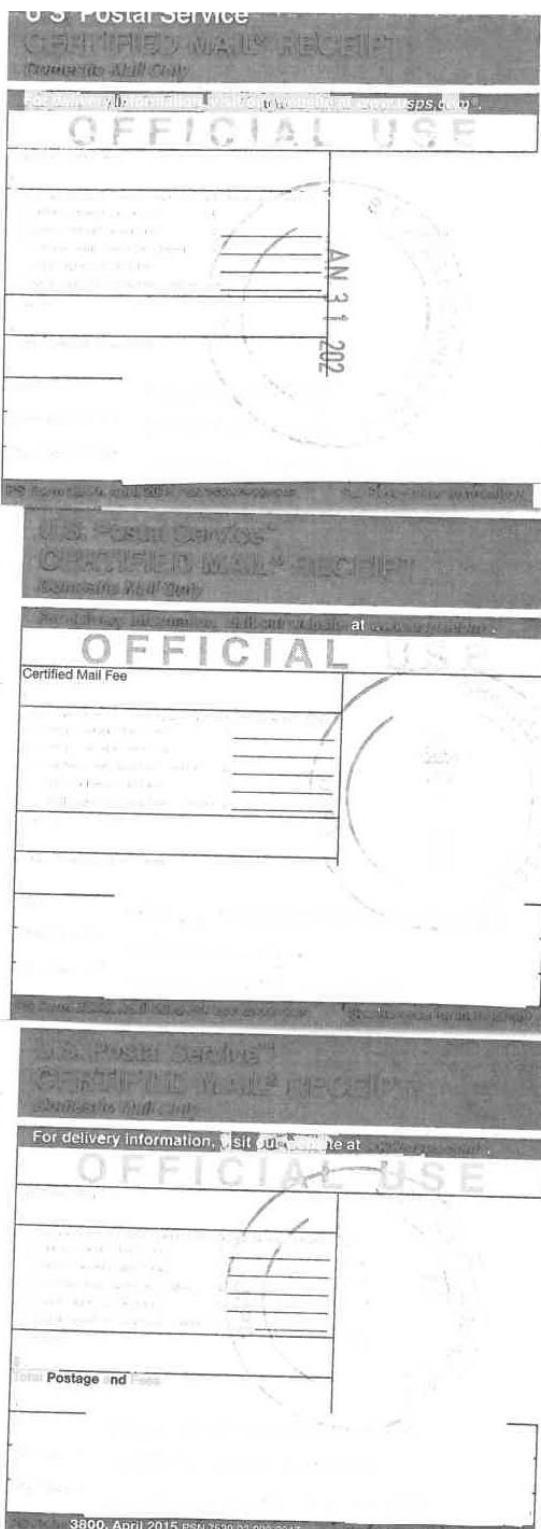
Subscribed and sworn to before me on this date:

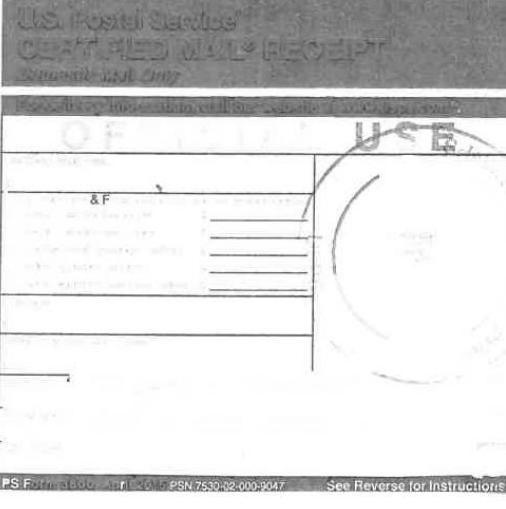
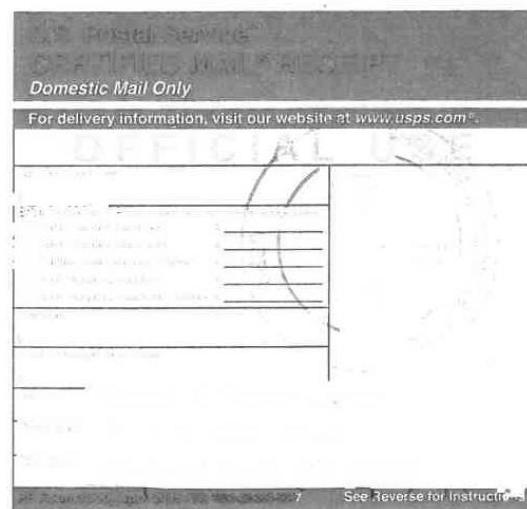
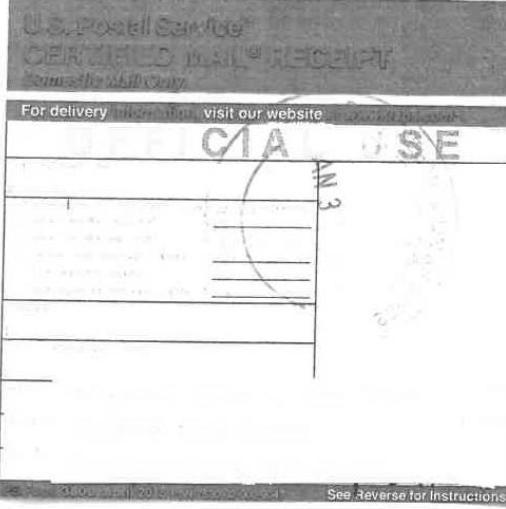
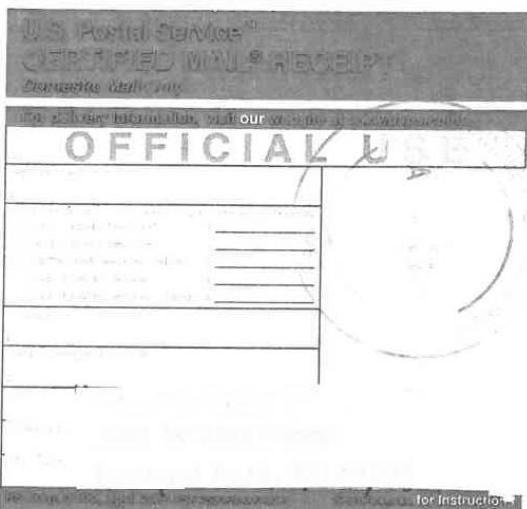
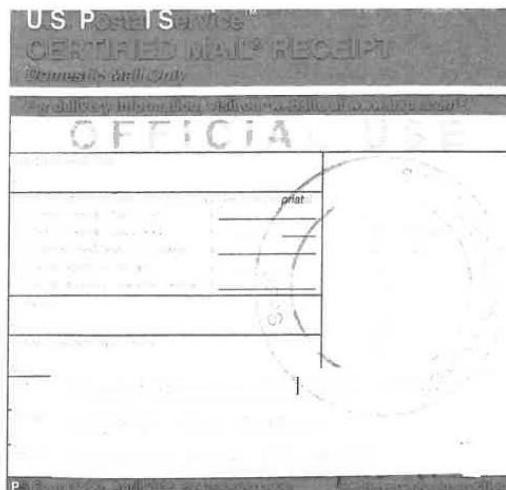
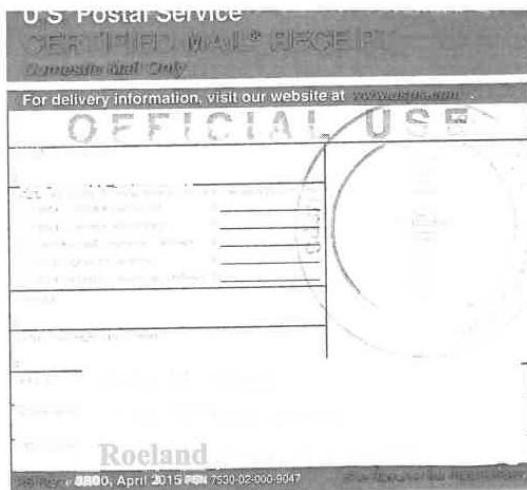
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Publication Fees: \$275.5

Check stub from The Check Company for \$10.00, dated 10/10/01. Handwritten note 'SIO V' is written across the stub. A circular postmark from 'JAN 28 2002' is stamped over the stub, with the name 'Lori Ranall' handwritten below it.





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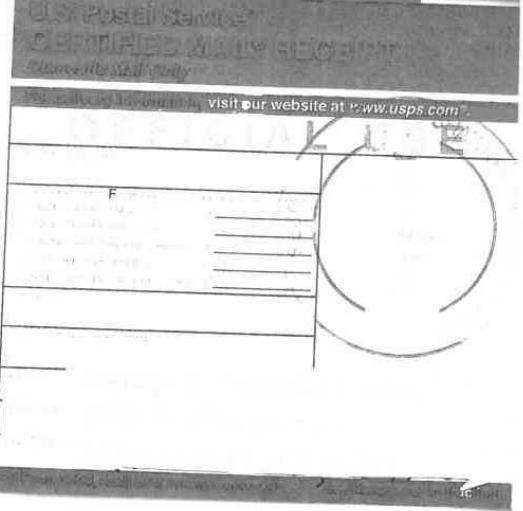
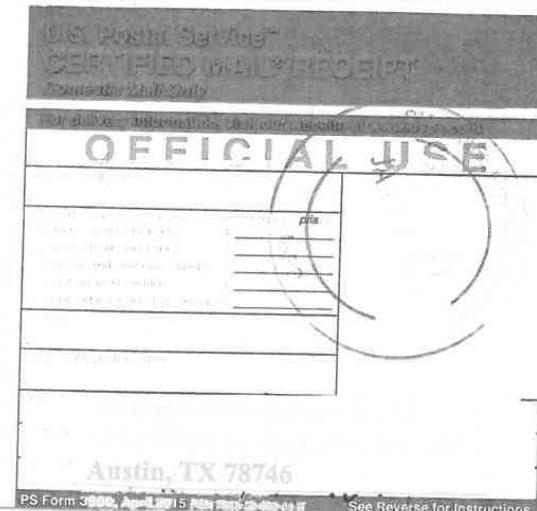
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<p>For _____, the following are my recommendations:</p> <p>See _____</p>	
<p>check</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	
