

AGENDA

TOPEKA BOARD OF ZONING APPEALS

Monday, June 12, 2017
5:30 P.M.

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

MEMBERS OF THE BOARD

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

- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
- The following agenda identifies and describes each proposal to be considered by the Board.
- Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
- Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
- Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
- Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



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

A. Call to Order

B. Approval of Minutes from October 10, 2016

C. Items

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

D. Election of Officers

E. Adjournment



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



CITY OF TOPEKA BOARD OF ZONING APPEALS

MINUTES

Monday, October 10, 2016

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

Members present: Toni Beck, Tim Carkhuff, Marty Hazen, Mike Morse, Helen Crow, Walter Schoemaker
(6)

Members Absent: Carole Jordan (1)

Staff Present: Dean Diediker, Planner II; Mary Feighny, Deputy City Attorney; Mike Hall, Planner III;
Richard Faulkner, Dev. Services Director, Kris Wagers, Office Specialist

A) Call to Order

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

B) Approval of minutes from July 11, 2016 meeting

Motion from Mr. Hazen to approve; **second** by Ms. Beck. **APPROVAL** (6-0-0)

C) Items

- 1) **BZA16A/2 by Lisa Corwin**, appealing as provided for by Section 2.45.070 of the Topeka Municipal Code (TMC) a decision by the Development Services Director that the 8 foot height of the side yard fence located on property at 3018 SW Lincolnshire Road Topeka, Kansas being measured from the nearest ground surface (emphasis added) complies with TMC Section 18.210.040 (1) regarding the maximum allowable fence height.

Mr. Hall reviewed the appeal evaluation, giving a chronology of events.

Questions from Commissioners including an inquiry as to the grade change between the properties, which Mr. Hall approximated at 12" – 18". There were additional questions regarding the height of the fence, the grade difference between the two properties. Mr. Morse asked Mr. Hall if the code said you could not re-grade your yard. Mr. Hall stated that a berm would not be allowed. Mr. Faulkner confirmed that the yard was not burmed but level after additional dirt had been brought in to fill in fish pond(s).

Mr. Bill Corwin, 2034 Lincolnshire, spoke and stated that he believes the fence to be a code violation because it begins on the higher grade while the fence posts are on the lower grade. He stated the measurement should be from the lower grade up.

Mr. Morse asked Mr. Corwin if he thought it would be a violation if the fence posts were on the other side of the fence, thus on the higher grade, and Mr. Corwin said no.

DRAFT

Mr. Carkhuff and Ms. Crow asked questions regarding the height of the fence and where measurements began, whether it was 8' or 9' tall, where the fence posts were in relation to the retaining wall and where the fence panels sat.

Mr. Ron Kruzel, owner of the property at 3018 SW Lincolnshire, spoke. He explained that the retaining wall was in place and the yard graded before the fence posts were placed. He stated that the posts are in the ground at the higher ground level inside his property line.

Patty Kruzel, also of 3018 SW Lincolnshire, explained that the Kruzel property has always been at a higher grade than the Corwin property next door.

Mr. Schoemaker asked the Kruzels when they put the retaining wall in and asked if the retaining wall was level. He also asked whether they put the dirt in to grade or to level the property. Mr. Kruzel stated that the wall had been put in approximately 6 weeks earlier, it's fairly level and blends into the ground, and the dirt was put in to level the ground following the removal of fish ponds. He stated that where the fence is remains a bit lower than the center of his yard.

**Mr. Hazen moved to adopt the staff findings and disapprove the application. Second by Mr. Carkhuff.
APPROVAL (6-0-0)**

D) Adjournment at 6:00PM

**APPEAL EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT**

Date: June 12, 2017

Case No.: BZA17A/1

Applicant Name: Rodney and Verna Hayes
Address: 716 NE Grattan Street, Topeka, Kansas

Property Data:

Address of Property: 716 NE Grattan Street, Topeka, Kansas

Zone for Property: "R-2" Single Family Dwelling District

Property Size: 9,525 sf in area with dimensions of 75' (width at street) x 127' (depth)

Section to be Appealed: The restriction on storage of commercial vehicles as an accessory use in the R-1, R-2, R-3, R-4, M-1 and M-1a districts pursuant to Topeka Municipal Code (TMC) 18.210.020(b)(ii).

Decision Being Appealed: The decision of Mr. Richard Faulkner, City of Topeka Director of Development Services, that the trailer for food caterer *Front Door Catering* is a "commercial vehicle" and, therefore, is prohibited from being stored at the subject property pursuant to TMC 18.210.020(b)(ii), applicable to the R-2 and other residential districts, and which states as follows.

(ii) No commercial vehicles or commercial equipment, machinery or materials of any kind shall be stored any place on a lot or tract of land, except if such vehicles, equipment, machinery or materials are in temporary usage to actively accomplish permitted temporary activities on the premises such as construction, repair, moving, and other similar activities. In such case they shall be removed from the lot or tract of land within 48 hours of completion of said activity.

Furthermore, "commercial vehicle" and "commercial equipment" are defined by TMC 18.55.030 as follows.

"Commercial vehicle" means any vehicle, excluding pickup trucks, used for a business that has a height (including ladder racks and other items attached thereto) exceeding a height of 10 and one-half feet or width (excluding mirrors) exceeding eight feet or length exceeding 25 feet or manufacturer's rating exceeding 12,000 pounds of gross vehicle weight. Additionally, the following types of vehicles shall all be considered commercial vehicles: flatbed, stake-bed, or box trucks except those that are pickup trucks, buses, semi-trailers or tractor-trailers, dump trucks, cement mixers, wreckers, and trailers loaded with any commercial equipment or construction materials. Additionally, any vehicles, including pickup trucks, with any of the following exterior modifications shall be considered commercial vehicles: liquid storage tanks exceeding 100 gallons, aerial buckets or platforms, welding equipment, or mechanical lifts or arms for loading and unloading materials/equipment. Vehicles for transferring passengers and their personal luggage/cargo for churches, nonprofit agencies, nursing homes, retirement communities, and other similar facilities shall not be considered commercial vehicles. Recreational vehicles are not considered commercial vehicles unless used for business purposes.

"Commercial equipment" means any equipment or machinery used in a business, trade or industry, including liquid storage tanks exceeding 100 gallons, earth-moving equipment, trenching or pipe-

laying equipment, landscaping equipment, spools of wiring/cable, portable pumps, portable generators, portable air compressors, pipes, pool cleaning equipment and supplies, and any other equipment or machinery similar in design or function. However, equipment and machinery for business use kept within an enclosed pickup truck or van; ladders, PVC pipe, or conduit attached to a truck or van via a rack; or equipment and machinery solely for personal residential use are not included.

Notice of Hearing:

Notice of the public hearing was published in the Topeka Metro News on May 22, 2017 in compliance with TMC 18.45.090.

Notice of the public hearing was mailed to adjoining and adjacent property owners on May 22, 2017 in compliance with TMC 18.45.090.

Analysis and Findings:

The matter before the Board of Zoning Appeals (Board) is the applicant's appeal of the above described decision and the interpretation by the Director of Development Services of the City of Topeka regulations in arriving at said determination. According to TMC 2.45.050, the Board exercises the "power to determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations." In its deliberations the Board of Zoning Appeals is advised to consider whether the interpretation in question conforms to the intent and literal meaning of the regulations.

As grounds for the appeal the applicant asserts:

- The code violation is based on an arbitrary and capricious interpretation of TMC 18.210.020(b)(ii).
- The food trailer is used in both commercial and recreational endeavors, and the violation notice fails to note there is any commercial equipment within the trailer.
- The Director's interpretation leads to the exclusion of any trailer with a possible commercial function from being parked in a residentially zoned district. The appellant's statement offers as an example an individual who mows lawns being prohibited from parking a small trailer, used to transport a lawn mower, at the individual's residence.
- The Director has failed to express if and how the food trailer meets the dimensional characteristics in the definition for "commercial vehicle".

Staff encourages the Board to read the applicant's statement in full (Exhibit 1).

In response to the applicant's assertions, the width and length of the food trailer are sufficient to define it as a commercial vehicle. The Director measured the food trailer in the field finding it to be 8' 7" wide, 25' 10" long (not including the trailer tongue), and estimates it to be 11' high including the rooftop air conditioning unit. The specification drawing provided by the applicant indicates the width as 8'6" and length as 25' (not including the trailer tongue). Additionally, the food trailer's design and appearance indicates it is a commercial vehicle. While the trailer may be used for recreational use, it is also used and designed for a commercial purpose.

Regarding trailers for lawn mowing services, in general practice the Zoning Inspector determines whether a violation of TMC 18.210(b)(ii) exists based on the ongoing presence of lawn mowers and other equipment in the trailer, the size and nature of the trailer, and only after continued monitoring of the trailer. Some degree of judgment is necessary.

The question of whether the food trailer is an “accessory use” is not the focus of the appeal. However, staff acknowledges that the primary use of the property is a residential duplex and, unless the operator of the food trailer resides in the duplex, the food trailer is not directly related to the duplex and is thus not truly an accessory use.

The Board should consider the broad impact of a successful appeal that changes how the City interprets the regulation of commercial vehicles. This food trailer is parked behind the duplex and directly off the alley in a location that is not highly visible from Grattan Street. However, if this food trailer or a similar trailer are determined to not be a commercial vehicle, than there is no standard in the Topeka zoning regulations restricting this vehicle or others from being parked in a highly visible location, such as a driveway directly off the street in front of a residence.

Conclusion and Recommendation:

Based on the analysis and findings, staff concludes that the food trailer is a commercial vehicle and its storage at the subject property should be prohibited. Staff recommends that the Board of Zoning Appeals affirm the decision of the Director of Development Services by concurring with the findings as set forth herein.

Exhibits:

1. Application and Statement of Grounds for Appeal, Violation Notice
2. Trailer Specifications
3. Photo 1
4. Photo 2 – View from NE Grattan
5. Aerial Map of 716 NE Grattan

Staff: Michael Hall, AICP
Current Planning Manager and Acting Secretary of Board of Zoning Appeals

BZA 17A/01
BZA Date: 6/12/17

CITY OF TOPEKA PLANNING DEPARTMENT

620 SE Madison Street, 3rd Floor
Topeka, Kansas 66607

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

**APPEAL OF ADMINISTRATIVE DECISION TO THE
BOARD OF ZONING APPEALS**

Planning Office Use Only	
Case No. 20170101 BZA 17A/01	Hearing Date: 5.8.17
Filing Fee \$ 130.00	130.00 - Pd Cash

Make checks payable to "City of Topeka".

Applicant: Rodney and Verna Hayes Phone: 785-235-8851

Address: 718 12 NE Grattan Street Topeka KS 66616

Location of Property: 716 NE Grattan Street Topeka KS 66616

Legal Description of Property: Sardou's 2nd Addition, Lot 430+, Grattan Lots 430-434-434 Sardou's 2nd Addition Section 28 Township 11 Range 16

Current Use of Property: Residential

Proposed Use of Property: Residential

Decision Being Appealed:

Explanation of Administrative Error:

Please see attached.

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RECEIVED
APR 19 2017
TOPEKA PLANNING
DEPARTMENT

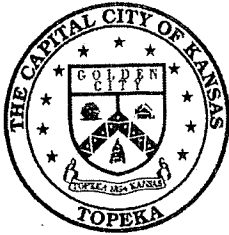
KEVIN J Cook 785-235-5500
1200 SW Tyler Topeka Ks 66612
Applicant's Signature

4-17-2017
Date

The violation notice number 2017010 is without justification as the City of the Topeka has by the issuance of the violation interpreted Topeka Municipal Code 18.210(b)(2)(iii) in an arbitrary and capricious manner.

In this appeal the property owner has permitted an individual to park their food cart at his residence. The food cart is used in both commercial and in recreational endeavors. However, the violation notice fails to submit that there is any commercial equipment being stored within the trailer. The violation simply states that it is a commercial related vehicle.

The City Zoning Inspector has interpreted the aforementioned Code section as a complete exclusion of any trailer with a possible commercial function from being parked in residentially zoned district. This interpretation is outside of the bounds of reason as it would exclude any trailer of any size from a residential area, if it has a possible connection to commerce. In applying this interpretation, an individual who mows lawns in the summer and uses a small trailer to transport the lawn mower from area to area would be prohibited from parking the trailer at their residence. Further, at the time of adoption of the code section the City of Topeka Council made specific allocations for a size restriction for vehicles. The City Zoning Inspector has failed to set forth that this food cart exceeds the size and weight standards that would be in place for a vehicle. The application of size restriction for a vehicle and a complete exclusion of a trailer creates a impermissible disparity in application.



CITY OF TOPEKA

Division Director
Development Services
620 SE Madison Unit 6
Topeka, KS 66607-1118

Richard Faulkner, Director
Tel: (785) 368-3704 #1
Fax: (785) 368-1650

VIOLATION NOTICE

No. 2017010

ISSUE TO:

Rodney & Verna Hayes
718 1/2 NE Grattan St.
Topeka, KS 66616

LOCATION OF VIOLATION:

PID# 1082803007009000
716 NE Grattan St.
Topeka, KS 66616

DATE OF NOTICE March 17, 2017

On December 15th YOUR PROPERTY WAS INSPECTED AND FOUND TO BE IN VIOLATION OF THE TOPEKA MUNICIPAL CODE (TMC): 18.210 (b) (2) (ii) Accessory Uses.

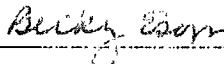
NATURE OF VIOLATION: Your property is zoned "R-2" Single Family Dwelling district. No commercial vehicles or commercial equipment, machinery or materials of any kind shall be stored any place on a lot or tract of land, except if such vehicles, equipment, machinery or materials are in temporary usage to actively accomplish permitted temporary activities on the premises such as construction, repair, moving, and other similar activities. In such case they shall be removed from the lot or tract of land within 48 hours of completion of said activity.

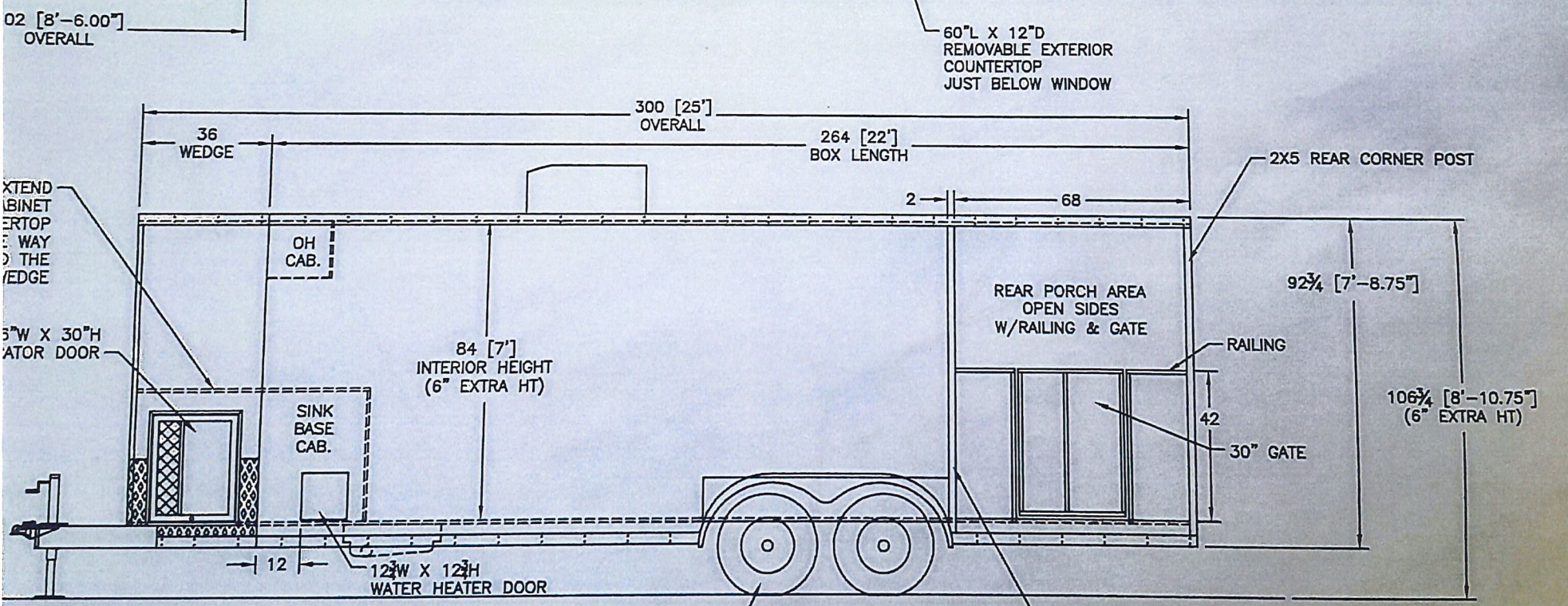
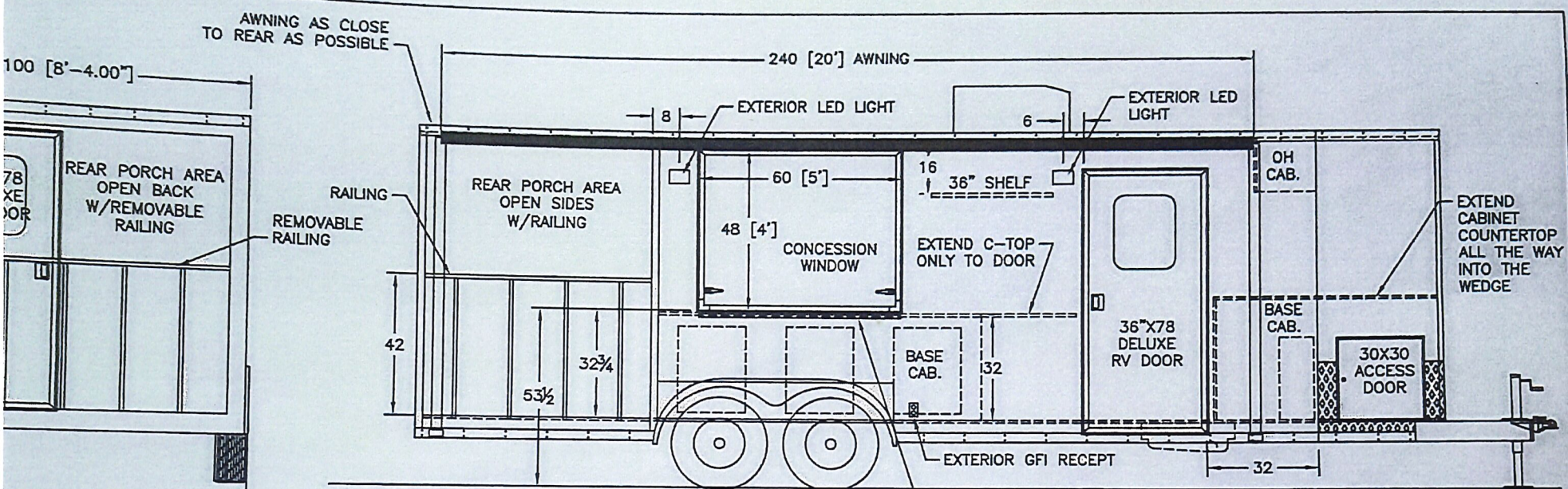
CORRECTIVE ACTION REQUIRED: The Food Truck must be removed immediately. The storage of a commercial related vehicle would not be allowed to be stored on this property.

FAILURE TO COMPLY WILL RESULT IN REFERRAL TO THE CITY ATTORNEY'S OFFICE FOR PROSECUTION AS A CRIMINAL OFFENSE WITH A POTENTIAL FINE OF \$499 FOR EACH DAY THE VIOLATION EXISTS AND POSSIBLE JAIL TIME.

If you disagree that a violation exists, you have a right to appeal this notice to the Board of Zoning Appeals. The appeal must be made within 30 days of the receipt of this notice on a form provided by the City of Topeka Planning Department along with a filing fee of \$130.00.

If you have any questions contact me as soon as possible at 785)368-3012.


Becky Esopi
Zoning Inspector III



REVISION LEVEL	DATE	APPROVAL
TIRES, UPGRADE TANKS, ADD RECEPTS	10/7/13	TTS
PER REQUIREMENTS	10/7/13	TTS

5200# SPRING AXLES
W/ ST225/75R15 TIRES

CUSTOMER: D & D TRAILERS - BBQ TRAILER

EXHIBIT 2

Approval <i>MW</i>	Date 10/9/13
Date	Scale

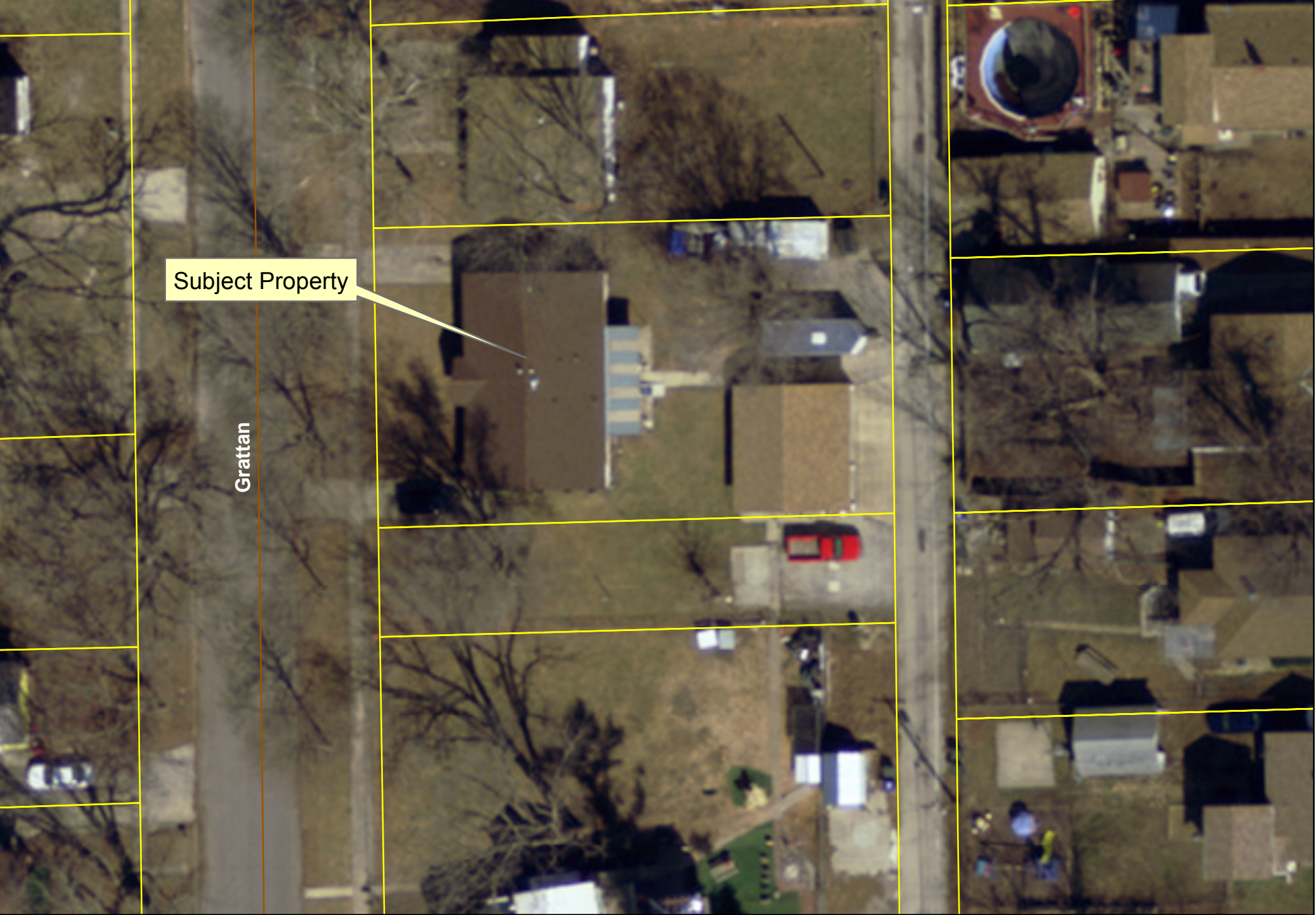


EXHIBIT 3



Food Trailer – View from NE Grattan Street

BZA 17A/1



Subject Property

Grattan

