

BOARD OF ZONING APPEALS

MINUTES

MAY 25, 1954

A meeting of the Board of Zoning Appeals was held on Tuesday, May 25, 1954, at 1:30 p.m. in the City Manager's Conference Room of the City Building. Members present were: Chairman Herrman, Chas. Ritchie, J. Lisle Morris and Conlee Smith. Also present were Building Inspection Superintendent Maple, Jack Miller, McCaig, Secretary Fisher and Weyer.

Chairman Herrman called the meeting to order and asked the Secretary to present the case.

CASE NO. 4-54

Secretary Fisher presented the appeal of O. A. Sutton Corporation who desire to make an addition to the commercial building located at 3412 West Eighth Street, Wichita, Kansas, and was denied issuance of a building permit for the reason that the building is non-conforming and located in an "AA" Zoning District.

The following is a copy of the petitioners' appeal statement:

"This application for appeal is being filed by the O. A. Sutton Corporation as tenants of building address 3412 West Eighth Street, Wichita, Kansas, in behalf of the owner, Wayne Bolan (3400 West Douglas) by reason that a building permit to build an 8' X 33' and a 8' X 92' L-shaped lean-to building was denied by Building Inspection Department for reason that the area was zoned "AA" Residential.

The present building of which we have occupied since approximately January, 1953, was as we leased it, outside the City Limits. Since that time, unaware to ourselves, this property was taken into the City Limits sometime late in 1953. It recently became our necessity to provide small extra space area in order to meet specific manufacturing operations. Since we were not aware of this zoning action, we made necessary arrangements with the property owner, etc. to permit us to build the proposed attached space as attached. Because of this permit refusal action we are filing this appeal on the reason that it would create an unusual hardship on our manufacturing operation by not being able to complete immediately.

s/ Dale L. Gordon, Vice President
O. A. Sutton Corporation

The following remarks were made by the petitioners in connection with the four conditions required to be present:

2.1 That the exception or variance desired arises from some condition which is not ordinarily found in the same zoning district.

Ans. Due to our being tenants and not owners of this property, we did not have the knowledge of the area zoning changes that a property owner would have and, since this area was taken into the city limits since our unforeseen immediate need for additional building space, time does not permit customary procedure of applying for rezoning of property in question.

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

Ans. Since there is already a commercial building of sizeable nature on this property at the time it was taken into the city limits, the proposed addition would not distract to the community nor interfere with rights of adjacent property owners, as the proposed addition would lie adjacent to the Missouri Pacific right-of-way, of which we have their complete cooperation and permission to erect this building.

2.3 That the strict application of the terms of this ordinance will constitute unnecessary hardship upon the property owner represented in the appeal.

Ans. While we are tenants of property, we have adequate permission of owners for us to make this addition at our own expense; we have an immediate need for the proposed building in question in order to meet and expand our facility to give our customers adequate service on their merchandise. In our business of air conditioning which is highly seasonal, it is very essential that when hot weather begins, usually in May, that we be able to accommodate a tremendous load of air conditioner service repair which we maintain at subject address. By this reason, the application of ordinance as is enforced would create an unusual hardship on The O. A. Sutton Corporation.

2.4 It is our honest opinion that the variance or request for appeal if granted, would in no way be detrimental to public interest, distract from present community, nor interfere with property owners in the community."

The Secretary stated that notices have been sent to all property owners within a radius of 200 feet, and that no opposition has been received.

A drawing was presented showing the building and the proposed additions.

It was moved by Morris and seconded by Ritchie that the Board take jurisdiction in this case. The motion carried unanimously.

MR. COFFEY, 805 North Sheridan, was present and stated that he had no opposition to this proposed addition; stated that his farm is located on the south of this building, another farm is located on the east side of it, 8th Street is on the north, and the railroad is on the west side.

Mr. Maple stated that it isn't very often he makes many comments on these cases at these meetings, but in this instance, he felt that the background of this case should be revealed. Mr. Maple stated that approximately 3 weeks ago a member of the O. A. Sutton Corporation came to his Department and verbally requested a permit. Due to the fact that this building is non-conforming, he was informed that the permit could not be issued. On May 8 the building inspector in charge of this area discovered the addition was being made to the building despite the fact that a building permit had not been issued. The building inspector then tried to get in touch with the party responsible for making the addition; he was unsuccessful in this attempt. The following day, Mr. Miller of the O. A. Sutton Corporation was contacted. Mr. Miller was aware of the fact that they were violating the ordinance at that time. On May 12 they were ordered to cease construction until such time as all requirements had been complied with.

Maple stated further that he realized they needed the added space, but that it did not set well with his department that they should go ahead with construction as long as they could without getting a building permit; stated that they were not displaying the proper recognition of authority; stated that this is not the first incident this corporation has been involved in which was in violation of the Ordinance of the City of Wichita.

MORRIS stated that this Board and the City of Wichita do everything they can to help these industries out, and it seems to him that these industries in return should show a little consideration.

MORRIS Stated that he is not opposed to this appeal - merely the manner in which the corporation has handled this situation; namely, that they went ahead with construction after a permit had been denied - whereas, if they had brought this before the Board in the first place, it could have been straightened out in 10 days or two weeks.

C. SMITH stated that the matter of bringing all area into the City as "AA" zoning is a weakness in our present set up in zoning - stated that property should be properly zoned when it is brought into the city, and thereby many problems such as this would be eliminated.

RITCHIE remarked that if this property was leased back in 1953 by this corporation, they should have made their additions at that time, rather than delaying so long, to which it was stated that at that time this corporation was not aware of the fact that they would need this additional space.

Assistant Chief Building Inspector McCaig was present and stated that in due justice to this corporation, he had received calls from different individuals stating that O. A. Sutton Corporation was attempting to purchase property in area that was properly zoned for their type of business, but were unable to do so.

At this time Morris moved that this appeal be granted subject to the petitioner being penalized by not allowing him to continue further construction for a period of two weeks from this date.

It was not felt by some of the members that this Board could penalize the corporation by delaying them two weeks in their construction.

Ritchie moved that the appeal be granted subject to the Chairman writing a letter of censor to the proper officer of the company, and informing them that the Building Inspection Department will be on guard at all times, in the future for actions such as this by the O. A. Sutton Corporation, and if it is repeated, they will be penalized as violating the fourth condition of the variance of the Board of Zoning Appeals.

SMITH asked just why the O. A. Sutton Corporation went ahead with construction on this building when they knew they were in violation.

MR. MILLER stated at the time they wanted to start construction on this building, one of his men came down to get a building permit at which time he was verbally refused. He (Mr. Miller) then went to the executive officer of the corporation, who was getting ready to leave on his vacation, and asked him what to do about the permit. The executive officer told him that if they got involved in it to go as far as he could with it until he got back. Mr. Miller stated that he had acted on his own initiative by going ahead with the construction.

SMITH didn't feel that the corporation should be penalized; however, one of the four conditions of variances before the Board is that it is not against the public interest - this enlargement is a minor one, and not against the public interest, but the manner in which the corporation went about it is; that the corporation should be put on notice that this may not happen again. Feels that the Corporation should realize they have to go through certain clearance and procedure on these matters - and that if such an occurrence such as this happens again, this Board will be forced to find that we do not have jurisdiction, as it will be against the public interest.

At this point Mr. Morris and Mr. Ritchie asked to withdraw their former motions.

After further discussion, Smith moved and Morris seconded that this appeal be granted subject to the Secretary writing a letter to Mr. Dale Gordon of the O. A. Sutton Corporation stating the action of the Board and request an answer of acknowledgement that they understand the action of this Board, and that incidents such as this will not happen again. Motion carried unanimously.

R E S O L U T I O N 4-54

WHEREAS, O. A. Sutton Corporation has applied for a permit to make an addition to the commercial building at 3412 West Eighth Street; and

WHEREAS, the City Building Inspector has issued a formal refusal under Section 16, Par. C of the Zoning Ordinance, for the reason that the building in question is a legally non-conforming use building in an "AA" District, and the proposed addition would violate the provisions of said section; and

WHEREAS: the variance desired arises from a condition which is not uniform over this zoning district in that this building backs up to the railroad tracks, and is not suitable for residential purposes; and

WHEREAS, the granting of the permit for this variance will not adversely affect the rights of the adjoining property owners in that this addition would lie adjacent to the Missouri Pacific right-of-way, and would not distract to the community nor interfere with rights of adjacent property owners; also, no opposition was voiced to this appeal; and

WHEREAS, the strict application of the terms of this ordinance will constitute unnecessary hardship upon the property owner in that they have immediate need for the proposed building in order to give air conditioner service repair to their customers; and

WHEREAS, the exception or variance desired is not detrimental to the public interest per se; however, the procedure followed by the appellant in constructing the addition could hardly be called beneficial to the public interest;

NOW THEREFORE BE IT RESOLVED by the Board of Zoning Appeals that the Building Inspector of the City of Wichita is authorized and hereby directed to issue a permit for an 8' X 33' addition and an 8' X 93' L-shaped addition to the commercial building located at 3412 West Eighth Street, Wichita, Kansas.

ADOPTED at Wichita, Kansas this Twenty-fifth day of
May, 1954.

George W. Herrman, Chairman

ATTEST:

George J. Fisher, Secretary

As there was no further business to come before the Board
at this time, the meeting adjourned at 2:45 p.m.

George J. Fisher
Secretary