

Case No. 4-52

**THE CITY OF WICHITA**

OFFICE OF Assistant City Attorney

DATE August 15, 1952

TO J. Thomas Via, Planning Director

FROM Paul J. Donaldson, Assistant City Attorney

SUBJECT Power of Board of Zoning Appeals to act on behalf of Emigh Manufacturing Company

In reply to your memo of July 23d, above subject, to Fred Aley, from a review of Section 34 of the Zoning Ordinances to determine the jurisdiction of the Board of Zoning Appeals, it would appear that the Board clearly has jurisdiction to hear any appeal from "any order, requirement, decision or determination" made by the Building Inspector; however under this paragraph it is believed that the Board has only the authority to determine whether the Building Inspection Superintendent acted in accordance with the ordinance and the proper application thereof, ie, whether he was arbitrary. This paragraph, however, does not confer jurisdiction upon the Board to grant exceptions and variances from the strict application of the provisions of the Zoning Ordinances.

Jurisdiction to grant exceptions and variances is conferred upon the Board in the fourth paragraph of Section 34. This section specifically provides "the Board or the governing body shall not assume jurisdiction unless it first finds the following conditions present:

- (1) That the exception or variance desired arises from some condition which is not ordinarily found in the same zoning district;
- (2) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- (3) That the strict application of the terms of this ordinance will constitute unnecessary hardship upon the property owner represented in the appeal;
- (4) That the exception or variance desired is not against public interest.

Based upon the facts alleged in your letter of July 23, 1952, it does not appear that the required conditions are present. Your letter disclosed, (a) no condition not ordinarily found in that district, (b) no adverse effect upon adjacent owners, (c) no

J. Thomas Via, Planning Director  
8-15-52  
Page 2

evidence that an unnecessary hardship has been imposed upon the owner of the property even though the former tenant moved from the premises as a result of the change of the 13th Street Bridge, (It is particularly noted that the appeal in this instance is being perfected by an individual other than the property owner. Sub-paragraph 3, cited above, may well be interpreted so as to limit an appeal to the owner of the property to alleviate a hardship imposed upon him and not upon a tenant.), (d) the requested exception or variance to the zoning ordinance does not appear to be consistent to the present planning program of the City of Wichita and may therefore be considered as against the public interest.


From the above, in my opinion, the Board of Zoning Appeals, in the instant case, has authority to determine whether or not the Building Inspector acted arbitrarily in denying a building permit. Said Board does not have jurisdiction to consider or rule on a variance or exception to the Zoning Ordinance in the absence of a finding that the four conditions stated above are in fact present.

An extra copy of this opinion is being forwarded with a request that it be submitted to the Chairman of the Board of Zoning Appeals for his information and guidance.

Yours very truly,

Paul J. Donaldson,  
Assistant City Attorney

djs

THE CITY  OF WICHITA

No 342

WICHITA, KANSAS, 7/21 1952 \$ 15.<sup>00</sup>

RECEIVED OF Sam Boone

THE SUM OF Fifteen and 00/100 DOLLARS

BEING FOR h1 712 T 4 712 Board of Zoning Appeals

DEPARTMENT JUL-21-52 1-8723 A TR 15.00

Jim Orend  
CITY TREASURER

CASHIERS OFFICIAL RECEIPT

*Board of Zoning Appeals*  
**ZONING PETITION**

ACCEPTED AS TO FORM Date 7-21-52

#342  
Sam Boone

WICHITA CITY PLANNING COMMISSION  
By M. Young

BOARD OF ZONING APPEALS

Case No. \_\_\_\_\_

Filed \_\_\_\_\_, 19\_\_\_\_

A P P E A L U N D E R T H E Z O N I N G O R D I N A N C E

TO THE BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

The undersigned, D. Boone, hereby appeals  
from the decision of the Building Inspector wherein a Building Permit  
Is Refused For use of  
Temporary ~~residential~~ property at 1946 Parker  
for attached reasons

OR

Order Or Decision Rendered Because \_\_\_\_\_

The Plans, application, and all data heretofore filed with said Building Inspector are attached hereto and made a part of this appeal.

I have not made a previous application or appeal under the Zoning Ordinance affecting these premises.

I hereby declare that all the statements contained in all of the information transmitted herewith are true.

D Boone

Appellant.

NAMES AND ADDRESSES

Appellant D Boone Address 3104 E 17th  
Owner E S Covault Address \_\_\_\_\_  
Lessee John Melling Address 2021 Salina

INSTRUCTIONS

1. This appeal must be typewritten and filed within ninety (90) days after the date of the decision of the Building Inspector from which this appeal is taken.
2. The appellant must file an explicit Typewritten statement setting forth:
  - (a) The principal points on which this appeal is made. These points shall be the same as those under which the Building Inspector issued a refusal, order, or decision.
  - (b) A clear and accurate description of proposed work or use.
  - (c) Specific reference to that Section of the Zoning Ordinance under which it is claimed permit should be issued.
  - (d) Names and addresses of all owners and residents within a distance of 200 feet of the property concerned.

BOARD OF ZONING APPEALS

Case No. \_\_\_\_\_

Filed \_\_\_\_\_, 19 \_\_\_\_\_

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  - (d) Names and addresses of all owners and residents within a distance of 200 feet of the property concerned.

CITY OF WICHITA  
BUILDING INSPECTION DIVISION

To E. S. Covault Owner Address 1950 Parker  
To Emigh Manufacturing Co. Applicant Address 1946 Parker

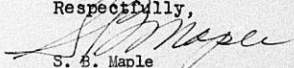
Dear Sir:

Your Application Dated March 11, 1952  
For a Permit for the remodeling for use as a machine and die shop  
at the premises designated as  
1946 Parker

Is hereby refused on this 11th day of March, 1952,  
Under Section 19 of the Zoning Ordinance.

For the reason that this use as a machine and die shop is not permitted in the  
Light Commercial district. This portion of the building was previously used as a  
retail feed store and if changed to the desired use it would make it non-conforming.

Respectfully,

  
S. B. Maple  
Chief Building Inspector

NOTE: Any appeal from this refusal must be filed with the Board of  
Zoning Appeals (Room 304, City Hall) within ninety (90) days after  
the date of this refusal. For further information, take this notice  
to the Planning Department, Room 304, City Hall.

## Emigh Manufacturing Company

Tools, Dies, Jigs and Fixtures

1946 PARKER

DIAL 7-0771

WICHITA -- KANSAS

July 17, 1952

To: The Board of Zoning Appeals  
Room 304, City Hall  
Wichita, Kans.

Gentlemen:

We are asking that the property known as 1946 Parker, be temporarily rezoned to allow a tool & die shop to operate in this building, for the following reasons.

1-The owner of the building, which is on leased property, had to close his feed and hardware business, due to the 13 th st. bridge being out since June of 1951. Mr John C. Moellinger, who is the owner of the building, operated his business until last August, at which time he was forced to close. The paramount reason being the bridge being rebuilt. As you know the new bridge took considerable more time than was anticipated, and in veiw of the fact that he is on leased ground with a rather high lease, he had no alternative but to try and rent the building. The Emigh Manufacturing Co. were the only persons interested in renting the building with the bridge being out. Prior to their renting the building had set idle for seven months. This ca used considerable hardship on the owner, not only the lost of his business, but the cost of the rent of the ground, amounted to quite a loss financially.

2-This building sits on the East bank of the big Arkansas river, back away form the street, and with only one residence in the near vicinity. We do not feel that this will cause any hardship on the rights of the adjanace property owners or the public interests.

3-Emigh Manufacturing has there equipment set up and operating on defense contracts. Emigh Manufacturing has tried to secure another building, but were unsuccessful. For this reason, we have not bothered you with this request, as we had anticipated moving. But due to the fact the machinery is already set and operating, the cost of moving is prohibative to a small, new company such as ours.

We would greatly apprecitae your careful consideration of the request. We would be most happy to give you any additional information to help obtain this request.

Sincerely Yours.

*D. Bare*

LIST OF OWNERS

LOT	STREET	ADDITION	OWNER
264	W. of Amidon A.V.I.	Riverside	City of Wichita
266	"	"	"
268	"	"	"
270	"	"	"
272	"	"	"
274	"	"	"
264 E. of Center of A.V.I. r/w	"	"	Gwynne E. & Beulah Meeker <i>1330 Amidon</i>
266	"	"	"
268	"	"	"
270	"	"	"
272	"	"	"
274	"	"	"
263	Perry	"	A. H. & Amy V. Bradshaw <i>1329 Perry</i>
265	"	"	John C. & Mildred McNally <del>1218 Kansas</del>
267	"	"	" <i>1353 Perry</i>
269 (S.10½')	"	"	"
269 (N.14½')	"	"	Solon E. & Lela B. Duncan <i>1355 Perry</i>
271	"	"	"
273	"	"	"
32 (S.120')	Parker	Riverside Court	Glenn V. & Margaret Stitt <i>1816 Parker</i>
34 (S.120')	"	"	S. D. & Mina A. Hyter <i>1443 Perry</i>
36	"	"	"

Page 2.

LOT	STREET	ADDITION	OWNER
38 (S.120')	Parker	Riverside Court	Royce O. & Evelyn Sehnert <i>119 N. Richmond</i>
40	"	"	"
42 (ex pt cond for Parker Ave)		"	Vera Arlene Cook <i>Harriet B.</i> <i>1501 Washrow</i>
Beg at SW cor Lot 42 Riverside Court, Nely along E. line of A.V.I r/w to Wilkinson tract E. par to Parker Ave 20' SWly par to said r/w to N. line of Parker Ave W. to beg together with that portion of abandoned r/w accruing to said property by vacation			
7	McKee	Riverside Court Second	Margaret S. Bryant <i>Hale</i> <i>1811 McKee</i>
Beg on W. line of Lot 8 Riverside Court 2nd Add. 103.88' NE from SW cor said Lot, NE to NW cor said Lot E to NE cor said Lot, S. to pt 52.93' N. of SE cor said Lot NW 47.34' to beg			
8 (ex Bryant tract)	McKee	Riverside Court 2nd	Thurman W. & Dorothy I. Pinkard <i>1420 Perry</i>
15 (W. of A.V.I. Exc N. 490')		Hanna Sub	E. S. Covault <i>878 Shadyway</i> Norma Jeane Mims & Harold D. Mims <i>1437 Perry</i>
S. 75 ft of: Beg on W. line of A.V.I. r/w 150 ft S. of N. line Lot 15 Hanna Sub W. to W. line said Lot, SWly along said W. line 165 ft E. to W. line of Perry Ave NE along W. line of Perry Ave to pt E. of beg. W. to beg			
Beg at a pt in W. line of A.V.I. r/w 150' S. of N. line Lot 15, Hanna Sub. W. par with N. line said Lot 15, 250'± to W. line of Lot 15 SWly along said W. line 165' for point of beg. SWly along said W. line 175' E. par to N. line Lot 15 to W. line of Perry Ave, N. along Perry Ave to pt E. of beg. W. to beg			Balfour C. & Annetta E. Wilkinson <i>1415 Perry</i>

THE MIDLAND ABSTRACT COMPANY hereby certifies: That the foregoing is a true and correct list of the owners of the various lots and/or tracts lying within a radius of 200 feet from

Lot 15 (W. of A.V.I. )  
Except N. 490 feet, Hanna Sub

as shown by the deed records in the office of the Register of Deeds of Sedgwick County, Kansas, on this date.

WITNESS our hand and seal this 1st day of April, 1952, at 7:00 o'clock A. M.

THE MIDLAND ABSTRACT COMPANY

By *E. L. Mason*  
President

Order No. 82581.  
(BM)

BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

NOTICE TO PROPERTY OWNERS

August 8, 1952

An appeal has been filed by Dan Boone  
(Address) 3104 E 17th St. on behalf of E. S. Novault  
828 Shady Way (Address)  
as provided by Section 33 of the Zoning Ordinance. The appellant  
desires to remodel and operate a machine and file shop  
on the premises  
located at 1946 Parker Avenue

This appeal has been given Case No. 4-52  
and a hearing will be held by the Board of Zoning Appeals on  
August 18, 1952 at 1:30 p.m.  
at which time you may appear, if you so desire, either in person or  
by agent or attorney.  
**Room 301, City Building**

By order of the Board of Zoning Appeals.

Eugene N. Smith  
Secretary.

BOARD OF ZONING APPEALS  
Notices sent out to property owners on August 2, 1952

NOTICE TO PROPERTY OWNERS

Mr. Gwynne E. & Beulah Meeker, 1330 Amidon, City  
A. H. & Amy V. Bradshaw, 1329 Perry Avenue, City  
John C. & Mildred McNally, 1353, Perry Avenue, City  
Solon E. & Lela B. Duncan, 1355 Perry Avenue, City  
Glenn V. & Margaret Stitt, 1816 Parker Avenue, City  
S. D. & Mina A. Hyter, 1443 Perry Avenue, City  
Royce C. & Evelyn Sehnert, 119 N. Richmond, City  
Vera Arlene Cook & Hershel B., 1501 Woodrow Court, City  
Margaret S. Byrant & Dale, 1811 McKee, City  
Thurman W. & Dorothy I. Pinkard, 1420 Perry Avenue, City  
E. S. Covault, 828 Shady Way, City  
Norman Jeane Mims & Harold D. Mims, 1437 Perry Avenue, City  
Balfour C. & Annetta E. Wilkinson, 1415 Perry Avenue, City  
Mr. Dan Boone, Emigh Manufacturing Company, 1946 Parker Avenue, City

(Address)  
as provided by Section 75 of the zoning Ordinance. The applicant  
desires to  
located at  
This appeal has been given Case No.  
and a hearing will be held by the board of zoning appeals on  
at  
at which time you may appear, if you so desire, either in person or  
by agent or attorney.  
By order of the board of zoning appeals.

BEFORE THE BOARD OF ZONING APPEALS  
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

CASE NO. 4-52

APPEAL OF DAN BOONE

Comes now Dale M. Bryant and Margaret S. Bryant and move this honorable Board of Zoning Appeals to dismiss the appeal of Dan Boone for the reason that the Board does not have jurisdiction in that the appeal was not filed within ninety (90) days as provided by Section 34 of Ordinance 16-890, as amended, after the application for a permit to remodel and operate a machine and die shop was denied by the City of Wichita.

1. That the notice of appeal filed herein by Dan Boone does not contain the conditions required to exist by Section 34 of Ordinance 16-890, as amended, before the Board of Zoning Appeals assumes jurisdiction of the appeal.
2. That to grant the said application would be in direct conflict with the theory, principle and purpose of Wichita's zoning ordinances and would result in the unjust enrichment of the petitioner and the petitioner's landlord at the expense and damage of resident property in the neighborhood.
3. That the exceptions and variances asked by the appellant would adversely affect the rights of the adjacent property owners and other residents.
4. That to grant the application would constitute unnecessary hardship upon the owners of residential property in the area.
5. That the exceptions and variances asked are against public interest.
6. That to permit the property to be used for a purpose other than that authorized under Ordinance 16-890 as amended, would defeat the theory, principle and purpose of zoning laws to promote the health, safety, morals and general welfare of the community.

WHEREFORE, the undersigned ask that the Board of Zoning Appeals deny and reject the appeal of Dan Boone.

Dale M. Bryant  
Margaret S. Bryant  
84 McKee  
Wichita Kansas

TO THE BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

Case No. 4-52  
Dan Boone

You are hereby notified that we, the undersigned, hereby register our protest against the granting of the appeal of Dan Boone whereby the appellant desires to obtain a permit to remodel and operate a machine and die shop at 1946 Parker Avenue, Wichita, Kansas, for the reason that to grant the request would be in direct conflict with the theory, principle and purpose of the zoning laws of Wichita and would result in the enrichment of the petitioner at the expense and damage of the owners of residential property in the neighborhood.

Mrs. B. C. Wilkinson

Mr. B. C. Wilkinson

TO THE BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

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*Mrs Dorothy R. Pinkard*  
*Sumner W. Pinkard*

TO THE BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

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F. R. Heckel  
1307 Perry  
Louise Heckel.  
1307 Perry  
Ethel Bayer  
1305 Perry  
Faye Simpson  
1312 Perry  
Mrs. Edna McFarland  
1342 Perry  
A. N. Bradshaw  
Amy V. Bradshaw  
1329 Perry

Matthew Ellis  
1317 Perry  
Walter C. Gerner  
Joseph F. Gerner  
1316 Perry  
J. W. Southard  
Waverly Southard  
1320 Perry  
Anna Van Cura  
1326 Perry  
Ola Holland  
1315 Perry.

MADE IN U.S.A.

TO THE BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

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Mrs Mildred McHally  
1353 Perry

Mrs Lela B. Duncan  
1355 Perry ave

Mrs F. J. Tucker  
1922 W. 12th St.

Gwynne E. Meeker  
Beulah Meeker  
1330 Arundel ave

Mr & Mrs R. H. Tucker  
1302 Arundel

Addie House 1921  
1920 W 12th, Kansas

BEFORE THE BOARD OF ZONING APPEALS  
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

CASE NO. 4-52

APPEAL OF DAN BOONE

The undersigned, being owners of property zoned "A" located in the area and neighborhood of the property located at 1946 Parker Avenue, Wichita, Kansas, for which Dan Boone made application to remodel and operate a machine and die shop, which application was refused by the City on March 14, 1952, hereby enter their protest and opposition to the granting of said application. As property owners affected, we urge:

1. That to grant the said application would be in direct conflict with the theory, principle and purpose of Wichita's zoning ordinances and would also result in the unjust enrichment of the petitioner and the petitioner's landlord at the expense and damage of resident property in the neighborhood.
2. That the exceptions and variances asked by the appellant would adversely affect the rights of the adjacent property owners and other residents.
3. That to grant the application would constitute unnecessary hardship upon the owners of residential property in the area.
4. That the exceptions and variances asked are against public interest.
5. That to permit the property to be used for a purpose other than that authorized under Ordinance 16-890 as amended, would defeat the theory, principle and purpose of zoning laws to promote the health, safety, morals and general welfare of the community.
6. The undersigned further state that they as owners of residential property in the area made their investments on the strength of Wichita's zoning laws and state that to permit temporary use as asked for by appellant would affect them adversely, causing great and irreparable damage and injury and would be against public interest and result in the unjust enrichment of petitioner and his landlord at their expense and to their damage.

WHEREFORE, the undersigned ask that the Board of Zoning Appeals deny and reject the appeal of Dan Boone.

*Harold S. Mims*  
*Donald J. Mims*  
*Florence G. Shelley*  
*James D. Keen*

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CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

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*Harold S. Minis*  
*Donna J. Minis*  
*Howard G. Shelley*  
*Pauced Sheest*

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