

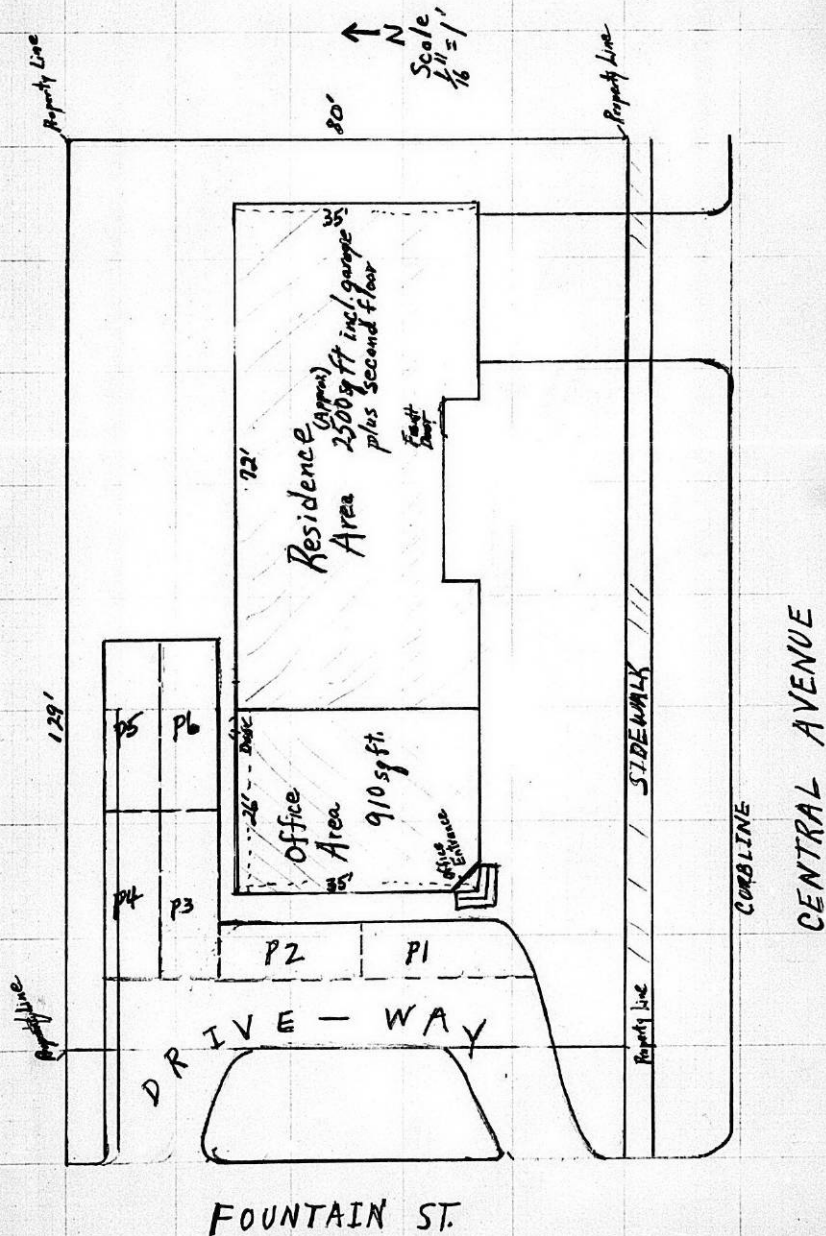
BZA 4-64 - Henry M. & Deborah P. Aberle request variance to use property for medical or dental office & residence on NE cor. of Fountain & ntral.

ACTION

DATE 12/1/64
Bza COMMITTEE Approved
no appeal filed
M.A.P.C. _____
B.C.C./B. CO. C. _____

SKETCH OF
HM ABERLE RESIDENCE
AND OFFICE - NE CORNER
FOUNTAIN & CENTRAL

Re BZA4-64



February 10, 1964

Mr. Orval J. Kaufman, Attorney
830 First National Bank Building
Wichita, Kansas

Dear Mr. Kaufman:

Re: Case No. BZA 4-64

On January 29, 1964, we advised you that the Board of Zoning Appeals had approved your request for a variance to permit use of property for a residence and medical or dental office contiguous to the residence, on property generally located on the northeast corner of Fountain and Central, subject to certain conditions.

We also advised that the Board's decision might be appealed to the City Commission provided such appeal was filed on or before February 7, 1964. The City Clerk has advised that no appeal was filed on or before that date, and the decision of the Board of Zoning Appeals is, therefore, final.

A copy of the resolution setting forth the action of the Board is attached for your information and files.

Very truly yours,

Robert A. Lakin
Secretary

RAL:JWH:ber
Attachment

cc: Henry M. and Deborah P. Aberle
606 South Minnesota

Glen Lytle, Superintendent
of Central Inspection

RESOLUTION NO. BZA 4-64

WHEREAS, Henry M. and Deborah P. Aberle, 606 South Minnesota, Wichita, Kansas, by Orval J. Kaufman, attorney, 830 First National Bank Building, Wichita, Kansas, have requested a variance to permit use of property for a residence and medical or dental office contiguous to the residence, as provided in Section 2.12.590.2, Code of the City of Wichita, Kansas, on property generally located on the northeast corner of Fountain and Central, and legally described as:

The west 19 feet of the south 80 feet of Lot 25 and the south 80 feet of Lots 26, 27, 28 and 29, in Engstrom Addition, in the City of Wichita, Sedgwick County, Kansas; and

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, in regular meeting consider said application on the 28th day of January, 1964; and

WHEREAS, the Board of Zoning Appeals has found that the request for variance arises from a condition which is found to be unique and not ordinarily found in the same zoning district inasmuch as a Planning Department staff report to the Metropolitan Area Planning Commission has indicated that the probable best use for the property on both sides of Central in this particular area would be for low intensity office use rather than light commercial, but that such zoning ("B" Multiple family and "BB" Office District - both of which allow dental and medical offices) should not be established until such time as the new prototype zoning regulations are adopted inasmuch as this recommendation was made in recognition of the fact that the present ordinance does not contain adequate controls for these types of uses and whereas the Board of Zoning Appeals is authorized to attach conditions in the granting of variances; further, subject property is zoned "A", has frontages on both Central and Fountain and is in an area developed in the 1930's but is the only tract fronting on Central between Hillside and Oliver which remains unoccupied; and further, provided that subject property is on a major thoroughfare with nearby property developed for residences, yet within six blocks to the east or west are light commercial districts containing a large hospital, Hillside Medical Towers and small shopping centers; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance, as approved, would not adversely affect the rights of adjacent property owners inasmuch as the applicants propose to construct a very substantial, attractive home-office combination which would be a credit to the neighborhood and blend in well with the surrounding area; the dental practice will be conducted strictly on an appointment basis and it is not contemplated that there would be more than 3 cars in the parking area at any one time; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the applicant inasmuch as the applicants' present location is being condemned for construction of the Canal Route (I-35W), and after diligent and frustrating

search over the last two years, the applicants have acquired this property and desire to begin construction at this time in order to have the office-residence completed before the finalization of the condemnation takes place; and further provided that a further hardship would exist if the variance is not granted, since there are very few, if any, properties which are now available which would fit the general criteria of being in a nice residential area, have the physical characteristics which make it adaptable for a home-office combination, and is so located to be readily accessible to the applicants' patients; and

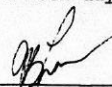
WHEREAS, the Board of Zoning Appeals has found that the variance, as approved, will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and

WHEREAS, as shown above, each of the four conditions required by Section 2.12.590.2, Code of the City of Wichita to be present before a variance can be granted, has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the variance requested be approved and the Superintendent of Central Inspection be authorized to issue the appropriate permit for construction of a residence and medical or dental office contiguous to the residence, on the above described property, subject to the following:


1. The ground coverage of the structure shall not cover more than one-third of the total ground area.
2. No more than one-third of the gross floor area be devoted to non-residential use.
3. No more than two professionals (medical or dental) establish their offices in such structure at any given time.
4. Off-street parking shall be provided according to Section 28.04.140 of the ordinance, and each supporting technician or employee be provided with an off-street parking space.
5. In the event this property is so zoned as to permit medical or dental offices, those zoning regulations shall apply and these regulations shall thereby be superseded.

ADOPTED AT WICHITA, KANSAS, this 28th day of January, 1964.



E. B. Law, Chairman

ATTEST:



Robert A. Lakin, Secretary

Board of Zoning Appeals

February 5, 1964

Robert G. Finch, City Clerk
Robert A. Lakin, Secretary

Case No. BZA 4-64

Attached is a copy of BZA Resolution No. 4-64, covering action taken by the Board of Zoning Appeals on the above numbered case.

This case was heard January 28, 1964, and an appeal may be filed in your office on or before February 7, 1964. If an appeal is filed, please advise.

Robert A. Lakin
Secretary

RAL:JWH:ber

Attachment

January 29, 1964

Mr. Orval J. Kaufman, Attorney
830 First National Bank Building
Wichita, Kansas

Dear Mr. Kaufman:

Re: Case No. BZA No. 4-64

This is to advise you that at its regular meeting of January 28, 1964, the Board of Zoning Appeals of the City of Wichita, considered your request for a variance to permit use of property for a residence and medical or dental office contiguous to the residence, on property generally located on the northeast corner of Fountain and Central, and legally described as:

The west 19 feet of the south 80 feet of Lot 25 and the south 80 feet of Lots 26, 27, 28 and 29, in Engstrom Addition, in the City of Wichita, Sedgwick County, Kansas.

It was the decision of the Board to approve this request subject to the following:

1. The ground coverage of the structure shall not cover more than one-third of the total ground area.
2. No more than one-third of the gross floor area be devoted to non-residential use.
3. No more than two professionals (medical or dental) may establish their offices in such structure at any given time.
4. Off-street parking shall be provided according to Section 28.04.140 of the ordinance, and each supporting technician or employee be provided with an off-street parking space. All off-street parking shall be approved by the Traffic Engineering Division of the Department of Public Works.

Page 2 - Mr. Orval J. Kaufman, Attorney
January 29, 1964

5. In the event this property is so zoned as to permit medical or dental offices, those zoning regulations shall apply and these regulations shall thereby be superceded.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the Board of City Commissioners within ten days of the date of the Board's action. Accordingly, an appeal could be filed in this case on or before February 7, 1964.

Subsequent to the expiration of the appeal period, you will be advised whether or not an appeal has been filed. If no appeal has been filed on or before February 7, 1964, the decision of the Board will be final and the Superintendent of Central Inspection will be in a position to issue the appropriate permit.

Very truly yours,

Robert A. Lakin
Secretary

RAL:JWH:ber

cc: Henry M. and Deborah P. Aberle
606 South Minnesota

Robert Finch
City Clerk

Glen Lytle, Superintendent
of Central Inspection

SECRETARY'S REPORT

CASE NO. BZA 4-64

GENERAL LOCATION

The property represented in this application is generally located at the northeast corner of Fountain and Central.

EXISTING LAND USE

The property in question is generally vacant. Existing land use to the north is duplexes; east single family; south single family and west are duplexes.

EXISTING ZONING

The property in question is currently zoned "A" Two Family. Existing zoning to the north is "A" Two Family; west is "A" Two Family; west is "AA" Single Family and east is "A" Two Family.

REQUEST

The request is for a variance as provided in Section 2.12.590.2, Code of the City of Wichita, to allow a medical or dental office to be located in "A" Two Family zoning district.

The Board of Zoning Appeals has the authority to grant the variance as requested provided all four of the following conditions can be found to exist:

1. Variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district.
2. Granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. Strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal.

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Case No. BZA 4-64

- 4. Variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The applicant has submitted a statement of justification which is included as Attachment #1 to this report, and a plot plan which is included as Attachment #2 to this report.

HISTORY

The applicant had originally applied for a change in zoning from "A" to "B" Multiple Family, where dental and medical offices are allowed as a "use by right". The Planning Commission, in November 21, 1963, recommended that the application be denied inasmuch as if the application was approved it would set a precedent of the looking with favor on other applications for the same type of zoning in this general area. It was the sense of the Planning Commission that the particular proposal and use would be appropriate and compatible with the area. On December 17, 1963, the City Commission considered the application and deferred action so that the applicants could seek relief through the Board of Zoning Appeals.

UNIQUENESS

The attorney for the applicant has suggested that this case is unique inasmuch as the property is zoned "A"; has frontages on both Central and Fountain and is situated in an area developed in the 1930's and the only tract fronting on Central between Hillside and Oliver which remains unoccupied. He further suggests that probably most important in reviewing is the fact that the lot is situated on a major thorofare and with nearby property developed for residences located in "A"

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Case No. BZA 4-64

Two Family on the north and for quality single family homes in "AA" located to the south, yet within six blocks either to the east or to the west are "LC" zoning districts containing a large hospital, Hillside Medical Towers and small neighborhood shopping centers.

Although the statements submitted by the attorney for the applicant may justify uniqueness, there is one thing which does appear to make this property unique. That is that at the time the zoning application was considered by the Planning Commission, the staff submitted a report on the future use of the mile strip on Central lying between Hillside and Oliver. In that report, it was indicated by the staff that probably the best use for the property lying on both sides of Central in this particular area would be for low intensity office use rather than light commercial activities. However, it was also suggested that neither "B" Multiple Family or "BB" Office District zoning (both categories allow medical and dental offices) zoning be established until such time as the new prototype zoning regulations are adopted. This recommendation was made in view of the fact that the present ordinance does not contain adequate controls for these ~~types of uses~~. Consequently, since the recommendation of the staff for future use of this area was for the type of use as being proposed by the applicant, and since the Board of Zoning Appeals has the authority to attach conditions to the granting of variances, this case could be considered unique from this standpoint.

ADJACENT PROPERTY

The attorney for the applicant is of the opinion that the granting of this variance would have no adverse affect on the rights of adjacent

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Case No. BZA 4-64

property owners in that the applicants propose to construct a very substantial, attractive home-office combination which would be a credit to any neighborhood. It was also pointed out that the applicant conducts his practice on an appointment basis as an individual general practitioner and to the best of his recollection there has never been over 3 patients' cars in his office at any one time, and rarely more than 2 patients' cars.

The Secretary is of the opinion that the granting of this variance should not adversely affect the rights of adjacent property owners in that according to the information submitted, the applicant intends to construct a very attractive home-office combination whereby the residence will be located on the eastern portion of the lot and the office will then be attached to the west end of the residence. The proposed structure should be very compatible and blend in with the residential uses in the surrounding area.

HARDSHIP

The attorney for the applicant has suggested that hardship exists in that the applicants' existing office is presently located in an area which will be condemned for construction of the highway along the canal route. When the applicant found that his property might possibly be taken for this purpose in 1957 and since that time has been looking for a lot situated in a nice residential area where he could comfortably raise his family and carry on his practice. Consequently, after two years of diligent and frustrating searching, the applicant found and acquired the property represented in this application. It was also

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Case No. BZA 4-64

pointed out that the applicants have found that their property will be condemned and he would like to start construction on his home and office for six months before the finalization of the condemnation takes place. For these reasons, the attorney for the applicant is of the opinion that if the variance requested is not granted it will be a real substantial and unnecessary hardship upon the applicants.

Under the present ordinance, dentists, doctors, etc., are permitted to operate in their home under the home occupation clause as set out in the ordinance. However, in this instance it was pointed out at the time the zoning was being considered by the Planning Commission, that the applicant intended to have one receptionist which is not permitted under the ordinance. The home occupation clause requires that these activities may be permitted only when performed by the person occupying the building as his or her private dwelling, and not including the employment of any outside help.

The attorney has indicated to the Secretary that although it is their intention at the present time to employ only a receptionist for the proposed dental office, they desire to protect their future property rights and their ability to resell the property without sustaining an undue loss in value. It was pointed out that this might happen in the event of Dr. Aberle's death, whereby his widow would no longer have use for a property designed for office-residential use. Thus, it could be resold to a doctor or another dentist and that there may be need for more than a single professional in such a future operation. Similarly, should Dr. Aberle bring in his son or another dentist, permission for a single receptionist would be of little value.

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Case No. BZA 4-64

It was stated by the attorney that it was the applicant's intention not to construct or operate a "medical or dental clinic", but to merely protect his property rights. They are not adverse to establishing a limit on either or both the number of professionals in the office and the total per centage of area devoted to non-residential activity.

As this property can probably be used for the purpose for which zoned, as is attested by the relatively new duplexes to the north, it would seem that the only justification in making a finding of hardship is the applicant's statement that there are no other vacant properties now available which would fit his general criteria of being located in (1) a nice residential area; (2) the physical characteristics which would make it adaptable for a home-office combination; and (3) be so located as to be readily and easily accessible to his patients. It is assumed that not being able to locate in the same general district in which his existing practice is located would constitute a hardship.

It is the opinion of the Secretary that if the applicant is in fact going to hire only one outside assistant to assist in his practice, it would come very close to being a home occupation and hardship could possibly be found to exist. However, on the other hand, if the applicant intends to have a full scale dental clinic at this location, it would not, in the Secretary's opinion, constitute justification for hardship in that the appropriate remedy would be to either amend the ordinance or seek an appropriate zoning classification which permits the use.

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Case No. BZA 4-64

PUBLIC INTEREST

The Secretary agrees with the attorney for the applicant in that the granting of the variance should in no way adversely affect the public interest.

It is the opinion of the Secretary that all points to the variance have been found to exist and that the variance be granted subject to the following conditions and requirements:

1. The ground coverage of the structure not cover more than one-third of the total ground area.
2. No more than one-third of the gross floor area be devoted to non-residential use.
3. No more than three professionals (medical or dental) establish their offices in such structure at any given time.
4. Off-street parking shall be provided according to Section 28.04.140 of the ordinance, and each supporting technician or employee be provided with an off-street parking space.
5. In the event this property is so zoned as to permit medical or dental offices, those zoning regulations shall apply and these regulations shall thereby be superceded.

Attachments

- #1 - Statement of justification
- #2 - Plot Plan
- #3 - Variance vote sheet

CASE NO. BZA 4-64

PREPARATION OF THE SECRETARY'S REPORT

ON THIS CASE HAS BEEN DELAYED PENDING

SUBMISSION OF ADDITIONAL INFORMATION

BY THE ATTORNEY IN THIS CASE.

CASE NO. BZA 4-64

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BY THE ATTORNEY IN THIS CASE.

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

January 13, 1964

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 4-64

An application has been filed by Orval J. Kaufman, attorney, 830 First National Bank Building, Wichita, Kansas, on behalf of Henry M. and Deborah P. Aberle, 606 South Minnesota, Wichita, Kansas, requesting a Variance of the requirements of Section 28.04.050.A, Code of the City of Wichita, pursuant to Section 2.12.590.2, Code of the City of Wichita, Kansas, to permit the applicants to use property for a residence and for medical or dental offices contiguous to the residence, on property zoned "A" and legally described as:

The West 19 feet of the South 80 feet of Lot 25 and the South 80 feet of Lots 26, 27, 28 and 29, in Engstrom Addition to Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of Fountain and Central.

This application has been assigned Case No. BZA 4-64. A hearing will be held by the Board of Zoning Appeals on Tuesday, January 28, 1964, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

January 13, 1964

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Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

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Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

January 13, 1964

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BEA 4-64

An application has been filed by Orval J. Kaufman, attorney, 830 First National Bank Building, Wichita, Kansas, on behalf of Henry M. and Deborah P. Aberle, 606 South Minnesota, Wichita, Kansas, requesting a Variance of the requirements of Section 28.04.050.A, Code of the City of Wichita, pursuant to Section 2.12.590.2, Code of the City of Wichita, Kansas, to permit the applicants to use property for a residence and for medical or dental offices contiguous to the residence, on property zoned "A" and legally described as:

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This application has been assigned Case No. BEA 4-64. A hearing will be held by the Board of Zoning Appeals on Tuesday, January 28, 1964, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Robert A. Lakin
Secretary

CASE NO. BZA 4-64

NOTICES MAILED JANUARY 13, 1964 FOR MEETING ON JANUARY 28, 1964

Wayne E. Forsberg
Maleta A. Forsberg
4125 East Central

Pauline M. Dayes
Frederick E. Dayes
445 North Broadview

Mrs. Vera Darling
4105 East Central

The Chapple Investment Corp.
147 North Water

H. A. Blinn
457 North Fountain

Orville L. Elrick
Ruth T. Elrick
447 North Fountain

Clara L. Wuertz
4061 East Central

Dora W. Hodgson
4020 East Central

Ann Burdick
Walter W. Burdick
Trudy I. Palmer
544 North Broadview

Andrew John Focht
Joyce Chappell Focht
521 North Fountain

Clifford McCrea
Vada McCrea
115 South Rutan

Clair H. Etter
Jennie F. Etter
529 North Fountain

Bernard A. Clark
Geraldine P. Clark
4715 Vesta Drive

Clifford E. Clark
Joann Clark
1614 Kenmar Drive

Robert L. Clark
Patricia A. Clark
522 North Fountain

Iona Brittingham
Fred H. Taylor
512 North Fountain

Clarence Edward Reed
4114 East Central

Wayne T. Burbank
Blanche H. Burbank
529 North Broadview

Orval J. Kaufman
830 First National Bank Building

Henry M. and Deborah P. Aberle
606 South Minnesota

STATEMENT OF JUSTIFICATION

Re: Case No. BZA 4-64
Applicants: Henry M. and Deborah
P. Aberle
Property: NE Cor Fountain and
Central legally described as:
W 19' of the S 80' of Lot 25,
and the S 80' of Lots 26, 27, 28
and 29 in Engstrom Addition to
Wichita, Sedgwick County, Kansas
Zoning: "A" Two Family Dwelling
District

JURISDICTION

Jurisdiction is granted to the Board of Zoning Appeals to act upon this application for variance under Section 2.12.590.2 of the Code of the City of Wichita which provides that "The Board shall have jurisdiction to grant variances from the strict application of the enforcement provisions of the Zoning Ordinance..." Under the strict application of the Zoning Ordinance the applicant could build the proposed structure and use the property for his home and dental office under the Home Occupation Exception allowed in any zoning classification under the zoning ordinance if no person outside of the home was employed for the performance of his service. Since 1951 when Dr. Aberle commenced the practice of dentistry in Wichita, he has been an individual practitioner employing a full time receptionist and one half-time dental assistant. Unless the strict application of the zoning ordinance is alleviated it will be necessary to obtain "B" zoning for the property in order for Dr. Aberle to continue the practice of dentistry in the manner upon which he has built his practice and this zoning change the Governing Body is hesitant to make just to allow the employment by Dr. Aberle of one to two assistants in the office.

STATEMENT OF CONDITIONS

A. Unique and not ordinarily found in the same zoning district.

The property is zoned "A" and is a tract having 129 ft. of frontage on Central Avenue and 80 ft. of frontage on Fountain Street. It is situated in an area that developed in the 1930's and is the only tract fronting on Central between Hillside and Oliver Streets which remains unoccupied. Across Central to the south is property zoned "AA" which is improved by large, substantial, older type, but well kept residences. Surrounding the property on the north side of Central are a scattering of smaller single family residence and duplexes on property zoned "A". The property lies midway between downtown and the eastern edge of the City and fronts on a major

Case No. BZA 4-64
Attachment #1 - 1

Page

street making it easily accessible from all directions. The property was originally platted with the lots facing Central Avenue, but the surrounding property has developed in such a manner as to leave the south 80' of five lots undeveloped, thereby diminishing the normal depth of platted lots and creating a situation where the maximum depth is actually obtained by combining the five lots and the minimum depth is contained on the front eighty feet of the total depth of the lots as originally platted. The surrounding land use does not make the land truly adaptable to a substantial residence north of Central even though directly across the major street to the south are substantial residences. The location of the lot does not make construction of a duplex the ideal use because of the substantial residences to the south. The physical characteristics of the remaining 80' of the lot lend the tract to the unique capability of constructing a substantial residence fronting on Central Avenue with attached offices fronting on Fountain, thereby alleviating curb cuts or potential traffic congestion on the major streets. Finally and probably most important and revealing is the fact that the lot is situated on a major thoroughfare, at the edge of an "A" zoning district, but across the street from substantial residences is an "AA" zone - yet within six blocks either to the west or the east are LC zoning districts containing on the west a large hospital and surrounding suburban commercial areas and to the east a suburban shopping area. In view of the foregoing, applicants submit that no where in the City of Wichita will a tract be found in an "A" zoning district where the combination of factors hereinabove outlined can be found and where granting of the variance for the use proposed will have the effect of fortifying property values in the area and at the same time serve the applicants critical needs.

B. No adverse affect on the rights of adjacent property owners.

The applicants propose to construct a very substantial attractive home-office combination which would be a credit to any neighborhood. The granting of the variance will in fact be a benefit to the adjacent property owners and will not have an adverse affect. Dr. Aberle conducts his practice on an appointment basis as an individual general practitioner and to the best of his recollection there have never been over three patients cars at his office at any one time, and rarely more than two patients cars. No objections have been raised by anyone in connection with Dr. Aberle's contemplated use of the property. Everyone apparently recognizes that the structure and use proposed would be a compatible valuable addition to the neighborhood and would help hold and upgrade the surrounding area rather than adversely affect it. Certainly the use contemplated under the application would be more compatible in the area than a nursing or convalescent home or a home for the aged which is permitted under the present zoning on the property.

C. Hardship upon the property owner if enforcement provisions of zoning ordinance are strictly applied. ~~Case No. 2224-64~~

Attachment #1 - 2

b. Major Street - A street or extension thereof shown on the Major Street Plan adopted by the City Planning Commission on January 23, 1946, or a revision thereof. In areas outside the city limits, a major street is located at section and quarter section lines.

c. Whenever the word "Commission" is used in these Rules and Regulations, it shall be deemed to refer to the Wichita-Sedgwick County Metropolitan Area Planning Commission.

III. APPROVAL OF SUBDIVISION PLATS

Any sale or contract of sale or agreement to purchase any lot or division of land either by lot description or by metes and bounds, shall constitute a subdivision of land and require, prior to any sale or contract of sale or agreement to purchase, and before the delivery of a deed, the submission of a plat to the Commission as required by law and these Rules; provided, however, that this requirement shall not apply to land in subdivisions previously recorded, or to sales of land of two and one-half (2½) acres or more in size, or to the sale or exchange of small parcels of land to or between adjoining property owners, where such sale or exchange does not create additional lots.

Every subdivision of land within the City of Wichita or within unincorporated territory located not more than three (3) miles from the corporate limits of the City of Wichita, shall be shown upon a plat and submitted to the Commission for approval or disapproval. Any plat approved by the Commission shall be submitted to the Board of Commissioners of the City of Wichita and to the Board of Commissioners of Sedgwick County for approval or disapproval. No plat shall be recorded in the office of the Register of Deeds and no lots shall be sold from such plat unless and until approved as hereinabove provided.

Sketch Plat and Preliminary Plat

To subdivide land into lots, parcels or tracts, or to dedicate or reserve streets, alleys, or land for public or private use, the owner shall file a completed "Application for Subdivision" form and subsequently confer with the Metropolitan Area Planning Department to develop a Sketch Plat of the area to be subdivided.

In the event that the subdivider and the Planning Department shall be unable to reach agreement on the characteristics of the Sketch Plat within 30 days of the date of the application, in considering the Sketch Plat, the subdivider's

To Clancy, Scanlon, Wulz, Des Marteau, Lakin

Subject: Cityh of Wichita Council for Community Development

Please advise me of the meeting date which was established by your committee, the frequency of the meetings, time of meetings and the place at which it will be held. This information is necessary to distribute to the Executive Committee.

Also, please advise me of the members of your committee which represent a minority group. This information is necessary to submit to the Federal Housing, Home and Finance Agency, as indicated at the meeting of January 23.

It appears to be appropriate for minutes to be taken of all future committee meetings. I assume that you will be able to provide such secretarial service as necessary from your staff for the preparation, duplication and distribution of these minutes.

A corrected roster of the members of the Council will be forwarded as soon as possible.

Roy C. Russell
1005 Union Center Building
Wichita, Kansas 67202

Dear Mr. Russell:

I will be out of the office between the dates of January 24 and February 4 inclusively on various matters of business. As I understand it, you will not be available for an Executive Committee meeting of the Council for Community Development for some time. Since I will be out of the office, I would appreciate it if you would discuss with Mr. Krouse your wishes in regard to his conducting a meeting in your absence and I will contact him upon my return to the office. I feel that an executive committee meeting should be held within the next two or three weeks, if possible.

I think there are a number of matters on procedure which we may wish to discuss, including such questions as----Committee rights in regard to studying problems not specifically assigned by the City Commission --- methods and procedures for obtaining City Commission approval --- Subjects which Committee members may wish to study --- Date, time and place for meetings.of the Executive Committee.

Very truly yours,

C. Hardship upon the property owner if enforcement provisions of zoning ordinance are strictly applied.

Since 1951 Dr. Aberle has conducted his dental practice at 602 South Minnesota which is connected to his residence at 606 South Minnesota by a breezeway. His existing residence and office are more than adequate and Dr. Aberle would not consider moving if he were not being forced out by condemnation. In 1957 Dr. Aberle learned that the U. S. 81 by-pass was being proposed along the canal route through the City which would require condemnation of his existing facilities. In order to avoid the possibility of being condemned and having no place to move, thereby creating interruption of his dental practice as well as his home requirements, Dr. Aberle commenced searching for a tract of ground which would fulfill three basic requirements - (1) Be situated in a nice residential area where he could comfortably raise his family (2) Has the physical characteristics which would make it highly adaptable to a home-office combination and (3) Be located so it would be readily and easily accessible to his patients. After two years of diligent but frustrating searching, Dr. Aberle located the property in question and after ascertaining the ownership, purchased the property in April of 1959. Dr. Aberle felt that this afforded himself and his family protection against the eventuality when he might be required to vacate his present facilities. That eventuality has become a rapidly approaching reality and Dr. Aberle must be in a position where he will be ready to commence construction at least four to six months before the condemnation of his present home-office becomes final. For the reasons stated, it seems obvious that if the variance requested is not granted, it would be a real, substantial and unnecessary hardship on the applicant.

D. No adverse affect upon public health, safety, morals, order, convenience, prosperity or general welfare.

That the fourth condition just above set forth is fully met seems so self-evident that it should require no discussion. No public interest would be adversely affected. There would be less curb cuts on Central Avenue than if a duplex with garages at each end were to be constructed. It would not inconvenience any one and would in fact be more convenient than uses presently permitted. Less traffic would be generated than a residence only occupied by a family having several teenage sons or daughters.

By reason of the foregoing, applicants respectfully request that the Board of Zoning Appeals act favorably upon this application for a variance and grant a variance permitting use of the property for a residence and for medical or dental offices contiguous to the residence.

HENRY M. AND DEBORAH P. ABERLE

By S/ Orval J. Kaufman

Case No. BZA 4-64
Attachment #1 - 3

STATEMENT OF JUSTIFICATION

Re: Case No. BZA 4-64
Applicants: Henry M. and Deborah
 P. Aberle
Property: NE Corner Fountain and
 Central legally described as: W
 19' of the S 80' of Lot 25, and the
 S 80' of Lots 26, 27, 28 and 29 in
 Engstrom Addition to Wichita,
 Sedgwick County, Kansas.
Zoning: "A" Two-Family Dwelling
 District"

JURISDICTION

Jurisdiction is granted to the Board of Zoning Appeals to act upon this application for variance under Section 2.12.590-2 of the Code of the City of Wichita which provides that "The Board shall have jurisdiction to grant variances from the strict application of the enforcement provisions of the Zoning Ordinance . . ." Under the strict application of the Zoning Ordinance the applicant could build the proposed structure and use the property for his home and dental office under the Home Occupation Exception allowed in any Zoning Classification under the Zoning Ordinance if no person outside of the home was employed for the performance of his service. Since 1951 when Dr. Aberle commenced the practice of dentistry in Wichita, he has been an individual practitioner employing a full time receptionist and one half-time dental assistant. Unless the strict application of the Zoning Ordinance is alleviated it will be necessary to obtain "B" zoning for the property in order for Dr. Aberle to continue the practice of dentistry in the manner upon which he has built his practice and this zoning change the Governing Body is hesitant to make just to allow the employment by Dr. Aberle of one to two assistants in the office.

STATEMENT OF CONDITIONS

A. Unique and not ordinarily found in the same zoning district.

The property is zoned ^{"A"} and is a tract having 129 ft. of frontage on Central Avenue and 80 ft. of frontage on Fountain Street. It is situated in an area that developed in the 1930's and is the only tract fronting on Central between Hillside and Oliver Streets which remains unoccupied. Across Central to the south is property zoned "AA" which is improved by large, substantial, older type, but well kept residences. Surrounding the property on the north side of Central are a scattering of smaller single family residence and duplexes on property zoned "A". The property lies midway between downtown and the eastern edge of the City and fronts on a major street making it easily accessible from all directions. The property was originally platted with the lots facing Central Avenue, but the surrounding property has developed in such a manner as to leave the south 80' of five lots undeveloped, thereby diminishing the normal depth of platted lots and creating a situation where the maximum depth is actually obtained by combining the five lots and the minimum depth is contained on the front eighty feet of the total depth of the lots as originally platted. The surrounding land use does not make the land truly adaptable to a substantial residence north

of Central even though directly across the major street to the south are substantial residences. The location of the lot does not make construction of a duplex the ideal use because of the substantial residences to the south. The physical characteristics of the remaining 80' of the lots lend the tract to the unique capability of constructing a substantial residence fronting on Central Avenue with attached offices fronting on Fountain, thereby alleviating curb cuts or potential traffic congestion on the major streets. Finally and probably most important and revealing is the fact that the lot is situated on a major thoroughfare, at the edge of an "A" zoning district, but across the street from substantial residences is an "AA" zone - yet within six blocks either to the east or the west are LC zoning districts containing on the west a large hospital and surrounding suburban commercial areas and to the east a suburban shopping area. In view of the foregoing, applicants submit that no where in the City of Wichita will a tract be found in an "A" zoning district where the combination of factors hereinabove outlined can be found and where granting of the variance for the use proposed will have the effect of fortifying property values in the area and at the same time serve the applicants critical needs.

B. No adverse affect on the rights of adjacent property owners.

The applicants propose to construct a very substantial attractive home-office combination which would be a credit to any neighborhood. The granting of the variance will in fact be a benefit to the adjacent property owners and will not have an adverse affect. Dr. Aberle conducts his practice on an appointment basis as an individual general practitioner and to the best of his recollection there have never been over three patients cars at his office at any one time, and rarely more than two patients cars. No objections have been raised by anyone in connection with Dr. Aberle's contemplated use of the property. Everyone apparently recognizes that the structure and use proposed would be a compatible valuable addition to the neighborhood and would help hold and upgrade the surrounding area rather than adversely affect it. Certainly the use contemplated under the application would be more compatible in the area than a nursing or convalescent home or a home for the aged which is permitted under the present zoning on the property.

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Since 1951 Dr. Aberle has conducted his dental practice at 602 South Minnesota which is connected to his residence at 606 South Minnesota by a breezeway. His existing residence and office are more than adequate and Dr. Aberle would not consider moving if he were not being forced out by condemnation. In 1957 Dr. Aberle learned that the U. S. 81 by-pass was being proposed along the canal route through the City which would require condemnation of his existing facilities. In order to avoid the possibility of being condemned and having no place to move, thereby creating interruption of his dental practice as well as his home requirements, Dr. Aberle commenced searching for a tract of ground which would fulfill three basic requirements - (1) Be situated in a nice residential area where he could comfortably raise his family (2) Has the physical characteristics which would make it highly adaptable to a home-office combination and (3) Be located so it would be readily and easily accessible to his patients. After two years of diligent but frustrating searching, Dr. Aberle located the property in question and after ascertaining the ownership, purchased the property in April

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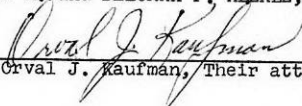
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HENRY M. and DEBORAH P. ABERLE,

By


Orval J. Kaufman, Their attorney.

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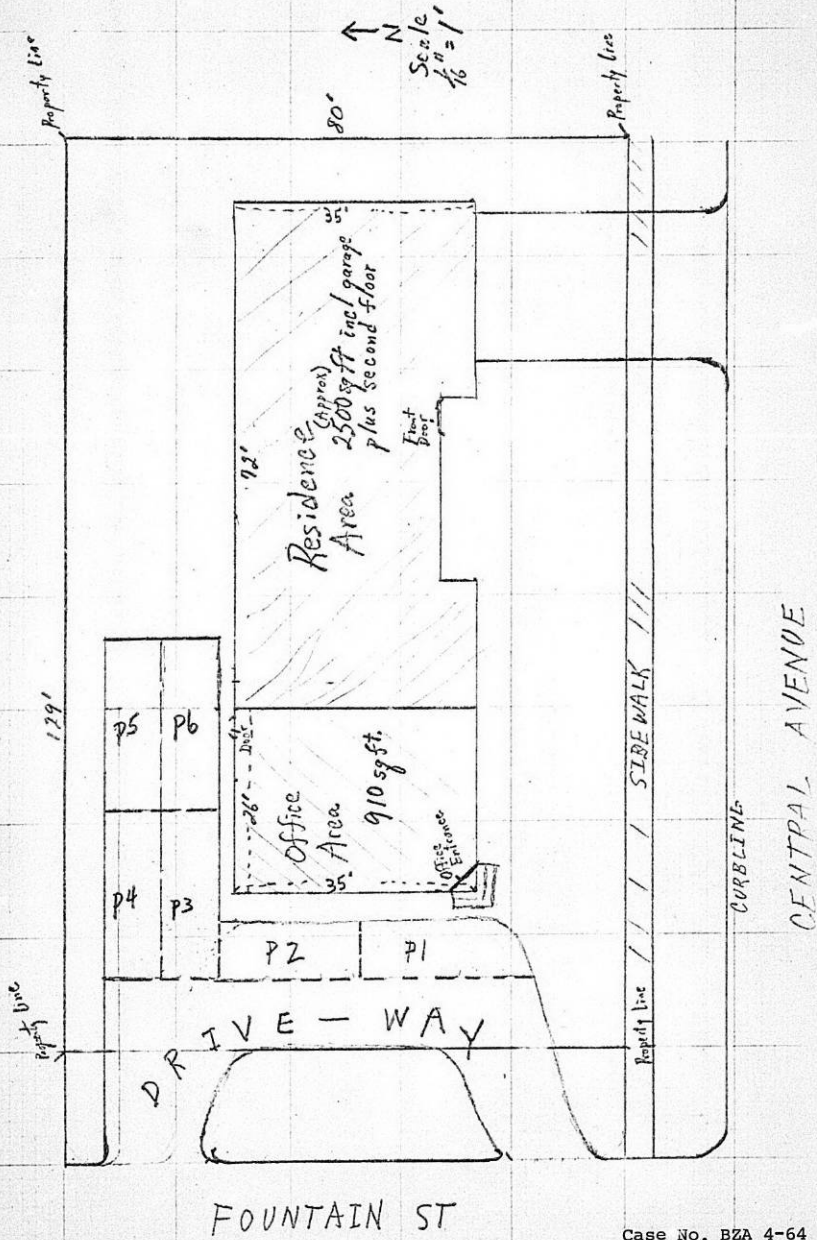
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HENRY M. and DEBORAH P. ABERLE,

By Orval J. Kaufman
Orval J. Kaufman, Their attorney.

SKETCH OF
 HM ABERLE RESIDENCE
 AND OFFICE - NE CORNER
 FOUNTAIN & CENTRAL

Re BZA 4-64



BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

APPLICATION FOR VARIANCE

I. NAME OF APPLICANT Henry M. Aberle and Deborah P. Aberle
MAILING ADDRESS 606 South Minnesota PHONE AM 4-8863
NAME OF AUTHORIZED AGENT Orval J. Kaufman
MAILING ADDRESS 830 First Nat'l Bank Bldg. PHONE AM 4-1376
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owner
(OWNER, TENANT, LESSEE, OTHER)

II. THE VARIANCE REQUESTED IS to use the property for a residence
and for medical or dental offices contiguous to the residence.

FOR PROPERTY LOCATED AT Northeast corner of Fountain & Central
AND LEGALLY DESCRIBED AS: The West 19 feet of the South 80 feet
of Lot 25 and the South 80 feet of Lots 26, 27, 28 and 29, in
Engstrom Addition to Wichita, Sedgwick County, Kansas
IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED "A".

(GIVE METES AND BOUNDS DESCRIPTION BELOW IF APPROPRIATE):

III. THE APPLICANT HEREIN, OR HIS AUTHORIZED AGENT, ACKNOWLEDGES:

- A. THAT HE HAS RECEIVED AN INSTRUCTION SHEET CONCERNING THE FILING AND HEARING OF THIS MATTER;
- B. THAT HE HAS BEEN ADVISED OF THE FEE REQUIREMENTS ESTABLISHED BY SECTION 2.12.580 OF THE CODE OF THE CITY OF WICHITA (ORDINANCE No. 24-606); AND THAT THE APPROPRIATE FEE IS HEREWITH TENDERED;
- C. THAT HE HAS BEEN ADVISED OF HIS RIGHT TO APPEAL OF THE DECISION OF THE BOARD TO THE CITY COMMISSION WITHIN TEN (10) DAYS OF THAT DECISION;
- D. THAT ALL DOCUMENTS ARE ATTACHED HERETO AS NOTED IN PARAGRAPHS 3 AND 4 OF THE INSTRUCTIONS.
(Being submitted under separate cover as per conference with Mr. Lakin.)

Henry M. Aberle & Deborah P. Aberle
APPLICANT Husband and Wife
By Orval J. Kaufman
AUTHORIZED AGENT Orval J. Kaufman

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING
APPEALS, 3:50 (A.M. P.M.), 1-10, 1964,
TOGETHER WITH APPROPRIATE FEE OF \$50.00.

[Signature]
SIGNED

OWNERSHIP LIST

LOT	STREET	ADDITION	PROPERTY OWNER
14 ex N 6½'	Broadview	Engstrom	Wayne T. Burbank Blanche H. Burbank 529 N. Broadview
15	"	"	"
16 N 12½'	"	"	"
16 ex N 12½'	"	"	Clarence Edward Reed 4114 East Central
17	"	"	"
18	"	"	"
19	Central	"	"
20	"	"	"
21	"	"	"
22	"	"	"
23	"	"	"
24	"	"	"
25 E 6'	"	"	"
25 W 19' S 80'	"	"	Henry M. Aberle Deborah P. Aberle 606 S. Minnesota Ave.
26 S 80'	"	"	"
27 S 80'	"	"	"
28 S 80'	"	"	"
29 S 80'	"	"	"
25 W 19' N 76'	"	"	Iona Brittingham Fred H. Taylor 512 N. Fountain
26 N 76'	"	"	"
27 N 76'	"	"	"
28 N 76'	"	"	"
29 N 76'	"	"	"

Continued -2-

30	Fountain	Engstrom	Robert L. Clark Patricia A. Clark 522 N. Fountain Clifford E. Clark Joann Clark 1614 Kenmar Drive Bernard A. Clark Geraldine P. Clark 4715 Vesta Drive
31	"	"	"
32	"	"	"
33	"	"	"
34	"	"	"
590	"	Overlook	Clair H. Etter Jennie F. Etter 529 N. Fountain
591	"	"	Clifford McCrea Vada McCrea 115 S. Rutan
592	"	"	"
593	"	"	Andrew John Focht Joyce Chappell Focht 521 N. Fountain
594	"	"	"
703	Central	"	Ann Burdick Walter W. Burdick Trudy I. Palmer 544 N. Broadview
704	"	"	"
705	"	"	Dora W. Hodgson 4020 E. Central
706	"	"	"
707	"	"	Clara L. Wuertz 4061 E. Central
708	"	"	"
20	Fountain	Small's 2nd Add. to College Hill	Orville L. Elrick Ruth T. Elrick 447 N. Fountain
22 S 22½'	"	"	"

Continued -3-

22 N 27½'	Fountain	Small's 2nd Add. to College Hill	H. A. Blinn 457 N. Fountain
24	"	"	"
43	"	"	The Chapple Investment Corp. 147 N. Water
45	"	"	Mrs Vera Darling 4105 E. Central
47	"	"	"
44 S 46'	Broadview	"	Pauline M. Dayes Frederick E. Dayes 445 N. Broadview
44 N 4'	"	"	E. R. Walker No Address Available
46 S 44'	"	"	"
46 N 6'	"	"	Wayne E. Forsberg Maleta A. Forsberg 4125 E. Central
48	"	"	"

We hereby certify the foregoing to be a true and correct List of Property Owners within a two hundred foot radius of the West 19 feet of the South 80 feet of Lot 25, and the South 80 feet of Lots 26, 27, 28 and 29, Engstrom Addition to Wichita, Sedgwick County, Kansas, as shown by the records in the office of the Register of Deeds of said county, on this the 26th day of August, A.D., 1963 at 7:00 A. M.

THE SECURITY ABSTRACT AND TITLE CO., INC.

By

Raymond Bell

Vice President

Order No. 106753
(rnb)

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bld'g & Elev. _____ Elec. _____ Elev. Insp. _____
Exam Fees _____ Hse. Mvr. _____ Hse. Moving _____
Licse. _____ Mech. _____ Oil Well _____ Pav. Cuts. _____
Plan. Pib'g. _____ Pib'g Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

DESCRIPTION	AMOUNT

Name _____

Address _____

Type _____ Due Date _____

Comments _____

Date _____ By _____