

Case No. BZA 22-82 - The Kelly Building, Inc. - requests a variance to eliminate the required screening fence adjacent to the residential district on the north on property zoned "RB" Office District and

*POSTED*  
*7-8-82*

**ACTION**

*BZA*  
BZA COMMITTEE Approved DATE 7-27-82

~~M.A.P.G.~~ \_\_\_\_\_

~~B.C.C./B.C.O.C.~~ \_\_\_\_\_

*BZA*  
*7-28-82*

5548 C

200'4Sec 8-11-82  
Checked 8-11-82  
Shot 8-12  
Recorded 8-17 KB

Map No. 5548  
 Sec. 16  
 Twp. 27  
 Range 1E

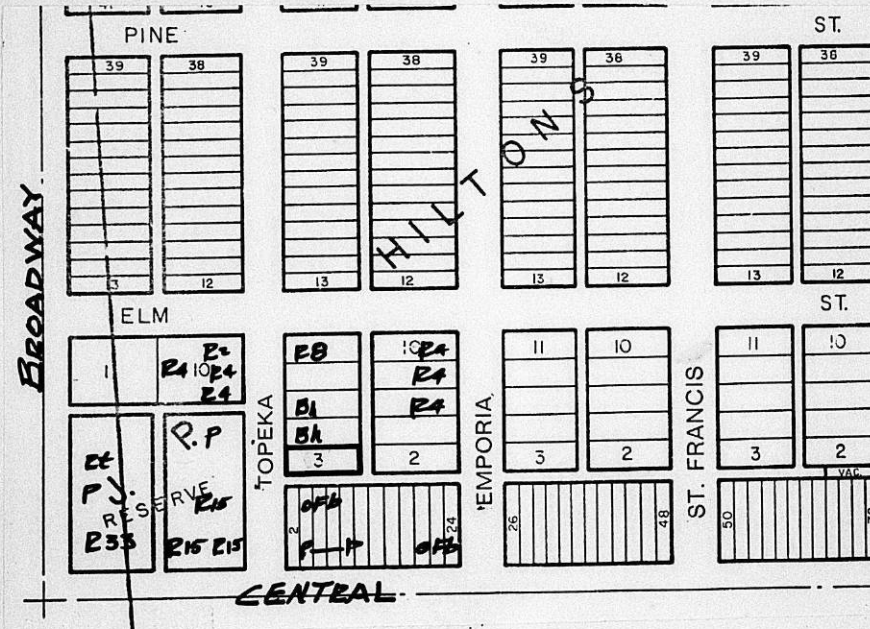
BZA- 22-82  
 SCZ- \_\_\_\_\_  
 CU- \_\_\_\_\_  
 Filed \_\_\_\_\_

AREA DATA:

1. Acres: 0.16 (. 50 ft. by 140 ft.)
2. Adjoining Zoning: E \_\_\_\_\_ S \_\_\_\_\_ W \_\_\_\_\_ N \_\_\_\_\_
3. Land Use: East UNDEVELOPED South OFFICE BLDG  
 West APARTMENTS North BOARDING HOUSE
4. Sketch Plan Land Use is for: \_\_\_\_\_
5. Present Land Use if for: UNDEVELOPED
6. Area (is) (is not) platted.

PHOTO DATA:

Taken by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_



REGISTERED MAP  
 LOS ANGELES COUNTY REGISTER  
 MCGREGOR TX, LOCUST GROVE, GA  
 U S A

**Sybold**  
 No. 2153C

July 28, 1982

Mr. Carl E. Kelly  
Kelly Building, Inc.  
510 North Topeka  
Wichita, Ks. 67214

Re: Case No. BEA 22-82  
Request for Variance

Dear Mr. Kelly:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on July 27, 1982.

This Resolution reflects the official action of the Board to approve your request. It is forwarded to you for your information and files.

If you have questions concerning this matter, please call our office.

Sincerely,

Glen E. Lytle  
Assistant Secretary

GE:isd  
Enclosure

cc: Robert Feldner, Superintendent of Central Inspection (2)  
Don Cisick, City Clerk

RESOLUTION NO. BZA 22-82

WHEREAS, Kelly Building, Inc., 510 North Topeka, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to eliminate the required screening fence adjacent to the residential zoning district along the north property line on property zoned the "BB" Office District and legally described as follows:

Lot three (3), on Topeka Avenue, J. P. Hilton's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located on the east side of Topeka and north of Central (510 North Topeka).

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, at the meeting of July 27, 1982, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant inasmuch as the property is located in an area where the established zoning policy is to look with favor on commercial zoning; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the property to the north is a two-story residential structure used for apartments or rooming house purposes, and a six foot screening fence would not provide any visual protection to the windows of either floor; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of Title 28 (Zoning Ordinance) of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as the installation of the fence that would not provide protection as intended by the ordinance would be an undue expense to the applicant; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that the lack of the screening fence could be beneficial to both properties and to the public as far as security is concerned; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the screening between office and multiple-family dwellings are both higher intensity uses than in most instances applicable under the general provisions of the ordinance throughout the City; and

WHEREAS, each of the five conditions required by Section 2.12.590.B, 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 this request for a variance to eliminate the required screening fence adjacent to the residential zoning district along the north property line on property zoned the "BB" Office District and legally described as:

Lot three (3), on Topeka Avenue, J.P. Hilton's  
Addition to the City of Wichita, Sedgwick County,  
Kansas. Generally located on the east side of  
Topeka and north of Central (510 North Topeka).

be approved.

ADOPTED AT WICHITA, KANSAS, this 27th day of July, 1982.

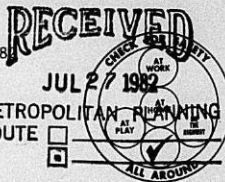
  
\_\_\_\_\_  
Tom Jacob, Chairman

ATTEST:

  
\_\_\_\_\_  
Glen F. Lytle, Assistant Secretary

**THE CITY OF WICHITA**  
**OFFICE OF** CITIZEN PARTICIPATION

DATE July 27, 1982



**TO** Glen Lytle, Special Assistant for Zoning

**FROM** Stan Scott, Administrative Aide III

**SUBJECT** BZA 22-82: East Side of Topeka,  
north of Central (510 N. Topeka)

On Monday, July 26th, CPO Neighborhood Council "L" considered the captioned case, a request for a variance to eliminate the required screening fence adjacent to the residential district on the north on property zoned "BB", Office District. After discussion, the Council voted 5-0 no to oppose the requested variance.

The applicant, Carl Kelly, was present to explain the requested variance and respond to questions from the Council. Mr. Kelly indicated that he was not aware of any opposition to the requested variance and that the residents to the north supported the variance. No area residents or property owners appeared before the Council.

Please provide the Council's recommendation to the Board of Zoning Appeals when BZA 22-82 is considered on Tuesday, July 27th.

Stan Scott  
Administrative Aide III

Noted:

Sarah Gilbert  
CP Coordinator

SECRETARY'S REPORT  
CASE NO. BZA 22-82

APPLICANT: Kelly Building, Inc., 510 North Topeka,  
Wichita, Kansas

AGENT: Carl N. Kelly, Kelly Building, Inc., 510 North  
Topeka, Wichita, Kansas

REQUEST: Variance pursuant to Section 2.12.590.B, Code  
of the City of Wichita, to eliminate the re-  
quired screening fence adjacent to the  
residential zoning district on the north.

GENERAL LOCATION: On the east side of Topeka and north of Central  
(510 North Topeka).

ZONING: Subject property is zoned the "BB" Office  
District. Property to the north is zoned  
the "B" Multiple-family District and to the  
south and east the "C" Commercial District.

LAND USE: Subject property has been converted from  
residential to office purposes. Property  
to the south is offices, to the north a  
rooming house and to the west parking.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita and the Board may grant the request when all five conditions as required by the State Statutes are found to exist.

COMMENTS BY THE SECRETARY:

The applicant is requesting a variance to eliminate the required screening fence adjacent to the residential zoning district along the north property line. In this particular instance the fence would be within 4 feet of the applicant's building and a similar distance from the structure to the north. Both buildings are also more than one story in height.

In this area on Topeka, from Central to Murdock, it is the established policy to look with favor on zoning requests for "LO" and "C" zoning. Should at some point in time the zoning be changed on the property to the north, no screening fence would then be required. In areas deemed to be in a transitional stage, it is the Secretary's opinion that the requirement of the screening does not provide the protection to adjacent properties as it does in newly developed areas.

UNIQUENESS:

It is the opinion of the Secretary that this property is unique inasmuch as the property is located along a street where the zoning policy established by the Planning Commission and City Commission is to look with favor on commercial zoning.

ADJACEPT PROPERTY:

It is the opinion of the Secretary that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the property to the north is a two-story residential structure used for apartments or rooming house purposes, and a six foot screening fence would not provide any visual protection to the windows of either floor.

HARDSHIP:

It is the opinion of the Secretary that the strict application of the provisions of the zoning ordinance may constitute an unnecessary hardship upon the applicant inasmuch as the installation of the fence that would not provide protection as intended by the ordinance would be an undue expense to the applicant.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as the lack of the screening fence could be beneficial to both properties and to the public as far as security is concerned.

SPIRIT AND INTENT:

It is the opinion of the Secretary that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the screening between office and multiple-family dwellings are both higher intensity uses than in most instances applicable under the general provisions of the ordinance throughout the City.

RECOMMENDATION:

Should the Board determine that all five conditions necessary to the granting of a variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted to not require the screening fence adjacent to the north property line.

BZA CASE NO. 22-82

1 NOTICES SENT TO APPLICANT/AGENT

10 NOTICES SENT TO MAPC

1 NOTICES SENT TO CPO

10 NOTICES SENT TO ADJOINING PROPERTY OWNERS

22 TOTAL NOTICES SENT 7-7-82

BOARD OF ZONING APPEALS  
Tenth Floor - City Hall  
455 North Main, Wichita, Kansas 67202

July 7, 1982

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 22-82

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by The Kelly Building, Inc., 510 North Topeka, Wichita, Kansas, requesting a variance.

Pursuant to Section 2.12.590.B, of the Code of the City of Wichita, the applicant is requesting a variance to eliminate the required screening fence adjacent to the residential district on the north on property zoned "BB" Office District. A legal description of the applicant's property is as follows:

Lot Three (3), on Topeka Avenue, J. P. Hilton's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located on the east side of Topeka and north of Central (510 North Topeka).

This application has been assigned Case No. BZA 22-82. It will be considered by the Board of Zoning Appeals on July 27, 1982 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested variance you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

If you have any questions about the application, please feel free to call the Wichita-Sedgwick County Metropolitan Area Planning Department at 268-4421.

Jack H. Galbraith  
Secretary

BOARD OF ZONING APPEALS  
CITY OF WICHITA, KANSAS

CASE NO. 22-82  
FILED 6-10-82

APPLICATION FOR VARIANCE

I. Name of Applicant The Kelly Building, Inc.  
Mailing Address 510 N. Topeka, Wichita, KS 67214 Phone 262-3741  
Name of Authorized Agent Carl N. Kelly  
Mailing Address 510 N. Topeka, Wichita, KS 67214 Phone 262-3741  
Relationship of applicant to property is that of owner  
(Owner, Tenant, Lessee, Other)

II. The variance requested is to eliminate the <sup>required</sup> screening fence  
That a fence not be required between  
adjacent to the residential district on the north  
property owned by applicant and the property lying to the North of  
applicant's property.  
on the east side of Topeka and north of Central  
for property located at 510 North Topeka, Wichita, Kansas

and legally described as: Lot Three (3), on Topeka Avenue,  
J. P. Hilton's Addition to the City of Wichita, Sedgwick County, Kansas

in the City of Wichita; and which is presently zoned BB.

- III. The applicant herein, or his authorized agent, acknowledges:
- That he has received an instruction sheet concerning the filing and hearing of this matter;
  - 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. 36-596); and that the appropriate fee is herewith tendered;
  - That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
  - That all documents are attached hereto as noted in paragraphs 2, 3, 4, and 5 of the instructions.

Applicant The Kelly Building, Inc.

Authorized Agent Carl N. Kelly  
Carl N. Kelly

OFFICE USE ONLY; Received in Office of Secretary, Board of Zoning Appeals, 4:45 (a.m.-p.m.), June 10, 1982 together with appropriate fee of 150.00.

Signed [Signature]

OWNERSHIP LIST

LEGAL	ADDITION	OWNER/ADDRESS
Lot 3, on Topeka Avenue	J.P. Hilton's Addition	<input checked="" type="checkbox"/> The Kelly Building, Inc. 510 North Topeka Wichita, Kansas 67214
Lot 5, on Topeka Avenue	"	<input checked="" type="checkbox"/> Lawrence E. and Rosalie M. Smith 1302 North Emporia Wichita, Kansas 67214
Lot 7, on Topeka Avenue	"	<input checked="" type="checkbox"/> Irene M. and L.P. McMurtray 526 North Topeka Wichita, Kansas 67214
Lot 9, on Topeka Avenue	"	<input checked="" type="checkbox"/> Irene M. and L.P. McMurtray 526 North Topeka Wichita, Kansas 67214
The North 45 feet of Lot 10, except the West 2 feet on Topeka Avenue	"	<input checked="" type="checkbox"/> The Kelly Building, Inc. 510 North Topeka Wichita, Kansas 67214
The South 75 feet of Lot 10, on Topeka Avenue	"	<input checked="" type="checkbox"/> Robert A. and Karen A. Wilkins 339 North Belmont Wichita, Kansas 67208
"	"	<input checked="" type="checkbox"/> Bobby B. and Shirley A. Fulgroat 2535 West 27th Street South Wichita, Kansas 67217
Lot 11, on Topeka Avenue	"	<input checked="" type="checkbox"/> Irene McMurtray 526 North Topeka Wichita, Kansas 67214
Even lots 2 to 18, inclusive, on Central Avenue	"	<input checked="" type="checkbox"/> K&S Enterprises, Inc. 404 East Central Wichita, Kansas 67202
Lots 20, 22 and 24 on Central Avenue	"	<input checked="" type="checkbox"/> Elvin H. and Martha Jane Henry 1608 North Clarence Wichita, Kansas 67203
The West 45 feet of the South 100 feet of the East 140 feet of Reserve	"	<input checked="" type="checkbox"/> Builders, Inc. 1000 Park Lane, Room 306 Wichita, Kansas 67218
The West 5 feet of the North 25 feet of the South 100 feet of the East 95 feet of Reserve	"	<input checked="" type="checkbox"/> The Kansas Elks Training Center for the Handicapped, Inc. 1006 East Waterman Wichita, Kansas 67211
The South 50 feet of the North 105 feet of the East 140 feet of Reserve	"	<input checked="" type="checkbox"/> Kelly Land Company 510 North Topeka Wichita, Kansas 67214
The North 55 feet of the East 140 feet of Reserve	"	<input checked="" type="checkbox"/> Marcella S. Roberts 104 North Armour Wichita, Kansas 67206
The East 95 feet of the South 75 feet of Reserve	"	<input checked="" type="checkbox"/> <del>Mid Main Inc.</del> No Address Available

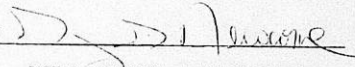
OWNERSHIP LIST (continued)

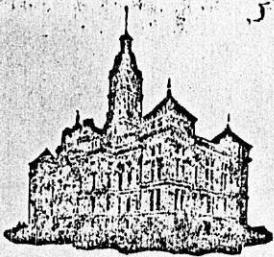
Legal	Addition	Owner/Address
A tract described as beginning 75 feet North of the Southeast corner of Reserve; thence West 90 feet; thence North 25 feet; thence West 50 feet, thence North 75 feet; thence East 140 feet; thence South 100 feet to beginning	J.P. Hilton's Addition	The Kansas Elks Training Center for the Handicapped, Inc. 1006 East Waterman Wichita, Kansas 67211

COLUMBIAN NATIONAL TITLE INSURANCE COMPANY HEREBY CERTIFIES THE FOREGOING TO BE A TRUE AND CORRECT LIST OF PROPERTY OWNERS WITHIN A 200 FOOT RADIUS OF LOT 3, ON TOPEKA AVENUE, IN J. P. HILTON'S ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS AS SHOWN BY THE LAST DEED OF RECORD ON FILE IN THE OFFICE OF THE REGISTER OF DEEDS, SEDGWICK COUNTY, KANSAS, ON THE 29th DAY OF MARCH, 1982 AT 7:00 A.M.

COLUMBIAN NATIONAL TITLE INSURANCE  
COMPANY OF WICHITA, INC.

BY

  
GARY G. NEWCOME, VICE PRESIDENT



SEDGWICK COUNTY COURT HOUSE

State of Kansas )  
1930  
County of Sedgwick )

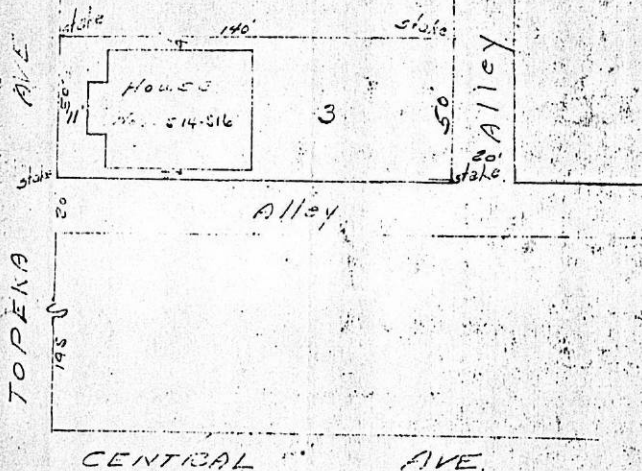
OFFICE OF  
**RANSOM H. BROWN**  
County Surveyor, Sedgwick  
County

Wichita, Kansas, August 18 1930

I, Ransom H. Brown, County Surveyor in and for said county and state, do hereby certify that I did this 18th day of August, 1930, survey lot 3 Topeka Ave. in J. P. Hilton's Addition to Wichita, Kansas. Said lot surveyed 140 feet east and west by 60 feet north and south. All corners were marked.

On said lot is House No. 514-16 which is in the clear of all boundary lines. There are no encroachments on said lot by buildings on the adjoining lots.

County Surveyor.

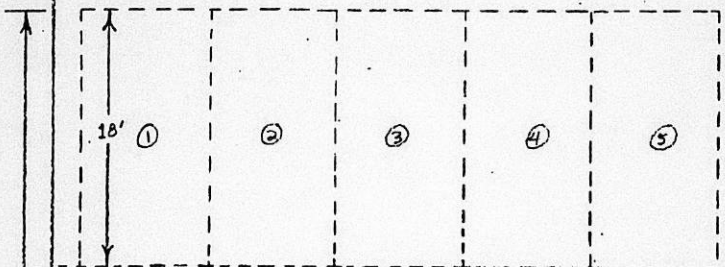
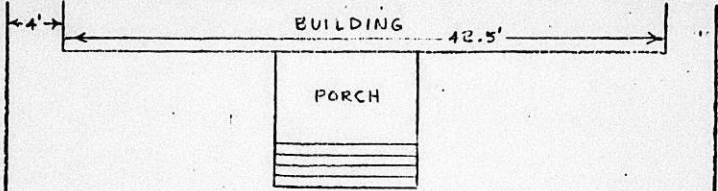


The fences required by Zoning Ordinance Section 28.04.160 K appears to have been enacted to provide a separation between residential neighborhoods and business uses. The primary factors to be considered would be appearance and security.

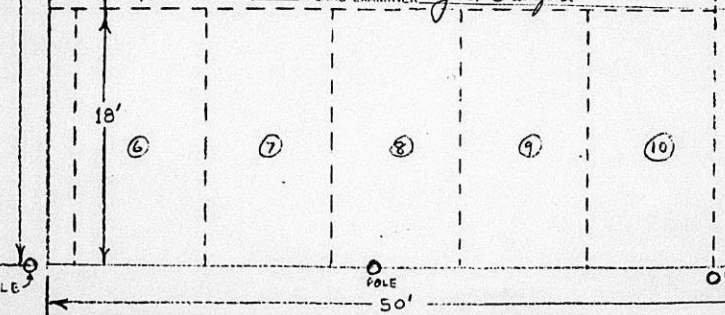
With regard to appearance, it is obvious that the office building located at 510 North Topeka adds to rather than detracts from the appearance of the apartment house to the north.

With regard to security, it is important to note that the property is located in an area where there is already too much crime. The addition of a fence for would-be criminals to hide behind would make more of a security problem for the building at 510 North Topeka and the apartment building to the north.

DATE 5/8/79. SUBJECT PARKING LAYOUT SHEET NO. OF  
 D.D. BY DATE JOB NO.  
 Scale: 1" = 9'



OFF-STREET PARKING AND LOADING  
 ADDRESS 510-14 N. TOPEKA  
 PROJECT REMODEL FOR OFFICES  
 SCREEN LOC. AND HT. 6' TO 8' FENCE ALONG NORTH PROPERTY LINE  
 REQ'D. BY 28-24,160 (K)  
 NO. OF APPROVED EXISTING PARKING SPACES \_\_\_\_\_  
 TOTAL NO. OF PARKING SPACES REQUIRED 23  
 CALCULATED ON 5703/250  
 NO. OF APPROVED EXISTING LOADING SPACES \_\_\_\_\_  
 TOTAL NO. OF LOADING SPACES REQUIRED \_\_\_\_\_  
 CALCULATED ON \_\_\_\_\_  
 DATE 6-8-79 PLANS EXAMINER Jim Crawford



POLE POLE POLE  
 50'

60'  
 18'  
 9'  
 24'  
 9'  
 18'

**MICROFILMED**  
**FROM THE BEST**  
**AVAILABLE COPY**

FORM 25 21

**PAYMENT NOTICE**  
City of Wichita

Bldg.	Use of Str.	Code Bks	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev. (P.W.)	Cement	M.S.P.
	Planning		

DESCRIPTION AMOUNT

NAME

ADDRESS

FUND

DUE DATE

COMMENTS

DATE

BY