

ACTION

DATE

10-23-63

COMMITTEE

By *Approved in*
Part

M.A.P.C.

B.C.C./B. CO. C.

BZA 28-63 - Lloyd L. Harp appeals
Order of S of CI to allow addition
to nonconforming building on E side
of Tyler in an area N of Maple.

R E S O L U T I O N N O. BZA 28-63

WHEREAS, Lloyd Lee Harp, 215 South Tyler Road, Wichita, Kansas, by H. R. Kuhn, Attorney, 201 Beacon Building, Wichita, Kansas, has appealed from the decision of the Superintendent of Central Inspection, as provided in Section 2.12.590.1, Code of the City of Wichita; and in addition, if the appeal is not upheld by the Board of Zoning Appeals, then the applicant requests a variance, as provided in Section 2.12.590.2, Code of the City of Wichita, to permit the construction of a 40' x 60' commercial building; and

WHEREAS, this application relates to property legally described as follows:

South half of Lot 50, Westfield Acres, in the City of Wichita, Sedgwick County, Kansas.
Generally located on the west side of Tyler Road in an area just north of Maple; 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 22nd day of October, 1963; and

WHEREAS, the Board determined that said appeal resulted from a decision of the Superintendent of Central Inspection that the construction of a building for the purpose of conducting a related sales and service (including well drilling) of water well pumps is not permitted under Sections 28.04.090 and 28.04.170 of the Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals determined that it had proper jurisdiction to consider said appeal under the provisions of Section 2.12.590.1, Code of the City of Wichita; and

WHEREAS, the property is zoned "LC" Light Commercial; and

WHEREAS, the attorney for the applicant stated that he had been advised by his client that 80% or more of the income from his business is derived from the sales and service of pumps, water wells and the service thereto; and

WHEREAS, the Board finds that activity as described by the attorney for the applicant does comply with sub-section 1.2 of Section 28.04.090.A of the City Code; and

WHEREAS, the attorney for the applicant and the Board of Zoning Appeals both recognize that the well drilling equipment is comparable to a contractor's business and as such is not a permitted use under Section 28.04.090.A and as such is a nonconforming use which may not be expanded; and

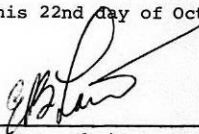
WHEREAS, the Board indicated that it would order the issuance of the permit, and based upon this indication, the attorney for the applicant requested that the variance portion of the application be withdrawn.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals that the decision of the Superintendent of Central Inspection that the contracting portion of the business in question is not permitted in the "LC" Light Commercial District, and that retail sales are a permitted use, is hereby upheld and that the Board of Zoning Appeals does hereby direct and order the Superintendent of Central Inspection to issue a building permit for a commercial building to house a business providing for the sale, service and repair of water well pumps and equipment, on property legally described as follows:

The South half of Lot 50, Westfield Acres, in the City of Wichita, Sedgwick County, Kansas. Generally located on the north side of Maple and on the west side of Tyler Road.

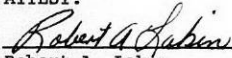
The Board further recognizes that the existing well drilling equipment operation now conducted on the property is not and shall not be considered a conforming use under the provisions of Section 28.04.090, Code of the City of Wichita, and that no portion of the structure heretofore authorized, shall be used in pursuant of this nonconforming activity.

ADOPTED at Wichita, Kansas, this 22nd day of October, 1963.



E. B. Law, Chairman

ATTEST:



Robert A. Lakin
Secretary

November 4, 1963

Mr. Lloyd Harp
215 South Tyler Road
Wichita, Kansas

Dear Mr. Harp:

re: BZA Case No. 29-63

On October 23, 1963, we advised you that the Board of Zoning Appeals had considered your appeal from the decision of the Superintendent of Central Inspection and your request for a variance in case the decision of the Superintendent of Central Inspection was upheld. This concerned property described as the South half of Lot 50, Westfield Acres, generally located on the west side of Tyler road in an area just north of Maple.

The decision of the Superintendent of Central Inspection that the contracting portion of the business in question is not permitted in the "LC" District and that retail sales are a permitted use, was upheld, and the Superintendent was issued to issue a permit for a commercial building to house a business providing for the sale, service and repair of water well pumps and equipment on the above property.

We also advised that the Board's decision might be appealed to the City Commission provided that such appeal was filed on or before November 1, 1963. The City Clerk has advised that no appeal was filed, 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:ber
Attachment
cc: H. R. Kuhn
201 Beacon Building

Glen Lytle, Superintendent
of Central Inspection

October 23, 1963

Mr. Lloyd Harp
215 South Tyler Road
Wichita, Kansas

Dear Mr. Harp:

Re: BZA Case No. 28-63

This is to advise you that at its regular meeting of October 22, 1963, the Board of Zoning Appeals of the City of Wichita, considered your appeal from the decision of the Superintendent of Central Inspection, and your request for variance in case the decision of the Superintendent of Central Inspection was upheld. This concerned property described as the South half of Lot 30, Westfield Acres, and generally located on the west side of Tyler Road in an area just north of Maple.

It was the decision of the Board that the decision of the Superintendent of Central Inspection that the contracting portion of the business in question is not permitted in the "LC" District, and that retail sales are a permitted use, was upheld, and the Board directed the Superintendent of Central Inspection to issue a building permit for a commercial building to house a business providing for the sale, service and repair of water well pumps and equipment on the above described property.

The Board recognized that the existing well drilling equipment operation now conducted on the property is not and shall not be considered a conforming use under the provisions of Section 28.04.090, Code of the City of Wichita, and that no portion of the structure authorized shall be used in pursuant of this nonconforming activity.

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 November 1, 1963.

Page 2 - Mr. Lloyd Harp
October 23, 1963

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 November 1, 1963, 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

Robert A. Lakin
Secretary

RAL:JWH:ber

cc: H. R. Kuhn, Attorney
201 Beacon Building
Wichita, Kansas

Robert G. Finch
City Clerk

Glen Lytle, Superintendent
of Central Inspection

Board of Zoning Appeals

October 25, 1963

Robert G. Finch, City Clerk

Robert A. Lakin, Secretary

BZA Case No. 28-63

Attached is a copy of BZA Resolution No. 28-63, covering action taken by the Board of Zoning Appeals on the above case.

This case was heard on October 22, 1963, and an appeal may be filed in your office on or before November 1, 1963.

If an appeal is filed, please advise.

Robert A. Lakin
Secretary

RAL:ber

Attachment

SECRETARY'S REPORT

CASE NO. BZA 28-63

GENERAL DESCRIPTION

The property represented in this application is generally located on the west side of Tyler Road just north of Maple. The property in question is occupied by a single family dwelling and the business in question in this case, which we determine to be a contractor's storage yard. The area is used for the storage of equipment, pumps and related supplies.

The existing land use to the north is liquor store and single family. South is single family, drive-in restaurant and a service station. West is single family and east single family and a small neighborhood shopping center.

The property in question is zoned "LC" Light Commercial. This is a typical "LC" area, 600 x 600 feet of "LC" on each section line corner without regard to ownership pattern or land use. The existing zoning to the north is "LC" Light Commercial and "AA" Single Family; east is "AA" Single Family and "LC" Light Commercial; west is "AA" Single Family; and south is "LC" Light Commercial.

REQUEST

The applicant has filed an appeal from the refusal of the Superintendent of Central Inspection not to issue a permit for construction of a commercial building pursuant to Section 28.04.090 ("LC" district regulations) and 28.04.170 (Nonconforming

Page 2 - Secretary's Report
Case No. BZA 28-63

use regulations) of the Code of the City of Wichita. In the event the Board of Zoning Appeals upholds the decision of the Superintendent not to issue a permit for this particular building, the applicant has requested that a variance be granted as provided in Section 2.12.590.2 (Board of Zoning Appeals jurisdiction) of the Code of the City of Wichita to permit a building to be constructed for a "Commercial Use" in the Light Commercial zoning district.

PART I - APPEAL

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

The attorney for the applicant has pointed out in the statement of justification that it is the intention of the applicant to build a 40' x 60' commercial building for the purpose of conducting a related sales and service business in connection with the sales and service of water well pumps and related supplies. The applicant further contends that the refusal to grant the permit by the office of the Superintendent of Central Inspection was unjustified under the applicable code provisions of the City of Wichita. (Section 28.04.090) It is the applicant's position that the proposed use is basically a "retail use".

In a memorandum dated October 9, 1963 (see Attachment #3), the Superintendent of Central Inspection has stated that building

permit was denied the applicant for two basic reasons:

1. "The present operation with exterior storage of equipment and materials is a nonconforming use in the "LC" zoning district". Thus, if nonconforming it may not be expanded nor may new construction be allowed.
2. In reviewing the applicant's operation and the proposed use of the new structure, the decision of the Division was based on the fact that there would be an absolute separation between the proposed pump service to be housed in the new building and the now existing business.
3. As I have previously stated on similar matters pertaining to what uses are allowed in the "LC" district, the proposed use is not a purely retail business as permitted under 28.04.090.A.1.2".

The section just noted provides that among the uses permitted are:

"All purely retail businesses; provided, that all articles for sale, rent, display, storage or hire must be kept within an enclosed building."

Mr. Lytle also suggested that the applicant and his counsel indicated to him that it would be impossible to entirely separate

what would be considered the retail portion of the business and that of the well drilling. He further points out that Webster defines the word "purely" as follows:

"In a pure manner; unmixed with anything else."

He also suggests that "when the ordinance states, 'purely retail' he assumes that the intent of the ordinance is to limit use to that category."

COMMENTS BY THE SECRETARY

It is the Secretary's opinion that the Board must find that the proposed business and the operation thereof is the use which is especially provided for in the "LC" district. In this particular case, the applicants are contending that the use is a "retail use". Should the Board find that this particular use is "retail" in nature, it should be incumbent upon the applicant to make a formal showing that this is fact is the situation at hand. Disregarding for the moment the question of "purity", it is incumbent on the applicant and his counsel to show that the activities proposed to be undertaken on this property are at least primarily retail and that any other activities carried on on this property is merely incidental and accessory to the main use for retail purposes.

In considering the question as to "strict interpretation" and "legislative intent", it should be noted that the light commercial district does not contain a precise intent section stating how this district should be utilized and in what type of situation

or to what type of area it should be applied. It is generally accepted in the planning field, however, that light commercial districts are those which will be used to provide neighborhood type services. This includes areas for sale of food and clothing, dry cleaning services, service stations, personal services, medical and dental offices. It should also be noted at this point that the manner in which the zoning ordinance has been constructed provides that in the light commercial district only those uses which are specifically set out in the text are to be allowed. This includes, of course, all of the uses allowed in the most restrictive zoning district, plus those specifically stated in the "LC" section. Among those uses specifically listed in the "LC" section is the phrase "purely retail uses,"

If the governing body had intended for "across the board" retail activities, they would have merely stated "retail" and not have included the word "purely". Inclusion of the word "purely" indicates that the governing body had a specific type of retail activity in mind.

On the other hand, very little in today's business world can be stated as being purely retail or purely wholesale. These terms, while they may have had a clearer meaning 20 years ago, have certainly become "grayer" through modern business practices. There would appear, however, some means of distinguishing the general types of uses. Logic would dictate that those businesses

which derive the greater share of income, or creates a greater degree of activity from retail type services than from other types of activities which might be considered as accessory and supplemental to the main use, could properly be called a "retail use". An example of this might be the sale of "white goods" as the main use and repair man or installation man as a service incidental to the main use. However, when the repair and rebuilding part of the business overshadow the occasional sale or retail of a new piece of furniture, then the operation no longer is a retail, but a repair type business.

An examination of the property and the general area would indicate that the existing operation as now conducted is not a retail operation but more similar to a contractor's business. In the area, there are pipes stored, as is well digging equipment mounted on trucks. From appearances it would seem that this operation is clearly more related to a contractor's operation than to a retail sales or service, unless the applicant can make a showing that

- (1) the use which is to be located in the proposed building will be retail and will constitute a substantial and major portion of his business activity;
- (2) that the nonconforming use of well drilling and contracting equipment will not be a part of the new business.

It is recommended that the Board of Zoning Appeals uphold the decision of the Superintendent of Central Inspection in denying the permit on the basis that the proposed use is not a use permitted in the Light Commercial district.

Types of proof which might be acceptable to the Board as to the type of activity to be carried on in this business would be a listing of the type of products to be sold, approximate quantities, approximate dollar sales or percent of sales (both dollars and numbers) of the operation as compared to other related activities, or records of past activities carried on in a retail business of this nature, or comparisons of other operations now conducted within the city in this same general field.

PART II - VARIANCE

The applicant has also requested a variance in the event his appeal is denied to allow his particular use to be constructed in an "LC" Commercial zone.

The applicant suggests in his statement of justification concerning the variance (see Attachment #4) that the property involved was annexed to the City of Wichita in 1962 and that prior to that time the use proposed was subject to the zoning regulations of Sedgwick County.

Even so, however, if this is not a "retail use" it would have been nonconforming under the County Zoning Resolution. However, the County Zoning Resolution does allow nonconforming

uses a 50% expansion if approved by the County Board of Zoning Appeals.

JURISDICTION

As has been stated before, the ordinance creating a Board of Zoning Appeals granted the Board jurisdiction to hear three types of cases - appeals, variances and exceptions. The Secretary feels that the intent of the ordinance insofar as it relates to variances was to allow the Board to modify such requirements as height, setback, lot area, lot width and similar requirements to the zoning ordinance and not to allow the granting of permission to use property in a different manner or a different use than that permitted by the zoning ordinance. To allow a different use than that specified in the zoning ordinance would be, in effect, the amendment of the zoning ordinance by a board not having legislative power or authority. Since uses to be permitted in any specific zone are established by the City Commission by adoption of an ordinance as a legislative act, it is the opinion of the Secretary that the granting would be a legislative act capable of being exercised only by the City Commission and not within the jurisdiction of the Board of Zoning Appeals.

In the opinion of the Secretary, the zoning ordinance cannot and should not be amended through the granting of "use variances". Therefore, based upon the foregoing review, it is the opinion and recommendation of the Secretary that the Board of Zoning Appeals not take jurisdiction.

In the event the Board does take jurisdiction in this case, the Board must find that all four of the following conditions are present before granting the request of the applicant:

1. The variance desired arises from such condition which is unique and not ordinarily found in the same zoning district.
2. The 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 would constitute an unnecessary hardship on the property owners represented in the appeal.
4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

GENERAL COMMENTS

In requesting the variance, the applicant makes the statement that:

- (a) That the variance requested arises from a condition which is unique to the particular property involved and is not ordinarily found in the same zoning district.
- (b) That the granting of a permit for the variance will not adversely effect the rights of adjacent property owners or residents.
- (c) That the strict interpretation applied by the office of the Superintendent of Central Inspection, creates and constitutes unnecessary hardship upon the property owner.
- (d) That the variance desired is not against the public interest.

It is the opinion of the Secretary that this is merely the re-statement of the requirements of the ordinance and does not

provide any information as to why or in what manner these conditions are met in this particular case. In other words, in what manner is this situation unique? What is the hardship? - financial, or inability to put the property to a reasonable use? None of these types of questions have been answered by the applicant in his application.

Gordon Whitnall, AIP, planning consultant and recognized authority on planning matters, including "Boards of Zoning Appeals" states that before a variance should be granted "there should be something about the property which does not allow it to be used in the same manner as other property in the same zoning district". Can not this property be used in the same manner as every other properties zoned "LC" in this area. If the variance is granted, the applicant would be attaining a special privilege not accorded to other properties in the same neighborhood and zone. Even as a nonconforming use, if the variance were granted, the property owner would be obtaining a greater privilege than other nonconforming uses, not only for those which might be located in the same general area but those throughout the city.

Since the applicant has not submitted any detailed justifications concerning the four points prerequisite to granting a variance, it is difficult to try and prejudge any reasons which the applicant may submit at the hearing. However, the following should be considered before favorable action is taken on this case.

Is there any physical feature of this land which presents a greater problem to the development than on adjacent property? Are the surrounding land uses substantially different and unique from those normally found in residential districts and light commercial districts?

Will the permission for the expansion of a non-conforming use (as it will be if the decision of the Superintendent of Central Inspection is upheld), tend to increase or decrease the value of the residences in the area? This area, although zoned "LC", is predominately developed with quality residences.

If this is not a retail use, will the expansion of such use create additional traffic of a different character than that normally expected and tolerated in either a residential or "LC" area?

Will the Board's action, if approval, establish precedent for the inclusion of heavier uses in Light Commercial districts?

What is the hardship? Is it financial, and if so is the hardship a loss of actual dollars or the loss of potential dollars? Can not this business be located in an area already zoned for this type of use since new structures will be required and the old structures will be removed?

It is not alleged that these are all of the matters which should be examined prior to the Board's consideration, but are indicative of the type of questions which the staff feels the applicant should answer before being granted a variance.

SECRETARY'S RECOMMENDATION

It is the recommendation of the Secretary that this application be denied due to a lack of evidence concerning the four points required by ordinance and due to the applicant being given greater rights in an "LC" zone than are other owners of such land similarly zoned and located.

In the event the Board takes jurisdiction and finds all four conditions necessary to the granting of a variance to exist, and the variance is approved, it is recommended that it be approved subject to the following conditions:

1. Solid wall fencing a minimum of 8 feet in height shall be provided around all heavy equipment and material storage area if not located within the new structure.
2. A corporate performance bond, or similar security, in the amount of \$_____ shall be filed with the City Clerk within 30 days from the time the permit is issued.
3. The new structure shall be used only for pump sales and service and uses permitted in light commercial areas.
4. No advertising signs, except those normally permitted in the light commercial district, shall be permitted.
5. Off-street parking shall be provided in accordance with Section 28.04.140 of the zoning ordinance.

Attachments:

- #1 - Statement of Justification
- #2 - Plot Plan
- #3 - Memorandum of Central Inspection, dated 10-9-63
- #4 - Statement of Justification re variance request
- #5 - Vote sheet for Variance

COFY

Law Offices of
ARN, MULLINS, UNRUH, KUHN & CATES
Beacon Building
Wichita, Kansas

October 8, 1963

Office of the Secretary
Board of Zoning Appeals
Wichita, Kansas

Re: Case No. BZA 28-63

Gentlemen:

In reply to your request of this date, the following statement is submitted:

The appellant, Mr. Lloyd Harp, was denied a building permit under the code sections referred to in the Appeal heretofore filed. It is the intention and desire of Mr. Harp to construct a 60' x 40' commercial building for the purpose of conducting a related sales and service business in connection with the sales and service of water well pumps and related supplies.

It is the position of Mr. Harp that the refusal to grant the permit by the office of the Superintendent of Central Inspection was unjustified under the applicable code provisions of the City of Wichita.

Respectfully submitted,

S/ H. R. Kuhn
Attorney for Lloyd Lee Harp

Attachment #1
Case No. BZA 28-63

TO: James W. Howe, Assistant Secretary, Board of Zoning Appeals

FROM: Glen E. Lytle, Superintendent of Central Inspection

October 9, 1963

Subject: Appeal of decision of Superintendent of Central Inspection relative to the refusal of the Superintendent of Central Inspection to issue a building permit for the construction of a commercial building at the premises designated as 215 South Tyler

The application for a building permit to construct a building for a well drilling and pump service at this location was denied for the following reasons:

1. The present operation with exterior storage of equipment and materials is a nonconforming use in the present "LC" zoning district. The expansion of a nonconforming use is prohibited in Section 28.04.170 of the zoning ordinance.
2. In reviewing the applicant's operation and the proposed use of the new structure, the decision of this division was based on the fact that there could not be an absolute separation between the proposed pump service to be housed in the new building and the now existing business. As I have previously stated on similar matters pertaining to what uses are allowed in the "LC" district, the proposed use is not a purely retail business as permitted under 28.04.090. A 1.2.

In conversations with Mr. Harp and his counsel, Mr. Kuhn, they indicated to me it would be impossible to entirely separate what could be considered the retail portion of the business and that of the well drilling. Relying on Noah Webster for an explanation for the term "purely", I quote, "In a pure manner; unmingled with anything else". When the zoning ordinance states, "Purely retail", I assume that the intent of the ordinance is to limit use to that category.

Under the present zoning ordinance there is not a distinction made as to where a service type business would first be permitted unless it be considered in the permitted uses of "C" zoning by not being excluded. It was this division's decision that the present operation is similar to that of 28.04.100 B-7 which would limit the number of employees to five at this location.

I feel that the decision made in the case will be used as a measuring stick for several similar situations that have developed in the past few weeks, particularly sign painters and contractors of all types.

If further discussion of this matter could be helpful, please advise.

S/ Glen E. Lytle

Attachment #3
BZA Case No. 28-63

Law Offices of
ARN, MULLINS, UNRUH, KUHN & CATES
Beacon Building
Wichita, Kansas

Sept. 27, 1963

Board of Zoning Appeals,
Wichita, Kansas

Re: Alternative Application
for Variance

Gentlemen:

The owner of the South 1/2 of Lot 50, Westfield Acres, Wichita, Sedgwick County, Kansas, has filed an appeal from the order of the Superintendent of Central Inspection of the City of Wichita, which order or ruling was made on September 27, 1963. As an alternate remedy and in the event the Board should deny appeal, then the owner and applicant is requesting a variance from 28.04.090 and 28.04.170 Sections of the Wichita Zoning Ordinances upon which the Superintendent of Central Inspection is relying, that is, 28.04.090 and 28.04.170.

The property involved was annexed to the City of Wichita in September, 1962. Prior to that time said property was subject to the zoning regulations of Sedgwick County, Kansas. The applicant feels that the office of the Superintendent of Central Inspection is being too restrictive in its application of the zoning ordinances in this instance and that a permit to construct a 40 x 60 commercial building to accommodate the applicant's desire to conduct a sales and service water well supply business should be granted. If, however, the Board should feel that the refusal to grant the permit is justified, then the applicant urges that the Board grant a variance from the strict application of the ordinance for the following reasons:

- a) That the variance requested arises from a condition which is unique to the particular property involved and is not ordinarily found in the same zoning district;
- b) That the granting of a permit for the variance will not adversely effect the rights of adjacent property owners or residents;
- c) That the strict interpretation applied by the office of the Superintendent of Central Inspection, creates and constitutes unnecessary hardship upon the property owner;
- d) That the variance desired is not against the public interest.

Attachment #_4
Case No. BZA 28-63

BZA ACTION

Motion made by	Seconded by	Action
		Jurisdictions
		FINDINGS OF FACT 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.
		4. Variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
		Determination (Approve or Deny)

THE CITY OF WICHITA

OFFICE OF CENTRAL INSPECTION DIVISION

DATE October 9, 1963

TO James W. Howe, Assistant Secretary, Board of Zoning Appeals

FROM Glen E. Lytle, Superintendent of Central Inspection

SUBJECT Appeal of decision of Superintendent of Central Inspection relative to the refusal of the Superintendent of Central Inspection to issue a building permit for the construction of a commercial building at the premises designated as 215 South Tyler

The application for a building permit to construct a building for a well drilling and pump service at this location was denied for the following reasons:


1. The present operation with exterior storage of equipment and materials is a non-conforming use in the present "LC" zoning district. The expansion of a non-conforming use is prohibited in Section 28.04.170 of the zoning ordinance.
2. In reviewing the applicant's operation and the proposed use of the new structure, the decision of this division was based on the fact that there could not be an absolute separation between the proposed pump service to be housed in the new building and the now existing business. As I have previously stated on similar matters pertaining to what uses are allowed in the "LC" district, the proposed use is not a purely retail business as permitted under 28.04.090 A 1.2.

In conversations with Mr. Harp and his counsel, Mr. Kuhn, they indicated to me it would be impossible to entirely separate what could be considered the retail portion of the business and that of the well drilling. Relying on Noah Webster for an explanation for the term "purely", I quote, "In a pure manner; unmixed with anything else". When the zoning ordinance states, "Purely retail", I assume that the intent of the ordinance is to limit use to that category.

Under the present zoning ordinance there is not a distinction made as to where a service type business would first be permitted unless it be considered in the permitted uses of "C" zoning by not being excluded. It was this division's decision that the present operation is similar to that of 28.04.100 B-7 which would limit the number of employees to five at this location.

I feel that the decision made in the case will be used as a measuring stick for several similar situations that have developed in the past few weeks, particularly sign painters and contractors of all types.

If further discussion of this matter could be helpful, please advise.


Glen E. Lytle
Superintendent of Central Inspection

GEL:mm:l

Attachment #3
BZA Case No. 28-63



Board of Zoning Appeals

October 8, 1963

Glen Lytle, Superintendent of Central Inspection

James W. Howe, Assistant Secretary

Appeal from an order of the
Superintendent of Central
Inspection relative to the refusal of
the Superintendent of Central Inspec-
tion to issue a building permit for the
construction of a commercial building
at the premises designated as 215 South
Tyler

H. R. Kuhn, attorney, on behalf of Lloyd Lee Harp, 215 South Tyler Road, has filed an application for an appeal from your order not to issue a building permit for construction of a commercial building on the above described property.

Since we are required to make a recommendation to the Board of Zoning Appeals on this application, we would appreciate any comments you might have as to why a building permit was not issued for construction of this particular building.

Since we have discussed this matter several times in the past, I will not go into the details of the case. However, if you should have any questions, we will be glad to discuss this matter at your convenience.

James W. Howe
Assistant Secretary

JWH:ber

EDWARD F. ARN
RICHARD F. MULLINS
MILD M. UNRUH
H. R. KUHN
LOUIE W. LATES
BERNICE BURKET

LAW OFFICES OF
ARN, MULLINS, UNRUH, KUHN & CATES
SEASON BUILDING
WICHITA, KANSAS 67202
AMHERST 7-5257

October 8, 1963

Office of the Secretary
Board of Zoning Appeals
Wichita, Kansas

Re: Case No. BZA28-63

Gentlemen:

In reply to your request of this date, the following statement is submitted:

The appellant, Mr. Lloyd Harp, was denied a building permit under the code sections referred to in the Appeal heretofore filed. It is the intention and desire of Mr. Harp to construct a 60' x 40' commercial building for the purpose of conducting a related sales and service business in connection with the sales and service of water well pumps and related supplies.

It is the position of Mr. Harp that the refusal to grant the permit by the office of the Superintendent of Central Inspection was unjustified under the applicable code provisions of the City of Wichita.

Respectfully submitted,


H. R. Kuhn, Attorney for
Lloyd Lee Harp

Attachment #1
Case No. BZA 28-63

LAW OFFICES OF
ARN, MULLINS, UNRUH, KUHN & CATES
SEACON BUILDING
WICHITA, KANSAS 67202
AMHERST 7-5267

EDWARD F. ARN
RICHARD F. MULLINS
MILD M. UNRUH
H. R. KUHN
LOUIS W. CATES
BERNICE BURKET

Sept. 27, 1963

Board of Zoning Appeals,
Wichita, Kansas.

Re: Alternative Application
for Variance

Gentlemen:

The owner of the South 1/2 of Lot 50, Westfield Acres, Wichita, Sedgwick County, Kansas, has filed an appeal from the order of the Superintendent of Central Inspection of the City of Wichita, which order or ruling was made on September 27, 1963. As an alternate remedy and in the event the Board should deny appeal, then the owner and applicant is requesting a variance from 28.04.090 and 28.04.170 Sections of the Wichita Zoning Ordinances upon which the Superintendent of Central Inspection is relying, that is, 28.04.090 and 28.04.170.

The property involved was annexed to the City of Wichita in September, 1962. Prior to that time said property was subject to the zoning regulations of Sedgwick County, Kansas. The applicant feels that the office of the Superintendent of Central Inspection is being too restrictive in its application of the Zoning Ordinances in this instance and that a permit to construct a 40 x 60 commercial building to accommodate the applicant's desire to conduct a sales and service water well supply business should be granted. If, however, the Board should feel that the refusal to grant the permit is justified, then the applicant urges that the Board grant a variance from the strict application of the ordinance for the following reasons:

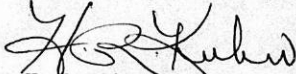
- (a) That the variance requested arises from a condition which is unique to the particular property involved and is not ordinarily found in the same zoning district;
- (b) That the granting of a permit for the variance will not adversely effect the rights of adjacent property owners or residents;
- (c) That the strict interpretation applied by the office of the Superintendent of Central Inspection, creates and constitutes unnecessary hardship upon the property owner;
- (d) That the variance desired is not against the public interest.

Attachment #4
Case No. BZA 28-63

-2-

In behalf of the owner it is respectfully requested that the appeal from the rulings and orders of the office of the Superintendent of Central Inspection be allowed and the building permit requested by the owner be granted. In the alternative, and if the appeal be disallowed, then and in behalf of the owner it is respectfully urged and requested that the application for a variance be granted.

Respectfully submitted,



H. R. Kuhn, Attorney
Agent for Owner

CASE NO. BZA 28-63

CORRECTED NOTICES MAILED OCTOBER 7, 1963

HEARING OCTOBER 22, 1963

James R. & Doris E. Albertson
150 South Tyler Road

N. H. & Lorene M. Sinclair
203 South Tyler Road

John M. & Philomena M. Rice
208 South Tyler Road

Guy O. & Eunice M. Pratt
157 South Tyler Road

Joseph E. & Hallie M. Norris
214 South Tyler Road *Bus. 72384*

Lloyd Lee Harp
215 South Tyler Road

Berniece Martin & Philomena Sheetz
302 Indiana

H. R. Kuhn
201 Beacon Building

George Elkouri, Mitchell Elkouri
and Fred Elkouri
849 Country Acres

Paul A. & Leone A. Lightner
9010 Maple Street

Vernon R. & Rowena Nicholson
8910 Maple Street

Paul Allen & Viola Faye Dodson
8924 Maple Street

Philo & Mary E. Bear
8826 Maple Street

James Troy Griffin
Jessie B. Griffin
8820 Maple Street

Charles R. & Helen L. McCann
1723 South Wichita

Graham L. Sterling
433 South Spring Street
Los Angeles, California

Mitchell E. & Georgia Patton
220 South Byron

G. L. & Mildred M. Eicholtz
200 South Byron

CORRECTED NOTICE

BOARD OF ZONING APPEALS
Room 201 City Building Annex
104 South Main
Wichita, Kansas:

October: 7, 1963

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 28-63

An application has been filed by Lloyd Lee Harp, 215 South Tyler Road, Wichita, Kansas, by H. R. Kuhn, Attorney, 201 Beacon Building, Wichita, Kansas, appealing from the decision of the Superintendent of Central Inspection in his refusal to issue a permit for construction of a 40x60 commercial building, pursuant to Section 28.04.090 and 28.04.170 of the Code of the City of Wichita, and in the event th a appeal is not upheld by the Board of Zoning Appeals, then the applicant requests a variance under Section 28.04.090 and 28.04.170, Code of the City of Wichita, Kansas, to permit the construction of a 40x60 commercial building to conduct a sales and service water well supply business, on property zoned "LC" Light Commercial, and legally described as follows:

The south half of Lot 50, Westfield Acres, Wichita, Sedgwick County, Kansas. Generally located on the west side of Tyler Road in an area just north of Maple.

This application has been assigned Case No. BZA 28-63, and will be heard by the Board of Zoning Appeals on Tuesday, October 22, 1963, 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 28-63

NOTICES MAILED OCTOBER 4, 1963

HEARING OCTOBER 22, 1963

James R. & Doris E. Albertson
150 South Tyler Road

N. H. & Lorene M. Sinclair
203 South Tyler Road

John M. & Philomena M. Rice
208 South Tyler Road

Guy O. & Eunice M. Pratt
157 South Tyler Road

Joseph E. & Hallie M. Norris
214 South Tyler Road

Lloyd Lee Harp
215 South Tyler Road

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and Fred Elkouri
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Graham L. Sterling
433 South Spring Street
Los Angeles, California

Mitchell E. & Georgia Patton
220 South Byron

G. L. & Mildred M. Eicholtz
200 South Byron

BOARD OF ZONING APPEALS
Room 401 City Building Annex
104 South Main
Wichita, Kansas

October 4, 1963

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 28-63

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Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

APPEAL FROM ORDER OR DECISION OF THE
SUPERINTENDENT OF CENTRAL INSPECTION

I. NAME OF APPELLANT Lloyd Lee Harp
MAILING ADDRESS 215 South Tyler Rd PHONE PA-21411
NAME OF AGENT H. R. Kuhn, Attorney
MAILING ADDRESS 201 Beacon Building PHONE AM-75267
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owner
(OWNER, TENANT, LESSEE, OTHER).

II. THE APPELLANT HEREIN APPEALS FROM A DECISION, DETERMINATION OR
AN ORDER OF THE SUPERINTENDENT OF CENTRAL INSPECTION, AS FOLLOWS:

Refusal to issue permit for construction of a 40 x 60 commercial building, to 28.04.090 and 28.04.170 of Wichita City Ordinances.

Pursuant See Ruling attached

FOR PROPERTY LOCATED AT 215 South Tyler Rd.

AND LEGALLY DESCRIBED AS South 1/2 of Lot 50, Westfield Acres
Wichita, Sedgwick County, Kansas

IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED LC.

THE DECISION WAS RENDERED 9-27-63, AND REFERS TO SECTION
28.04.090 and 28.04.170, OF THE CODE OF THE CITY OF WICHITA (ZONING
ORDINANCE).

III. THE APPELLANT HEREBY DECLARES THAT HE HAS SUBMITTED THE FOLLOWING
REQUIRED MATERIAL, TOGETHER WITH AND AS PART OF THE APPEAL:

- A. A CLEAR AND ACCURATE DESCRIPTION OF THE PROPOSED WORK OR USE.
- B. THE ORDER, REQUIREMENT, DECISION OR DETERMINATION BY THE SUPERINTENDENT OF CENTRAL INSPECTION WHICH THE APPELLANT BELIEVES TO BE IN ERROR, AND THE PRINCIPAL POINTS SUPPORTING THE APPELLANT'S ALLEGATION OF ERRORS;
- C. SPECIFIC REFERENCE TO THAT SECTION OF THE ZONING ORDINANCE UNDER WHICH IT IS CLAIMED THE PERMIT SHOULD BE ISSUED;
- D. DRAWINGS OR PLANS FOR THE PROPOSED WORK OR USE IN RELATION TO THE ADJACENT BUILDINGS AND PROPERTY;
- E. A CERTIFIED LISTING FROM AN ABSTRACT COMPANY OF THE NAMES AND CURRENT MAILING ADDRESSES OF OWNERS OF ALL PROPERTY WITHIN A DISTANCE OF 200 FEET OF THE PROPERTY AFFECTED BY THE APPEAL.

LLOYD LEE HARP

APPLICANT

By: H. R. Kuhn

AUTHORIZED AGENT H. R. Kuhn

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING
APPEALS, _____ (A.M. - P.M.), _____, 19_____,
TOGETHER WITH APPROPRIATE FEE OF \$50.00.

SIGNED

CITY OF WICHITA
BUILDING INSPECTION DIVISION

To Lloyd Harp Owner Address 215 S. Tyler, Wichita, Kansas

To Lloyd Harp Applicant Address 215 S. Tyler, Wichita, Kansas

Dear Sir:

Your application Dated September 26, 1963
For a Permit for the construction of a 40' x 60' commercial building
at the premises designated as
215 South Tyler, Wichita, Kansas

Is hereby refused on this 27th day of September, 1963,
Under Section 28.04.090 & 28.04.170 of the Zoning Ordinance.

For the reason that

It is not a permitted use as per 28.04.090 and adding to a non-conforming
usage as per 28.04.170.

Respectfully,

C. I. McCair

C. I. McCair

~~CITY OF WICHITA~~

Construction Inspection Supervisor

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.

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

APPLICATION FOR VARIANCE

I. NAME OF APPLICANT Lloyd Lee Harp
MAILING ADDRESS 215 South Tyler Rd PHONE PA-21411
NAME OF AUTHORIZED AGENT H. R. Kuhn, Attorney
MAILING ADDRESS 201-11 Beacon Bldg., Wichita PHONE AM-75267
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owner
(OWNER, TENANT, LESSEE, OTHER)

II. THE VARIANCE REQUESTED IS If appeal from Superintend of Central in-
spection is denied, applicant requests a variance of 28.04.090 and
28.04.170 of Wichita Zoning Ordinances to permit construction of
a proposed commercial building
FOR PROPERTY LOCATED AT 215 South Tyler Road
AND LEGALLY DESCRIBED AS: South 1/2 of Lot 50, Westfield Acres,
Wichita, Sedgwick County, Kansas
IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED IC.
(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.

LLOYD LEE HARP
APPLICANT

H. R. Kuhn
AUTHORIZED AGENT

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING
APPEALS, _____ (A.M. - P.M.), 19____,
TOGETHER WITH APPROPRIATE FEE OF \$50.00.

SIGNED


STATEMENT OF OWNERSHIP

STATE OF KANSAS)
)
 Sedgwick County,)

The undersigned duly bonded and qualified abstractor within and for the County and State aforesaid, does hereby certify:

That we have examined the records in the office of the Register of Deeds of Sedgwick County, Kansas, with reference to the ownership of the following property in Sedgwick County, Kansas, viz:

Property lying within a radius of 200 ft of:
 The South One-Half of Lot 50, Westfield Acres.


 Fidelity
 Title
 Company.
 inc.

And from such examination find that the owners thereof are as set opposite the description of the property below, viz:

Lot	Addition	Owner
49 (S $\frac{1}{2}$)	Westfield Acres	Guy O. & Eunice M. Pratt, ux 157 S. Tyler
50 (S $\frac{1}{2}$)	" "	Lloyd Lee & Florence Harp, ux 215 S. Tyler
50 (N $\frac{1}{2}$)	" "	N. H. & Lorene M. Sinclair, ux 203 S. Tyler
34 (S $\frac{1}{2}$)	" "	G. L. & Mildred M. Eicholtz, 200 S. Byron ux
33	" "	Mitchell E. & Georgia Patton, 220 S. Byron ux



Lot	Addition	Owner
1 (S 125 ft)	Westfield Acres	Graham L. Sterling 433 S. Spring St., Los Angeles, D. X. Sunray Oil Co., Lessee Cal.
1 (N 125 ft)	" "	Charles R. & Helen L. McCann, ux 1723 S. Wichita
2	" "	James Troy Griffin Jessie B. Griffin, ux 8820 Maple St.
3	" "	Philo & Mary E. Bear, ux 8826 Maple St.
4	" "	Vernon R. & Rowena Nicholson, ux 8910 Maple St.
5	" "	Paul Allen & Viola Faye Dodson, ux 8924 Maple St.
6	" "	Paul A. & Leone A. Lightner, ux 9010 Maple St.
1 (exc N 120 ft)	Park Acres	George Elkouri, Mitchell Elkouri & Fred Elkouri 849 Country Acres
1 (N 120 ft)	" "	Berniece Martin & Philomena Sheetz 302 Indiana
2	" "	Joseph E. & Hallie M. Norris, ux 214 S. Tyler
3	" "	John M. & Philomena M. Rice, ux 208 S. Tyler
4	" "	James R. & Doris E. Albertson, ux 150 S. Tyler

Dated at Wichita, Kansas this 26th
day of September, 1963 at 7:00 A. M.

FIDELITY TITLE COMPANY, INC.

By Elaine M. Farrell
Sec. OEM

Tracer # 56350

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. _____ Plb'g. _____ Plb'g. Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

DESCRIPTION	AMOUNT

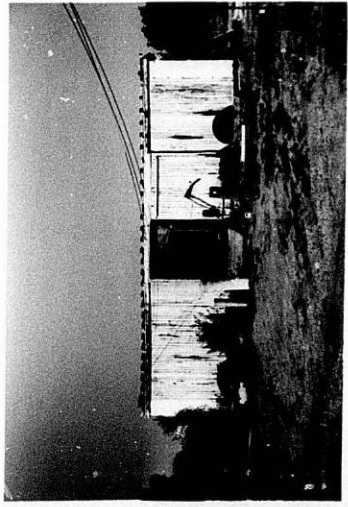
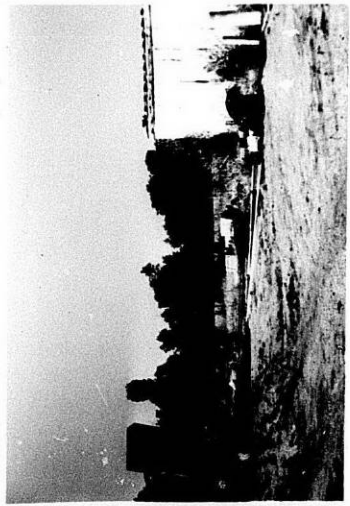
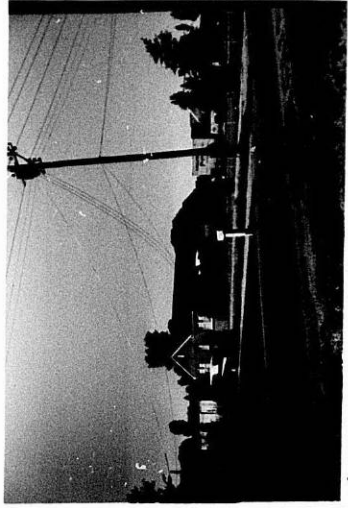
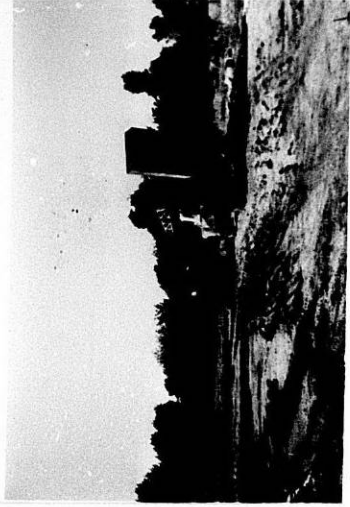
Name _____

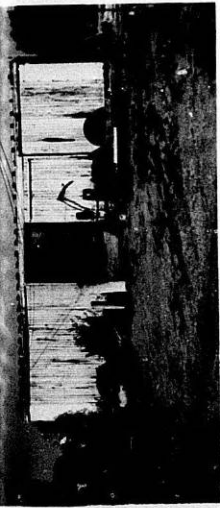
Address _____

Type _____ Due Date _____

Comments: _____

Date _____ By _____





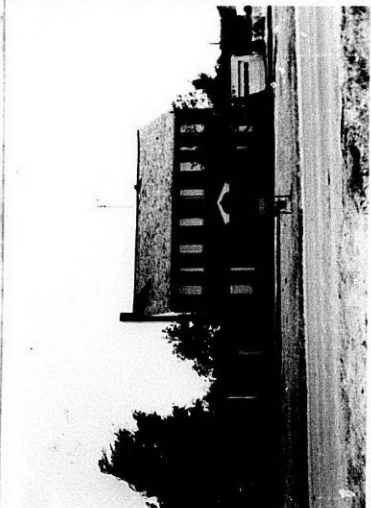
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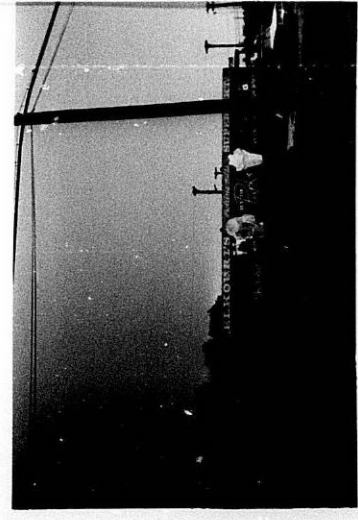
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