

Violations had been made. DATE

200' 4 Sec. 2-14-86
Shot 2-27-86
Record ✓

Case No. BZA 45-84 - Lloyd L. Harp -
Requests a variance to expand a non-
conforming use into "LC" Light Comm-
ercial a maximum of 200% on property
zoned the "AA" Single-family & "LC"
Light Commercial District & generally
located at the northwest corner of

Posted 7-9-84

ACTION

B.Z.A. 45-84 Approved 8/28/84
DATE

Consideration to
reconsider prev. action

But upheld prev. action. 1/28/86
DATE
Violations had been made.

200' 4 Sec 2-14-86

Shot 2-27-86

Record ✓

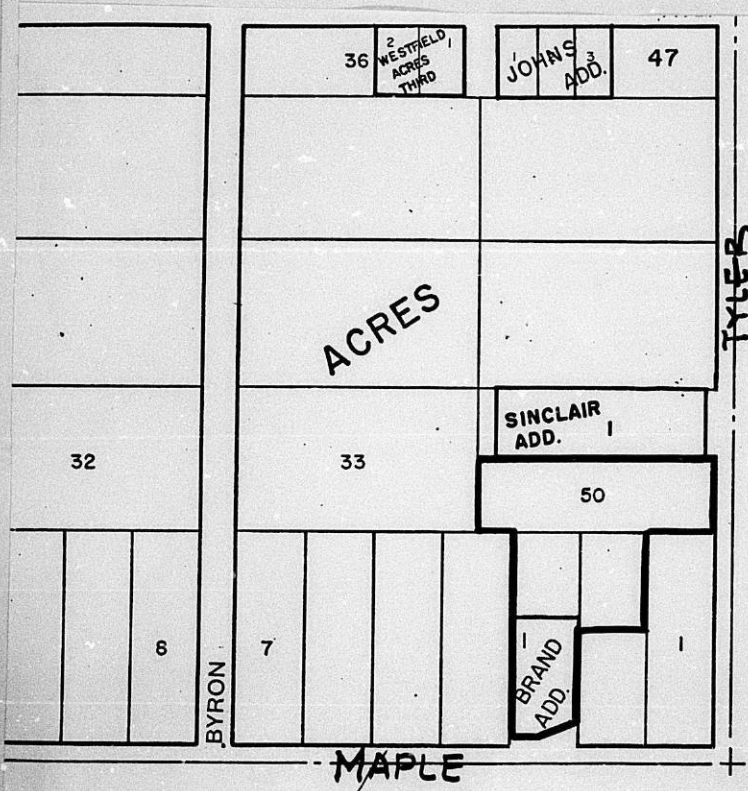
Case No. BZA 45-84 - Lloyd L. Harp -
Requests a variance to expand a non-
conforming use into "C" Light Com-
mercial a maximum of 20% on property
zoned the "M" Single-family & "LC"
Light Commercial District & generally
located at the northwest corner of

Map No. 4847 B

BZA 45-84
Filed _____

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E LC3 AA S LC4 AA W AA N LC
3. Land Use: East Res. South Res.
West Res. North _____
4. Area (is) (~~is not~~) platted.



Shirley
No. 2453C
HASTINGS, MN
LOS ANGELES, CHICAGO, LOGAN, OH
MEMPHIS, TRUST GROVE, GA
U.S.A.

February 7, 1986

Lloyd L. Harp
215 South Tyler
Wichita, Kansas 67209

RE: BZA 45-84

Dear Mr. Harp:

Please be advised that the Board of Zoning Appeals considered the request by the Superintendent of Central Inspection to rescind the previous approval to allow expansion of your nonconforming use. It was the action of the Board on January 28, 1986 to uphold their previous decision made on August 28, 1984 and release the Resolution affecting the legal expansion of the Harp Well and Pump business.

We were advised by Mr. Azim, of Central Inspection, that the screening fence on the west had been installed and the fence on the south has been moved to the proper location. In addition a corrected site plan as submitted by Baughman Company is now a part of the file. Should at any point in time you wish to modify the operation of the business to relocate any of the areas designated by the plan, it will take additional public hearings and approval.

The expansion permitted by the enclosed Resolution is the maximum permitted by the ordinance. Your cooperation in maintaining the property in compliance with the conditions of the Resolution and those of the zoning ordinance will be appreciated.

If you have any questions on the Resolution or on the limitations of the use of your property, please give me a call.

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL/lw
Enclosure

cc: James R. Schaefer, 400 N. Woodlawn, Wichita, KS 67208
Monty Robson, Superintendent of Central Inspection (2)
Don Gisick, City Clerk
Robert C. Finch, Deputy City Manager

RESOLUTION CASE NO. 45-84

WHEREAS, Lloyd L. Harp, 215 South Tyler, Wichita, Kansas requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita, to allow the expansion of a nonconforming use (contractor's storage yard) a maximum of 200 percent on property zoned the "LC" Light Commercial District and legally described as follows:

The south ½ of Lot 50, and the north 150' of Lot 3, and the north 175' of Lot 2, all being in Westerfield Acres, together with Lot 1, Brand Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Tyler Road and Maple (215 S. Tyler).

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 August 24, 1984 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 applicant was annexed as a nonconforming use and has remained at this location for the past 22 years; and the site is located in an area which is generally screened from the streets by other uses established on the fronts of the properties; 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 adjacent properties are large tracts and developed so that the existing structures are a greater distance from the property lines than is normally required by ordinance; 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 applicant would be unable to expand the existing use more than 100 percent unless the variance is granted, or the applicant would be required to find a new location for the well drilling business; 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 expansion will not include the addition of buildings or interfere with any public right-of-way; 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 nonconforming contractor's yard has been at this general location since prior to the adoption of zoning in the County and with appropriate screening and fencing to contain the use to the maximum area allowed by the ordinance should be appropriate; 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 permit the expansion of a nonconforming use (contractor's storage yard) a

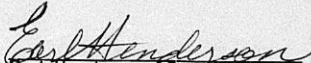
maximum permitted by the ordinance of 200 percent of land area on property zoned the "LC" Light Commercial District and legally described as:

The south ½ of Lot 50, and the north 150' of Lot 3, and the north 175' of Lot 2, all being in Westerfield Acres, together with Lot 1, Brand Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Tyler Road and Maple (215 S. Tyler).

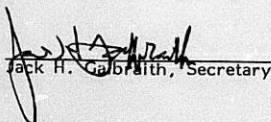
be approved subject to the following conditions:

1. The applicant shall submit a new detailed site plan showing the legal description of the land on which the expansion will occur. The site plan shall also show the location of the 10 off-street parking spaces required for the purely retail business building permitted to be constructed in 1963 and the spaces shall be striped in conformance to an approved plan. Such plan shall also show the outdoor storage areas for equipment, materials, etc., and shall show the physical improvements as required by conditions set forth in this resolution.
2. A six to eight foot screening fence as defined in the zoning ordinance shall be installed the entire length of the property that is adjacent to any residential zoning district. The remainder of the property shall be fenced with a security fence of a material at the discretion of the property owner.
3. Ingress and egress shall be limited to the existing driveway on Tyler Road, except that the one access to Maple may be used for emergencies only.
4. No additional buildings shall be constructed on the property to be used in any way with the nonconforming use.
5. The expansion area for the nonconforming well and drilling business shall be limited to 52,000 square feet of the area to the south of the south half of Lot 50 Westerfield Acres Addition. The nonconforming use shall not occupy any more of the original lot than now exists, which includes only the area to the west of the front of the 40 foot by 60 foot building constructed in 1963, and the area to the north of said building between the fence behind the house and the north property line which is a total of 26,000 square feet in area.
6. All off-street parking and driveways shall conform to the standards as established by the Traffic Engineer and shall be surfaced as set forth in 28.04.143 of the Zoning Ordinance.

ADOPTED AT WICHITA, KANSAS, this 28th day of August, 1984.


Earl Henderson, President

ATTEST:


Jack H. Calbraith, Secretary


WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: January 21, 1986

TO: Robert G. Finch, Deputy City Manager
FROM: Glen E. Lytle, Assistant Secretary, Board of Zoning Appeals
SUBJECT: Harp Well & Pump - 215 S. Tyler Road

Attached is a copy of the staff report that will be considered for appropriate action by the Board of Zoning Appeals on January 28, 1986.

You will be advised of the action taken by the Board on that date.



Glen E. Lytle
Assistant Secretary
Board of Zoning Appeals

GEL/lw

Attachment

cc: Michael E. Lindebak, Acting Director of Planning
Monty Robson, Superintendent of Central Inspection

RE: AGENDA ITEM NO. 9

SECRETARY'S REPORT CASE NO. BZA 45-84

APPLICANT: Lloyd L. Harp, 215 S. Tyler, Wichita, KS 67209

AGENT: James R. Schaefer, 105 S. Broadway, Wichita, KS 67202

REQUEST: Consideration to rescind action of the Board on August 28, 1984 to permit expansion of a nonconforming use.

GENERAL LOCATION: Near the northwest corner of Tyler and Maple (215 S. Tyler).

ZONING: Subject property is zoned the "LC" Light Commercial District as are the properties to the south, north and east. To the west is "AA" One-family Dwelling District.

LAND USE: Subject property is occupied by the applicant's pipe and well business. To the west are one-family dwellings. To the north is a small commercial business and a one-family dwelling. To the south and east are a mixture of office, commercial and residential uses.

JURISDICTION:

The Board has jurisdiction to consider this request under the general provisions of Section 2.12.590, Code of the City of Wichita.

COMMENTS BY THE SECRETARY:

Due to neighborhood complaints, and through the Citizen's Participation Organization, Council "A", the City Manager's office has directed that appropriate action be taken to secure compliance with all applicable regulations to the property. After review of the action taken by the Board of Zoning Appeals on August 28, 1984, and physical inspections of the property by Central Inspection, the Superintendent of Central Inspection has requested that the Board consider rescinding the previous action.

The Superintendent of Central Inspection has based his determination on the length of time that has elapsed without action by the owner to correct the deficiencies. He has indicated that there are at least three matters to be corrected before the property would be in compliance with the conditions established by the Board. These are as follows:

1. The submission of a corrected site plan showing compliance with conditions established by the Board and those required by the zoning ordinance.
2. The installation of the required screening fence along the west property line that is adjacent to a residential zoning district.
3. The installation of a fence at the south limitation of the property to be designated by the owner as the line to establish the 52,000 square foot expansion.

It should be noted that the Secretary received a corrected site plan on January 15, 1986 showing the required conditions of approval. The applicant's attorney has also been advised that there is no reason that the fences cannot be completed by the date of the hearing.

RECOMMENDATION:

It is the opinion of the Secretary that the owner has had more than adequate time to install the fences since the date of approval (8/28/84), and if said fences are not completed by the hearing date, the previous action should be revoked.

THE CITY OF WICHITA

OFFICE OF Citizen Participation DATE January 10, 1986

TO Glen Lytle, Special Assistant for Zoning

FROM Barry L. Carroll, Administrative Aide III

SUBJECT BZA 45-84: Northwest corner of
Tyler Road and Maple

On January 9, CPO Council "A" considered the above captioned case, a request for rescinding the action of the Board to allow 200 percent expansion of the Harp Well and Pump Service, Inc., for failure to comply. Council members were provided the notice to adjoining property owners, a map of the area and MAPD staff comments. After extensive discussion, the Council voted 7-0 to recommend rescinding the request.

The agent, James Schafer, Attorney, although invited to appear was not present to describe the request and respond to questions from the Council and area residents.

Council members felt very strongly that the Harp Well and Pump Service, Inc., should comply with existing City ordinances. Therefore Council members would like to see the City proceed with the enforcement procedures.

Please provide the Council's recommendation to the Board of Zoning Appeals when case BZA 45-84 is considered.

Barry L. Carroll

Barry L. Carroll
Administrative Aide III

BLC:dm

Noted:

Annie K. Montgomery
Annie K. Montgomery
CRS Director

RECEIVED

JAN 10 1986

METROPOLITAN PLANNING

ROUTE

January 6, 1986

Mr. James R. Schafer, Attorney
105 South Broadway
Wichita, Kansas 67202

RE: BZA Case No. 45-84

Dear Mr. Schaefer:

Enclosed herewith is a copy of a notice to the adjacent property owners related to the possible revocation of the action taken by the Board of Zoning Appeals on August 28, 1984.

As you will note, the request by the Superintendent of Central Inspection to rescind the previous action to permit the expansion will be considered on January 28, 1986. This action is under consideration due to the failure of Mr. Harp to comply with the conditions of approval as established by the Board 17 months ago for the permitted expansion of the use. As of this date, Central Inspection has advised the Secretary that no progress has been made to install the screening fence along the west or the fence on the south at the limitation line to be established by your client.

If you have any questions, please give me a call.

Sincerely,

Clen E. Lytle
Assistant Secretary

GEL/lw

Enclosure

cc: Robert Finch, Deputy City Manager
Monty Robson, Superintendent of Central Inspection
Lloyd Harp, 215 South Tyler, Wichita, KS 67209

BZA CASE NO. 45-84

<u>2</u>	NOTICES SENT TO APPLICANT/AGENT
<u>15</u>	LEGAL ADVERTISEMENT SENT TO MAPC & BZA
<u>1</u>	NOTICES SENT TO CPO
<u>16</u>	NOTICES SENT TO ADJOINING PROPERTY OWNERS
<u>18</u>	TOTAL NOTICES SENT <u>1/7/86</u>

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

January 6, 1986

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 45-84

As required by law, all property owners of record, within 200 feet of a property to be considered by the Board of Zoning Appeals, are to be notified of the public hearing. A request by the Superintendent of Central Inspection to consider rescinding previous action of the Board to allow expansion of a nonconforming use.

At the request of the Superintendent of Central Inspection consideration to rescind the action of the Board to allow 200 percent expansion of the Harp Well and Pump Service, Inc. at 215 South Tyler Road, for failure to comply with conditions established by the Board of Zoning Appeals on August 28, 1984. The property is located in the "LC" Light Commercial District. A legal description of the applicant's property is as follows:

The south $\frac{1}{2}$ of Lot 50, and the north 150' of Lot 3, and the north 175' of Lot 2, all being in Westerfield Acres, together with Lot 1, Brand Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Tyler Road and Maple (215 S. Tyler).

This application has been assigned Case No. BZA 45-84. It will be considered by the Board of Zoning Appeals on January 28, 1986 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, 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.

Gien E. Lytle
Assistant Secretary

THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE December 18, 1985

TO Mike Lindebak, Acting Director of Planning

FROM Monty Robson, Superintendent of Central Inspection

SUBJECT 215 South Tyler Road
(BZA 45-84)

This location has been of concern to the neighbors for several years. While a portion of this operation has a non-conforming use right, much of it is the result of improper expansion. After several contacts with Mr. Harp and notices issued without gaining full compliance, it became necessary to sign a complaint in Municipal Court.

Subsequently, a BZA case was filed and BZA 45-84 was granted subject to six conditions.

To date, the following of these conditions have not been met:

1. A correct site plan has not been provided to the Planning Department.
2. The required screen fence has not been installed on the west property line.
3. The installation of the fence on the south limiting the expansion to 52,000 Sq. Ft. has not been installed.

Based on these deficiencies and the length of time without compliance in this case, we request that this case be reviewed by the Board of Zoning Appeals and consideration be given to revoking their previous action in BZA 45-84.

Should you need additional information or pictures, please advise.

Monty Robson

Monty Robson
Superintendent of Central Inspection

MR:dbg

Approved:

Don Anderson
Don Anderson
Director of Housing & Economic Development

cc: Glen Lytle, Special Assistant for Zoning
Joe Donnelly, Housing Code Administrator

RECEIVED

DEC 19 1985

METROPOLITAN PLANNING
ROUTE *Just*
 Glen

FROM _____ DATE _____

ADMINISTRATION	ADVANCE PLANS	CURRENT PLANS	ENGINEERING	GRAPHICS
<input type="checkbox"/> Lakin	<input type="checkbox"/> Stockwell	<input type="checkbox"/> Galbraith	<input type="checkbox"/> Lindebak	<input type="checkbox"/> Pierce
<input type="checkbox"/> Walter	<input type="checkbox"/> Schwartz	<input checked="" type="checkbox"/> Lytle	<input type="checkbox"/> Cain	<input type="checkbox"/> Commer
<input type="checkbox"/> Doramus	<input type="checkbox"/> Dudark	<input type="checkbox"/> Young	<input type="checkbox"/> Ruiz	<input type="checkbox"/> Crook
<input type="checkbox"/> Eubanks	<input type="checkbox"/> Ahrens	<input type="checkbox"/> Bonanni	<input type="checkbox"/> Henry	<input type="checkbox"/> Jones
<input type="checkbox"/> Harris	<input type="checkbox"/> Bechtel	<input type="checkbox"/> Lahey	<input type="checkbox"/> Schneider	<input type="checkbox"/> Whitney
<input type="checkbox"/> Henderson	<input type="checkbox"/> Hart	<input type="checkbox"/> Nagley	_____	
<input type="checkbox"/> Wasko	<input type="checkbox"/> Kelley	<input type="checkbox"/> Olivarez	_____	
<input type="checkbox"/> Wimbley	<input type="checkbox"/> Losew	<input type="checkbox"/> Smythe	_____	
	<input type="checkbox"/> Mitchell		_____	
	<input type="checkbox"/> Peete		_____	
	<input type="checkbox"/> Shen		_____	

REMARKS Set a meeting with
Robert E. ...
I talked to Hank.

TS-105 Tue 9-9:30

Note & Return
 Handle
 All Staff
 Comment
 Signature
 Library
 Information
 File
 Type

IMPORTANT MESSAGE

FOR Shen
DATE 12-11 TIME 8:40 ~~A.M.~~ P.M.

WHILE YOU WERE AWAY
Ray Basil

OF _____
PHONE No. 7351

TELEPHONED	<input checked="" type="checkbox"/> PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	
WANTS TO SEE YOU	RETURNED YOUR CALL	

MESSAGE _____

SIGNED Shen

FORM 000-017

THE CITY OF WICHITA

DATE: December 3, 1985

TO: Mike Lindebak, Acting Director of Planning

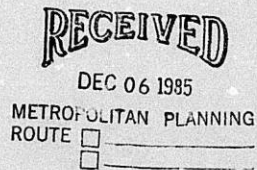
FROM: City Manager's Office *[Signature]*

SUBJECT: BZA 45-84 -- Enforcement of
Screening Requirements
(215 South Tyler Road)

It is my understanding that no action has been taken on installing the screening fence at 215 South Tyler Road as requested in Glen Lytle's letter of November 18, 1985, to James Schaefer.

Please proceed with the next follow-up action, keeping this office advised.

RGF/spd



[Handwritten initials]

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: November 18, 1985

TO: Robert G. Finch, Deputy City Manager


FROM: Michael E. Lindebak, Acting Director of Planning

SUBJECT: BZA 45-84 - Enforcement of Screening Requirements
(215 S. Tyler Road)

The Board of Zoning Appeals approved BZA Case 45-84 on August 28, 1984 for the expansion of a legal nonconforming use. This case was filed after citations by Central Inspection for violations of the zoning ordinance. The approval by the Board included screening of the property adjacent to any residential zoning district.

In discussing this matter with Barry Carroll, CPO staff assistant, it is doubtful that CPO Council "A" fully understood the screening requirements for this expansion. The screening would only be required along the west property line as the majority of the property is adjacent to the "LC" Light Commercial District.

A copy of a letter to Mr. Harp's attorney, James R. Schaefer, is attached for your information. As you will note, until the Resolution is released, the expansion to the south of the original property is a violation.


Michael E. Lindebak
Acting Director of Planning

GEL/MEL/lw

Attachment

cc: Monty Robson, Superintendent of Central Inspection
Jack Galbraith, Chief Planner Current Plans

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: November 18, 1985

TO: Robert G. Finch, Deputy City Manager

FROM: Michael E. Lindebak, Acting Director of Planning

SUBJECT: BZA 45-84 - Enforcement of Screening Requirements
(215 S. Tyler Road)

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In discussing this matter with Barry Carroll, CPO staff assistant, it is doubtful that CPO Council "A" fully understood the screening requirements for this expansion. The screening would only be required along the west property line as the majority of the property is adjacent to the "LC" Light Commercial District.

A copy of a letter to Mr. Harp's attorney, James R. Schaefer, is attached for your information. As you will note, until the Resolution is released, the expansion to the south of the original property is a violation.



Michael E. Lindebak
Acting Director of Planning

GEL/MEL/lw

Attachment

cc: Monty Robson, Superintendent of Central Inspection
Jack Galbraith, Chief Planner Current Plans

November 18, 1985

Mr. James R. Schaefer, Attorney
105 South Broadway
Wichita, Kansas 67202

RE: BZA 45-84 (215 South Tyler)

Dear Mr. Schaefer:

This office has recently been advised by the City Manager's office of the concern expressed by CPO Council "A". Their concern is primarily related to the failure of your client to install the required screening fencing along the west property line.

As Mr. Galbraith stated in a letter to you on September 11, 1984, the conditions of approval by the Board included the above screening. In addition, the resolution authorizing the expansion of this nonconforming use would not be released until a site plan showing compliance with the conditions has been filed. Until the resolution is released, authorizing the expansion, your client continues to violate the zoning ordinance with the storage yard. Each day is a separate violation as long as the screening fence is not installed.

The site plan recently submitted to this office does not show compliance with the conditions established by the Board. Although a portion of the property to the west was recently approved for "OC" Office Commercial, it remains "AA" One-family. The approval was subject to replatting within one year, and as of this date, this office has had no further contact on replatting the property. As you know, many zone change requests are speculative, and subject to the present owners finding a buyer. This may never occur on this property.

It is apparent that your client has made no attempt, since the BZA meeting in August 1984, to install the required screening fence on the west property line. I am returning herewith a copy of the site plan that was recently filed with this office. The following notations should be made on the plan and returned to this office as soon as possible:

1. Show the required six to eight foot screening fence along the entire west property line.

Mr. James R. Schaefer, Attorney
November 18, 1985
Page 2

2. Show all locations of a fence enclosure of the entire parcel to be used by the business.
3. In accordance with the site plan no vehicular access shall be permitted to Maple except for emergency access. If general access is desired, the rearrangement of the 52,000 square feet expansion area should include any driveway to Maple.
4. If the garages located along the north property line are not maintained as parking spaces for employees or customers, two additional spaces must be provided.

I would hope that the installation of the screening fence along the west property line can be started immediately and be completed within two weeks. The remainder of the improvements required should also be completed within that time.

By copy of this letter, I am asking Central Inspection to monitor the progress, and notify this office of any violations. I hope that your cooperation will result in compliance thus eliminating the need for the Board to reconsider and revoke their previous action.

If you have any questions, please give me a call.

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL/lw

cc: Monty Robson, Superintendent of Central Inspection
Michael E. Lindebak, Acting Director of Planning
Robert G. Finch, Deputy City Manager
Barry Carroll, CPO Administrative Aide

THE CITY OF WICHITA



BOARD OF ZONING APPEALS
CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-1421

November 18, 1985

Mr. James R. Schaefer, Attorney
105 South Broadway
Wichita, Kansas 67202

RE: BZA 45-84 (215 South Tyler)

Dear Mr. Schaefer:

This office has recently been advised by the City Manager's office of the concern expressed by CPO Council "A". Their concern is primarily related to the failure of your client to install the required screening fencing along the west property line.

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C
O
P
Y

Mr. James R. Schaefer, Attorney
November 18, 1985
Page 2


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If you have any questions, please give me a call.

Sincerely



Glen E. Lytle
Assistant Secretary

GEL/lw

cc: Monty Robson, Superintendent of Central Inspection
Michael E. Lindebak, Acting Director of Planning
Robert G. Finch, Deputy City Manager
Barry Carroll, CPO Administrative Aide

September 11, 1984

James R. Schaefer
800 Broadway Plaza
Wichita, Ks.

Re: BZA 45-84 - Request for Variance

Dear Jim,

The Board of Zoning Appeals at its regular meeting of August 28, 1984 considered the above-captioned case. Their action was to approve the request subject to the following conditions:

1. The applicant shall submit a new detailed site plan showing the legal description of the land on which the expansion will occur. The site plan shall also show the location of the 10 off-street parking spaces required for the purely retail business building permitted to be constructed in 1963 and the spaces shall be striped in conformance to an approved plan. Such plan shall also show the outdoor storage areas for equipment, materials, etc., and shall show the physical improvements as required by conditions set forth in this resolution.
2. A six to eight foot screening fence as defined in the zoning ordinance shall be installed the entire length of the property that is adjacent to any residential zoning district. The remainder of the property shall be fenced with a security fence of a material at the discretion of the property owner.
3. Ingress and egress shall be limited to the existing driveway on Tyler Road except that the one access to Maple may be used for emergencies only.
4. No additional buildings shall be constructed on the property to be used in any way with the nonconforming use.
5. The expansion area for the nonconforming well and drilling business shall be limited to 52,000 square feet of the area to the south of the south half of Lot 50 Westerfield Acres Addition. The nonconforming use shall not occupy any more of the original lot than now exists, which includes only the area to the west of the front of the 40 foot by 60 foot building constructed in 1963, and the area to the north of said building between the fence behind the house and the north property line which is a total of 26,000 square feet in area.

6. All off-street parking and driveways shall conform to the standards as established by the Traffic Engineer and shall be surfaced as set forth in 28.04.143 of the Zoning Ordinance.

As to condition number two which requires screening whenever adjacent to a residential zoning district, this condition as required by the Zoning Ordinance requires the construction of a screening fence along the entire west property line. We reviewed this site again after the Board of Zoning Appeals meeting as you had expressed that there was vegetative type screening on the property to the west. There are a number of trees on the property to the west, however, they do not conceal from view the storage of pipe and other materials and equipment on your client's property. There is no evergreen vegetation on your client's property that meets the definition of screening in the Zoning Ordinance.

As to condition number five, since your client has already fenced his entire site, it is difficult to determine the limitations of the 52,000 square feet for the nonconforming well and drilling business. We had indicated that area on our presentation map, however, it could be arranged in some other location. It does, however, need to be identified on the site plan.

Prior to the release of the resolution, condition number one needs to be complied with. Would you have Baughman Company submit three copies of the revised site plan that can be kept in our files and Central Inspection. The plan needs to reflect all applicable conditions of approval. The 52,000 square feet expansion area must be identified as well as the other requirements in conditions one and two. The emergency access to Maple should be located on the site plan and identified as "emergency access only".

As your client's use of a major portion of this property has been cited for violation, it is important that these plans be revised and submitted to us as quickly as possible so that the resolution may be prepared and released.

Enclosed is a marked copy of the expansion area as we presented it to the Board. This copy should be shared with Bill Korber so that the revised plans can be prepared and submitted to us. If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Secretary

JHG:sad

cc: Lloyd L. Harp, 215 South Tyler, Wichita
William L. Korber, Baughman Company, P.A., 330 Laura, Wichita 67211
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk

THE CITY OF WICHITA

OFFICE OF Citizen Participation DATE August 17, 1984

TO Glen Lytle, Special Assistant for Zoning

FROM Cindy Entriken, Administrative Aide III

SUBJECT BZA 45-84 Generally located on
the northwest corner of Tyler
Road and Maple (215 S. Tyler)

On Wednesday, August 15, CPO Council "A" considered the above captioned case. The Council voted 4-1 to recommend that the variance be approved subject to the conditions in the Secretary's report, excepting conditions 3 and 6.

Jim Schaefer, agent, was present to discuss the case with the Council and to show a map of the area. There were no area residents present to discuss this case.

Please present the Council's recommendations to the BZA when it meets to consider the case.

Cindy Entriken
Cindy Entriken
Administrative Aide III

CE:sm

Noted:

Annie K. Montgomery
Annie K. Montgomery
CRS Director

RECEIVED

AUG 21 1984

METROPOLITAN PLANNING

ROUTE

RE: AGENDA ITEM NO. 2

SECRETARY'S REPORT
CASE NO. BZA 45-84

APPLICANT: Lloyd L. Harp, 215 South Tyler, Wichita, Kansas.

AGENT: James R. Schaefer, 800 Broadway Plaza, Wichita, Kansas.

REQUEST: Variance pursuant to Section 2.12.590.B, Code of the City of Wichita, to allow the expansion of a nonconforming use (contractors storage yard) into the "LC" Light Commercial District a maximum of 200%.

GENERAL LOCATION: On the northwest corner of Tyler and Maple.

ZONING: Subject property is zoned the "LC" Light Commercial District. Property to the west is "AA" One-family Dwelling District. Properties to the south and east are "LC" and "AA". Property to the north is "LC".

LAND USE: Subject property is occupied by a one-family dwelling and in part a legal nonconforming use. To the east, north and south are residential and commercial development. To the west is residential.

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Sections 2.12.590.B, and 28.04.170 E and 28.04.170F of the Code of the City of Wichita. 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 permit the legal expansion of a nonconforming business that has been cited as a zoning violation on the property. It should be noted that the property was annexed into the City of Wichita on October 26, 1962. At the time of annexation, the property was located in the "LC" Light Commercial District that was established in the county in 1958. Subsequently part of the property included in the application area was changed to the "AA" One-family Dwelling District. The applicant subsequently acquired the property and recently submitted a zone change request to "LC" Light Commercial zoning in order that this application could be filed.

Over the past 22 years + since this property has been in the city, the applicant has been cited a number of times for expanding a nonconforming use onto adjoining properties. A case has been filed against the applicant for the expansion of a contractor's storage yard without proper zoning.

It should also be noted that the 40 foot by 60 foot building on the property was the subject of a BZA case in 1963 when Central Inspection refused to issue a permit for the building in the "LC" Light Commercial District since the Superintendent of Central Inspection determined that the use of the property was not a purely retail business, and a nonconforming use could not be expanded under the provisions of the zoning ordinance at that time. It was the determination of the Board to uphold the ruling by the Superintendent of Central Inspection that the well drilling and contracting portion of the business could not be permitted in the new building, and authorized the Superintendent of Central Inspection to issue a permit for a purely retail business. They further stipulated that the existing well drilling equipment operation conducted on the property was not and shall not be considered a conforming use, and that no portion of the building authorized by the building permit be used in conjunction with the nonconforming use.

Since that time the applicant has moved or constructed several small buildings on the property and are possibly a part of the nonconforming use whether authorized or not by permit by Central Inspection. At the time of annexation, the nonconforming use was existing on the south half of Lot 50 which includes the applicant's residence and the building authorized by permit in 1963 by the Board of Zoning Appeals. Records of Central Inspection do not indicate any other permits for structures on the property.

Prior to 1981, no expansion of any nonconforming use was permitted. The Ordinance will now permit such expansion subject to the conditions and limitations of the zoning ordinance. In this particular application for expansion up to the maximum of 200%, the Board of Zoning Appeals is the Board authorized to permit such expansion. It further states that any expansion of a nonconforming use must comply with all conditions of the zoning ordinance that would normally be required for the use to expand in the appropriate zoning district.

In review of the site plan submitted with the application, the legal description includes 63,369 square feet of property south of the land that the nonconforming use originally occupied, which was the south half of Lot 50. When the area occupied by the one-family dwelling and the driveway parking area required for the conforming use building is deducted from the total lot area, a maximum of only 26,000 square feet would be all that the nonconforming use could legally occupy. This will permit a maximum expansion of the nonconforming use of 52,000 square feet. Since there were no buildings on the property, at the time of annexation used with the nonconforming use, the building area permitted for expansion is prohibited. Since the property is adjacent to residential zoning all along the west property line, the entire west property line shall be screened with a six foot wood or masonry wall. Since the application has in the past continued to violate the provisions of the zoning ordinance by expanding to the west and north into the residential zoning districts, it would be appropriate to require fences at the limitations of any area that might be authorized by this application. It would also be appropriate for the applicant to determine how 52,000 square feet of the property to the south will be used and where the fence to contain the use will be installed.

UNIQUENESS:

It is the opinion of the Secretary that this property is unique inasmuch as the property was annexed as a nonconforming use and has remained at this location for 22 years. Also, the site is located in an area which is generally screened from the streets by other uses established on the fronts of the properties.

ADJACENT 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 adjacent properties are large tracts and developed so that the existing structures are a greater distance from the property lines than is normally required by ordinance.

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 applicant would be unable to expand the existing use more than 100% unless the variance is granted, or the applicant would have to find a new location for the outdoor storage of pipe and well drilling equipment.

PUBLIC INTEREST:

It is the opinion of the Secretary that the requested variance would not adversely affect the public interest inasmuch as the expansion will not include the addition of buildings or interfere with any public right-of-way.

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 nonconforming contractor's yard has been at this general location since prior to the adoption of zoning in the county and with appropriate screening and fencing to contain the use to the maximum area allowed by the ordinance should be appropriate.

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 subject to the following conditions:

1. The applicant shall submit a new detailed site plan showing the legal description of the land on which the expansion will occur. The site plan shall also show the location of the 10 off-street parking spaces required for the purely retail business building permitted to be constructed in 1963 and the spaces shall be striped in conformance to an approved plan. Such plan shall also show the outdoor storage areas for equipment, materials, etc., and shall show the physical improvements as required by conditions set forth in this resolution.
 2. A six to eight foot screening fence as defined in the zoning ordinance shall be installed the entire length of the property that is adjacent to any residential zoning district. The remainder of the property shall be fenced with a security fence of a material at the discretion of the property owner.
 3. Ingress and egress shall be limited to the existing driveway on Tyler Road.
 4. No additional buildings shall be constructed on the property to be used in any way with the nonconforming use.
 5. The expansion area for the nonconforming well and drilling business shall be limited to 52,000 square feet of the area to the south of the south half of Lot 50 Westerfield Acres Addition. The nonconforming use shall not occupy any more of the original lot than now exists, which includes only the area to the west of the front of the 40 foot by 60 foot building constructed in 1963, and the area to the north of said building between the fence behind the house and the north property line which is a total of 26,000 square feet in area.
 6. All off-street parking and driveways shall conform to the standards as established by the Traffic Engineer and shall be surfaced as set forth in 28.04.143 of the Zoning Ordinance.
-

BZA CASE NO. 45-84

<u>2</u>	NOTICES SENT TO APPLICANT/AGENT
<u>10</u>	LEGAL ADVERTISEMENT SENT TO MAPC
<u>1</u>	NOTICES SENT TO CPO
<u>18</u>	NOTICES SENT TO ADJOINING PROPERTY OWNERS
<u>21</u>	TOTAL NOTICES SENT <u>8-7-84</u>

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

August 7, 1984

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 45-84

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 Lloyd L. Harp, 215 South Tyler Road, 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 permit the expansion of a non-conforming use (contractors storage yard) a maximum of 200% as set forth in Sections 28.04.170.E and F, on property zoned the "LC" Light Commercial District. A legal description of the applicant's property is as follows:

The south ½ of Lot 50, and the north 150' of Lot 3, and the north 175' of Lot 2, all being in Westerfield Acres, together with Lot 1, Brand Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Tyler Road and Maple (215 South Tyler).

This application has been assigned Case BZA 45-84. It will be considered by the Board of Zoning Appeals on August 28, 1984 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. 45-84
FILED 5-31-84

APPLICATION FOR VARIANCE

I. Name of Applicant LLOYD L. HARP
Mailing Address 215 South Tyler Phone 722-1411
Name of Authorized Agent James R. Schaefer
Mailing Address 800 Broadway Plaza Phone 262-4403
Relationship of applicant to property is that of owner
(Owner, Tenant, Lessee, Other)

II. The variance requested is to expand a nonconforming use
into "LC" and "AA" a maximum of 200 %
for property located at the Northwest corner of Tyler and
Maple

*see
attached*

*The south 1/2 of Lot 50, and the north 150'
of Lot 3, and the north 175' of Lot 2, all
being in Westerfield Acres, together
with Lot 1, Brand Addition, ^{to Wichita,} Sedgwick
County, Kansas*

in the City of Wichita; and which is presently zoned AA & LC.

- 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 Lloyd L. Harp

Authorized Agent By: James R. Schaefer

OFFICE USE ONLY: Received in Office of Secretary, Board of
Zoning Appeals, 3:30 (a.m.-p.m.), MAY 31, 1984
together with appropriate fee of 150.00

Signed L. Lytle

JUSTIFICATION STATEMENT

Applicant hereby submits the following statement in compliance with Section 2.12.590.B of the Code of the City of Wichita to justify the requested variance.

Applicant has owned his home and operated his business on land adjacent to the land for which the variance is requested for approximately 25 years.

At the time Applicant moved to the adjacent land where he lives, such was located outside the City Limits of Wichita. The adjacent land as well as the land for which a variance is requested was subsequently annexed by the City of Wichita and Applicant has continued to operate his business as a nonconforming use. The land for which the variance is requested is zoned LC except for the North 150 Feet of Lot 3. An Application has been filed to rezone this land to LC also.

The fact that the land was annexed to the City created a unique situation (even though the land for which the variance is requested was acquired after annexation) in that expansion of Applicant's business adjacent to his longstanding nonconforming use would not be permitted subsequent to annexation. The conditions creating the unique situation were not created by any action or inaction of Applicant.

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

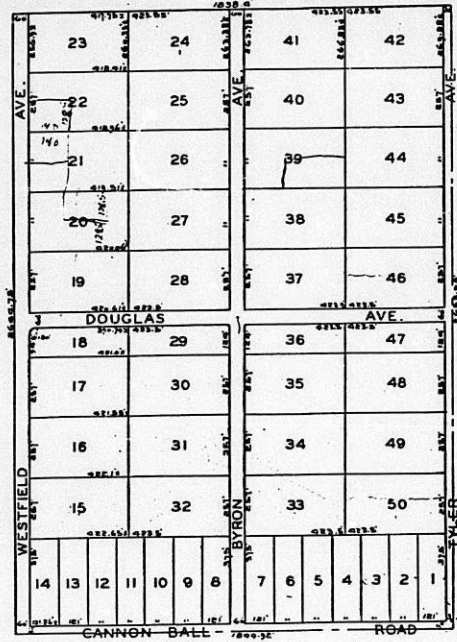
That the strict application of the provisions of Title 28 of the Code of the City of Wichita would constitute unnecessary hardship upon the Applicant in that Applicant would be unable to expand his business which, as above stated, is of longstanding in the area.

That the granting of the variance would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare of the citizens of Wichita, and that the granting of the variance will not be opposed to the general spirit and intent of Title 28 of the Code of the City of Wichita.

W1-7-5

WESTFIELD ACRES

SEDGWICK COUNTY KANSAS.



State of Kansas } ss:
 County of Sedgwick } ss:
 I, Z. Benson
 in and for said county and
 that I have surveyed and
 Sedgwick County, Kansas
 ing plot is a true and cor
 as surveyed, described
 of the southeast quarter
 west half of said southeast
 132 feet, all in section 20 T
 West of the 6th PM

I know all men by these
 Farmer and Emma Farmer,
 land described in the su
 rved and platted into th
 known as Westfield Acres
 The avenues are hereby o
 use of the public.

State of Kansas } ss:
 County of Sedgwick } ss:
 Be it remembered t
 1930, before me a notary p
 and state, came Fred M
 his wife, to me personally
 persons who executed
 of writing and duly ackn
 their voluntary act and

My Commission expires

Approved by County
 March - 1930
O. A. Bell
R. L. Jackson
 County Clerk

State of Kansas } ss:
 County of Sedgwick } ss:
 This
 instrument was filed in
 of Deeds office on the
 21st of Feb. 1930 at 10
Edith Neal
 By R. L. Jackson

Approved by the Board of County Commissioners
 this 11th day of March - 1930
O. A. Bell County Clerk

Entered on Transfer Record this 11th day of
 March - 1930.
O. A. Bell County Clerk

Order & Resol. 11448 p. 576
 Public Trust Road 7448 p. 577
 Survey & Plat. 11451 p. 110
 Restrictive Covenants 74580 p. 103



SECURITY IS KNOWING
Title Insurance • Escrow Closings • Abstracts

OWNERSHIP LIST

<u>Property Description</u>	<u>Property Owner</u>
The south half of lot 50, Westfield Acres	Lloyd Lee Harp Florence Harp 215 S. Tyler 67209 D
The north 150 feet of lot 3, Westfield Acres	Lloyd L. Harp 215 S. Tyler 67209 D
The north 175 feet of lot 2, Westfield Acres	Lloyd Lee Harp 215 S. Tyler 67209 D
The north 125 feet of lot 1, Westfield Acres	Kare Free Nursing Center Inc. 231 S. Tyler 67209 Returned 8-13-84
The south 125 feet of lot 1, Westfield Acres	American Petrofina Marketing Inc. 8800 Maple 67209 x
The south 125 feet of the north 250 feet of lot 1, Westfield Acres	Gerald J. Woydziak Marie Woydziak 1747 N. Nevada 67212 x
Lot 2, except the north 175 feet, Westfield Acres	Michael Lawrence Herndon Peggy Lou Herndon 8820 Maple 67209 x
Lot 1, Brand Addition	Melvin R. Brand Rosella T. Brand 8726 Maple 67209 x
Lot 4, Westfield Acres Addition	W. H. Ridley Virginia C. Ridley 8910 Maple 67209 x
Lot 5, Westfield Acres	Paul Allen Dodson Viola Faye Dodson 8924 Maple 67209 x
The north 183 feet of lots 6 & 7, Westfield Acres Addition	Lloyd L. Harp Karen L. Harp 215 S. Tyler 67209 D

add to ownership list:

PAUL LUCKER
1212 N. Topeka
Wichita, KS 67214

<u>Property Description</u>	<u>Property Owner</u>
Lot 33, Westfield Acres	D Lloyd L. Harp 215 S. Tyler 67209
The south half of lot 34, Westfield Acres	X G. L. Eicholtz Mildred M. Eicholtz 200 S. Byron 67209
The south half of lot 49, Westfield Acres	+ Floyed B. Tingle Wilma E. Tingle 157 S. Tyler 67209
Lot 1, Sinclair Addition	X N. A. Sinclair Lorene M. Sinclair 211 S. Tyler 67209
Beginning at the southwest corner of lot 1, Park Acres; thence north along the west line of lot 1, 320 feet to a point 120 feet south of the northwest corner; thence east parallel to the north line of lot 1, 198.73 feet; thence south 320 feet to a point on the south line of lot 1, said point being 204.01 feet east of the southwest corner; thence west 204.01 feet to the point of beginning.	+ Ron Groves 9601 E. Kellogg 67207
The north 120 feet of lot 1, Park Acres	X John R. Carnahan Minnie E. Carnahan 226 S. Tyler 67209
Lot 2, Park Acres	+ David J. Martin Evelyn L. Martin 125 S. Tyler 67209 <i>returned 8-9-54</i>
Lot 3, Park Acres	+ John M. Rice Philomena M. Rice 208 N. Tyler 67209
Lot 4, Park Acres	+ William D. Ellis Elizabeth A. Ellis 150 S. Tyler 67209

Property Description

Property Owner

The west 127 feet of the east 292 feet of the north 145 feet of Block Z, Callahan Addition

Milton McClay
+ Nettie McClay
8720 W. Central
67212

The north 145 feet of Block Z, except the east 431 feet of the north 145 feet, Callahan Addition

+ R. Kell Hawkins
Norma J. Hawkins
429 Westfield Ct.
67212

The west 139 feet of the east 431 feet of the north 145 feet, of Block Z, Callahan Addition

+ R. Kell Hawkins
D 429 Westfield Ct.
67212

The north 145 feet of the east 234 feet Block Z, except the west 69 feet of the east 234 feet of the north 145 feet, Callahan Addition.

Gibraltar Investments Inc
2910 N. West 12th
+ Oklahoma City, Oklahoma
73107
Returned 8-17-84

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described lots and tracts within a 200 foot radius of:

The south half of lot 50, the north 175 feet of lot 2 and the north 150 feet of lot 3, all in Westfield Acres, Sedgwick County, Kansas and lot 1, Brand Addition, 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 22nd day of November, 1983, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE CO. INC.

By

Mary Gable
Vice President

Order No: 327861
Amendment to Ownership list: 327234
cf

Den -

She records you
requested on 215

S. Tyler.

Wade
Jensen

215 S. Tyler

AA

J. L. Harp

Harp Well & Pump Service

8-1-79 Storing pipe and equipment in AA Zone

8-1-79 Notice issued #A19548

Compl. 8-17-79

Small progress 8-23-79

File 9-25-79

*9-26-79 He said that all is sold & will
be gone in 2 weeks not more than 5 or
less more it to the sand.*

11-7-79 Closed

MICROFILMED
FROM THE BEST
AVAILABLE COPY

215 S. Tyler Road "AA"
Harp Well & Pump Service
6698 HARP
Has expanded non-conforming usage well & pump
service.
5-11-77 Mailed notice 13147.
Comp 5-28-77 BL

Proposed 5-29-77

MICROFILMED
FROM THE BEST
AVAILABLE COPY

217 S. Tyler Road D 2319
Harp Well & Pump Serv. C9688
L. E. Harp
erect - 40 X 60 - 2400 Sq ft - canopy, 58 sqft
50 X 23 - BZA 2863
12-13-63
2-11-64 *9/9/64*
7/13/64 *12/17/64*
8/31/64 *Complete*

215 S. Tyler Road 10-26-62
Annexed
1 F m. brick veneer res. Att. garage & metal utility
building.

214 S. Tyler Road 9/28/62
annexed
1-fam. stone veneer det. gar

214 Tyler Rd. 21544

5. Landscaped yards required by this section of the code shall not be used for driveways, parking, loading, outdoor storage, displays, work areas, signs or similar uses.

L. MAINTENANCE.

It shall be the responsibility of the owner to maintain in good condition all of the required improvements on his property. This shall include, but not be limited to, fences, screening, landscaping, off-street parking and off-street loading areas.

When it is determined by the superintendent of central inspection that improvements required by this title are not being maintained, it is his duty to give notice in writing to the property owner. Such notice shall specify in what manner the improvements are in need of maintenance and a date for compliance. The property owner shall have not less than thirty days to comply with the notice; provided, however, that any person aggrieved by any such order and disagreeing with any of the requirements of the notice, may file an appeal, within the thirty-day period, with the secretary of the board of zoning appeals.

If the owner of the land has failed, refused or neglected to make the necessary maintenance repairs within the time of the notice or time designated by the board of zoning appeals, then the superintendent of central inspection shall cause such maintenance to be done to the property. The cost of maintenance shall be certified by the superintendent of central inspection to the city clerk, who shall cause the costs to be assessed against the property on which the maintenance repairs were made. (Ord. No. 38-113, (part); Ord. No. 36-107; Ord. No 34-714, (part); Ord. No. 33-272; Ord. No. 27-551, § 10.)

28.04.170 Nonconforming use regulations. A. Registration of Nonconforming Uses. A determination by the superintendent of central inspection shall be made of all nonconforming uses and a record kept of all occupancy changes, expansions or reconstructions. Such list shall include only those uses that have been deemed to be legal nonconforming uses. Such uses shall be deemed legal nonconforming uses for one of the following reasons:

1. A use or building that was established prior to the adoption of zoning in the city of Wichita and has been continued as a legal nonconforming use.

2. A use or building that was established in conformance with the applicable zoning regulations and became nonconforming due to an amendment to the zoning ordinance and has been continued as a legal nonconforming use.

3. A use or building that was established outside the city of Wichita and was subsequently annexed into the city of Wichita, became nonconforming at that time and has been continued as a legal nonconforming use.

B. Continued Existence. Any legal nonconforming use at the time of the adoption of the ordinance codified in this section may be continued indefinitely, although such use or building does not conform to the provisions hereof.

28.04.170 ZONING

C. Loss from Natural Disaster. Any legal nonconforming use structure destroyed by fire, wind, tornado, earthquake or other natural disaster except flooding may be rebuilt provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences); or floor areas or ground coverage (for nonresidential uses); provided, however, rebuilding may permit expansion when such expansion complies with the limitations as is hereinafter set forth. The structure shall not be rebuilt closer to the property lines than the original structure or that of the zoning district setback lines, whichever is closer. Nonconforming structures destroyed or damaged by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the building code of the city of Wichita, Kansas related to construction in flood hazard areas.

D. Repair or Alteration of Original Structure. Any structure which is a part of a nonconforming use may be repaired or altered under the same terms as set forth in paragraph C.

E. Expansion of Nonconforming Uses. Nonconforming uses may be replaced or expanded under the terms of this section as follows:

1. Expansion of buildings permitted by the provisions contained herein shall be the total aggregate floor area included in all such separate additions or enlargements, based on the floor area contained in said building or structure at the time said building or structure became nonconforming. Expansion of open land uses permitted by the provisions contained herein shall be the total aggregate land area included in all such enlargements, based on the land area being used at the time said use became nonconforming.

2. Nonconforming uses in the AA, A, RB, R-5, R-6, B and G zoning districts when the use:

a. Does not increase the number of dwelling units, when residential.

b. Does not exceed fifty percent of the floor area of the original use or if not a structure, not over fifty percent of the lot area originally used; provided however, that the board of zoning appeals may allow a variance, as set forth in Section 2.12.590B of the Code, to permit expansion by not more than one hundred percent providing a finding is made that such expansion does not endanger the continued well-being and quality of life of the residential area in which the use is located.

c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.

d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, 28.04.142 and 28.04.143.

e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.

3. Nonconforming uses in nonresidential zoning districts when the use:

a. Does not exceed one hundred percent of the floor area, or if a structure is not involved not over one hundred percent of the land area involved; provided however, the board of zoning appeals may allow as a variance, as set forth in Section 2.12.590B of the Code, to permit expansion by not

more than two hundred percent when the board determines such action would not be detrimental to the area or community at-large as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, availability of adequate utilities and drainage facilities, and the ability to provide adequate fire protection.

b. Does not intrude into a residential zoning district.

c. Is such that the expansion does not exceed the setbacks or height limitations of the district in which the expansion occurs.

d. Provides for off-street parking and loading as required by Sections 28.04.140, 28.04.141, and 28.04.142 and 28.04.143.

e. Provides for advertising signs only in accordance with the requirements of the district in which the use is first permitted as a conforming use.

4. Conversion to other uses. A nonconforming use may be changed to any new use provided that the new use shall be of the same general character, or of a more restricted character as determined by the superintendent of central inspection based on the use lists and limitations of the zoning districts. This shall not be deemed to permit the conversion of a structure to residential purposes in any district wherein such use is prohibited.

5. Expansion not applicable to all uses. The provisions of these regulations are not applicable to the expansion of nonconforming home occupations or to the expansion of nonconforming signs.

F. Compliance with All Regulations. Any legal nonconforming use that is expanded or reconstructed under the terms of this regulation shall comply with all conditions that would normally be required for the expansion or reconstruction to have been permitted in the proper zoning district. Whenever the building and related technical codes require greater setbacks or height restrictions, then the most restrictive provision of those codes would be applicable.

G. Abandonment of Nonconforming Uses.

1. A nonconforming use shall be considered to be abandoned when any of the following shall occur:

a. The owner shall have in writing or by public statement indicated intent to abandon the building, structure or use.

b. A more restrictive use shall have supplanted the original nonconforming use.

c. The building or structure shall have been removed as a result of condemnation as an unsafe structure.

d. The owner shall have changed physically the building or structure or its permanent equipment in such a manner as to clearly indicate an abandonment of the nonconforming use.

e. The property is vacant for twenty-four consecutive months and the owner has failed to maintain said property as required by applicable regulations.

2. Any nonconforming use in an abandoned building or structure shall not be reused unless the new use shall conform to the district requirements in which it is located.

24.08.180 ZONING

3. Any use of land having only incidental or accessory structures such as salvage yards, automobile sales lots, parking lots, trailer parks or mobile home parks, extraction of gravel or similar uses when such are abandoned or discontinued for over twenty-four months shall not be used except for uses permitted by the district in which it is located. (Ord. No. 37-120, (part).)

28.04.180 Exceptions to use regulations – Generally. This chapter shall not apply to existing structures nor to the existing use of any building which shall have complied with all the laws and ordinances in effect prior to the effective date of this chapter, excepting for the future change to conforming use as provided in paragraph A of Section 28.04.170. All zoning district regulations shall apply to any enlarging of a building for a nonconforming use in the district in which it is located, and to any alteration of a building which is intended to change its use to a less restricted classification.

BOARD OF ZONING APPEALS

MINUTES

OCTOBER 22, 1963

The regular meeting of the Board of Zoning Appeals was held on October 22, 1963, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas. The following members were present: E. B. Law, H. D. Lester and Harold Bauer. Member absent was Claude Moore. (Russell Jump, former member, has recently submitted his resignation to the Mayor.) Also present were Arthur Johnson, Assistant City Attorney, Robert A. Lakin, Secretary, James Howe, Assistant Secretary, Jack Galbraith, and Berniece Rathke of the planning staff. Chairman Law presided.

1. The minutes of the special meeting of July 16, 1963, and of the recessed meeting of October 1, 1963, were approved as written and mailed.

-
2. Case No. BZA 28-63 - Lloyd Lee Harp, by H. R. Kuhn, Attorney, appeals from the decision of the Superintendent of Central Inspection, who refused to issue a permit for the construction of a 40'x60' commercial building in light commercial area, and if the appeal is not upheld by the Board of Zoning Appeals, then the applicant requests a variance for property described as south half of Lot 50, Westfield Acres. Generally located on the west side of Tyler Road in an area just north of Maple.

LAKIN pointed out the area involved on the aerial map and zoning map and presented the following written report:

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 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 in 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". Cannot 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 nonconforming 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? Cannot 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.

The Chairman announced that the appeal from the decision of the Superintendent of Central Inspection would be considered first.

H. R. KUHN, attorney representing the applicant, stated that the proposed operation is completely retail, and he did not think the Superintendent of Central Inspection could refuse the issuance of a permit for construction of a commercial building which would permit a use that is permitted in the Light Commercial zoning district. He noted that Section 28.04.090 ("LC" Light Commercial District) requires that everything must be within an enclosed building, which is what the applicant is attempting to do. He pointed out that the applicant intends to construct a building in which to house items (water well pumps and related equipment) he is offering for sale at retail. He also pointed out that the activity concerns residential type wells and not oil well supplies or related equipment.

KUHN stated that the applicant has conducted this type of business in which he sells water well pumps, parts, repairs pumps and replaces parts, at this particular location for several years.

KUHN pointed out that the activity carried on by this applicant is comparable to that of a service station, electrical contractor, and radio or television repair sales and other service type business, all of which he understands are permitted in Light Commercial zoning.

MR. KUHN stated that in the past he has heard this Board discuss various matters on the legal intent of the wording of the ordinance. He stated that before a court of law, if reasonable minds can differ as to intent, the Supreme Court has ruled as recent as last year that the ordinance of a municipality must be construed in favor of the property owner. He pointed out that the City Commission can easily remove any doubt as to what is meant or intended by amending the ordinance.

KUHN also pointed out that even if well drilling is something separate from retail, it is a nonconforming use and is still permitted to exist. There has been no intention that that particular operation be expanded.

J. R. ALBERTSON, 150 South Tyler Road, asked what types of activity would be carried on on subject property if the request is approved. KUHN stated that it is proposed to do exactly what has been done on the property in the past - sell water well pumps, together with related parts. JOHN RICE, 208 South Tyler Road, was also interested and stated that he was neither in favor or opposed. ALBERTSON said they would not want their residential property to decrease in value because of the activities being carried on on subject property.

The Chairman pointed out that since the property is already zoned "LC", anything permitted in that zone could be developed on the property.

GLEN LYTLE, Superintendent of Central Inspection, stated that in his opinion an electrical contractor or plumbing contractor should be located in "C" zoning and that since a certain amount of the activities of the applicant are contracting, then it was his decision it should be located in a "C" category.

The Chairman pointed out that a number of plumbing and electrical contractors, and service stations, are located in "LC" areas throughout the city.

CHARLES MC CANN, 231 South Tyler Road, noted that septic tanks are used for sewage disposal in the area, and inquired whether or not there would be problems created because of water well testing operations which might be carried on at subject property.

The Chairman pointed out that the problems which might be created in respect to waste water and sewage disposal would be handled by the City-County Health Department.

The Chairman asked Lytle if he considered the selling of pumps, and related merchandise enclosed in a building a "Retail business."

LYTLE agreed that it would be but wondered how that type of operation could be separated from an existing nonconforming use since the equipment used in this case makes it basically one operation.

LAW said he concurred with Lytle that the contracting portion of the operation is not a use permitted in "LC", but pointed out that there are a number of similar sales and service type businesses located in "LC" zoning.

LYTLE suggested that some may have moved in without permits, which is the only way his office has control without additional inspectors to enforce the regulation. He also pointed out that when a permit is issued the applicant must state what the operation will be. He stated that his office attempts to visit sites before issuing permits, but until last year they did not have the manpower to make such inspections, except on new structures or investigate something on which a complaint had been registered.

LAKIN stated that in his opinion, if the prime use of the property and the proposed structure is for the selling of pumps, and related equipment and supplies, that there is no question that the applicant should be granted the permit. He stated that as the operation appears in the field now, one gets the idea that it is that of a contracting operation.

KUHN pointed out that the applicant has stated and is willing to swear to the fact, that over 80% of his gross income comes from retail sales and if the building can be constructed the retail sales operation will be conducted from that building. Other activities can be continued in their nonconforming status.

LYTLE again pointed out the difficulty in separating one operation from the other.

JOHNSON, legal counsel for the Board, said it was an honest difference of opinion as to whether or not the total operation is purely a retail business. He also pointed out that the Board must decide whether or not it is purely retail operation.

JOHNSON stated that a permit could be granted for construction of the building to operate purely as a retail establishment.

MOTION: LAW moved that the Board uphold the ruling of the Central Inspection Superintendent insofar as the contracting portion (including well drilling rigs and equipment) of this application is not permitted in "LC" districts and therefore cannot be conducted in the new building under the ordinance, and further, based on the statement by the attorney for the applicant that that portion of the business which will be conducted in the new building is retail sales and will constitute over 80% of the sales of this business, and therefore would be permitted in an "LC" district.

LAW continued that if the applicant chooses to separate his now existing nonconforming business under the nonconforming use provisions of the Zoning Ordinance, that this is not a matter for

this Board to determine. Consequently, the permit should be issued for the purely sales portion of the business.

The above motion was seconded by BAUER and carried unanimously.

MOTION: LAW moved, BAUER seconded and it carried unanimously that the repair and servicing of pumps and sales of pumps and related equipment all within the confines of a building is a use permitted as the Board construes Section 28.04.090.A.1.2 of the Zoning Ordinance, all as shown by the following resolution:

R E S O L U T I O N N O . B Z A 2 8 - 6 3

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.

S/ E. B. Law
E. B. Law, Chairman

ATTEST:

S/ Robert A. Lakin
Robert A. Lakin
Secretary

-
3. Case No. BZA 29-63 - Mrs. Thelma Garretson requests Exception to permit a mobile home to remain on property described as west 75 feet of Lots 22, 23 and 24, Block 17, Jones Park Addition. Generally located on the east side of Wellington Place in an area between 32nd and 33rd Streets North.

LAKIN pointed out the area on the zoning map and aerial map and submitted the following written report:

HISTORY:

At a recessed meeting of the Board of Zoning Appeals on October 1, 1963, the Board considered a request from Mrs. Thelma Garretson of 3200 Wellington Place, that Case No. BZA 18-63 be reconsidered by the Board. Case No. BZA 18-63, approved by the Board of Zoning Appeals on July 23, 1963, granted Mrs. Garretson permission to place a mobile home on her property to accommodate her brother who was completely incapacitated and needed constant care.

One of the conditions attached to the approval of this particular case was that the mobile home could remain on Mrs. Garretson's property as long as Mr. Pew (her brother) occupied the mobile home. On September 5, 1963, Mr. Pew passed away and according to the resolution by which this case was approved, the mobile home was to be removed from the lot. However, Mrs. Garretson requested that the Board of Zoning Appeals re-open and reconsider BZA Case No. 18-63, as her brother's widow was still occupying the mobile home and it was her belief that she would be suffering a severe hardship if the mobile home was removed from the property.

On October 1, 1963, the Board considered Mrs. Garretson's request that BZA 18-63 be reconsidered. However, under the Rules and Regulations of the Board, and upon the advice of legal counsel for the Board, the Board decided that Mrs. Garretson must file a new application because the 15 day period in which a case might be reconsidered by the Board, had elapsed.

WICHITA - SEDGWICK COUNTY

W S C

METROPOLITAN AREA PLANNING
DEPARTMENT
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

RECEIVED

AUG 17 1984

METROPOLITAN PLANNING

ROUTE sd



GIL 10 211188NT 08/11/84

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BZA 45-84

Gilbralter Investments Inc.
2910 N. West 12th
Oklahoma City, Ok. 73107

*FOE
607021*

RETURN TO
SENDER MOVED.
LEFT NO ADDRESS



WICHITA - SEDGWICK COUNTY

W S C

BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

RECEIVED

AUG 13 1984

METROPOLITAN PLANNING

ROUTE 90th



*BZA
45-84*

Kare Free Nursing Center Inc.
231 South Tyler
Wichita, Ks. 67209

ATTEMPTED
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RETURN TO SENDER



WICHITA - SEDGWICK COUNTY

W S C

BOARD OF ZONING APPEALS
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

RECEIVED

AUG 9 1984

METROPOLITAN PLANNING

ROUTE



BZA 45-84

David J. & Evelyn L. Martin
125 South Tyler
Wichita, Ks. 67209

MAR 25 02080491 08/08/84
RETURN TO SENDER
MOVED LEFT NO ADDRESS

MICROFILMED
FROM THE BEST
AVAILABLE COPY

FORM 021

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
CITY BZA VAC.	\$ 150.00

NAME: JAMES R. CHAFFEE

ADDRESS: 210 E. 10th St

FUND: 152-40071-00 DUE DATE:

COMMENTS:

DATE: MAY 21 1970 BY: [Signature]

FROM LYTLE DATE 2/2/86

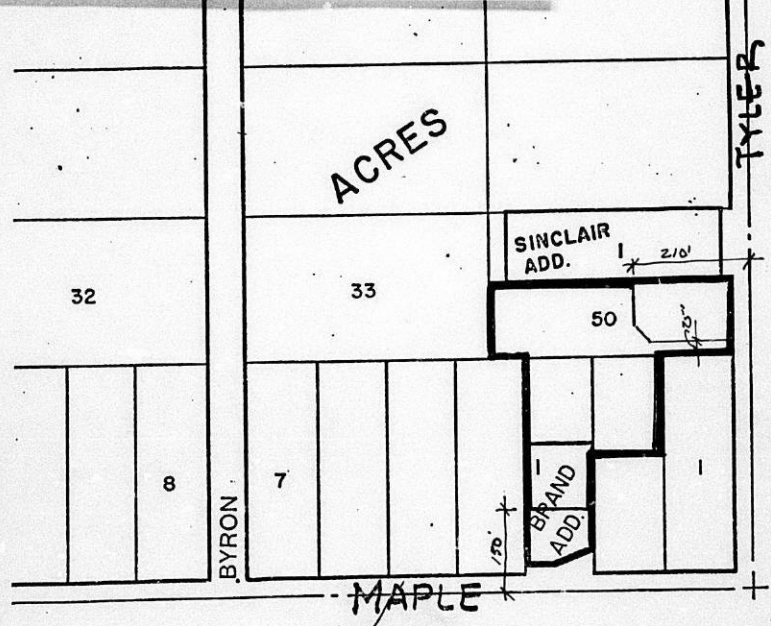
BZA 45-34
Filed

- | ADMINISTRATION | ADVANCE PLANS | CURRENT PLANS | ENGINEERING | GRAPHICS |
|------------------------------------|------------------------------------|------------------------------------|------------------------------------|--|
| <input type="checkbox"/> Lakin | <input type="checkbox"/> Stockwell | <input type="checkbox"/> Galbraith | <input type="checkbox"/> Lindebak | <input type="checkbox"/> Pierce |
| <input type="checkbox"/> Walter | <input type="checkbox"/> Schwartz | <input type="checkbox"/> Lytle | <input type="checkbox"/> Cain | <input checked="" type="checkbox"/> Commer |
| <input type="checkbox"/> Doramus | <input type="checkbox"/> Leivo | <input type="checkbox"/> Young | <input type="checkbox"/> Ruiz | <input type="checkbox"/> Crook |
| <input type="checkbox"/> Eubanks | <input type="checkbox"/> Bechtel | <input type="checkbox"/> Chambers | <input type="checkbox"/> Henry | <input type="checkbox"/> Jones |
| <input type="checkbox"/> Hanson | <input type="checkbox"/> Clark | <input type="checkbox"/> Daniels | <input type="checkbox"/> Schneider | <input type="checkbox"/> Whitney |
| <input type="checkbox"/> Henderson | <input type="checkbox"/> Dudark | <input type="checkbox"/> Lahey | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> Hart | <input type="checkbox"/> Nagley | <input type="checkbox"/> | |
| <input type="checkbox"/> Scott | <input type="checkbox"/> Kelley | <input type="checkbox"/> Olivarez | <input type="checkbox"/> | |
| | <input type="checkbox"/> Losew | <input type="checkbox"/> Shirkey | <input type="checkbox"/> | |
| | <input type="checkbox"/> Shen | | | |
| | <input type="checkbox"/> Vinson | | | |

by _____ ft.)
W AA N LC

- Note & Return
- Handle
- All Staff
- Comment
- Signature
- Library
- Information
- Files
- Type

REMARKS *Post to zoning maps -
Make sure the area plotted only
includes that area shown in
text on attached map.*

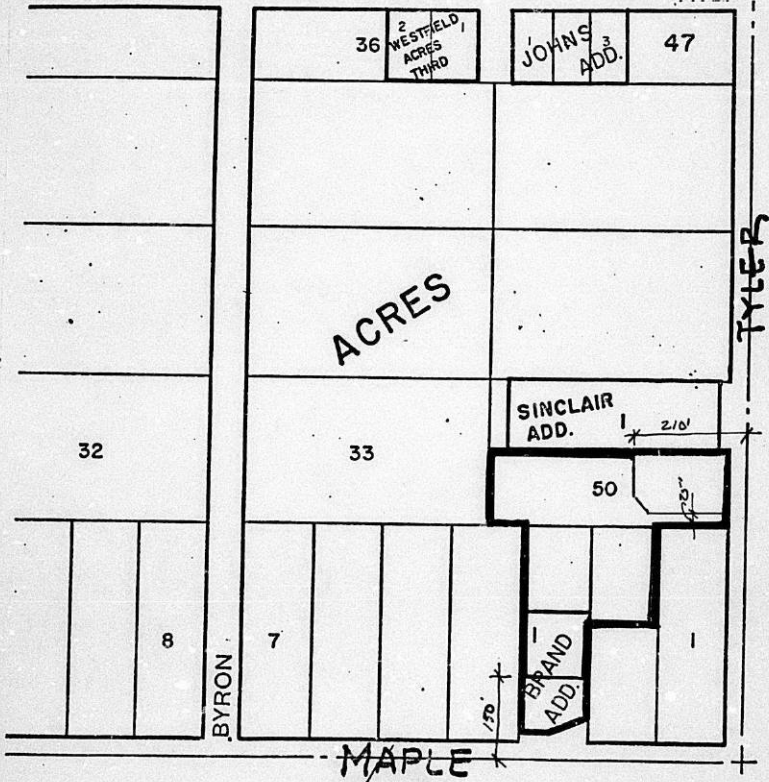


Map No. 4847 B

BZA 45-84
Filed _____

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E LC $\frac{1}{2}$ AA S LC $\frac{1}{2}$ AA W AA N LC
3. Land Use: East Res. South Res.
West Res. North _____
4. Area (is) (~~is not~~) platted.



*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm

Roll # 2