

CASE No- 24-49

75,000

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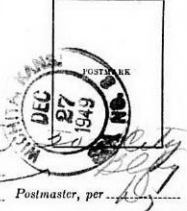
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BOARD OF ZONING APPEALS  
Room 304, City Hall  
Wichita, Kansas

NOTICE TO PROPERTY OWNERS

December 27, 19 49

An appeal has been filed by Carl A. Bell  
(Address) 1400 North St. Francis on behalf of same  
(Address) \_\_\_\_\_

as provided by Section 33 of the Zoning Ordinance. The appellant  
desires to construct addition to the commercial building at 1400 N.  
St. Francis without allowing 38' from the center of  
Thirteenth Street right of way on the premises  
located at 1400 N. St. Francis

This appeal has been given Case No. 24-49  
and a hearing will be held by the Board of Zoning Appeals on  
Friday, December 30, 1949 at 1:30 P.M.  
at which time you may appear, if you so desire, either in person or  
by agent or attorney. Hearing will be in room 201, City Building.

By order of the Board of Zoning Appeals.

Eugene N. Smith  
Secretary.

Notices mailed December 27, 1949

Carl A. Bell  
1400 N. St. Francis

Hugh S. & Edith Thogmartin  
624 E. 13th Street

Floyd Cox  
626 E. 13th Street

Carl E. Calloway  
309 N. Broadview

Eloise M. McMurry  
C/O Will Morris  
Morris & Son, Realtors

Nettie P. Bird  
1415 N. Santa Fe

W. J. & Ruth Barnett  
1413 N. Santa Fe

V. W. & Nettie B. Nobles  
1430 N. St. Francis

H. W. & Daisy Hull Smith  
1517 S. Emporia

J. D. & Helen Walker  
1414 N. St. Francis

Floyd S. Matlock  
2516 E. 13th Street

J. L. Noel  
1405 N. St. Francis

Lula J. Barnes  
Cecil F. Barnes, Executor  
1403 N. St. Francis

Ralph P. & Vivian R. Johnson  
1409 N. St. Francis

Hiram H. Godfrey  
247 N. Volutsia

Dollie Baughman  
3333 S. Broadway

Neil A. & C. Blanche Feller  
111 W. 21st St.

Healzer Investment Co.  
625 E. 13th Street

Alice Heldenbrand  
1123 N. St. Francis Ave.

W. L. Gardner  
1360 N. St. Francis

Phillips Petroleum Co.  
Div. Office  
Petroleum Building

Mary Heil  
1353 N. St. Francis

Charles M. Ayer  
1355 N. St. Francis

Fannie Sanford  
1515 N. Broadway

BOARD OF ZONING APPEALS  
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

December 29, 1949

Mr. Carl A. Bell  
1400 North St. Francis  
Wichita, Kansas

Dear Mr. Bell :

Your appeal, under the Zoning Ordinance, relative to premises at  
the east end of the commercial building at the premises designated as  
1400 North St. Francis

has been given Board of Zoning Appeals Case No. 24-49.

All inquiries and references should always be made to that Case  
Number when you seek information from the Secretary.

Further, you are notified to appear before the Board of Zoning  
Appeals either in person, or by agent or attorney, for a hearing of  
your case on Friday, December 30, 1949, at 1:30 p.m.  
Hearing will be held in room 201, City Building.

Respectfully,

Secretary, Board of Zoning Appeals

CITY OF WICHITA  
BUILDING INSPECTION DIVISION

To Carl Bell Owner Address 1400 N. St. Francis  
To Evan Evans Applicant Address 211 South Grove

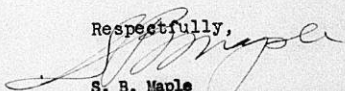
Dear Sir:

Your Application Dated 12-14-49  
For a Permit for the addition of 30' x 65' to the east end of the commercial  
building at the premises designated as  
1400 North St. Francis

Is hereby refused on this 14th day of December, 1949,  
Under Section 28 of the Zoning Ordinance.

For the reason that as planned said addition would not be as much as 38 feet  
from the center of the right-of-way of Thirteenth Street, as provided by  
said ordinance for Major Street thoroughfares.

Respectfully,



S. B. Maple  
Chief Building Inspector

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

BOARD OF ZONING APPEALS

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

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

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

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

The undersigned, CARL A. BELL, hereby appeals from the decision of the Building Inspector wherein a Building Permit Is Refused For "the reason that as planned said addition would not be as much as 38 feet from the center of the right-of-way of Thirteenth Street, as provided by said ordinance for Major Street thoroughfares."

OR

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

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

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

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

Carl A Bell  
Appellant.

NAMES AND ADDRESSES

Appellant Carl A. Bell Address 1400 N. St. Francis  
Owner Carl A. Bell Address 1400 N. St. Francis  
Lessee \_\_\_\_\_ Address \_\_\_\_\_

INSTRUCTIONS

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

TO the Board of Zoning Appeals,  
City of Wichita,  
Sedgewick County, Kansas

STATEMENT OF APPELLANT

I.

On the 14th day of December, 1949, Mr. Evan Evans, as the agent of the appellant, Carl A. Bell, made written application to the Building Inspection Division for permission to do certain construction work which would constitute an addition of 30' x 65' to the east end of the commercial building at the premises designated as 1400 North St. Francis, which building is owned by the appellant, Carl A. Bell, and houses two businesses owned and operated by him, namely, the Carl Bell Food Market and the Bell Wholesale Meat Company. This application was refused by S. E. Maple, Chief Building Inspector, under Section 28 of the Zoning Ordinance, "for the reason that as planned said addition would not be as much as 38 feet from the center of the right-of-way of Thirteenth Street as provided by said ordinance for Major Street thoroughfares." A copy of the written refusal above-mentioned is herewith made a part of this appeal.

The appellant, Carl A. Bell, is appealing from the above ruling of the Chief Building Inspector.

II.

The work for which the permit in question is desired is the construction of a brick building addition onto the east end of the already-established brick building situated on these premises. It is the plan of the appellant to incorporate such new building into the old one, which was constructed there prior to the enactment of Section 28 of the Zoning Ordinance, and consequently encroaches over the 38' set-back line. This construction is being done to afford to the appellant's wholesale meat company some much-needed extra space so that his business may be run more efficiently.

It is the plan of the appellant, therefore, that the new addition, for which this permit is desired, will be built on a front line even with this old building. Under this plan, the new addition, on a thirty (30) foot front, would encroach over the 38' set-back line a distance of seven (7) feet, ten and one-half (10½) inches. This appellant therefore asks that the Board reverse the decision of the Chief Building Inspector and direct that permission be granted him to build 7' 10½" closer to the center of the right-of-way of Thirteenth Street than is allowed under Section 28 of the Revised Zoning Ordinance.

### III.

The appellant prosecutes this appeal under Section 33 of the Revised Zoning Ordinance, and states that the following conditions are present:

- (1) While it would be impossible for this appellant to state, with any certainty, that the exception or variance desired arises from some condition which is not ordinarily found in the same zoning district, the appellant would call to the Board's attention the fact that he is submitting a waiver of his right to hold the City liable for any portion of the intended building that may encroach over the set-back line, and that such waiver should render this particular jurisdictional ground nugatory. He further states that in all probability this same condition will be found in the same zoning district as far as this setback line is concerned, but believes that if the City is released from liability as to any building placed over the set-back line, this condition should be overlooked.
- (2) That the granting of the permit for the variance (7' 10½") will not adversely affect the rights of adjacent property owners or residents. In this particular case, the appellant is the owner of the property directly adjacent to the area in question

on both sides, and east of the appellant's property lies an alley, while to the west of his property is situated St. Francis Street. It is believed that this variance will not, in any manner, affect the rights of any property owners as to the use and occupancy of their property.

- (3) That the strict application of the terms of this ordinance (Section 28) will constitute unnecessary hardship upon the property owner represented in this appeal. Should the appellant be required to observe the set-back line in question, it would mean that, when the addition to his building was made, he would have an extra corner in his wholesale meat company building, thereby causing loss of operational space. The space that he would lose could not be easily compensated for at the rear of the premises, as the area at the rear is needed for a passageway for delivery trucks and the automobiles of customers. The appellant points out that this hardship is unnecessary, in view of the fact that he is willing to release the City from all liability as to the variance requested.
- (4) That the exception or variance requested is not against the public interest. The appellant submits that the public interest will not be harmed as long as the City is released from liability as to this variance, in the event that Thirteenth Street is widened in the future. He further states that the public interest will not be harmed as far as obstruction of the street or sidewalk is concerned, as the proposed building will, in no manner, interfere with the use of these public thoroughfares.

IV.

Attached to this statement is a certificate of ownership of all the property within a Two Hundred (200) Foot radius of the area in question, as prepared on the 16th day of December, 1949, at 7:00 o'clock a. m., by The Security Abstract and Title Co., Inc., of Wichita, Kansas; also attached are the post office addresses of said property owners.

For all of the above reasons and under the ordinances above-referred to, this appellant prays that the Board of Zoning Appeals reverse the decision of the Chief Building Inspector, of December 14, 1949, refusing a permit to build on the south line of Lots 12 & 14, Wentzer's Subdivision of North Park Addition to the City of Wichita, Kansas, and that said Board order that permission be granted to this appellant to build as asked for in his application of December 14, 1949.

Carl A. Bell

To the Board of Zoning Appeals,  
City of Wichita,  
Sedgwick County, Kansas.

W A I V E R

I, Carl A. Bell, as the owner in fee simple of the lots described as "Lots 12 & 14, Mentzer's Subdivision to North Park Addition to the City of Wichita, Sedgwick County, Kansas", by these presents do hereby waive whatever right I have or may acquire in the future to proceed at law or in equity against the City of Wichita as to any building erected by me on the above-described lots that may be closer than Thirty-eight (38') Feet from the center line of Thirteenth Street, Wichita, Kansas, it being my specific intention to release the said City from any liability as to any building erected upon the said lots that may encroach upon the 38' set-back line on Thirteenth Street, as established by the Revised Zoning Ordinance, as of this date, and I do hereby release the said City from any liability that it may incur by reason of any future widening of Thirteenth Street as to the lots above-named to the 38' set-back line above-referred to.

Carl A Bell

Sworn to and subscribed before me this 21<sup>st</sup> day of  
December, 1949.

Geneva Morris  
Notary Public

(My commission expires: June 13, 1952)

POST-OFFICES ADDRESSES OF PROPERTY OWNERS LISTED ON THE  
ATTACHED CERTIFICATE OF TITLE

Below are the correct post office addresses of the owners of all property within 200 feet of the area in question, as far as the appellant has been able to obtain them.

| <u>NAME</u>                      | <u>ADDRESS</u>   |
|----------------------------------|--|
| 1. Carl A. Bell                  | 1400 North St. Francis Ave.  |
| 2. Floyd Cox                     | 626 E. 13th St.  |
| 3. Hugh S. & Edith Thogmartin    | 624 E. 13th St.  |
| 4. Carl E. Callaway              | 309 N. Broadview   |
| 5. Eloise M. McMurtry            | (This owner lives in Oklahoma; her father, Will Morris, Morris & Son, Realtors, manages her property for her and advises the appellant that notice should be sent to him rather than to Mrs. McMurtry) |
| 6. Nettie P. Bird                | 1415 N. Santa Fe   |
| 7. W. J. & Ruth Barnett          | 1413 N. Santa Fe   |
| 8. Alice G. Yates                |  |
| 9. V. W. & Nettie E. Nobles      | 1430 N. St. Francis Ave.   |
| 10. H. W. & Daisy Hull Smith     | 1517 S. Emporia St.  |
| 11. J. D. & Helen Walker         | 1414 N. St. Francis Ave.   |
| 12. Carl A. Bell                 | 1400 N. St. Francis Ave.   |
| 13. Floyd S. Matlock             | 2516 E. 13th St.   |
| 14. Lula J. Barnes               | (Mrs. Barnes is deceased; her son, Cecil F. Barnes, is executor of her estate and lives at 1403 N. St. Francis)  |
| 15. J. L. Noel                   | 1405 N. St. Francis Ave.   |
| 16. Ralph P. & Vivian R. Johnson | 1409 N. St. Francis Ave.   |
| 17. Hiram H. Godfrey             | 247 N. Volutsia  |
| 18. Dollie Baughman              | 3333 S. Broadway   |
| 19. Neil A. & C. Blanche Feller  | 111 W. 21st St.  |
| 20. Healzer Investment Co.       | 625 E. 13th St.  |
| 21. Alice Heldenbrand            | 1123 N. St. Francis Ave.   |
| 22. W. L. Gardner                | 1360 N. St. Francis Ave.   |
| 23. Phillips Petroleum Co.       | Div. Off., Petroleum Bldg.   |
| 24. Mary Heil                    | 1353 N. St. Francis Ave.   |
| 25. Charles M. Ayer              | 1355 N. St. Francis Ave.   |
| 26. Fannie Sanford               | 1515 N. Broadway   |