

BZA 2-66 - McBride and Dehmer Construction, Inc. requests appeal to allow contractor's storage yard on the west side of Woodland just south of 29th Street North

Rec'd

5450

ACTION

DATE

2-23-66

App

By COMMITTEE

M.A.P.C.

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

closed

R E S O L U T I O N N O. BZA 2-66

WHEREAS, McBride and Dehmer Construction, Inc., 2855 Woodland, Wichita, Kansas, pursuant to Section 2.12.590.1, Code of the City of Wichita, has appealed from the decision of the Superintendent of Central Inspection in that the Superintendent has interpreted Section 28.04.020 (Definitions), Code of the City of Wichita, to mean that a nonconforming use of land is only that tract, lot, or portion of a tract or lot in use at the time the nonconforming status is established and, further, the Superintendent of Central Inspection has interpreted Section 28.04.170 (Nonconforming Use Regulations), Code of the City of Wichita, to prohibit any expansion, enlargement, extension or reconstruction of a nonconforming use; and

WHEREAS, the appellant has had under lease for over ten years a tract of ground generally located on the west side of Woodland in an area just south of 29th Street North, and legally described as follows:

The south 4 acres of the north 8 acres of the east 15 acres of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 5, Township 27 South, Range 1 East, in the City of Wichita, Sedgwick County, Kansas, excepting therefrom the east 130 feet; and

WHEREAS, the appellant has utilized less than an acre of the above described tract until this time, but contends that although the lease agreement was oral, it was understood that the entire leased tract was intended for the use of a building materials storage yard; 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 February 23, 1966; and

WHEREAS, the Board determined that that portion of subject property which is not being used until this time is contingent to that portion which has heretofore been used for storage of construction materials and equipment, and is under one lease and one ownership.

NOW, THEREFORE, BE IT RESOLVED that the Board finds that the applicant is entitled to continue his nonconforming use of not only that portion heretofore being used, but the balance of the tract, said property being legally described as follows:

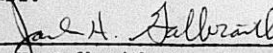
The south 4 acres of the north 8 acres of the east 15 acres of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 5, Township 27 South, Range 1 East, in the City of Wichita, Sedgwick County, Kansas, excepting therefrom the east 130 feet thereof.

DATED AT WICHITA, KANSAS, this 23rd day of February, 1966.



Harold Bauer, Chairman

ATTEST:



Jack H. Galbraith, Secretary

March 23, 1966

McBride and Dehmer Construction, Inc.
2855 Woodland
Wichita, Kansas

Gentlemen:

Re: BZA 2-66 - Appeal from the decision
of the Superintendent of Central
Inspection

We have completed the preparation of the Resolution adopted by the Board of Zoning Appeals in connection with the above numbered case, which was heard by the Board on February 23, 1966, which Resolution has been signed by the Chairman and Secretary.

As indicated in our letter of February 28, 1966, we are enclosing a copy of this Resolution for your information and files. A copy has also been provided the Central Inspection Division, and you may now obtain the appropriate permit from that Division with respect to your use of property located generally on the west side of Woodland in an area just south of 29th Street North.

Very truly yours,

Jack H. Galbraith
Secretary

JHG:ber

cc: Spencer L. Depew, Attorney
830 First National Bank Building

Glen Lytle, Superintendent
of Central Inspection

Ralph Eberly
City Clerk

February 28, 1966

McBride and Dehmer Construction, Inc.
2855 Woodland
Wichita, Kansas

Gentlemen:

Re: BZA 2-66 - Appeal from the decision of the Superintendent of Central Inspection

This is to advise you that at its regular meeting of February 23, 1966, the Board of Zoning Appeals of the City of Wichita considered your appeal from the decision of the Superintendent of Central Inspection, who had determined that the existing nonconforming storage of construction materials and equipment could not be expanded or enlarged on property generally located on the west side of Woodland in an area just south of 29th Street North.

The Board determined that the Superintendent of Central Inspection erred in his interpretation of the zoning ordinance, and that inasmuch as the area presently being used and that on which it is desired to expand is under one lease and the properties are contiguous, that the applicant is entitled to continue a nonconforming use on the entire tract.

A Resolution setting forth the official action of the Board will be prepared and forwarded to you as soon as possible. If you have any questions concerning this matter, please let us hear from you.

Very sincerely yours,

Jack H. Galbraith
Secretary

JHG:HW:bar

cc: Spencer L. Depew, Attorney
830 First National Bank Building

Glen Lytle, Superintendent of Central Inspection
Ralph Eberly, City Clerk

SECRETARY'S REPORT

CASE NO. RZA 2-66

APPLICANT: McBride and Dehmer Construction, Inc., 2855 Woodland

AGENT: Spencer L. Depew, 830 First National Bank Building

REQUEST: An appeal pursuant to Section 2.12.590, Code of the City of Wichita, appealing from decision of the Superintendent of Central Inspection, who has determined that the existing nonconforming storage of construction materials and equipment may not be expanded or enlarged.

ZONING: Existing and all surrounding zoning is "AA" - Single Family

LAND USE: Existing is a building materials and equipment storage yard, north is single family and livestock farm, south and east is single family and west is vacant and radio towers.

JURISDICTION: The Board has jurisdiction to consider the appeal under the provisions outlined in Section 2.12.590.1, Code of the City of Wichita.

COMMENTS BY THE SECRETARY

The applicant is appealing the decision of the Superintendent of Central Inspection who issued a cease and desist order of the expansion of a nonconforming land use.

Following is the appellant's statement of justification:

- A. A clear and accurate description of the proposed use: Contractors plant and storage yard, however, such use shall not exceed an additional three year period and no new improvements or permanent structures shall be erected upon the premises.
- B. The appellant believes that the order, decision and determination of the Superintendent of Central Inspection prohibiting the appellant from "expanding" its contractors storage yard is in error for the following reasons, to-wit:
 1. The property is unplatted, is in one ownership and has been under lease and available to the appellant for use as a contractors storage yard for in excess of ten years.

2. Appellant's use of the property in question is a proper and authorized nonconforming use pursuant to the zoning code.
3. Appellant's use of the property is not an expansion or enlargement of a nonconforming use as contemplated by the zoning code.
4. Appellant's use of the property has never been discontinued for a period of two years.
5. The entire tract in question should be considered as one "premises".

The nonconforming use regulations, Section 28.04.170 of the Code of the City of Wichita, are vague in that they do not specifically state whether a nonconforming use of land consists of the entire property under one ownership or control, or whether the nonconforming use of land pertains strictly to that area, lot, or portion of a lot or area in use at the time the nonconforming status is established. The said Section of the Ordinance is also vague concerning the expansion or enlargement of a nonconforming land use whereas it specifically states that structures may not be enlarged or expanded.

It is the interpretation of the Superintendent of Central Inspection, according to the definition of a nonconforming use, Section 28.04.020, Code of the City of Wichita, that a nonconforming use of land is only that tract, lot, or portion of a tract or lot in use at the time the nonconforming status was established; and further, in accordance with the nonconforming use regulations, Section 28.04.170 of the Code of the City of Wichita, that any expansion, enlargement, extension or reconstruction of the area is in violation of the Ordinance.

The definition of a nonconforming use as stated in Section 28.04.020 of the Code of the City of Wichita is as follows:

"Nonconforming Use. A building or premises legally occupied by a use that does not conform with the regulations of the district in which it is situated as established by this Chapter or any prior Zoning Ordinance."

The appellant has utilized less than an acre for his operation until this time, but has held a lease for about 3 acres for more than ten years. It is his contention that the entire 3 acre tract should

be considered as "one premises" and, therefore, the use should be able to encompass the entire tract.

The question is, what is considered to be a premises according to the definition of a nonconforming use. The definition states that a nonconforming use is a premises legally occupied by a use that does not conform with the regulations of the district in which it is situated. Therefore, according to the definition, the use of the land determines what is considered to be a premises in cases of nonconformity.

The point is that only a portion of this area was being utilized for the storage of building materials and equipment and, therefore, only that portion of the tract is a legal nonconforming use. The strict interpretation of the definition states that the premises must legally be occupied at the time the nonconforming status is established, or the premises cannot be classified as a nonconforming use. Nonconforming status is based on land use and when land is vacant it is difficult to designate it as a nonconforming use.

Based upon the assumption that the above interpretation is correct and that the ordinance has no provisions for the expansion of the nonconforming use of land, the legal nonconforming use is limited to the specific area originally designated as nonconforming. Generally, the courts have ruled in favor of restrictions upon the expansion, extension or enlargement of nonconforming uses and structures, based on the greater use of modern planning concepts and the intent of zoning to restrict and eventually eliminate nonconforming uses. The courts have further taken the approach that nonconforming uses may not be expanded, enlarged or extended as a matter of right and hence the maximum expansion, enlargement or extension legally possible is only that permitted by the provisions of the ordinance. The ordinance does not specifically state whether nonconforming land use may expand but does, however, state that nonconforming structures may not be expanded. Therefore, it is reasonable to assume that the intent of the ordinance is to not allow any expansion of nonconforming uses.

Recommendation

It is the opinion of the Secretary that the Superintendent of Central Inspection has correctly interpreted the ordinance in that the nonconforming use of land pertains to that tract, lot or portion of a tract or lot being used at the time the nonconforming status is established and that the ordinance does not indicate any method of expanding a nonconforming land use, therefore, it prohibits the expansion or enlargement.

It is the recommendation of the Secretary that this appeal not be granted.

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

February 1, 1966

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 2-66

An application has been filed by McBride and Dehmer Construction, Inc., 2855 Woodland, Wichita, Kansas, pursuant to Section 2.12.590, Code of the City of Wichita, appealing from the decision of the Superintendent of Central Inspection, who has issued an order for the applicant to cease storage of construction materials and equipment, whereas the applicant contends he has continued nonconforming use rights on property zoned "AA" One Family Dwelling District, and legally described as follows:

The south 4 acres of the north 8 acres of the east 15 acres of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 5, Township 27 South, Range 1 East, in the City of Wichita, Sedgwick County, Kansas, excepting therefrom the east 130 feet thereof, in the City of Wichita, Sedgwick County, Kansas, generally located on the west side of Woodland in an area south of 29th Street North.

This application has been assigned Case No. BZA 2-66, and will be considered by the Board of Zoning Appeals at its meeting on Wednesday, February 23, 1966, at 2 p.m. in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

21 Notices Mailed 2-1-66 + 7 to P.C.

3RD FLOOR - CITY HALL ANNEX - PHONE AM 2-8211
CITY OF WICHITA, KANSAS - CENTRAL INSPECTION DIVISION

2919 Woodland

CITY OF WICHITA, KANSAS - CENTRAL INSPECTION DIVISION
3RD FLOOR - CITY HALL ANNEX - PHONE AM 2-8211

Nº A 241

To Mr. Bigger & Johnson
Address 2919 Woodland 10-24, 1915

You are hereby notified that unpaid storage

located at _____ is in violation of
City Ordinance No. 28 Code Chapt. 15-11-110

and you are hereby ordered to remove all storage material and pay fines and costs of 10/24/15

This Notice Must Be Complied With On
or Before 1-1, 1915

GLEN E. LYTLE, Supt. Central Inspection

By Bill Keap
INSPECTOR

FORM 41-227 Refusing or neglecting to comply with this notice will be followed by prosecution.

BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPEAL FROM ORDER OR DECISION OF THE
SUPERINTENDENT OF CENTRAL INSPECTION

1. Name of Appellant McBride and Dehmer Construction, Inc. ✓

Mailing Address 2855 Woodland Wichita, Kansas Phone TE 8-1471

Name of Agent Spencer L. Depew ✓

Mailing Address 830 First National Bank Bldg. Phone AM 4-1376
Wichita, Kansas

Relationship of applicant to property is that of lessee
(owner, tenant, lessee, other).

II. The appellant herein appeals from a decision, determination or an order of the Superintendent of Central Inspection, as follows:

~~Order of the Superintendent directing the appellant to cease any further action toward the clearing of ground, the same to be used by the appellant for a contractor's storage yard.~~

for property located at 2855 Woodland Wichita, Kansas
South 4 acres of the North 8 acres of the East
and legally described as 15 acres of the NW/4 of the NW/4 of Sec. 5-
Twp. 27S - Range 1E, Sedgwick County, Kansas, excepting therefrom
the East 130 feet thereof

in the City of Wichita; and which is presently zoned AA. The decision was rendered November 24, 1965, and refers to Section 28.04.040, of the Code of the City of Wichita.

III. The appellant hereby declares that he has submitted ^{or will submit by} the following 1/31/66 required material, together with and as part of the appeal:

- A. A clear and accurate description of the proposed work or use.
- B. The order, requirement, decision or determination by the Superintendent of Central Inspection which the appellant believes to be in error, and the principal points supporting the appellant's allegation of errors;
- C. Specific reference to that section of the Zoning Ordinance under which it is claimed the permit should be issued;
- D. Drawings or plans for the proposed work or use in relation to the adjacent buildings and property;
- E. A certified listing from an abstract company of the names and current mailing addresses of owners of all property within a distance of 200 feet of the property affected by the appeal.

Applicant McBride and Dehmer Construction, Inc.

Authorized Agent By Spencer L. Depew
Spencer L. Depew

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals, _____ (a.m. - p.m.), _____, 19____, together with appropriate fee of \$50.00.

Signed _____

III.

A. A clear and accurate description of the proposed use:

Contractors plant and storage yard, however, such use shall not exceed an additional three year period and no new improvements or permanent structures shall be erected upon the premises.

B. The appellant believes that the order, decision and determination of the Superintendent of Central Inspection prohibiting the appellant from "expanding" its contractors storage yard is in error for the following reasons, to-wit:

1. The property is unplatted, is in one ownership and has been under lease and available to the appellant for use as a contractors storage yard for in excess of ten years.
2. Appellant's use of the property in question is a proper and authorized non-conforming use pursuant to the Zoning Code.
3. Appellant's use of the property is not an expansion or enlargement of a non-conforming use as contemplated by the Zoning Code.
4. Appellant's use of the property has never been discontinued for a period of two years.
5. The entire tract in question should be considered as one "premises".

C. N/A

D. To be furnished by January 31, 1966.

E. To be furnished by January 31, 1966.

OWNERSHIP LIST

LOT	BLOCK	ADDITION	PROPERTY OWNER
II	A	Toepke	✓ Herman Toepke Minnie Pearl Toepke 2948 Salina
6	-	Mileen Acres	"
7		"	"
8		"	"
9		"	"
10		"	✓ Harry Newsum Anna B. Newsum 2910 Salina
5 S 75' W 160' ex W 10'		Gould Gardens	✓ Robert Ray Nelson Lula Marie Nelson 2928 Woodland
6 W 296' S 75'		"	✓ Melvin E. Meyer Lillian J. Meyer 2900 Woodland
6 N 75' S 150' W 296'		"	✓ Ed Powell Gertrude Powell 2906 Woodland
6 N 75' S 225' W 296'		"	✓ Lloyd R. Kalp Constance L. Kalp 4812 N. Seneca
6 W 296' ex S 225'		"	✓ Michael Mohr <i>2924 Woodland</i> Clara Mohr Address Unknown
7 N 73 3/5' W 296'		"	<i>no address found</i> ✓ Ramona Grace Caster Address Unknown
7 S 73 3/5' W 296'		"	✓ Fred E. Bell Doris A. Bell 2848 Woodland
Beg 73 3/5' N of SW/c Lot 7 th N 73 3/5' th E 305' th S 73 3/5' th W to pob.		"	✓ Lester A. Holloway Thelma A. Holloway 9816 Hickory Lane
7 S 73 3/5' N 147 1/5' W 296' ex W 10'		"	✓ C. W. Bragg Co. Inc. 1743 N. Broadway
7 W 296' ex N 147 1/5' & ex S 147 1/5'		"	✓ Glen L. Orr Beula B. Orr 2860 Woodland

Continued -2-

S 100' of N 939.49' of E 15 acres
of Govt. Lot 4, 5-27-1E

✓ Raymond A. Bagshaw
Orill T. Bagshaw
2849 Woodland

N 55' of E 15 Acres Govt. Lot 4,
5-27-1E ex N 939.49'

"

Beg 336' W of NE/c Govt. Lot 4,
5-27-1E; th S 427' th W to W ln
E 15 Acres Govt. Lot 4; th N
427'; th E to beg.

✓ Lee Whitney
Carlene Whitney
3558 Fairview

S 4 Acres of N 8 Acres of E 15
Acres of NW $\frac{1}{4}$ NW $\frac{1}{4}$ 5-27-1E

✓ Don N. Young
2107 N. Riverside Blvd.

S 163 $\frac{1}{2}$ ' of Beg 30' W of NE/c
Govt. Lot 4, 5-27-1E; th S
parl with E ln of Govt. Lot 4
427'; th W 178 $\frac{1}{2}$ '; th N 427';
th E 178 $\frac{1}{2}$ ' to beg.

✓ E. C. Riley
c/o Ed E. Peterson
2929 Woodland

S 55' N 110' E 15 Acres Govt Lot
4, 5-27-1E, ex N 999.49'

✓ Chester Lervold
Thelma Lervold
2847 Woodland

Govt. Lot 4, 5-27-1E ex E 15 Acres
and ex N 670'

✓ Wichita Beacon Broadcasting Co.
Inc.
2829 Salina

Beg 208 $\frac{1}{2}$ ' W NE/c of Govt. Lot 4,
5-27-1E; th S 427'; th W 127 $\frac{1}{2}$ ';
th N 427'; th E 127 $\frac{1}{2}$ ' to beg.

✓ Gage W. Lee
Esther E. Lee
931 W 29th St. No.

Beg 30' W of NE/c of Govt. Lot 4,
5-27-1E; th S parl with E ln of
Govt. Lot 4, 427'; th W 178 $\frac{1}{2}$ ' th
N 427' E 178 $\frac{1}{2}$ ' to beg ex S 163 $\frac{1}{2}$ '

✓ Fred R. Kaltenback
901 W 29th St. No.

We, The Security Abstract and Title Co., Inc., hereby certifies the foregoing to be a true and correct List of Property Owners within a two hundred foot radius of the South 4 Acres of the North 8 Acres of the East 15 Acres of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 5, Township 28 South, Range 1 East of the 6th P. M., Sedgwick County, Kansas, except the East 130 feet thereof, as shown by the records in the office of the Register of Deeds of said County of this the 27th day of January, A. D., 1966 at 7:00 A. M.

THE SECURITY ABSTRACT AND TITLE CO., INC.

By

Roger N. Bell

Vice President

Order No. 132604

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
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<i>B.Z. Application</i>	<i>50⁰⁰</i>
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Name

McKriden & Dehmer Const. Co.

Address

2855 Woodland

Type

Due Date

1-27-66

Comments:

R-712

Date

1-27-66

By

B. P. Pankes

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 1