

SEA 13-65 - Dr. Harold Litwiler re-
quests variance to permit doctor's
office in "E" at the NE corner of
Hydraulic and Mildred

F-6

Pass 100

9-6-65

ACTION

DATE

4-27-65

Bya COMMITTEE Aggr

M.A.P.C.

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

May 10, 1965

Dr. Harold R. Litwiller
845 George Washington Boulevard
Wichita, Kansas

Dear Dr. Litwiller:

Re: Case No. BZA 13-65

On April 29, 1965, we advised you that the Board of Zoning Appeals had approved subject application for a variance to permit a doctor's office to be located in the Light Industrial zoning, on property generally located at the northeast corner of Hydraulic and Mildred.

We also advised that the Board's decision might be appealed to the City Commission provided that such appeal was filed on or before May 7, 1965. The City Clerk has advised that no appeal was filed, and the decision of the Board is, therefore, final.

A copy of the Resolution setting forth the action of the Board is attached for your information and files.

Very truly yours,

James W. Howe
Assistant Secretary

JWH:ber
Attachment

cc: Glen Lytle, Superintendent
of Central Inspection

R E S O L U T I O N N O . B Z A 1 3 - 6 5

WHEREAS, Dr. Harold R. Litwiller, 845 George Washington Boulevard, Wichita, Kansas, pursuant to Section 2.12.590.2, Code of the City of Wichita, has requested a variance to permit the location of a doctor's office on property zoned "E" Light Industrial and legally described as follows:

The south 51 feet of Lots 10 and 11 and the south 51 feet of the west 15 feet of Lot 12, on Mildred Avenue, Boulevard Addition to Wichita, Sedgwick County, Kansas.

Generally located at the northeast corner of Hydraulic and Mildred; 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, on April 27, 1965, considered said application; and

WHEREAS, the Board of Zoning Appeals determined that it had proper jurisdiction to consider said request for an Exception under the provisions of Section 2.12.590.2, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has determined that the variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district inasmuch as it is located in an area of mixed uses which may have been prematurely zoned Light Industrial; and further, several years ago an attempt was made to amend the zoning ordinance to permit doctor and dentist offices as a use first permitted in the "BB" Office District Classification, in which case the proposed location of the doctor's office would be permitted, since the "E" Light Industrial District excludes only those uses first permitted in the "AA", "A", "RB" and "B" Districts; and

WHEREAS, the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents, inasmuch as none appeared in opposition; and

WHEREAS, the strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal, in that it appears the real intent of the ordinance at the time it was amended was not to exclude doctors' and dentists' offices from the "E" district; and

WHEREAS, the variance desired will not adversely affect the public interest, health, safety, morals, order, convenience, prosperity or general welfare; and

WHEREAS, each of the four conditions required by Section 2.12.590.2, 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 the variance requested be granted as follows:

The doctor's office shall be constructed in accordance with standards and specifications of the Central Inspection Division of the Department of Public Works, and in accordance with the off-street parking requirements enumerated under Section 28.04.140, Code of the City of Wichita, and all other applicable provisions of the City Code.

ADOPTED AT WICHITA, KANSAS, this 27th day of April, 1965.

Harold Bauer
Harold Bauer, Chairman

ATTEST:

James W. Howe
James W. Howe
Assistant Secretary

April 29, 1965

Dr. Harold R. Litwiller
845 George Washington Boulevard
Wichita, Kansas

Dear Dr. Litwiller:

Re: Case No. BZA 13-65

This is to advise you that at its regular meeting of April 27, 1965, the Board of Zoning Appeals of the City of Wichita considered your request for a variance to permit a doctor's office to be located in the "E" Light Industrial zoning district, on property generally located at the northeast corner of Hydraulic and Mildred.

It was the decision of the Board to approve the request as follows:

The doctor's office shall be constructed in accordance with standards and specifications of the Central Inspection Division of the Department of Public Works and in accordance with the off-street parking requirements enumerated under Section 28.04.140, Code of the City of Wichita, and all other applicable provisions of the City Code.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the Board of City Commissioners within ten days of the date of the Board's action. Accordingly, an appeal could be filed in this case on or before May 7, 1965.

Subsequent to the expiration of the appeal period, you will be advised whether or not an appeal has been filed. If no appeal has been filed on or before May 7, 1965, the decision of the Board

Page 2 - Dr. Harold R. Litwiller
April 29, 1965

will be final and the Superintendent of Central Inspection will
be in a position to issue the appropriate permit.

Very truly yours,

James W. Howe
Assistant Secretary

JWH:ber

cc: Glen Lytle, Superintendent
of Central Inspection

Robert G. Finch
City Clerk

SECRETARY'S REPORT

CASE NO. BZA 13-65

APPLICANT: Dr. Harold L. Litwiller, 845 George Washington Boulevard

LOCATION: Northeast corner of Hydraulic and Mildred

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to permit a doctor's office to be located in the "E" Light Industrial District.

ZONING: Property in question and all surrounding property is "E" Light Industrial zoning.

LAND USE: Property in question is occupied by a doctor's office. To the north is single family, east is single family and building yard, south is general business, and west is single family and duplexes.

JURISDICTION

The Board has jurisdiction to consider this request under the provisions outlined in Section 2.12.590.2, Code of the City of Wichita, and may grant the variance when all four of the following conditions are found to exist:

1. That the variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district.
2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal.
4. That the variance desired will not adversely affect the public interest, health, safety, morals, order, convenience, prosperity or general welfare.

COMMENTS BY THE SECRETARY

The applicant has indicated in his statement of justification that he purchased this property with the understanding that a doctor's office could be located in the "E" Light Industrial district. He further indicates that the real estate company from whom he purchased the property told him at the time of the purchase that a doctor's

office could be located in the "E" Light Industrial district. According to the applicant, the real estate agent had advised him that they had checked out the matter thoroughly prior to the time they sold the property, and were advised that the "E" zoning would allow the construction of a doctor's office.

Under Section 28.04.120 of the "E" Light Industrial district regulations, it is provided that "under no circumstances shall the following uses be permitted even though allowed in the "B" district:

- B. Those uses first permitted in the "AA", "A", "RB", "B", or "G" zoning districts."

Since doctors' offices and dental clinics are uses first permitted in the "B" Multiple family district, they are, therefore, a use which is now excluded from the "E" Light Industrial district.

It is further indicated in the statement of justification that the applicant, after purchasing the property, removed the residential improvements located thereon and applied to the City for a building permit to construct a doctor's office. The request for the building permit was denied on the grounds that the zoning did not allow construction of a doctor's office in that the property was located in the "E" Light Industrial district.

UNIQUENESS

It is the opinion of the Secretary that this request is not unique because of the fact that there was misrepresentation on the part of the real estate agent at the time this property was sold, because the applicant would have recourse through the Courts on matters of this nature.

This property is located within an area where there are mixed uses. North of this property is single family, east is single family and a building yard; to the south is a general business, and to the west is a mixture of single family and duplexes. This may be somewhat unique inasmuch as it is the opinion of the Secretary that this area could have been prematurely zoned. On the other hand, there was an attempt several years ago to amend the "B" Multiple family district to take out doctors' offices and dental clinics and list them as a use first permitted in the "BB" Office District classification. If this amendment had been approved, then there would have been no problem in constructing a doctor's office on this property. So, from this standpoint, the request may be somewhat unique.

ADJACENT PROPERTY

It is the opinion of the Secretary that the granting of the variance should in no way adversely affect adjacent property owners.

HARDSHIP

It is rather apparent that the applicant has suffered a hardship in this instance, but on the other hand, the question arises as to whether or not the applicant has suffered a hardship which should be alleviated by the Board of Zoning Appeals. It is the opinion of the Secretary that the Board should be very careful not to set a precedent to alleviate hardships which have been suffered by property owners when there has been misrepresentation on the part of real estate agents. These property owners always have recourse through the Courts and it is the opinion of the Secretary that this is the way in which matters of this kind should be handled.

On the other hand, the real hardship, in the Secretary's opinion, results from the fact that it doesn't appear that the real intent of the ordinance at the time it was amended was to exclude doctors' and dentists' offices from the "E" district.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance should in no way adversely affect the public interest.

RECOMMENDATION

Based upon the foregoing comments, it is the opinion of the Secretary that all four conditions necessary to the granting of a variance can be found to exist and, therefore, it is recommended that the variance be granted, subject to the following conditions:

1. The doctor's office shall be constructed in accordance with standards and specifications of the Central Inspection Division of the Superintendent of Public Works and in accordance with the off-street parking requirements enumerated under Section 28.04.140, Code of the City of Wichita, and all other applicable provisions of the City Code.

SECRETARY'S REPORT

CASE NO. BZA 13-65

APPLICANT: Dr. Harold L. Litwiller, 845 George Washington Boulevard

LOCATION: Northeast corner of Hydraulic and Mildred

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to permit a doctor's office to be located in the "E" Light Industrial District.

ZONING: Property in question and all surrounding property is "E" Light Industrial zoning.

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Page 2 - Secretary's Report
Case No. BZA 13-65

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It is further indicated in the statement of justification that the applicant, after purchasing the property, removed the residential improvements located thereon and applied to the City for a building permit to construct a doctor's office. The request for the building permit was denied on the grounds that the zoning did not allow construction of a doctor's office in that the property was located in the "E" Light Industrial district.

UNIQUENESS

It is the opinion of the Secretary that this request is not unique because of the fact that there was misrepresentation on the part of the real estate agent at the time this property was sold, because the applicant would have recourse through the Courts on matters of this nature.

This property is located within an area where there are mixed uses. North of this property is single family, east is single family and a building yard; to the south is a general business, and to the west is a mixture of single family and duplexes. This may be somewhat unique inasmuch as it is the opinion of the Secretary that this area could have been prematurely zoned. On the other hand, there was an attempt several years ago to amend the "B" Multiple family district to take out doctors' offices and dental clinics and list them as a use first permitted in the "BB" Office District classification. If this amendment had been approved, then there would have been no problem in constructing a doctor's office on this property. So, from this standpoint, the request may be somewhat unique.

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Page 3 - Secretary's Report
Case No. BZA 13-65

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On the other hand, the real hardship, in the Secretary's opinion, results from the fact that it doesn't appear that the real intent of the ordinance at the time it was amended was to exclude doctors' and dentists' offices from the "E" district.

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1. The doctor's office shall be constructed in accordance with standards and specifications of the Central Inspection Division of the Superintendent of Public Works and in accordance with the off-street parking requirements enumerated under Section 28.04.140, Code of the City of Wichita, and all other applicable provisions of the City Code.

Wichita, Kansas
April 14, 1965

Board of Zoning Appeals
City Annex Building
Wichita, Kansas

Gentlemen:

As requested, I wish to submit certain information concerning my request for a variance on the zoning affecting my property at 230-232 North Hydraulic, Wichita, Kansas, described as

The South 51 feet of Lots 10 and 11,
and the South 51 feet of the West 15
feet of Lot 12, on Mildred Avenue,
in Boulevard Addition to Wichita,
Sedgwick County, Kansas.

I have been an active Chiropractor in the City of Wichita for several years, and desire to construct on this property an office building for the practice of my profession. The property was sold to me by Mr. and Mrs. Philip Farha, and Don Dinning Real Estate Company represented to me that the property was properly zoned for a doctor's office and that I could utilize the property for that purpose.

After purchasing the property I removed the residential improvements which were located on it and applied to the City for a building permit to construct my office. This was denied on the grounds that the zoning did not allow the construction of a doctor's office in that the property carries "E" zoning. Prior to discovering this I sold the property where I have my present office and it is necessary that I move my office in the very near future. Since filing the application for a variance I have made arrangements to buy additional property adjoining the above-described property, which will provide me with ample parking facilities.

Board of Zoning Appeals
April 14, 1965
Page two

The variance which I am requesting, which will allow me to construct a doctor's office, arose due to the misrepresentation by the real estate agent at the time I purchased the property. I was also advised that the real estate agent had thoroughly checked the matter and that the zoning would allow the construction of a doctor's office.

It is my opinion that the granting of a variance for the construction of a doctor's office will not adversely affect the rights of adjacent property owners, but will in fact benefit them in that the construction of a doctor's office will be a higher and better use of the property than that which is ordinarily utilized under "E" zoning.

If I cannot construct a doctor's office, then I will be forced to sell the property and locate elsewhere, which will result in my having to close my office for a period of several months. This, of course, would result in a tremendous financial and professional hardship to me.

The construction of a doctor's office will not adversely affect adjacent property owners or the public. I ask sincerely that the Board give my request for a variance every consideration.

Respectfully submitted,

Harold Litwiller

Harold Litwiller

HL:mg

CASE NO. BZA 13-65

16 NOTICES MAILED APRIL 8, 1965

MEETING APRIL 27, 1965

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

April 8, 1965

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 13-65

An application has been filed by Dr. Harold R. Litwiler, 645 George Washington Boulevard, Wichita, Kansas, pursuant to Section 2.12.590.2, Code of the City of Wichita, requesting a Variance from Section 28.04.120, Code of the City of Wichita, to permit a doctor's office to be located in the "E" Light Industrial District, on property legally described as follows:

South 51 feet of Lots 10 and 11 and south 51 feet of the west 15 feet of Lot 12, Mildred Avenue, in Boulevard Addition, in the City of Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of Hydraulic and Mildred.

This application has been assigned Case No. BZA 13-65, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 27, 1965, 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

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

April 8, 1965

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Jack H. Galbraith
Secretary

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

April 8, 1965

NOTICE TO ADJOINING PROPERTY OWNERS

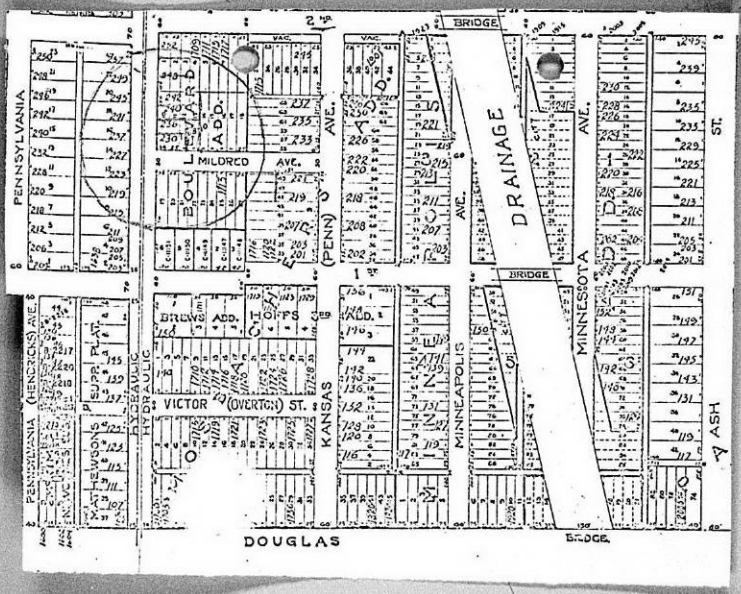
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Jack H. Galbraith
Secretary



BOARD OF ZONING APPEALS

CASE NO. _____

CITY OF WICHITA, KANSAS

FILED _____

APPLICATION FOR VARIANCE

1. Name of Applicant Dr. Harold R. Litwiller

Mailing Address 845 Geo. Washington Blvd. Phone AM 56681

Name of Authorized Agent Same

Mailing Address Same Phone Same

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

II. The variance requested is For a Doctors office ^{in an} (E)
Light Industrial ^{District}

for property located 230 N. Hydraulic

and legally described as: The south 51 feet of lots 10 and 11 and the south 51 feet of the west 15 feet of lot 12, on Mildred Avenue, in Boulevard Addition to Wichita, Sedgwick County, Kansas.

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

(Give metes and bounds description below if appropriate).

III. The applicant herein, or his authorized agent, acknowledges:

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- c. That he has been advised of his right to appeal of the decision of the Board to the City Commission within ten (10) days of that decision;
- d. That all documents are attached hereto as noted in paragraphs 3 and 4 of the instructions.

Dr. Harold Litwiller

Dr. Harold R. Litwiller
Applicant

Same

Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals,
12:35 (a.m. - (p.m.)), 4-5, 1965, together with appropriate fee of \$50.00.

T9-402

Signed

Mrs. Arney
Signed JNR


STATEMENT OF RECORD OWNERSHIP

STATE OF KANSAS)
)
SEDGWICK COUNTY)

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

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

Property lying within a radius of 200 ft of:
South 51 ft of Lots 10 & 11 and South 51 ft
of West 15 ft of Lot 12, Mildred Avenue, in
Boulevard Addition, Wichita, Kansas.


Fidelity
Title
Company,
inc.

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

N 50 ft of Lots 1, 2 & 3, Second Street,
Boulevard Addition.

✓ Kenneth E. Guy
114 E Second St.

S 46 ft of Lots 1, 2 & 3, Second Street,
Boulevard Addition.

✓ Irvin & Virginia Nixon, ux
Harold & Annzo Kingsley, ux
2458 S. Minneapolis

N 60 ft of S 106 ft of Lots 1, 2 & 3,
Second Street, Boulevard Addition.

✓ Chris T. & Linnie Robertson, ux
252 N. Hydraulic

Lot 4, Second Street, Boulevard Add.

✓ Russ & Alice Prater, ux
% Alice P. Carnahan,
5410 E. 3rd St.



Lots 5 & 6, Second St., Boulevard Addition.

✓ Floyd D. & Marie J. DeWitt, ux
3325 S. Oak

Lots 7, 8 & 9, Second St., Boulevard Addition.

✓ Harry F. & Cecil B. Dobson, ux
1711 E. 2nd St.

N 35 ft of Lots 10, 11, 12, 13, Mildred Ave.,
Boulevard Addition.

✓ Fern Old
✓ 242 N. Hydraulic

S 35 ft of N 70 ft. of Lots 10, 11, 12 & 13,
Mildred Ave., Boulevard Addition.

✓ Fred I. & Juanita F. Bowers, ux
1912 N. Richmond

N 35 ft of S 86 ft of Lots 10, & 11 &
N 35 ft of W 15 ft of S 86 ft of Lot
12, on Mildred Ave., Boulevard Add.

✓ I. D. Long
2036 Elpyco

S 51 ft of Lots 10 & 11 & S 51 ft of W
15 ft of Lot 12, Mildred Ave., Boulevard
Addition.

✓ Harold Litwiller
845 George Washington Blvd.

S 86 ft of Lot 13 & S 86 ft of E 10 ft
of Lot 12, Mildred Ave., Boulevard Add.

✓ R. D. & Mary Louise Mundell, ux
3401 Chrystal Drive

Lots 14, 15, 16, 17 & 18, Mildred Ave.,
Boulevard Addition.

✓ Harry F. & Cecil Dobson, ux
1717 E 2nd St.

Lots 19, 20, 21, 22, 23, Mildred Ave.,
Boulevard Addition.

✓ C. S. Ward & J. C. Dunlap
222 N. Hydraulic

Lots 24 & 25, Mildred Ave., Boulevard Add.

✓ Commercial Properties, Inc.
222 N. Hydraulic

Lots 26 & 27, Mildred Ave., Boulevard Add.

✓ Mildred Bender & Bethine Cox
Life Est: Mildred E. Converse
1717½ Mildred Ave.

Lot 22, Second Street, Mosbacher's Add.

✓ C. R. Wellborn & Emma C. Wellborn, ux
350 S. Erie

W 91 ft of Lots 43, 45, 47 & 49, Kansas Ave.,
& S 5.72 ft of Lot 51, Kansas Ave., Mosbacher's
Addition.

✓ Commercial Properties, Inc.
2937 S. Kansas

Lots 57 & 59 exc E 100 ft and N 19.28 ft of
Lot 55, exc E 100 ft., Kansas Ave., Mosbacher's
Addition.

✍ C. R. & Emma C. Wellborn, ux
350 S. Erie

W 91 ft of Lots 61, 63 & 65, Kansas Ave.,
Mosbacher's Addition.

✍ G. R. Wellborn
350 S. Erie

Dated at Wichita, Kansas this 2nd day
of April, 1965 at 7:00 A. M.

FIDELITY TITLE COMPANY, INC.

By Eric M. Farrell Sec. OEM

67279

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.	Pibg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION AMOUNT

Variance

50.00

Name *Dr H B Litzeler*

Address *845 Geo Wash Blvd*

Type *712* Due Date

Comments:

Date *4-5-65* By *Wm H. ...*

*

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

Roll # 1