

erally located at the northwest corner
of Thurman Street and Tyler Road,

subject to the following conditions:

1. The center shall comply with all licensing requirements of the Kansas State Department of Health, including all building and fire safety regulations of the State of Kansas and the City of Wichita.
2. The Department of Community Health shall determine the maximum number of children to be permitted in the center.
3. Outdoor play shall be limited to the hours between 7:30 a.m. and 6:30 p.m. when any part of the fenced play area is within 100 feet of any occupied residence.
4. One off-street parking space shall be provided on the premises for each teacher and employee plus one off-street parking space for each vehicle used in the operation of the child care center.
5. When the capacity of the child care center exceeds twelve, one off-street loading space shall be provided for each ten children or major fraction thereof.

ADOPTED AT WICHITA, KANSAS, this 22nd day of March, 1977.

Ewald Behnke, Chairman

ATTEST:

Jack H. Galbraith, Secretary

6. Case No. BZA 6-77 - Martin K. Eby Construction Company, Inc., 610 North Main, Wichita, Kansas, pursuant to Section 2.12.590. B, Code of the City of Wichita, requests a variance to reduce the number of required off-street parking spaces from 387 spaces to 254 spaces; and to reduce the required front yard setback from 20 feet to 0 feet and the required side yard setback from 5 feet to 0 feet for off-street parking purposes only for that portion of the application area located at the northwest corner of Market and Pine Streets, all on property zoned the "B" Multiple Dwelling District, "LC" Light Commercial District and "C" Commercial District, and legally described as follows:

Even numbered lots 34 through 60 on Main Street,
the N 1/2 of Lot 35 and all odd numbered lots
37 through 47 and odd numbered lots 57 through
63 on Market Street, and lots 38, 40 and all

even numbered lots 48 through 56 on Market Street, all in Munger's original Town, Sedgwick County, Kansas. Generally located in an area bordered on the south by Elm Street, on the west by Main Street, on the north by Pine Street, on the east by Market Street and also the northwest and southeast corners of Market and Pine Streets.

GALBRAITH showed the slide of the application area and reviewed the following comments from the Secretary's Report:

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five of the following conditions are found to exist:

1. That the variance requested 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.
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 provisions of Title 28 of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
5. That granting the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance).

COMMENTS BY THE SECRETARY:

This request is for a variance to reduce the required number of off-street parking spaces from 387 spaces to 254 spaces associated with the construction of a new corporate headquarters facility for the Martin K. Eby Construction Company. To provide 254 spaces, the applicants also need and are requesting a variance of 20 foot front yard and 5 foot sideyard down to 0 feet for off-street parking purposes only at the northwest corner of Pine and Market Streets.

On August 24, 1976, the Board of Zoning Appeals considered a similar request by this applicant (BZA 31-76) to reduce the re-

quired number of off-street parking spaces from 387 spaces to 141 spaces. It was the action of the Board to approve the variance, on a temporary basis, as long as the 3rd, 4th and 5th floors of the new 5 story building remained unfinished and unoccupied. (Attached for your review is an excerpt of the August 24, 1976 minutes concerning this previous case). Since that meeting the applicants have acquired three separate parcels of additional land sufficient for an increase of 113 parking spaces, bringing the total number of spaces they can provide to 254 spaces.

Some of the questions that were raised at the previous meeting included: how many employees ride to work with people who park elsewhere; how many are in carpools; how many ride the bus (or have other means of arriving at work than by driving a personal automobile). Other information which would seem helpful to the Board would be: how much work station space is designed for the new structure and how much is in the existing building (how many people are both buildings designed to accommodate at capacity?); what are the employment projections for the company over the next several years; what are the plans for utilization of the existing building, will it be utilized by Eby, sold, or torn down. The applicant has submitted statements in support of both variance requests and these are attached for your review. The applicants will hopefully have additional information to present at the meeting which will provide answers to these and other questions.

As mentioned, a variance is also requested for that portion of the application area located at the northwest corner of Market and Pine Streets, to permit the full utilization of the property for off-street parking. The property is zoned the "B" Multiple Family Dwelling District which does not permit the 20 foot front yard setback or the 5 foot side yard setback adjacent to Pine Street to be paved for parking. North of subject property is other "B" zoned property which contains a badly deteriorated single family home, while all other surrounding properties are zoned the "LC" or "C" districts which permit parking to the property lines. If this request is not approved, the total number of spaces that could be provided would be reduced by approximately 17 spaces.

UNIQUENESS:

It is the opinion of the Secretary that it is difficult to determine that a unique situation exists for the reduction of 133 quired off-street parking spaces based on the information now available, however, uniqueness may exist if the applicants can answer the questions raised, to show that 254 spaces will adequately serve the existing and future parking needs of the two buildings involved.

It is the opinion of the Secretary that the request to reduce the front and side yard setbacks at the N/W corner of Pine and Market may be a unique situation inasmuch as the only adjacent property that is not zoned to permit parking in the setback areas is the property to the north which, due to the condition of the existing residence thereon and the surrounding land uses, could

be expected to redevelop as parking, or with a change of zoning to some office or commercial use.

ADJACENT PROPERTY:

It is the opinion of the Secretary that the granting of the variance to reduce the number of required off-street parking spaces would not have an adverse affect on adjacent property owners if it can reasonably be determined that 254 parking spaces will provide a minimum ratio of 1 space for each employee working in both buildings.

It is the opinion of the Secretary that the setback variance for off-street parking would not adversely affect adjacent property owners due to existing and expected future land use and zoning in the area which permits parking to the property line.

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 applicants if they are required to provide a surplus of parking which is not needed to serve the needs of these buildings.

It is the opinion of the Secretary that a hardship may also exist if the applicants are not permitted to utilize the full potential of the land they do own for off-street parking purposes.

PUBLIC INTEREST:

It is the opinion of the Secretary that the public interest would not be adversely affected by the reduction of the required number of off-street parking spaces as long as sufficient parking is provided to meet the parking needs generated by these buildings.

It is the opinion of the Secretary that the granting of the variance to reduce the side yard and front yard setbacks for parking would not adversely affect the public interest.

SPIRIT AND INTENT:

It is the opinion of the Secretary that it is difficult to determine that the granting of the requested variance of off-street parking spaces would not be opposed to the general spirit and intent of the zoning ordinance, but that if the above four conditions could be found to exist it would not be opposed to the general spirit and intent.

It is the opinion of the Secretary that the granting of the setback variance for parking would not be opposed to the general spirit and intent of the ordinance inasmuch as this neighborhood is in the process of transition from a residential neighborhood to an office and commercial area, where the requested variance will not conflict with existing and future land uses.

RECOMMENDATION:

As in the discussion of the above five conditions, it is difficult for the Secretary to recommend that the variance to reduce the number of required off-street parking spaces from 387 to 254 spaces be granted. This is not to say that evidence could not be presented to support a 113 space reduction in parking, but rather the information supplied thus far does not, in the opinion of the Secretary, meet the five conditions necessary to the granting of a variance.

It is the opinion of the Secretary that the five conditions necessary to the granting of a variance can be found to reduce the required front yard setback from 20 feet to 0 feet and the south side yard setback from 5 feet to 0 feet for off-street parking purposes at the northwest corner of Pine and Market Streets. Therefore, it is recommended that this part of the variance request be granted.

GALBRAITH advised the Board that as pointed out in the Secretary's Report, the main concern of the staff was the amount of reduction requested because 133 parking spaces seemed to be a tremendous percentage of the total required parking.

JESS MYERS, representing Eby Construction Company, introduced Jim Greer, III, and Warner Moore, who would be assisting him in the presentation.

MYERS reviewed the variance case which had been before the Board in August, 1976, and advised the Board that since that time, the Company had been able to purchase additional land to be used for parking lots. This newly purchased land included the house that had been situated on the lot previously owned by the Company, as well as land directly across the street to the east. While this purchase had not enabled them to increase their parking area substantially, they had found it to be very costly. They had paid \$140,000 for the land which averaged out to \$675.00 per front foot on Market Street; yet, in the purchase of the land, they had picked up only 113 parking spaces. MYERS went on to estimate that approximately \$200,000 would be spent in bringing this land up to the specifications to be used for parking lots.

MYERS said he was informing the Board of this so they could see that the Company had made a sincere effort to meet the requirements of the Board, but they were beginning to feel land-locked, and still were unable to meet the full requirements for off-street parking.

Using color charts, MYERS described the useable work space in the building, common areas (reception rooms, halls, restrooms, stairwells, storerooms, etc.). He also pointed out some areas that could, if the need arose, be converted to work stations.

MYERS then discussed the requirement that the Company provide one parking space for each 250 square foot of space. He indicated this requirement might be a bit out of line in the particular instance of Eby because their walls were 19" thick in most places, and that added up to 7,681 square feet, and felt the Company was being asked to provide 31 parking spaces for the wall.

X GALBRAITH and COLE both reminded Myers that all buildings have to meet the parking requirements based on the square footage of their buildings and this specification has to be computed in some way. COLE asked Myers if he was suggesting that there was more common area in their building, or that the walls were thicker than the average building, or was the Company providing more restrooms. He asked Myers if the point he was making was that Eby was using their building differently than most buildings were ordinarily used, and MYERS replied yes, that was his point. He explained there was more unuseable space in their building, and felt this was because of the architectural design they had selected but, he commented, they had chosen this particular style because they wanted something that would look nice from the outside, and they also had in mind conserving energy on the inside.

MYERS returned to the discussion of the layout of the building and again discussed the matter of unuseable space of stairwells, elevator shafts, lunch rooms, conference room, etc., and X GALBRAITH advised him that all buildings have these requirements and do have their parking spaces computed in the manner compared with the square footage of their building.

COLE suggested to Galbraith that Myers was trying to point out that they did have a very thick wall because 19" was certainly thicker than most walls.

MYERS agreed that was his position, but he did not want to belabor the point, but was just mentioning these various factors so that the Board might better understand the problems of the Company.

MYERS then turned his attention to questions which had been raised in the staff report concerning employment projections. He said when he came before the Board in August, the Company had 95 employees and at the present time they have 103 employees in the office facility on North Main. He also reminded the Board that in August they had 141 parking spaces, and at the present time the Company has 254 parking spaces projected to serve 103 employees.

MYERS also discussed the methods of transportation used by Eby employees, and it was determined that several employees ride in car pools and did not require parking spaces; others ride to work with people who park elsewhere and not at the Company; some are brought to work by spouses who drop them off and are gone the rest of the day; and some use public transportation. He also advised the Board that the Company has employed people who work part time - some in the mornings and others in the afternoon, and as a result of that, the Company is able to pick up about two parking spaces in the afternoon. He informed the Board that the Company's work is spread over several states and this requires the management people to be away from the office, and there was difficulty in determining the amount of parking needed for these people, however, some space had to be reserved for them because they do work out of the office at 610 North Main.

Summarizing the employees who used public transportation, car pools, or had other rides to work, roving supervisors, and part-time help, as well as people who were away on vacations or other matters, MYERS estimated that 19 spaces would not be needed on a daily basis in relationship to their 103 employees, and therefore concluded that the requested variance from 387 parking spaces to 254 spaces was justified because at the present time, the Company had 89 assigned parking stalls to serve 103 employees.

JIM GREER, III, spoke next on behalf of the applicant. He advised the Board that the Company had been in business for 40 years in Wichita. They projected their growth through 1985 to be 165 employees. Therefore, with the number of employees they had in relation to the number of parking spaces they had, the Company felt they were adequately covered as far as parking was concerned. He assured the Board that the Company was well aware, after 40 years of business, that they did have an obligation to meet the requirements, and they also felt in order to obtain the best type of employees, it was necessary for the Company to provide parking spaces. He said he felt their projections showed that they would not need the parking spaces as required by the Board.

In response to inquiries from the Board, GREER told the Board that the Company would anticipate 60 or 65 employees working in the old building, and that would give them in the range of 225 to 230 employees projected for both buildings.

WARNER MOORE, spoke for the applicant, and reviewed the history of the Company as follows: the Company began business in 1937 with three employees; in 1947, they had 20 employees; in 1957, they had 45 employees; in 1967, they had approximately 65 employees; and they had done \$70 million dollars worth of business. In 1977, the Company had 103 full time and part time employees and did approximately \$100 million dollars worth of business.

MOORE advised the Board that in reviewing this history, it would appear that this Company could increase their business tremendously without adding new employees. He continued his remarks by reminding the Board that Eby Construction had contributed substantially to the economic growth and employment stability of Wichita over the last 40 years and would continue to make substantial contributions in the future.

MOORE reminded the Board that the City Commission had made provisions in the ordinance for the BZA to hear requests for variances and they had appointed the Board as judges. Therefore, he asked them to judge the case on its merits and grant the variance as requested.

COLE asked how many people in supervisory positions were in the area who would be driving to the office for consultation purposes and GREER replied there were really very few people who would be coming into the office on that basis. He referred to Project Managers who come into the office occasionally, but they were stationed from 50 to 100 miles of Wichita, and taking into considera-

tion the area offices of the Company which were located in various places, such as Little Rock and Omaha, there was really no one coming into the office on a daily basis. COLE said when he had been employed by Eby and working on the Courthouse building, there had been daily visits to the main office for consultation purposes and GREER reminded him of the close proximity of that building to the main office, and that was the reason for daily visits at that time.

X COLE inquired about parking spaces for visitors or people who come into the office for the purpose of making bids, inspections and other business transactions. Pointing to the map, GREER indicated 13 spaces north of the new building which had been reserved for people in this category.

COLE also asked about the screening plans for the area at the northwest corner of Market and Elm, and GREER replied that there were no screening plans. GALBRAITH said that the ordinance would require them to screen along the north property line. GREER indicated this would be no problem.

GALBRAITH advised the Board that it seemed that the Company's procedures in assigning work areas was a little unique, and another unique factor was that they were located close to the downtown area and discussed the people who arrived at work in car pools, and he said he felt that in the future, there would be many more employees who would be using the mass transit system and this would alleviate parking problems. GALBRAITH said, based on the facts presented, the operation could be considered unique in those respects. He said he felt as long as the Company did not exceed the number of employees mentioned in the presentation, they would definitely suffer a hardship if they were required to provide parking spaces they were not going to use.

GALBRAITH went on to point out that there is some congestion in the area, but probably if the congestion increases, no doubt, more parking lots will become available to be rented to employees, and it is possible that a parking garage will be built if there is a need demonstrated for it.

COLE asked if it would be reasonable for the Board to require a limit to the number of employees the Company could hire if the request was granted, and GALBRAITH replied that he felt the Board had that right and suggested the variance could be granted based on the condition that the Company not exceed the number of 165 employees. He felt, however, this might be an enforcement problem for Central Inspection to have to go in and count the employees.

BEHNKE commented that he did not feel parking was so much of a problem and indicated he was far more interested in Eby's contribution to the economic growth of Wichita than in the matter of parking spaces.

GALBRAITH asked if all the employees were to be moved to the new building and the response was that all employees would

be moved to the new building and the Company planned to lease the old building for a period of about five years. They would then determine what their growth was going to be, and if their determination was that it was necessary, they would probably build a parking garage; however, this was just part of their long-range plans.

After further discussion concerning the amount of reduction, GALBRAITH reminded the Board of another substantial parking reduction for a business at Clifton and Douglas, and one of the conditions of the Board had been that, in this instance, the basement not be assigned as a permanent work space for any employee, and Eby was saying essentially the same thing, for they were saying that no employees will be assigned work space in the area.

No one was present to speak in opposition.

MOTION: COLE moved, MOORE seconded and it carried unanimously that the five conditions necessary for the granting of a variance be found to exist and the variance be granted subject to the condition that no employees be assigned work space in the basement area.

The variance was granted as shown by the adoption of the following Resolution:

RESOLUTION NO. BZA 6-77

WHEREAS, Martin K. Eby Construction Company, Inc., 610 North Main, Wichita, Kansas, requests a variance as provided in Section 2.12.590.B, Code of the City of Wichita to reduce the number of required off-street parking spaces from 387 spaces to 254 spaces; and to reduce the required front yard setback from 20 feet to 0 feet and the required front yard setback from 20 feet to 0 feet and the required side yard setback from 5 feet to 0 feet for off-street parking purposes only for that portion of the application area located at the northwest corner of Market and Pine Streets, all on property zoned the "B" Multiple Dwelling District, "LC" Light Commercial District, and "C" Commercial District, and legally described as follows:

Even numbered lots 34 through 60 on Main Street, the N 1/2 of Lot 35, and all odd numbered lots 37 through 47 and odd numbered lots 57 through 63 on Market Street, and lots 38, 40, and all even numbered lots 48 through 56 on Market Street, all in Munger's Original Town, Sedgwick County, Kansas. Generally located in an area bordered on the south by Elm Street, on the west by Main Street, on the north by Pine Street, on the east by Market Street, and also the northwest and southeast corners of Mar-

ket and Pine Streets.

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 March 22, 1977, 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 for the reduction of parking spaces inasmuch as the applicants have demonstrated that 254 parking spaces are adequate to serve the existing and future parking needs of the two buildings based on the designed capacity of the buildings and the close proximity to rental parking and mass transit service as provided in the Central Business District; and for the reduction of front and side yard setbacks inasmuch as the only adjacent property that is not zoned to permit parking in the setback areas is the property to the north which, due to the condition of the existing residence thereon and the surrounding land uses, could be expected to redevelop as parking, or with a change of zoning to some office or commercial use; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance to reduce the number of required off-street parking spaces would not have an adverse affect on adjacent property owners or residents inasmuch as 254 parking spaces will provide a minimum ratio of 1 space for each employee working in both buildings; and the setback variance for off-street parking would not adversely affect adjacent property owners due to existing and expected future land use and zoning in the area which permits parking to the property line; 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 owner represented in the application inasmuch as compliance with the total parking requirement would provide a surplus of parking not needed to serve these buildings; and the unavailability of land in this area makes it necessary that they be permitted to fully utilize the setback areas for off-street parking purposes; and

WHEREAS, the Board of Zoning Appeals has found that the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare due to the fact that sufficient parking is provided to meet the

parking needs generated by these buildings; and the variance to reduce the side yard and front yard setbacks for parking would not adversely affect the public interest at this intersection where three of the corner properties are already permitted to park to the property lines; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance to reduce the number of off-street parking spaces will not be opposed to the general spirit and intent of Title 28 (Zoning Ordinance) inasmuch as the basement of the new building will be without assigned employee work space and rental parking space is available nearby if needed; and also the setback variance for off-street parking purposes would not be opposed to the spirit and intent inasmuch as this neighborhood is in the process of transition from a residential neighborhood to an office and commercial area, where the requested variance will not conflict with existing and future land uses.

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 reduce the number of required off-street parking spaces from 387 spaces to 254 spaces; and to reduce the required front yard setback from 20 feet to 0 feet and the required side yard setback from 5 feet to 0 feet for off-street parking purposes only, for that portion of the application area located at the northwest corner of Market and Pine Streets on property zoned the "B" Multiple Family Dwelling District, "LC" Light Commercial District, and "C" Commercial District, and legally described as follows:

Even numbered lots 34 through 60 on Main Street, the N 1/2 of Lot 35, and all odd numbered lots 37 through 47 and odd numbered lots 57 through 63 on Market Street, and lots 38, 40, and all even numbered lots 48 through 56 on Market Street, all in Munger's Original Town, Sedgwick County, Kansas. Generally located in an area bordered on the south by Elm Street, on the west by Main Street, on the north by Pine Street, on the east by Market Street, and also the northwest and southeast corners of Market and Pine Streets,

be approved subject to the following condition:

1. The basement area of the new building shall not be utilized as assigned work space for employees.

ADOPTED AT WICHITA, KANSAS, this 22nd day of March, 1977.

Ewald Behnke, Chairman