

WHEREAS, the variance desired is not against the public interest as the demolishing of the present wood structure and construction of a concrete block structure to harmonize with the present concrete block structure, would be an improvement for the benefit of the public through added investment in the building, and thus increased taxes for public use.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals that the Building Inspection Superintendent of the City of Wichita be and is hereby authorized and directed to issue a permit to the appellant for the demolition of the existing frame portion of the building at 351 Pattie and erection of a concrete addition to the existing concrete block portion of the building.

DATED at Wichita, Kansas, this 21st day of February, 1958.

Robt. M. Moore, Chairman

ATTEST:

Leland R. Edmonds, Secretary

CASE NO. 1-58

Mr. and Mrs. David R. Cole, 437 North Oliver, and Dr. and Mrs. V. A. Mueller, 4421 East Second, by Kenneth P. Stewart, attorney, appeal from the decision of the Building Inspection Superintendent who has refused a permit under Section 21-13A of the Zoning Ordinance, to operate a ceramic school or ceramic art studio in the premises located at 437 North Oliver. The use to which it is proposed to put this building would involve the sales of raw materials to other than those who are students. It is also desired to sell a small amount of novelty items which would be made at this place. This section of the ordinance covering "BB" classification states that no goods, wares or merchandise may be sold, and since these sales would be made to anyone who might apply, it would not be in strict conformity with the zoning ordinance.

Following is a copy of the appeal statement:

"Statement of Appeal

(a) Description of proposed work or use of premises:

Appellant, Mrs. V.A. Mueller, plans to use premises for the operation of a ceramic school or ceramic art studio. She plans to teach ceramic arts to any and all persons who desire to receive such instruction. Incidental to appellant's practice of the ceramic arts and her intended operation of a ceramic art studio, said appellant shall have available for her students the raw materials and supplies necessary to the practice and teaching of ceramic arts. Her past experience with such an operation would indicate that her former students and other persons will be interested in purchasing from her, the raw materials and supplies used in connection with ceramic arts. To a limited extent, appellant desires to display for sale her own ceramic art work.

In order to carry on the operation as planned, it is not necessary to alter the exterior of the premises which are presently occupied as a residence. Appellant shall use the house on the premises in its present condition. Ample parking in connection with her intended operation is provided by a driveway on the property and the rear yard. A sign will be placed on the front of the house indicating its use as a ceramic art studio.

(b) Principal points under which the Building Inspector issued a refusal.

1. Refusal of Building Inspector was on basis that intended use was not in strict conformity with Zoning Ordinance, Section 21-13A for the reason that "the use to which you wish to put this building would involve the sales of raw materials to other than those who are students. It is also desired to sell a small amount of novelty items which would be made at this place. This section of the ordinance covering "BB" classification states that no goods, wares or merchandise may be sold, and since these sales would be made to anyone who might apply, it would be in my opinion not in strict conformity with the zoning ordinance."

2. Appellants believe that variance should be permitted Zoning Ordinance, Section 21-27C2:

"Exceptions and Variances:

Further, the board (of zoning appeals) shall have jurisdiction and power to grant exceptions and variances from the strict application of the provisions of this article;

....."

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In support thereof, appellants state that property in question is abutted on the north by property presently zoned "A", but used for light commercial building, parking and driveway area. Appellants' petition to re-zone light commercial was denied and property zoned "BB".

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Zoning Ordinance, Section 21-13.1, "BB" Office District Regulations, permits limited sales of prescriptions from apothecaries operated in connection with medical or dental clinics (21-13.1A 2 and 7). Section 21-13B, Multiple Family Dwelling District Regulations, sub-section A6 permits the operation of educational institutions. The intended use by appellant, Mrs. Mueller, is primarily the operation of a ceramic art studio. Her sales of raw materials and her own ceramic arts are incidental to the operation of such studio.

(c) Jurisdiction for appeal.

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1. Exception or variance desired arises from conditions not ordinarily found in the same zoning district.

(aa) Appellants' property is abutted on the north by seventy-five (75) foot frontages on Oliver which is zoned "A" but used partially for light commercial and partially for parking and driveway for light commercial.

(bb) Intended use of premises will not necessitate any exterior alteration of premises, general appearance of premises will remain exactly the same.

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(cc) Intended use of premises for ceramic art studio, as outlined, will provide a definite "buffer" to residence property located south of appellants' property; and, at the same time, will permit appellants to economically utilize their property for a non-residential purpose. It is the contention of appellants that their property has been rendered unsuitable for residential occupancy because of the business use directly to the north.

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(dd) The intended use by appellants is such a limited use that it will not create any additional traffic problem whatsoever.

For all of the above reasons, appellants contend:

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 terms of this ordinance will constitute unnecessary hardship upon the property owner represented in the appeal. C  
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That the exception or variance desired is not against the public interest." P  
Y

MAPLE reviewed circumstances pertinent to this appeal. Dr. Mueller and Mrs. Mueller started the ceramic work in their home on East Second as a hobby, and the activity developed to such an extent that the Building Inspection office received complaints. The Muellers were teaching, making a few gadgets for sale and also selling some supplies. In attempting to locate a more logical place for their activities the Muellers have become interested in the subject property. Light Commercial zoning was denied by the Planning Commission and City Commission a few months ago, but it was approved for "BB" classification. Such a classification permits the operation of such a studio, but distinctly prohibits sale of articles and supplies, and for that specific reason the use as proposed for this building would not be conforming to the zoning ordinance.

KENNETH STEWART, attorney, stated that the ceramic studio is the result of an outgrown hobby originally carried on in the Muellers' home. Since the Planning Commission and City Commission did not permit an "LC" zone, he felt the Board of Zoning Appeals would have authority to hear the case and grant an exception to the ordinance if circumstances justified such a variance. Muellers propose to make small articles themselves and also to teach others and to have on hand the necessary supplies for sale to teach this art. Mrs. Mueller occasionally receives requests from other than students for her to make certain novelty items, ash trays, vases, etc., and it is intended such articles would be sold to outsiders. The primary purpose, however, is the operation of the school - any sales would be more or less of an incidental operation.

STEWART continued that they felt these two lots could have logically been zoned "LC" - the land to the north is all used for parking or light commercial activities, except the south 75 feet which is a portion used by Slimzell and parking and driveway purposes. Property directly across the street from subject property is presently zoned "LC" and so used. He stated that it is planned to provide adequate off street parking in the rear yard of the premises, and if necessary, the location of the existing garage will be changed. He indicated no plan for a specified number of students at anyone time, it no doubt will vary from time to time.

CASADO asked if this petition is granted just for this one purpose, and if any other use is contemplated whether approval from this Board would have to be given. Maple replied that if approved it would be to these particular appellants for this particular use. He pointed out that the use as proposed could some day get out of hand. He pointed out also that technically

speaking, manufacturing of the novelty items would not conform to the "BB" zone, but perhaps it would be on such a small scale it wouldn't create any trouble right now, but it is possible that in time if more people become interested, it could become a nuisance.

The thought was expressed that if this appeal is approved, then there should be no public statement or sign indicating sales of articles at these premises, but that only special orders could be handled.

STEWART pointed out that actually no one knows just what might develop, but that it is certainly not intended to open a store, and the only exception desired from the zoning ordinance is the privilege of selling incidental supplies and a few gadgets made on the premises, to students or friends. The attorney submitted a letter from D. A. Winters, owner of the property adjoining subject property on the south, which indicated he has no objections to subject property being occupied by the appellant in the operation of a ceramic art studio.

The matter of adequate off street parking was discussed, and Hall asked who would enforce compliance if "strings" are attached to any approval. Maple indicated it would be the responsibility of his office to enforce and inspect the premises. He indicated they do not have much difficulty in this respect, but that actually not many appeals are approved with conditions attached. Stewart said he thought at least a half dozen cars could be parked in the back yard and perhaps even more if the garage is relocated.

The chairman asked if the off street parking section of the ordinance would have to be complied with if this appeal is granted. Maple said it would be questionable because there would be no enlargement of the building, but if the garage is removed entirely from the property there could be better use of the parking area at the rear. In this respect, Stewart said he did not know what the appellants' plans might be so far as removing the garage from the premises, but it seemed likely that if additional area is some-time needed for parking, then it would be done.

It was pointed out that property owners within a radius of 200 feet of subject property were notified and that no opposition has been registered, and no one was present at the meeting to voice any opposition. Edmonds pointed out that the adjoining property owner who had objected most to the zoning to "LC" was sent a notice of this hearing and had not made known any objections.

HALL asked what control or restraint could be exercised if this appeal is granted and the operation and business grew beyond any expectations and did become a nuisance in the area. The chairman felt that the law of supply and demand would take care of such a situation - that the operators would just relocate in order to continue to handle the volume of business which would have developed over a period of time.

A member of Building Inspection staff checked the Sanborn maps for location of the residence and garage involved, and it seemed apparent that the garage would have to be relocated in order to permit easy use of the rear yard for parking purposes.

The chairman asked the Secretary for a ruling on jurisdictional authority, and the Secretary said he thought the Board had a right to act.

LESTER moved, Casado seconded and it carried unanimously that the Board of Zoning Appeals take jurisdiction in this case.

HALL moved that this appeal be granted with the strict compliance of the following provisions:

1. Provide adequate off street parking for all customers and students.
2. That this property should be used exclusively for this operation and not for anything else, and if so be brought to Maple's attention for presentation to this board.

The chairman said the second restriction could not be applied because there are certain things permitted in the "BB" zoning classification which would have to be allowed by the Building Inspection Department, and he did not favor any more restrictions which could not be enforced or carried out. As for the wording "adequate parking" who is going to define what adequate parking is.

The Secretary suggested that the Board first restrict the size of the classes to a given number, and second, that it require off street parking and traffic circulation in accordance with a plan to be approved by the Traffic Engineer.

STEWART said as for the first suggestion, the number of students has nothing to do with the appeal because the school contemplated is a permitted use in the "BB" zone, and as for the second, it is his understanding from Mr. Maple that as long as the building is not changed there is no question about the off street parking. This case has been filed for only one exception or variance and that is for the right to conduct minor sales of supplies or finished articles to students and the public. If the operation proposed does not prove profitable at this location, then no doubt the appellants would seek another location. He indicated he would dislike to have any operation approved limited to such an extent that the appellants would be uncertain just what or how extensive an operation could be carried on.

STEWART continued that the appeal statement sets forth the intentions of the appellant and if this Board sees fit to grant it and the activities as conducted do not work out on the basis of the permission, then the Building Inspection Department would rule there was a violation of the approval terms.

The chairman pointed out that, of course some parking area must be provided and it was his belief only 4 cars could be accommodated in the driveway. Stewart pointed out that perhaps 4 would be sufficient - at this time no one knows just what or size facilities will be needed.

After more discussion, Hall withdrew the above motion.

The Secretary stated that if provision cannot be made for off street parking, then he would feel the Board actually did not have the right to take jurisdiction and certainly should not have the right to grant this permit, on the grounds that this variance without the off street parking and traffic circulation provision, would violate Section 2.4 which is "that the exception or variance desired is not against the public interest."

The chairman asked if anyone was ready to move that the appeal be granted with the provision that with the occupancy of the property, as a school, off street parking be provided. Maple reminded the Board that the appeal is the matter of selling articles or materials. The school itself, as such, is permitted under present zoning and no strings can be tied to it, but the very appeal itself is based on whether or not the goods or materials can be sold. Maple wondered if there was some way to control sales so that the operation would not get out of hand, and suggested possibly only articles made on the premises could be sold, in order to prohibit the possibility of a regular gift shop with other articles purchased wholesale. It was suggested that sales be confined to only articles or merchandise made by students or teachers and raw materials purchased to carry on the school.

STEWART pointed out that the use contemplated is as stated in the appeal statement and that if the appeal is granted, then it is up to the appellant to comply with the ordinances and regulations, and if the operation as time goes by, does not comply then they are subject to legal action on the part of the city. He commented that it seemed the Board leans toward granting the appeal, and then desires to put various restrictions on the operation.

TOM WOOD thought it not quite correct to think of this as a non-conforming use, but rather as an exception or variance to the classification which would otherwise be permitted. The extent to which the exception or variance is to be granted is actually determined by the appeal. The items set out in the appeal show the use for which an exception or variance is requested. He did not consider it necessary to consider other points and not necessary to state them again as conditions to the granting of the appeal. As far as a policy decision is concerned, it is only necessary to move to accept the appeal and make the exception as requested in the appeal.

WOOD said he thought the answer to the situation would be simply to approve what has been expressed in the description of the proposed work and use of the premises in the appeal, and that could be embodied in the resolution, and there would be no need to review the case periodically.

The Secretary pointed out that the work as described in the appeal contains nothing about off street parking, in case it was the feeling of the Board that that should be a condition for any approval. The Board does have the right to require off street parking and it was his recommendation that the appeal be denied unless some off street parking specifications are placed in the resolution, such facilities to be approved by the Traffic Engineer. It was suggested that some provision should be made for a turn around in the proposed parking in the rear yard, or a circle drive on the north side and through the back yard and return onto Oliver on the south side of the residence. The chairman reviewed the off street parking requirements and stated that it would be his suggestion that off street parking be provided for a minimum of 6 cars.

CASADO moved the appeal be granted, subject to a parking area for a minimum of 6 cars (250 square feet per space) be provided, the arrangement of such facilities to be approved by the Traffic Engineer.

WOOD pointed out that as far as off street parking is concerned with reference to school use, this Board does not have the authority to make any regulations concerning off street parking trying to differentiate between customer parking and student parking.

After more discussion, the above motion was re-worded to approve this appeal subject to providing parking area for a minimum of 6 cars, the arrangement of such parking facilities to be approved by the Traffic Engineer. Hall seconded the motion and it carried unanimously.

#### R E S O L U T I O N . 1-58.

WHEREAS, Mr. and Mrs. David R. Cole, 437 North Oliver, and Dr. and Mrs. V.A. Mueller, 4421 East Second, by Kenneth P. Stewart, attorney, have made application for permission to use premises at 437 North Oliver to operate a ceramic school or ceramic art studio, with incidental sales of raw materials and supplies necessary to the practice and teaching of ceramic arts, and occasional sales to the general public.

WHEREAS, the Building Inspection Superintendent has formally refused said permit inasmuch as the use to which appellants desire to put the building would involve the sales of raw materials to other than those who are students, and the

sale of a small amount of novelty items which would be made at this place. The ordinance covering "BB" classification states that no goods, wares or merchandise may be sold.

WHEREAS, the variance desired arises from conditions which are not ordinarily found in the same zoning district, inasmuch as appellants' property is abutted on the north by 75 foot frontage on Oliver which is zoned "A", but used partially for light commercial development and partially for parking and driveway associated with the light commercial development;

WHEREAS, the granting of the variance will not adversely affect the rights of adjacent property owners inasmuch as the intended use of the premises will not necessitate any exterior alteration of premises; general appearance of premises will remain exactly the same; further, no objection has been made by any property owners in the neighborhood.

WHEREAS, the strict application of the terms of the Zoning Ordinance will constitute unnecessary hardship upon the appellants by depriving them of the economical use of their property for a non-residential purpose, in view of the light commercial activity adjoining on the north.

WHEREAS, the variance desired is not against the public interest as activity as proposed at this time will be so limited that it will not create any additional traffic problems, and adequate parking is proposed to be provided at the rear of the present structure.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Zoning Appeals, that the Building Inspection Superintendent of the City of Wichita, be and is hereby authorized and directed to issue a permit for occupancy of the building at 437 North Oliver as a ceramic school or ceramic arts studio in which the appellants may teach ceramic arts to any and all persons who desire to receive such instruction; where the appellants, as an incidental use to the appellant's practice of the ceramic arts and their intended operation of a ceramic art studio, may have available for their students, the raw materials and supplies necessary for the practice and teaching of ceramic arts; where their former students and other persons may purchase the raw materials and supplies used in connection with the ceramic arts; where the appellants may display for sale their own ceramic art work; and where a sign may be placed in front of the house indicating its use as a ceramic arts studio, subject to the appellants providing parking area for a minimum of 6 cars, the arrangement of such parking facilities to be approved by the Traffic Engineer prior to the first operation of such school.

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Robt. M. Moore, Chairman

ATTEST:

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Leland R. Edmonds, Secretary