

CASE NO. 1-53

RESOLUTION 1-53

WHEREAS, L. E. Dietrich, appellant, desires to erect a veterinary doctor's office building at 3421 East Harry, and has made application to the Building Inspection Superintendent for a building permit; and

WHEREAS, the Building Inspection Superintendent has formally refused said permit inasmuch as in his opinion it would be an extension of a non-conforming use; and

WHEREAS, the variance desired arises from conditions which are not ordinarily found in the same zoning district, inasmuch as this doctor's office is to be an entirely separate building from the animal hospital and clinic and will not be used in conjunction with them; and

WHEREAS, the granting of the variance will not adversely affect the rights of adjacent property owners, inasmuch as this property and surrounding property is zoned for "LC" Light Commercial use, in which doctors' offices of all types are permitted; also, inasmuch as no one appeared in opposition to this appeal; and

WHEREAS, the strict application of the terms of the Zoning Ordinance will constitute unnecessary hardship, inasmuch as the applicant has been operating a small animal hospital on the said premises for the past six years with the intent of continuing the operation thereof and desires to erect an office building on the said premises to be used for no other purpose than a doctor's office is customarily used for; and

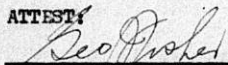
WHEREAS, the variance desired is not against the public interest as the building will be a modern, attractive building to be used in the same manner as any doctor's office would be used;

NOW THEREFORE BE IT RESOLVED by the Board of Zoning Appeals that in view of the fact that this building will be used strictly as a doctor's office in the same manner as an office would be used for any other type doctor, and in accordance with the legal opinion received from the City Legal Department, that the Building Inspection Superintendent of the City of Wichita is authorized and hereby directed to issue a permit for the erection of a veterinary doctor's office at 3421 East Harry.

NOW THEREFORE BE IT FURTHER RESOLVED that if in the future this building is used in any manner as a part of the kennels of the animal hospital and clinic, then the use will be in strict violation of the City Zoning Ordinance, and subject to the penalties thereof.

ADOPTED at Wichita, Kansas, this 6th day of February, 1953.

  
George W. Herrman, Chairman

ATTEST:  
  
George J. Fisher, Secretary

FRED W. ALEY  
CITY ATTORNEY  
LAWRENCE E. CURFMAN  
PAUL J. DONALDSON  
ROBT. B. MORTON  
DOUGLAS E. SHAY  
THEODORE H. HILL  
ROBERT C. HELGEL  
ASSISTANT CITY ATTORNEYS



# THE CITY OF WICHITA, KANSAS

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY  
WICHITA 2, KANSAS

January 15, 1953

*Approved  
Morris - Nelson  
Smith - Sec.*

Board of Zoning Appeals  
City Building  
Wichita, Kansas

Attention: George J. Fisher, Secretary

Re: Appeal of L. E. Dietrich  
3421 East Harry

Gentlemen:

While there has been no formal request for an opinion from the department of law on the above application, the writer has talked informally with the chief building inspector and it was his thought that an opinion might be of help to the board.

The facts appear to be that L. E. Dietrich has operated adjoining 3421 E. Harry, a small animal hospital and clinic and that such operation was going on at the time the area was annexed to the city making such use a non-conforming use at the time of annexation. The area in question is presently zoned L.C. The applicant desires a building permit to erect a structure quite close to, but separate from, the present clinic and hospital such building to be for "veterinary doctors' office".

The applicable section of the zoning ordinance with reference to the use problem is section 18 sub-section 2 sub-sub section D having to do with permitted uses and which sub sub section reads as follows "Doctors' offices, hospitals, and clinics, but not animal hospitals or animal clinics". It should be noted that while animal hospitals and animal clinics are specifically excluded veterinary doctors' offices are not excluded

January 15, 1953

Re: Appeal of L. E. Dietrich

any more than are osteopathic doctors offices, chiropractic doctors offices, or any other of the numerous types of doctors.

There is a maxim in the law commonly given in latin as follows "Inclusio Unius Est Exclusio Alterius" which means literally "the inclusion of one thing is the exclusion of another". It would appear to the writer that no matter what may have been the actual intent the legal intent and purpose of the sub section as written is to permit offices of any kind of doctor including those of a veterinarian.

There is another question on which the answer is not quite so clear and that is the matter of an extension of a non conforming use. The applicable section on this point is Section 24 Sub Section 3 which reads in part "no existing structure used contrary to the provisions to this ordinance in the district in which it is located may be enlarged extended or reconstructed \* \* \*" It is to be noted that it is the structure which may not be enlarged, extended or reconstructed. Under the facts of this application where the structure is different or where the structure is an entirely separate one it is difficult to see how it could be said to be an enlargement of a non conforming use. The writer realizes, that at as a result of the erection of the new building the doctors office may be removed from the other structure and the other structure may therefore accommodate more animals than with the doctor's office located in it. Since however, there is to be no enlargement of the structure it would appear to me to be no enlargement of the use, although it certainly could be argued that the use is in fact enlarged and that the separation of the new structure from the old is in form and not in substance.

The general tenor of this opinion has been discussed orally with the city attorney Mr. Aley, and I believe is in accordance with his views.

Respectfully submitted,

*Lawrence E. Curfman*  
Lawrence E. Curfman  
Assistant City Attorney

LEC/pm  
cc Fred W. Aley  
S. B. Maple



*L. E. Dietrich Jr.*

**BOARD OF ZONING APPEALS**

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

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

**APPEAL UNDER THE ZONING ORDINANCE**

To: The Board of Zoning Appeals  
Room 304, City Building  
Wichita, Kansas

The undersigned, L. E. Dietrich hereby appeals from the decision of the Building Inspector wherein a Building Permit is Refused for erection of a veterinary doctor's office building at the premises designated as 3421 East Harry, Wichita, Kansas

OR

Order or Decision Rendered Because \_\_\_\_\_

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

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

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

*L. E. Dietrich*  
Appellant

**NAMES AND ADDRESSES**

Appellant L. E. Dietrich Address 30 Laurel  
Owner Same Address \_\_\_\_\_  
Lessee \_\_\_\_\_ Address \_\_\_\_\_

**INSTRUCTIONS**

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

BOARD OF ZONING APPEALS

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

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

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Room 304, City Building  
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I have not made a previous application or appeal under the Zoning  
Ordinance affecting these premises.

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

L. E. Dietrich  
Appellant

NAMES AND ADDRESSES

Appellant L. E. Dietrich Address 30 Laurel  
Owner Same Address \_\_\_\_\_  
Lessee \_\_\_\_\_ Address \_\_\_\_\_

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  - b. A clear and accurate description of proposed work or use.
  - c. Specific reference to that section of the Zoning Ordinance under which it is claimed permit should be issued.
  - d. Names and addresses of all owners and residents within a distance of 200 feet of the property concerned.

L. E. Dietrich		3421 East Harry
Harvel E. White and Mae White		1807 Giltner Drive
Clyde N. Best and Ruth Fern Best		Quality Poultry Farms 3511 East Harry
Gus A. Penkratz	Office Home	1726 South Hillside 3819 East Gilbert
Ted V. Riley and Grace M. Riley		1626 South Rutan
Mark E. Stone and Grace Stone		3322 East Osie
Catholic Diocese <i>Leo Paulson Jr.</i> <i>attney</i>		Sisters of St. Joseph 3400 Grand

STATEMENT

The undersigned, L. E. Dietrich, hereby appeals from the decision of the Building Inspector wherein a building permit was refused this appellant to erect a veterinary doctor's office building at the premises designated as 3421 East Harry, Wichita, Sedgwick County, Kansas. The permit being refused by the Building Inspector under sections 16 and 24 of the city zoning ordinances on the ground that this territory is in a light commercial district, and therefore the existing small animal hospital on said premises is a non-conforming use and a veterinary doctor's office on said premises would be an extension of a non-conforming use as stated under section 16 of city zoning ordinance and under section 24, city zoning ordinance, and there does not appear a provision for making an extension of a non-conforming use.

This board's attention is called to the fact that this appellant does not wish to make an extension of a non-conforming use - the ground on which the building inspector refused to issue a permit, but on the contrary, to erect a doctor's office building completely distinct from the present existing non-conforming use structure. It is this appellant's position that the refusal of the building inspector to issue a permit was improper as sections 18 and 19 of the Revised Zoning Ordinance of the City of Wichita clearly permits the construction of doctors' offices.

This appellant has been for the past six years and is now operating a small animal hospital on the above premises with the intent of continuing the operation thereof and desires to erect an office building on the above premises to be used for no other purpose than a doctor's office is customarily used for. The contemplated veterinary doctor's office building will have no kennels or other places in which to keep small animals, but on the contrary, will be used entirely and strictly as and for a doctor's office. The proposed structure is very definitely


not intended to be used as a small animal hospital or clinic. The proposed structure will in no way be connected or joined to the existing animal hospital. A drawing of the proposed structure is hereto attached, marked Exhibit "A".

The above mentioned premises is located in a light commercial district. Under light commercial District Regulations, Section 19, paragraph 2 (O) of city zoning ordinance, offices are permitted and there appears no limitation as to type of office. This light commercial district extends more than six hundred (600) feet in continuous length and therefore as stated in section 19, paragraph 2, city zoning ordinance, any use permitted in the "E" Multiple-Family Dwelling District shall be permitted. Under "E" Multiple-Family Dwelling District Regulations, section 18, paragraph 2E, doctors' offices, hospitals, and clinics are permitted but not animal hospitals or animal clinics. This appellant again calls to the attention of this board that he desires to erect a "doctor's office" and not an animal hospital or an animal clinic.

The names and addresses of all owners and residents within a distance of 200 feet of the property concerned is hereto attached, marked Exhibit "B".

The strict application of the above referred to ordinances does not place any limitation on the type offices that are permitted. If the ordinance was intended to exclude veterinary doctors' offices it should so state.

This appellant petitions this board to reverse the decision of the building inspector and order the issuance of a building permit as requested.

  
Appellant

CITY OF WICHITA  
BUILDING INSPECTION DIVISION

To L. E. Dietrich Owner Address 3421 East Harry  
To Same Applicant Address \_\_\_\_\_

Dear Sir:

Your Application Dated Oct. 28, 1952

For a Permit for the erection of a veterinary doctor's office building  
\_\_\_\_\_ at the premises designated as  
3421 East Harry

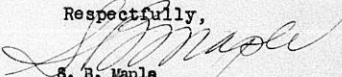
Is hereby refused on this 28th day of October, 1952,  
Under Sections 16 and 24 of the Zoning Ordinance.

For the reason that this recently annexed territory is in the <sup>L.C. - Commercial</sup> "A" residential

district, and therefore this small animal hospital is a non-conforming use.

Under Sec. <sup>19</sup>~~16~~, small animal hospitals are not permitted in the <sup>L.C.</sup>~~19~~ district, and  
under Sec. 24 there is no provision for making an extension of a non-conforming  
use.

Respectfully,

  
S. B. Maple  
Chief Building Inspector

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

LIST OF PROPERTY OWNERS

<u>LOT</u>	<u>BLOCK</u>	<u>ADDITION</u>	<u>PROPERTY OWNER</u>
1		Cherry Hills	L. E. Dietrich
2		"	Harvel E. White & Mae White
3		"	Clyde N. Best & Ruth Fern Best
11		"	"
12		"	Harvel E. White & Mae White
13		"	"
14-15-16-17		"	L. E. Dietrich
18 & 19		"	Harvel E. White & Mae White
1-2-3-4-5	B	Pankratz	Gus A. Pankratz
6	B	"	Ted V. Riley & Grace M. Riley
7	B	"	Mark E. Stone & Grace Stone
8	B	"	Gus A. Pankratz
8-9-10 & 11	B	Pineridge	Catholic Diocese
8-9-10 & 11	C	"	"

We hereby certify the foregoing to be a true and correct List of Property Owners as above described as shown by the records in the Office of the Register of Deeds of Sedgwick County, Kansas this 25th day of November 1952.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.,

BY: *Kenneth P. Brown*

Vice President

Order No. 83878

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

NOTICE TO PROPERTY OWNERS

~~February 2~~, 19 ~~53~~

An appeal has been filed by L. E. Dietrich  
(Address) 30 Laurel on behalf of \_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_  
as provided by Section 33 of the Zoning Ordinance. The appellant  
desires to erect a veterinary doctor's office  
\_\_\_\_\_ on the premises  
located at 3421 East Harry

This appeal has been given Case No. 1-53  
and a hearing will be held by the Board of Zoning Appeals on \_\_\_\_\_  
February 6, 1953, at 1:30 p.m.  
at which time you may appear, if you so desire, either in person or  
by agent or attorney. **Room 201, City Building.**

By order of the Board of Zoning Appeals.

George J. Fisher  
Secretary.

Notices sent out to property owners on February 2, 1953

Catholic Diocese  
Sisters of St. Joseph  
3400 Grand Ave.  
Wichita, Kansas

Mark E. and Grace Stone  
3322 East Osie  
Wichita, Kansas

Ted V. and Grace M. Riley  
1626 South Rutan  
Wichita, Kansas

Gus A. Penkretz  
3819 East Gilbert  
Wichita, Kansas

Glyde N. Best and Ruth Fern  
Quality Poultry Farms  
3511 East Harry  
Wichita, Kansas

Harvel E. White and Mae White  
1807 Giltner Drive  
Wichita, Ks.

Mr. L. E. Dietrich  
3421 East Harry  
Wichita, Kansas