

CASE NO. 7-53

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CITY ATTORNEY  
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PAUL J. DONALDSON  
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ASSISTANT CITY ATTORNEYS



## THE CITY OF WICHITA, KANSAS

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY  
WICHITA 2, KANSAS

April 16, 1953

Board of Zoning Appeals,  
Wichita, Kansas.

Re: Off-street parking

Gentlemen:

This memorandum is in answer to Mr. Maple's memorandum to Mr. Aley dated April 15th. It is my understanding that the old Shaklin Building at the southeast corner of Douglas and Greenwood which has formerly been a retail store, is being converted into a cereal malt beverage tavern and dance hall. There will be no enlargement of the structure itself but there are alterations and repairs and a great many more persons will probably use the building than in the past. You have inquired whether under the new off-street parking ordinance 16-500 interior remodeling which might result in a greater patronage, is such an "addition" under the terms of Section 28 of the ordinance as would require an existing building without off-street parking to comply with the off-street parking ordinance. You have asked for this opinion not later than April 20, 1953, and I am complying with this request.

I believe you should regard this opinion, however, because it is being prepared in such a short space of time as being tentative only and I should like to do some additional research on the question. Your attention is directed to the definition of the word "addition" appearing in subsection 1 (a) of Section 28. There must be an enlargement or increase of capacity by additional dwelling units, guest rooms, floor area, or seats. I do not believe the

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project at Douglas and Greenwood could possibly fit within that definition. The only possibility is it might be argued that the floor area was increased by the adding of a balcony. It would be my general thought (and again this is subject to more thorough research) that the ordinance could not have the effect of depriving an owner of a structure of the right to put that structure to any legitimate use which could be made of the structure within the zone. Such an interpretation would appear to me would be a taking of property without just compensation and in violation of the fourteenth amendment of the Federal Constitution. It would seem to me for example that if a building had been constructed for use as a theater, had actually been used for a use requiring less parking space, and were after November 7, 1952, reconverted to a theater use, the owner could not be compelled to provide the same off-street parking facilities as if an entirely new structure was in contemplation.

I will give this whole matter some further thought and study and advise you later.

Very truly yours,

*Lawrence E. Curfman*  
LAWRENCE E. CURFMAN  
ASSISTANT CITY ATTORNEY

LEC:tab

cc S. B. Maple  
Fred W. Aley



*See Fisher*

BUILDING INSPECTION DIVISION

April 15, 1953

Fred Alay, City Attorney

S. B. Maple, Chief Building Inspector

OFF STREET PARKING

The Board of Zoning Appeals has requested that I obtain an opinion from the Legal Department relative to your interpretation of a provision in Ordinance 18-500, which is an amendment to the Zoning Ordinance covering off street parking.

In this ordinance it requires that off street parking space be provided for additions to existing buildings or structures. It further defines the word "addition" as used in the ordinance to include "any alteration intended to enlarge or increase capacity by adding or creating dwelling units, guest rooms, floor area, or seats."

This request was brought about by my bringing to their attention the matter of changing a retail sales building to a restaurant or tavern wherein it was evident that there would be more people accommodated in the tavern than there were in the retail sales establishment.

I feel that through the change of occupancy there would be an additional number of people accommodated, even though the building was not being increased in area.

It was felt by one member of the Board that should parking space be required for what would be considered the additional number of people to be accommodated, we would be endeavoring to rule retroactively and therefore would not be legal, since a tavern is included in the same general category as retail sales.

It will be necessary that I receive an opinion on this matter before 1:30 Monday, April 20, when the Board intends to have a meeting.



S. B. Maple  
Chief Building Inspector

SBM MD  
Cc Curfman  
Fisher