

7-58 - G. C. Hammer, appellant  
Property at 2334 South Seneca

BEFORE THE BOARD OF ZONING APPEALS

APPEAL STATEMENT

- A. Please refer to Exhibit "A" attached for an accurate description of the proposed work. The use is a continuance of the same use. All the proposed work amounts to is an enlargement of the present facilities.
- B. The Building Inspector refused to issue a building permit because of the violation of non-conforming use regulations set forth in Sections 21-22 and 21-14 of the Wichita City Code.
- C.
1. The processing plant presently located on the property was commenced on a farm and as a farm in the year 1948 long before the area was annexed to the city. The present plant as it is was built in the year 1949. There are no other similar processing plants located within the same zoning district.
  2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners and residents for the reason that we make a special effort to keep our plant clean and orderly. We work very closely with the State and Local Health Departments. We are far enough away from our neighbors that they will not be at all disturbed by our operations and the addition to the size of our present plant will have no more effect on the adjacent property owners than does the present operation which we conduct.
  3. The strict application of the terms of the ordinance will constitute unnecessary hardship upon the undersigned for the reason that our old refrigeration is worn out and one of the purposes of the new construction is to house the new refrigeration. The present refrigeration is in such condition that we have to do something in order to be able to continue to operate at all. With new refrigeration we can have an even more sanitary and healthful operation than we have at present.
  4. The exception or variance sought by the undersigned is not against the public interest for the reason that our property is so large, having been platted to a depth of 290 feet, that a moderate increase in the size of our plant which we are seeking will have no adverse effect on the public interest.

TELEPHONE COMMENTS OF TOM WOOD, ASSISTANT CITY ATTORNEY  
RELATIVE TO BOARD OF ZONING APPEAL CASES AS PRESENTED ON  
APRIL 25, 1958

CASE NO. 8-58

Mr. Wood notes two major questions:

1. Is it proper to consider the matter on April 25 because notices were mailed less than 10 days prior to the meeting.
2. Should the Board take jurisdiction in this case.

Mr. Wood notes in respect to question No. 1 that there is no ordinance or statutory requirement for notice and that the 10 day notice requirement is contained only in the rules and regulations of the Board itself. The ordinance says that notice shall be given if practical, and in this particular case notice has been given, although it is a 3 day notice rather than a 10 day notice.

Mr. Wood states that it is, in his opinion, proper for the Board to consider the matter on April 25 on the basis of the notice which has been given.

In answer to question No. 2, it is his opinion that the Board can take jurisdiction. He believes that only the first of the 4 conditions of jurisdiction is in any way questionable and he believes that the situation is sufficiently unique that the case qualifies under the provisions of No. 1.

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CASES NO. 3-58 and 6-58

In both of these cases the question is one of jurisdiction. Mr. Wood made the following points relative to this matter:

1. It cannot be assumed that this use is against the best interest of the public welfare merely and solely because it is non-conforming.
2. Each case must be considered according to its affect upon the specific neighborhood in which it is located. He indicated the sign boards in one neighborhood might be against the public welfare because of the character of the neighborhood, whereas in a different neighborhood the signs would not be in opposition to the public welfare. The Board must determine in which of two categories these cases fall:

- (a) Is this an appeal from an order or determination by the Building Inspection Superintendent which would in essence only question the interpretation of the zoning ordinance as applied by the Building Inspection Superintendent?
- (b) Is this a request for an exception or variance to the provisions of the zoning ordinance?

If this is considered as a question of the correctness of interpretation, then the Board has the right to take jurisdiction under the provisions of 21-27 C1. If, on the other hand, this is a request for an exception or variance, then the Board would have jurisdiction only under 21-27 C2, which requires the findings as set forth in 21-27 C2, sub-paragraphs 1, 2, 3, and 4.

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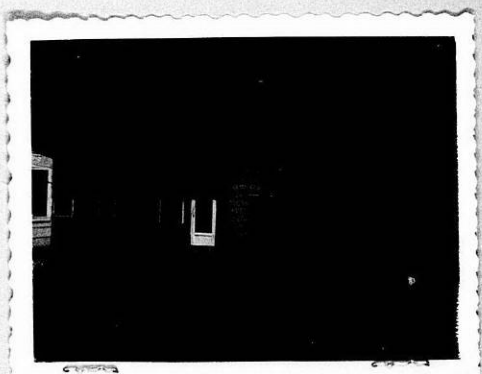
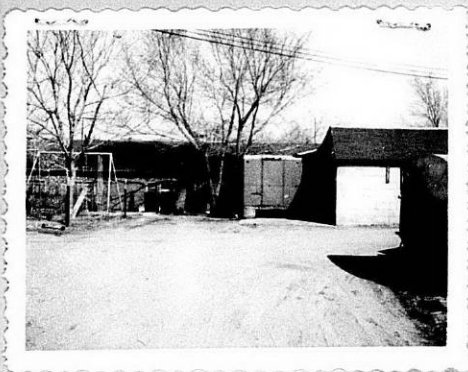
CASE NO. 7-58

With respect to this case, Mr. Wood made the following comments:

1. The extent of the enlargement which has been requested necessitates consideration of this as a request for an exception or variance.
  2. The first of the four facts which must be found in order to take jurisdiction "probably is made by the fact that it is a non-conforming use."
  3. The question of jurisdiction probably will have to be resolved on the basis of findings of fact related to conditions 2 and 4 as set forth in 21-27 C2.
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Chicken Acres Lot 2 Blk 1 Leonard Powell Addition



Chicken Acres Lot 2 blk 1 Leonard Powell Add.

No: 6386305

**RECEIPT FOR CERTIFIED MAIL—15¢**

SENT TO G. C. Hammer		POSTMARK OR DATE
STREET AND NO. 2434 South Seneca		
CITY AND STATE Wichita, Kansas		
<input type="checkbox"/> It shows to whom and when delivered		<input type="checkbox"/> It shows to whom, when, and address where delivered
<input checked="" type="checkbox"/> If you want a return receipt, check which		<input type="checkbox"/> If you want restricted delivery, check here
		<input type="checkbox"/> 30¢ fee

POD Form 3800 July 1955 Replaces previous editions of this form which MAY be used.

**A INSTRUCTIONS TO DELIVERING EMPLOYEE**

DELIVER ONLY TO ADDRESSEE (20¢ additional)

SHOW ADDRESS WHERE DELIVERED IN ITEM 4 BELOW (1¢ additional)

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**RECEIPT**

Received from the Postmaster the Registered, Certified, or Insured Article, the number of which appears on the face of this return receipt.

1. SIGNATURE OR NAME OF ADDRESSEE:  
 *G. C. Hammer*

2. SIGNATURE OF ADDRESSEE'S AGENT (Agent should enter addressee's name in item 1 above):  
*Maxine Melrose*

3. DELIVERY DATE:  
 JUL 11 1958


4. \_\_\_\_\_

No 6386305

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PDD Form 3800 July 1955 Replaces previous editions of this form which MAY be used.

POST OFFICE DEPARTMENT OFFICIAL BUSINESS		PENALTY FOR FAILURE TO PREPAY PAYMENT OF POSTAGE 50%	
			
INSTRUCTIONS.—Show name, address and number of article below. Complete "Instructions to Delivering Employees" on other side, when applicable. Modern gummed ends and coupons attach to back of article. Sticker front of article RETURN RECEIPT REQUESTED.			
REGISTERED NO.	NAME OF SENDER Metropolitan Area Planning Commission		
CERTIFIED NO. 6386305	STREET AND NO. OR P. O. BOX City Bldg. Annex 704 South Main		
WEIGHT NO.	CITY, STATE AND STATE Wichita, Kansas		

BOARD OF ZONING APPEALS  
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

April 15, 1958

Mr. G. C. Hammer  
2434 South Seneca  
Wichita, Kansas

Dear Mr. Hammer \_\_\_\_\_:

Your appeal, under the Zoning Ordinance, relative to premises at  
2434 South Seneca

has been given Board of Zoning Appeals Case No. 7-58.

All inquiries and references should always be made to that Case  
Number when you seek information from the Secretary.

Further, you are notified to appear before the Board of Zoning  
Appeals either in person, or by agent or attorney, for a hearing of  
your case on Friday, April 25, 1958, 1958, at 1:30 p.m.  
on the 4th Floor, City Building Annex, 104 South Main, Wichita, Kansas.

Respectfully,

Edward R. Edwards  
Secretary, Board of Zoning Appeals

CITY OF WICHITA  
BUILDING INSPECTION DIVISION

To G. C. Hammer Owner Address 2434 S. Seneca  
To Same Applicant Address \_\_\_\_\_

Dear Sir:

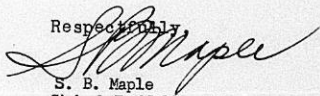
Your application Dated March 26, 1958  
For a Permit for the addition to the building  
\_\_\_\_\_ at the premises designated as  
2434 South Seneca

Is hereby refused on this 26th day of March, 1958,  
Under Section 21-14 and 21-22 of the Zoning Ordinance.

For the reason that this would be an extension of a non-conforming use.

Poultry processing plants are not permitted in "Light Commercial" zones,  
and the proposed construction would be an addition to the building that is  
now legally non-conforming.

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.

Case NO. 7-58

Filed 4-1-58 4 p.m.

APPEAL FOR VARIANCE OR EXCEPTION

TO: The Board of Zoning Appeals  
Fourth Floor, City Building Annex  
Wichita, Kansas

The undersigned G. C. Hammer hereby appeals  
from the decision of the Building Inspection Superintendent wherein  
a Building Permit is refused under Section 21-14 & 21-22  
to the undersigned  
at the premises located at 2434 South Seneca

This permit was denied for the reason that this property came into  
the City under non-conforming use regulations which do not permit  
enlargement of existing buildings.

The plans, application, and all data heretofore filed with  
said Building Inspection Superintendent 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.

Appellant *G. C. Hammer*

Appellant G. C. Hammer Address 2434 South Seneca  
Owner G. C. Hammer Address 2434 South Seneca  
Lessee None Address \_\_\_\_\_

(This appeal shall be filed in duplicate, with a \$30.00 filing fee  
within ninety days after the date of the decision of the Building  
Inspector.)

