

BZA 8-67 - John L. Evans Trust Estate, et al., request Variance to permit extension of warehouse in "C" zoning on the south side of Douglas in an area bet. Hillside and Rutan

5747
1/25/68
4-25-67

ACTION

Bza COMMITTEE *Approved* DATE *4-25-67*

M.A.P.C.

B.C.C./B. CO. C.

May 15, 1967

Mr. Leonard A. Levand
316 Insurance Building
Wichita, Kansas 67202

Dear Mr. Levand:

Re: Case No. BZA 8-67 - Request for
a Variance

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on April 25, 1967, in connection with your application for Variance of the required number of off-street parking spaces from 18 to 7 on property zoned "C" Commercial and generally located on the south side of Douglas in an area between Hillside and Rutan. This Resolution reflects the official action of the Board of Zoning Appeals.

If you have any questions concerning this matter, please call.

Very truly yours,

Ronald A. Williamson
Assistant Secretary

RAW:kkg

Attachment

cc: Glen Lytle, Superintendent of Central Inspection
Ralph Eberly, City Clerk
John L. Evans Trust Estate and the Florence N. Evans
Living Trust, and Marvin H. Levand, d/b/a Abbey Rents
224 North Crestway 67208

R E S O L U T I O N NO. BZA 8-67

WHEREAS, The John L. Evans Trust Estate and the Florence N. Evans Living Trust, and Marvin H. Levand, d/b/a Abbey Rents, 224 North Crestway, by Leonard A. Levand, 316 Insurance Building, Wichita, Kansas, requests a variance as provided in Section 2.12.590.2, Code of the City of Wichita, to reduce the required number of off-street parking spaces from 18 to 7 on property zoned "C" Commercial and legally described as follows:

Lot 5, Douglas Avenue, in Uptown Addition, to Wichita, Sedgwick County, Kansas. Generally located on the south side of Douglas in an area between Hillside and Rutan.

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 consider said application on April 25, 1967; and

WHEREAS, the Board of Zoning Appeals determined that it had jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.2, Code of the City of Wichita; and

WHEREAS, the property is zoned "C" Commercial; and

WHEREAS, the Board of Zoning Appeals has found that the variance requested arises from such a condition which is unique and 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 inasmuch as the applicant is providing more parking than is used by the business and the area is in a transitional state changing from retail uses to other uses which do not need as much parking; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance would not adversely affect adjacent property owners or residents inasmuch as the area is in a transitional state and the retail uses are being replaced by uses which do not generate as much traffic and, therefore, a reduction of off-street parking is reasonable; and

WHEREAS, the Board of Zoning Appeals has found 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 inasmuch as this area is in a state of transition and the status of the neighborhood is changing; and

WHEREAS, the Board of Zoning Appeals found the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

WHEREAS, the Board of Zoning Appeals found that the granting of the variance desired will not be opposed to the general spirit and intent of Title 28 (zoning ordinance); and


WHEREAS, each of the five conditions required by Section 2.12.590.2, Code of the City of Wichita, necessary to be present before a variance can be granted, have been found to exist; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals that this request for a variance of the required number of off-street parking spaces from 18 to 7 on property zoned "C" Commercial and legally described as:

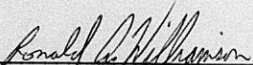
Lot 5, Douglas Avenue, in Uptown Addition,
to Wichita, Sedgwick County, Kansas. Gen-
erally located on the south side of Douglas
in an area between Hillside and Rutan.

be approved.

ADOPTED AT WICHITA, KANSAS, this 25th day of April, 1967.


Kenneth Hartstein, Chairman

ATTEST:


Ronald A. Williamson
Assistant Secretary

April 26, 1967

Mr. Leonard A. Levand
316 Insurance Building
Wichita, Kansas 67202

Dear Mr. Levand:

Re: Case No. BZA 8-67 - Request for
variance to reduce the required
number of off-street parking
spaces

At the meeting of the Board of Zoning Appeals on April 25, 1967, your request for a variance of the required number of off-street parking spaces from 18 to 7 on property zoned "C" Commercial and located on the south side of Douglas in an area between Hillside and Rutan, was considered.

It was the action of the Board to approve a variance of the required number of off-street parking spaces from 18 to 7 for subject property.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as the Chairman and Secretary of the Board have signed it.

If you have any questions, please call.

Very truly yours,

Ronald A. Williamson
Assistant Secretary

RAW:kgg

cc: Glen Lytle, Superintendent of Central Inspection
Ralph Eberly, City Clerk
John L. Evans Trust Estate and the Florence N. Evans
Living Trust, and Marvin H. Levand, d/b/c Abbey Rents
224 North Crestway
Earl Moore, 243 North Hillside

SECRETARY'S REPORT

CASE NO. B2A 8-67

APPLICANT: The John L. Evans Trust Estate and the Florence N. Evans Living Trust, and Marvin H. Levand, d/b/c Abbey Rents, 224 North Crestway, Wichita

AGENT: Leonard A. Levand, 316 Insurance Building, Wichita

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to permit reduction of the required number of off-street parking spaces from 18 to 7 in order to add an additional 900 square feet of floor area to an existing structure

GENERAL LOCATION: South side of Douglas in an area between Hillside and Rutan

ZONING: Subject property as well as that to the north, east and west is zoned "C" Commercial, property to the south is zoned "B" multiple family

LAND USE: Subject property is utilized for a rental business, to the west is a liquor store, to the east is a mortuary, to the south is a duplex, and to the north is a furniture store and florist

JURISDICTION:

The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.2, 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.

April 25, 1967

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

The applicant is requesting a variance of the required off-street parking spaces from 18 to 7 in order to construct an additional 900 square feet of floor area. The present structure was built prior to the off-street parking requirements in the ordinance and, therefore, no off-street parking is required at this time. However, when an addition is proposed for a structure and a building permit is requested the structure must come into conformance with the ordinance. The existing structure consists of 3,600 square feet and to be in conformance with the ordinance 14 off-street parking spaces should be provided. According to the plot plan submitted, approximately 10 approved off-street parking spaces could be placed on the site with the existing building.

Off-street parking in older commercial areas such as this is extremely critical and when a variance is granted to reduce the number of required off-street parking spaces it simply compounds an existing problem. The applicant states that he does not need or utilize the off-street parking spaces which he has provided inasmuch as his use does not generate a great deal of traffic. The problem, however, is that this particular use will not occupy this site forever and when occupancy changes a use may go into this area which will require more parking.

Attached is the applicants statement of justification.

Uniqueness

It is the opinion of the Secretary that there is nothing unique concerning this request inasmuch as that there is no physical element present that prevents the proper utilization of this site and further that the situation is self-created by the applicant inasmuch as he is attempting to over-develop the site without acquiring additional land as the business grows.

Adjacent Property

It is the opinion of the Secretary that the granting of the variance would adversely affect the adjacent property inasmuch as it would permit a use to expand without providing the required number of off-street parking spaces which would add to the further

congestion of the area. It should be emphasized again that off-street parking is critical in this area and the approval of this request would place a burden on the owners that have provided off-street parking.

Hardship

The applicant has pointed out in his statement of justification that if the variance is not granted the owner will lose a valuable tenant inasmuch as the tenant will be obligated to move to another location which provides more space. This is clearly a financial hardship and the Board has not generally accepted financial hardship as the only criteria to justify this condition of granting a variance. The applicant is not being deprived of the utilization of his property, in fact, he is more intensely utilizing the site than permitted under the present ordinance. It is, therefore, the opinion of the Secretary that there is not sufficient justification to demonstrate a hardship inasmuch as the applicant is not being deprived of the utilization of his site and that the only criteria presented has been on a financial basis.

Public Interest

It is the opinion of the Secretary that the granting of the variance would have an adverse affect on the public interest inasmuch as more on-street parking would be encouraged which would result in additional congestion in the area. In areas such as this the answer to the parking problem is not to grant a variance but to encourage the owners of the property to acquire additional land nearby to provide an off-street parking lot. The granting of a variance of this nature not only affects the traffic on the major street but encourages those who park all day, such as employees, to find spaces on nearby residential streets.

Spirit and Intent

It is the opinion of the Secretary that the variance request is not within the spirit and intent of Title 28 inasmuch as the applicant already has more floor area that he can provide parking spaces for on the site. The affect of an application on the spirit and intent of the ordinance depends on the degree of the variance requested. In this particular case, the applicant is requesting a variance from 18 required off-street parking spaces to 7, which is somewhat over a 60% variance and is approaching the complete wavier of the requirement.

Case No. BZA 8-67

4

April 25, 1967

Recommendation

It is the opinion of the Secretary that none of the five conditions necessary to the granting of the variance can be found to exist and, therefore, it is recommended that the variance request not be granted.

BOARD OF ZONING APPEALS
Room 402 City Building Annex
104 South Main
Wichita, Kansas

April 5, 1967

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 8-67

An application has been filed by The John L. Evans Trust Estate and the Florence N. Evans Living Trust, and Marvin H. Levand, d/b/c Abbey Rents, 224 North Crestway, Wichita, by Leonard A. Levand, 316 Insurance Building, Wichita, Kansas, pursuant to Section 2.12.590, Code of the City of Wichita, requesting a variance to reduce the required number of off-street parking spaces from 18 to 7 in order to add an additional 900 square feet of floor area to an existing structure on property zoned "C" Commercial and legally described as follows:

Lot 5, Douglas Avenue, in Uptown Addition, to Wichita, Sedgwick County, Kansas. Generally located on the south side of Douglas in an area between Hilleide and Rutan.

This application has been assigned Case No. BZA 8-67, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, April 25, 1967, 2:00 p.m., in Room 401 City Building Annex, 104 South Main, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

Jack H. Galbraith
Secretary

*Mailed 22 copies
plus 7 Planning Commissioners*

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. 8-67
FILED 3-28-67

APPLICATION FOR VARIANCE

THE JOHN L. EVANS TRUST ESTATE and
1. Name of Applicant THE FLORENCE N. EVANS LIVING TRUST, and
MARVIN H. LEVAND, d/b/a ABBEY RENTS
Mailing Address 224 N. Crestway, Wichita, Kansas 67208 Phone MU 6-1731

Name of Authorized Agent Leonard A. Levand
Mailing Address 316 Insurance Bldg., Wichita, Ks. 67202 Phone AM 2-4401

Relationship of applicant to property is that of owner and tenant
(owner, tenant, lessee, other)

II. The variance requested is the erection of an 800 square foot addition
to the warehouse section

for property located 3215 East Douglas, Wichita, Kansas,

and legally described as: Lot Five (5) on Douglas Avenue, Uptown
Addition to Wichita, Sedgwick County, Kansas,

in the City of Wichita; and which is presently zoned commercial.

(Give metes and bounds description below if appropriate):

III. The applicant herein, or his authorized agent, acknowledges:

- That he has received an instruction sheet concerning the filing and hearing of this matter;
- That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 24-606); and that the appropriate fee is herewith tendered;
- That he has been advised of his right to appeal of the decision of the Board to the City Commission within ten (10) days of that decision;
- That all documents are attached hereto as noted in paragraphs 3 and 4 of the instructions.

THE JOHN L. EVANS TRUST ESTATE and
THE FLORENCE N. EVANS LIVING TRUST, and
MARVIN H. LEVAND, d/b/a ABBEY RENTS

Applicant

By: Leonard A. Levand
Authorized Agent Leonard A. Levand

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeal
2:50 - p.m.), March 28, 19 67, together with
appropriate fee of \$50.00.

Sandra Altepelt, Secretary
Signed

Re: 3215 East Douglas
Wichita, Kansas

STATEMENT

The literal enforcement of the provisions of Title 28 are not applicable in this matter because the generality of the provisions, if followed, results in the impossibility of transacting any business in this location. The existing building in its present use and projected use results in the least amount of interference with the neighboring property and the general traffic situation in the vicinity.

The owner and tenant join in the request for a variance to be granted by the board for the following reasons:

(a) That the variance requested arises because of the particular use to which the property is devoted, and that such use and the availability of parking space on the premises and adjacent premises is more than sufficient and no further parking requirements are necessary.

(b) That the granting of the permit for the variance will not in any way adversely affect the rights of the adjacent property owners or occupants of the adjacent property.

(c) That the strict application of the provisions of Title 28 of which variance is requested constitutes an unnecessary hardship upon the property owner and the tenant represented in the application for the reason that the property owner will lose a valuable tenant and the tenant will be obligated to seek a new location.

(d) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

(e) That granting the variance desired will not be opposed to the general spirit and intent of Title 28.

STATEMENT OF OWNERSHIP

STATE OF KANSAS)
)
 Sedgwick County,)

The undersigned duly bonded and qualified abstractor within and for the County and State aforesaid, does hereby certify:

That we have examined the records in the office of the Register of Deeds of Sedgwick County, Kansas, with reference to the ownership of the following property in Sedgwick County, Kansas, viz:

Property lying within a radius of 200 ft.
 of: Lot 5, Douglas Avenue, in Uptown Addition,
 to Wichita, Sedgwick County, Kansas.


Fidelity
Title
Company,
inc.

And from such examination find that the owners thereof are as set opposite the description of the property below, viz:

LOT	STREET	ADDITION	OWNER
2	Douglas	UPTOWN	✓ Hillcrest Apartment Building Co. 3221 E. Douglas 67218
3 & 4,	"	"	✓ Byrd-Snodgrass Funeral Home, Inc. 3219 E. Douglas 67218
5	"	"	✓ The Southwest Nat'l. Bank, Trs. Florence N. Evans, Living Trust 400 E. Douglas 67202
6	"	"	X Lulu P. Grant No Address Available none found
7 & 8,	"	"	X Betty Smyth No Address Available none found
9	"	"	✓ L. H. Armstrong 340 N. Clifton 67208
10, 11, 12, Oakland	"	"	✓ Don D. & Loretta C. Rutherford, ux 807 W. 2nd St. 67203



LOT	STREET	ADDITION	OWNER
13	Oakland	UPTOWN	X Thomas B. & Marjorie Weaver, ux No Address Available <i>none found</i>
14	"	"	✓ Earl C. & Nancy Lee Moore, ux 243 N. Hillside 67214
15	"	"	✓ Evelyn J. Little 246 S. Brookside 67218
16 & 17,	"	"	✓ Dorothy A. & H. L. Williams, ux % R. M. Henderson, 1201 ^{1/2} Beaumont 67219
18	"	"	✓ Edith M. Gailey & Mary L. Von Merveldt 1912 Mentor 67213
19	"	"	✓ Hillcrest Apartment Building Co., 115 S. Rutan 67218
28	"	"	✓ L. M. & Ethel S. Hahn, ux 3231 Oakland 67218
29	"	"	✓ Christopher Loper 3237 Oakland 67218
30	"	"	✓ Southwest Federal Savings & Loan Assn 130 N. Market 67202
W 40.4' of E 80.8' Lot 2, 3 & 4, Oakland Ave., Rose Place Add.			✓ Luther E. & Robin E. Stillwell, ux 3209 Oakland 67218
E 40.4' Lots 2, 3, 4, Oakland Ave., Rose Place Add.			✓ Adrian P. Davis R # 3, Wichita 67208
18 & 19, Oakland Ave., Rose Place Add.			✓ Mary Sue Mulloy 5723 Park Hollow 67208
N 131.75' Lots 14 & 15, English Ave., exc Oakland Ave., Rose Place Add.			X Mark Clifton No Address Available <i>none found</i>
N 90' Lots 16 & 17, English Ave., Rose Place Add.			✓ Harold D. & Ruth S. Mercer, ux # 19 Huntington 67206
W 1/2 Lot 16, Douglas Ave., I. R. & R. Sub of Blk 1, College Hill Add.			✓ James A. Lewis & Bernard A. Lewis 3202-04 E. Douglas 67208
E 1/2 Lot 16, Douglas Ave., I. R. & R. Sub.			✓ Lucille D. Spines, 138 N. Fountain 67208
W 75' Lot 17, Douglas Ave., I. R. & R. Sub.			X James L. & Oma Jeanne Rauh, ux (Oma J. Rauh Wiley) No Address Available <i>none found</i>
E 25' Lot 17 & W 45' Lot 18, Douglas Ave., I. R. & R. Sub.			✓ J. E. & Lola G. Sanborn, ux 3224 E. Douglas 67208
E 55' Lot 18, Douglas Ave., I. R. & R. Sub.			✓ Walter A. Cunningham, Sr. 3234 E. Douglas 67208
Lot 19, Douglas Ave., I. R. & R. Sub.			✓ Charles E. Doolin & Loren B. Shaw 3236 E. Douglas 67208

-3-

Dated at Wichita, Kansas this 27th day
of March, 1967 at 7:00 A. M.

FIDELITY TITLE COMPANY, INC.

By Charles M. Farwell OEM
Sec.

Tracer # 80907

FORM 223-021

PAYMENT NOTICE

City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer	\$ 50.00	

DESCRIPTION

AMOUNT

BZA Application

Name

Lockens, Robert & Elsie

Address

500 Gorman & Sanders Bldg.

Doc.

R-71-C

Due Date

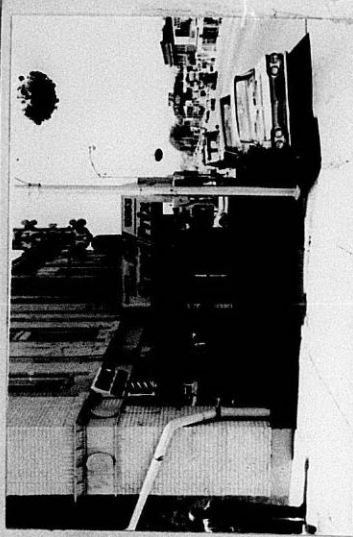
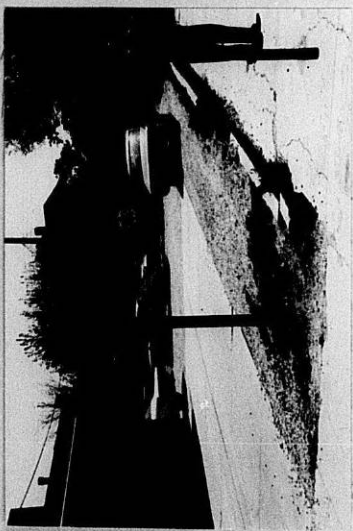
3-28-67

Comments:

Date

3-28-67

Chatteritt

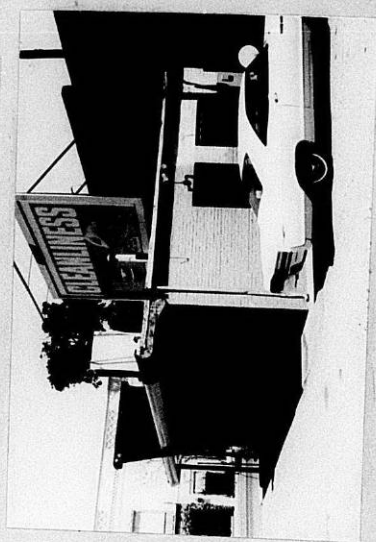


3

2



4



5

Map No. 574
 Sec. _____
 Twp. _____
 Range _____

AREA DATA:
 1. Acres: _____
 2. Adjoining _____
 3. Land Use: _____
 4. Sketch Pls _____
 5. Present La _____
 6. Area (is) _____

PHOTO DATA:
 Taken by _____

SPB

HILLSIDE AVE

VI
 R
 P
 T
 G
 1
 2
 3
 4
 5
 6
 7
 8
 9
 10

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm
Roll # 1