

CASE 13-55-HAYSVILLE RED-1-MIX

CASE NO. 13-55

Date Nov 28, 1955

ZONING APPEALS PETITION

ACCEPTED AS TO FORM by the WICHITA BOARD OF ZONING APPEALS

Receipt No. _____
(Purchasing Department)

by Haysville Real Estate Co.
by Ann + Mullins, attys

Case No. _____

Filed _____, 1955

APPEAL FOR VARIANCE OR EXCEPTION

TO: The Board of Zoning Appeals
Room 205, City Building
Wichita, Kansas

The undersigned, Haysville Red-I-Mix, Inc., hereby appeals from an order of the Chief Building Inspector of the City of Wichita, Kansas, S. B. Maple, under date of October 19, 1955, requiring that buildings located upon the following described real estate be removed:

A part of Lot 4, in Section 5, Township 28, Range 1 East of the 6th P. M., described as follows: Beginning at the NW corner of SE $\frac{1}{4}$ of Section 5, thence South on quarter section line 1209 feet, more or less, to the NW corner of the E. C. Carp property, thence East along the North line of said property 360.29 feet, thence North parallel with said quarter section line 1209 feet to the North line of the SE $\frac{1}{4}$, thence West 360.29 feet to the point of beginning; commonly known as 501 West 27th Street, South, Wichita, Kansas,

said real estate now being within the corporate limits of the City of Wichita, Kansas.

Said order was issued for the reason that the buildings located on said premises were used for commercial purposes and that said above described area is now located in an "AA" residential district.

That under date of October 4, 1955 the Wichita City Planning Commission, after considering a petition for change of zoning filed by Inland Construction Company, appellant's landlord, recommended to the Board of City Commissioners that the petition for a change from "AA" classification to a "C" classification be denied. Under date of October 11, 1955, the Board of City Commissioners accepted the recommendation of the Planning Commission and refused to grant the petition of Inland Construction Company. Neither the Board of City Commissioners nor the Planning Commission made a recommendation nor order relative to Inland Construction Company's alternative prayer before said Board, seeking permission for appellant herein to continue to use said premises under a "non-conforming use" classification.

12/16/55
Dismissed
Milo Murph
OK

No plans nor applications nor specifications have heretofore been submitted to the Building Inspection Superintendent for the reason that said Superintendent, on his own initiative, had advised the appellant that it will be necessary to remove the buildings since they were built without permit and the Building Inspector further stated that permits could not be issued. The refusal to issue the permits was made by the Building Inspector before any application to him was made by the appellant or landlord.

Previous application or appeal to the Board of Zoning Appeals of the City of Wichita by this appellant has not been made.

A certified list of the names and addresses wherever obtainable of all property owners within a 200 ft. radius of the property concerned is attached to his appeal statement.

As the records of the Planning Commission of the City Commissioners and the office of the Chief Building Inspector will reveal, the property involved is a part of an abandoned sandpit. Located upon these premises is a private garage and a storage house which was constructed by appellant. The garage and storage house were constructed on said property in the mistaken belief and information that the property was outside of the city limits of the City of Wichita. The garage and storage house have been used since the Spring of 1955.

The exception or variance desired by the appellant is to allow it to continue the use of said garage and storage house in the "AA" zoning district. The abandoned sandpit, garage and storage house situation is particularly peculiar to the appellant and the same condition does not ordinarily arise and is not ordinarily found in the same zoning district.

Appellant honestly believes that the granting of the exception or variance desired, will not adversely affect the rights of the adjacent property owners or residents. As will be noted from the aerial photograph attached to this appeal, the garage and storage house are located approximately in the center of an area consisting of an abandoned sandpit, open farm land and what appear to be sandpit operations in general. The two buildings involved clearly do not interfere with the use of the residential developments which are located to the South and to the West of the two buildings involved. The residential development in and around this area at the present time is rather scattered, as will be seen from the aerial photograph attached. The two buildings are actually very insignificant when considered in the light of the whole area, as revealed by the aerial photograph. The photograph itself is, in the opinion of the appellant, the most graphic demonstration of the proposition that the variance will not adversely affect the rest of the adjacent property owners.

The strict application of the terms of the ordinance concerning "AA" residential district, will constitute an unnecessary hardship upon the appellant. The property when leased by appellant was mistakenly believed to be outside the city limits of Wichita, both by the tenant and by the landlord. The parties involved thought the property was available for the intended use of appellant. The lease as above indicated, was executed and the lessee (appellant) took possession under the terms of the lease and constructed the two buildings above mentioned all under the mistaken belief and information as above stated. In view of the fact the two buildings are located in an area which could hardly, be termed a residential area, the order requiring the appellant to remove its buildings certainly does create it seems to appellant, an unreasonable hardship upon the operations of the appellant.

In view of what has been said above relative to the location of the buildings involved, the nature of the area involved, the mistaken belief which existed in both the minds of the tenant and the landlord, and in view of the fact that no business is carried on in the buildings which per se is against public policy, it would appear only reasonable to say that the exception or variance desired is not against the public interests. The garage is used for the purpose of carrying on the maintenance of certain mechanical devices of the lessee and the storage house is used for just what the name implies, storing facilities. It does not "clutter up" so to speak a fine residential area. Further since there is apparently some thought of acquiring the property above described for public purposes sometime in the future, it would seem that this request is not unreasonable.

As has been indicated above, it is the feeling of the appellant that the aerial photograph attached to this application is a rather clear and succinct presentation of the problem here involved. No other drawings or plans are therefore attached.

It is hereby declared that all the statements contained in this appeal are true and correct, to the best knowledge of the applicant, and by reason of all of the foregoing the appellant earnestly requests the exception and variance from the "AA" residential ordinance, which would enable appellant to [REDACTED] continue the use of the property above described by having located thereon the garage and storage house above mentioned.

RESPECTFULLY SUBMITTED,

ARN & MULLINS

BY *Richard J. Mullins*

Attorneys for Haysville
Red-I-Mix, Inc.

C O P Y

October 19, 1955

Mr. M. K. Gentry
702 East Harry
Wichita, Kansas

Dear Sir:

On May 4, 1955, you were notified by this office of the violation on this property by reason of the two buildings that were built without first obtaining building permits and the fact that the buildings were used for commercial purposes in the "AA" residential district. Following receipt of this letter, you and your attorney, Mr. Mullins, contacted me and a gentleman's agreement was reached whereby this office would hold in abeyance any action regarding this violation, pending the outcome of your petition for change of zoning.

As you know, this was recently denied by both the Planning Commission and the City Commission. Therefore, I have no alternative but to require that this property be brought into compliance with the zoning ordinance and the building code. Inasmuch as these buildings were built without permits and that permits cannot be issued, it will be necessary that the buildings be removed.

Yours very truly,

/s/ S. B. MAPLE
Chief Building Inspector

SBM MG
Cc
Mr. Fred Aley
Mr. Richard F. Mullins

C O P Y

October 19, 1955

Mr. M. K. Gentry
702 East Harry
Wichita, Kansas

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/s/ S. B. MAPLE
Chief Building Inspector

SBM MG
Cc
Mr. Fred Aley
Mr. Richard F. Mullins

BOARD OF ZONING APPEALS

Room 205, City Building
Wichita 2 Kansas

NOTICE TO PROPERTY OWNERS

December 5, 1955

An appeal has been filed by Arn & Mullins, Attornies
(address) Beacon Building, Wichita, Kansas on behalf of

Haysville Red-1-Mix (address) 501 W. 27th St. South

as provided by Section 21-10 Vol. 1 of the City Code. The appellatnt
desires to maintain a truck storage and repair shop for the

Haysville Red-1-Mix Concrete Company.

on the premises located at 501 W. 27th St. South, Wichita, Kansas

This appeal has been given Case No. 13-55 and a hear-
ing will be held by the Board of Zoning Appeals on Friday,
Dec. 16, 1955, at 1:30 p.m. in Room 201 of the City Building,
at which time you may appear, if you so desire, either in person or
by agent or attorney.

By order of the Board of Zoning Appeals.

Geo. J. Fisher

Secretary, Board of Zoning Appeals

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

December 5, 1955

Haysville Red-I-Mix
501 W. 27th St. South
Wichita, Kansas

Gentlemen _____ :

Your appeal, under the Zoning Ordinance, relative to premises at
501 West 27th Street South, Wichita, Kansas

has been given Board of Zoning Appeals Case No. 13-55.

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, December 16, 1955, 1955, at 1:30 p.m.
In Room 201 of the City Building, Wichita, Kansas

Respectfully,

Geo. J. Fisher
Secretary, Board of Zoning Appeals

DELIVERING EMPLOYEE Deliver ONLY to addressee.
 Show address where delivered.

Received from the postmaster the registered, certified, or insured article,
the number of which appears on the face of this return receipt.

1. Haysville Red-I-Mix
(Signature or name of addressee)

2. Billie Jean Casney
(Signature of addressee's agent. Agent should write address &
name on line 1 above)

Date of Delivery 12/16/55

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

NOTICE OF HEARING OF APPEAL

December 5, 1955

Haysville Red-1-Mix
501 W. 27th St. South
Wichita, Kansas

Gentlemen:

Your appeal, under the Zoning Ordinance, relative to premises at
501 West 27th Street South, Wichita, Kansas

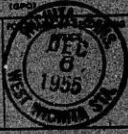
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Respectfully,

Geo. J. Fisher
Secretary, Board of Zoning Appeals

POST OFFICE DEPARTMENT OFFICIAL BUSINESS		PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE \$500 (1870)	
REGISTERED NO.			
CERTIFIED NO.	727308		
INSURED NO.			
RETURN TO →	NAME OF SEARCHER Service Department STREET AND NO. OR P.O. BOX Room 205 City Building POST OFFICE		
	STATE Wichita 2, Kansas		

POD Form 3811
Apr. 1955

ADDRESSES OF OWNERS

Inland Const. Co.	-	317½ S. Main, Wichita, Kansas
Paul E. Allen	-	5521 E. Orme, Wichita, Kansas
Adella Allen	-	
Hanford M. Fitch	-	1252 S. Minneapolis, Wichita, Kansas
Marinus Heersche	-	1027 West 27th South, Wichita, Kansas
O. L. Wallace	-	2053 S. Main, Wichita, Kansas
Lela R. Wallace	-	726 S. Topeka, Wichita, Kansas
Anne Gaskill	-	702 West 27th South, Wichita, Kansas
Midland Valley Railway Co.	-	Freight Depot, 510 West Douglas, Wichita, Kansas

CERTIFICATE OF OWNERSHIP

STATE OF KANSAS)
) SS:
 SEDGWICK COUNTY)

We the undersigned a duly qualified and bonded abstracter for the within county and state hereby certify that we have made a search of the records in the office of the Register of Deeds in and for County and State and from such examination find that the owners of the property within a 200 foot radius of

The West 360.29 feet of the North
 1209 feet of Lot 4 in Sec. 5-28-1E
 Except the East 345.29 feet of the
 North 100 feet.

are as follows:

LEGAL	OWNER
The West 360.29 feet of the North 1209 feet of Lot 4 in 5-28-1E., Except the East 345.29 feet of the North 100 feet.	Inland Const. Co.
Beg. 1437.12 Feet North of SW corner SE $\frac{1}{4}$ of 5-28-1E, East 458.53 feet; South 475 feet; West 458.53 feet North to Beg.	" " "
Beg. 1437.12 feet North and 458.53 feet East of SW cor SE $\frac{1}{4}$ 5-28-1E, E 91.7 ft, S 475 ft, W 91.7 ft, North to Beg.	" " "
Beg. 1437.12 ft N & 550.2 Ft E of SW Cor SE $\frac{1}{4}$ 5-28-1e, E 91.7 ft, S 475 ft, W 91.7 ft, North to Beg.	" " "
Beg. 1437.12 Ft N & 641.9 Ft E SW cor SE $\frac{1}{4}$ 5-28-1E, E 91.7 ft, S 475 ft, W 91.7 feet, North to Beginning.	" " "
Beg. 1437.12 feet N & 733.64 feet E of SW cor SE $\frac{1}{4}$ 5-28-1E, E 91.7 feet, S 475 feet, W 91.7 feet, North to beg.	" " "
Beg. 1437.12 feet N & 825.354 feet E of SW cor SE $\frac{1}{4}$ 5-28-1E, E 91.7 feet, S 475 feet, W 91.7 feet N to beg.	" " "
The E 345.29 feet of the North 100 feet of the W 360 feet of North 1209. of Govt Lot 4, 5-28-1E.	Paul E. Allen Adella Allen
Beg 360.29 Ft E of NW cor of Govt Lot 4, South 1209 feet, E to E line of Govt Lot 4 North 1209 feet W to Beginning. 5-28-1E.	Hanford M. Fitch
The Northeast Quarter of the Southwest Quarter of Section 5-28-1E.	Marinus Heersche
Beg 91.5 feet W of the SE cor of NW $\frac{1}{4}$ 5-28-1E, W 141 ft, N 210 feet, E 142 ft, S 210 ft to Beg.	O.L. Wallace Lela R. Wallace
The West 15.9 ac of the E 27 ac of Govt Lot 3 in NE $\frac{1}{4}$ 5-28-1E.	Anna Gaskill

Continued

The East 91.5 feet of the NW $\frac{1}{4}$ 5-28-1E
being the ROW of the Midland Valley R.R.

Midland Valley Railway Co.

Dated this 23rd day of Nov.
1955.

THE FIDELITY TITLE COMPANY

By Elsie M. Barrell
Sec. Treas.

No. No. 3350 SP

Point No. 4-
industrial waste

In regard to Point No. 4, the industrial waste originating in the City and the County, Commissioner Howse made the following statement:

Howse-statement

"In connection with the industrial wastes originating in or near the city as contrasted with the municipal wastes directly within the control of the city administration, I am convinced the pollution problem is of such paramount importance not only to the citizens of Wichita but also to the citizens of the entire State that we have no alternative but to correct these abuses of the public interest. I am well aware of the long background of the efforts of many local industries to avoid city taxes while at the same time enjoying the advantages of being located as closely as possible to the city but, in my opinion, the time has come when we must examine the record realistically and courageously and determine the public interest in assessing the cost of pollution abatement."

City Manager to
prepare analysis
& report on each
individual case

Howse moved that the City Manager be directed to prepare an analysis and report together with recommendations and suggested action to be taken in each individual case:

1. With respect to those industries discharging waste directly into the river.
2. With respect to those industries discharging waste directly into the drainage canal.
3. With respect to those industries discharging waste into the Wichita industrial sewer together with appropriate comments concerning the condition and probable continued use of this sewer.
4. With respect to legal agreements existing between such industries and the City of Wichita.
5. With respect to legislation that may be necessary to establish adequate sewer districts and/or the levy of a sewage treatment charge for operations both within and without the City limits.
6. With respect to the territory that should be annexed to the City for purposes either of controlling pollution practices and/or levying municipal taxes in payment of the cost thereof.

Howse also moved that a copy of his remarks be forwarded for the record to the Kansas State Board of Health.

Motion carried.

Mrs. Garner--
requesting closing
of sand pit at
623 W 27th St. So.

Mrs. Katherine Garner, 2907 South Osage, appeared before the Commission requesting that the Commission close the sand pit at 623 West 27th Street South, which is an area south from 27th Street to Ellen Street, and west from the Midland Valley Railroad tracts to Osage Avenue, which is owned by Mr. Heersche. Mrs. Garner stated that the dirt and dust creates a health problem; that the noise of the machinery makes operation of a normal classroom in Knight School impossible; creates a hazard for children; roads are kept in a nearly impassable stage; taxes have tripled on property while the value is decreasing due to the continued operation of this sand pit; and portions of ground have started to cave in as close as 20 feet from the school.

10/11/35

Several other property owners in the area appeared before the Commission requesting that action be taken correcting this situation.

Asst. City Attorney
--City has no
legal authority
in regard to matter

Assistant City Attorney, Lawrence Curfman, pointed out that the City of Wichita has no legal authority requiring the closing of the sand pit or the fencing. Mr. Curfman also pointed out that if the noise is a nuisance they can file suit against the owners of the sand pit and if the ground is caving in around the school the Board of Education can take legal action against the sand pit owner. It was also pointed out that the property owners can petition for paving of the streets which would solve the dirt and dust problem.

Geo. Peabody--

Mr. George Peabody, representing Mr. Heersche, owner and operator of the sand pit in question, appeared before the Commission stating that Mr. Heersche had operated the sand pit for three years, that the conditions were known when the houses were constructed, also that the pit is fenced and insofar as is possible Mr. Heersche operates it in a proper manner.

Discussed.

Matter referred
to City Manager
REPORTS FROM THE
CITY PLANNING
COMMISSION:

Change from AA to
E area at SW corner
of 27th St. So. &
Midland Valley RR

Howse moved that the matter be referred to the City Manager for his recommendation. Motion carried.

Report from the City Planning Commission in regard to change from AA to E a part of Lot 4, in Section 5, Township 28, Range 1-East of 6th P.M. described as follows: Beginning at the NW corner of SE $\frac{1}{4}$ of Section 5, thence south on quarter section line 1209 feet, more or less, to the NW corner of the E. C. Carp property, thence east along the north line of said property 360.29 feet, thence north parallel with said quarter section line 1209 feet to the north line of the SE $\frac{1}{4}$, thence west 360.29 feet to the point of beginning, being an area at the southeast corner of 27th Street South and Midland Valley Railroad, presented. The report stated that this area has been used as a sand pit. The property to the east and north is also sand pits. At its meeting of September 6, 1955 the Planning Commission denied a change of zoning for the property to the east to a C classification. The petitioner indicated that the property has been leased to Haysville Red-I-Mix, Inc. The Building Inspector indicated that a garage has been constructed on the property without the proper permit. The City Planning Commission has previously recommended to the City Commission and to the Park Board, that this entire area be acquired for public use. There is potential residential development to the south. New residential construction is under way to the northwest, west and southwest. City Planning Commission recommended that the petition be denied as an industrial classification would be contrary to the general planning for this entire area. City Manager concurred in the recommendation.

Comm. from Park
Board -purchase of
3 sand pits south
of Big Arkansas
River along 27th
St. So.

Communication from the Board of Park Commissioners in regard to the purchase of three sand pits located south of the Big Arkansas River, along 27th Street South, presented. The report stated that at its regular meeting on October 10, 1955 the Board of Park Commissioners approved the purchase of these three sand pits which are owned by Dolege Brothers Company, the Inland Construction Company and Mr. Hanford Fitch, respectively. The report pointed out, however, that no funds are available for this purchase at this time, and if