

BZA 13-67 - Kansas Masonic Home re-
quests Variance to permit sign in "B"
on the west side of Seneca in an area
south of Maple

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

ACTION

5396
Post
5-10-67

By a COMMITTEE *No Jurisdiction* *5-23-67*
Care not considered

M.A.P.C. *Closed* *6-27-67*

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

BKA 13-67 - Kansas Masonic Home re-
quests Variance to permit sign in "g"
on the west side of Seneca in an area
south of Maple

Sign Masonic Home

41.5		
<u>2.5</u>		
227.5	Letters	85.75
630	Box	<u>25.00</u>
<u>85.75</u>	Total	110.75 sq ft

June 28, 1967

Mr. George B. Powers
600 Fourth National Bank Bldg.
Wichita, Kansas 67202

Dear Mr. Powers:


Re: Case No. BZA 13-67 - Request for
a Variance of the sign area re-
quirements in the "B" Multiple
Family District

The Board of Zoning Appeals at the meeting of June 27, 1967, received both the opinion of the Board's legal counsel, Mr. Johnson, and your letter to Mr. Johnson, and after discussion voted unanimously as to those present to not accept jurisdiction on your application for the granting of the variance. This action was taken on the basis of advice of the Board's legal counsel. The case is now considered closed.

I mentioned in the meeting the apparent three remaining courses of action which your client may choose to seek remedy for their specific problem. These are in my opinion (1) seek a change in zoning district classification to such a district that will permit a larger sized sign, (2) request the MAPC or BCC to initiate action to amend the zoning ordinance to provide for a larger sign area for directory type sign in the "B" Multiple Family District, (3) appeal the decision of the Board of Zoning Appeals to the District Court.

Minutes of this meeting will be available in a week or two. If you care to have a copy, please advise and we will furnish them. Discussion was also had as to refunding of the application fee, however, comments by our legal counsel indicated that this might foreclose your pursuing the third alternate listed above. If you have any questions concerning the disposition of this case, please call us.

Sincerely,


Robert A. Lakin
Secretary Pro Tem.

Mr. George B. Powers
Case No. BZA 13-67
Page -2-
June 28, 1967

RAL:kgg

cc: Mr. Benjamin Langel
600 Fourth National Bank Bldg.
Wichita 67202

Kansas Masonic Home
401 South Seneca
Wichita 67213

Mr. Art Johnson
Beacon Building
Wichita 67202

Glen Lytle, Superintendent
Central Inspections Division

Ralph Eberly, City Clerk

THE CITY OF WICHITA



DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY
AMHERST 2-8211 — AREA CODE 316
SUITE 800 — BROWN BUILDING
WICHITA, KANSAS 67202

Board of Zoning Appeals
City Building Annex
114 South Main
Wichita, Kansas 67202

RE: Variance pursuant to Section 2.12.590.2,
Code of the City of Wichita, to erect a
sign having an area of 100.75 square feet
and a height of 38½ feet.

Gentlemen:

At the regular meeting of the Board of Zoning Appeals which was held on May 23, 1967, the question was raised as to the jurisdiction of the Board to grant the variance requested by the above applicant.

The request of the applicant is for a variance of Section 28.04.070(A)(12) which provides inter alia as follows:

28.04.070. "B" multiple-family dwelling district regulations. In "B" multiple-family dwelling district, no building or premises shall be used and no building shall be hereafter erected, enlarged, converted or altered, unless otherwise provided in this chapter, except for one or more of the following uses, and all buildings erected, enlarged, converted or altered in the "B" multiple-family dwelling district shall conform to the following area and height regulations:

A. USE REGULATIONS.

12. A directory-type sign associated with multiple housing or apartment uses permitted in 28.040.070 above; provided that it announces only the name of the multiple housing or apartment development, its street address and the name, address and telephone number of the manager and/or rental agent; and further provided that it shall comply with the following requirements:

JOHN DEKKER, DIRECTOR OF LAW AND CITY ATTORNEY

ASSISTANT CITY ATTORNEYS

EUGENE L. PIRTLE

ARTHUR G. JOHNSON

ROBERT A. THIESSEN

H. JAY SETTER

H. E. JONES

June 20, 1967

THE CITY OF WICHITA 2

Page Two
June 20, 1967

a. Such sign, exclusive of the base on which it is suspended, shall not exceed six square feet in area."

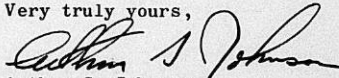
The Board of Zoning Appeals was created by ordinance pursuant to K.S.A. Supp. 12-714 and its authority to grant variances is set forth in K.S.A. Supp. 12-715(a) which provides as follows:

12-715(a). "Variances. To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district." (Emphasis Supplied)

In view of the limitation on usage provided by the State statute hereinabove cited, it is manifest that any attempted alteration of 28.14.070(A)(12) is contrary to said statute and is not within the jurisdiction of the Board.

Thus, it is my judgment that the Board of Zoning Appeals does not have jurisdiction to grant the relief sought by the applicant.

Very truly yours,



Arthur G. Johnson,
Assistant City Attorney

AGJ:nrh

cc: John Dekker, City Attorney
George B. Powers,

GEORGE S. POWERS
JOHN F. EBERHARDT
STUART R. CARTER
ROBERT C. FOULSTON
MALCOLM MILLER
ROBERT H. MATRIDGE
ROBERT M. SIEPKIN
RICHARD C. HARRIS
GERALD BANATYEN
DONALD L. CORDES
ROBERT L. HOWARD
CHARLES J. WOODIN
NIKEL L. STOUT
BENJAMIN C. LANGEL
PHILLIP S. FRICK
JERRY G. ELLIOTT
JOHN E. FOULSTON
STANLEY G. ANDEEL

ROBERT C. FOULSTON (1888-1947)
GEORGE SIEPKIN (1885-1964)
CARL T. SMITH (1898-1968)

LAW OFFICES

FOULSTON, SIEPKIN, POWERS, SMITH & EBERHARDT

SUITE 600 FOURTH NATIONAL BANK BUILDING

AMHERST 4-0372

WICHITA, KANSAS 67202

May 29, 1967

Mr. Arthur G. Johnson
425 Beacon Building
Wichita, Kansas

Re: Application of Masonic Home for
Variance - Board of Zoning Appeals

Dear Art:

At the request of the Board of Zoning Appeals, we have done some research into the jurisdiction of the Board to grant us the sign restriction variance we have requested on behalf of the Kansas Masonic Home.

We remain convinced that the Board does have the jurisdiction to grant the requested variance.

As your research has undoubtedly also revealed, we find no Kansas case that is in any way controlling on the matter, and we will be required to apply the various rules of construction and interpretation of both the Kansas statutes and the Wichita zoning ordinance.

One obvious starting point is the statute that sets up the Board of Zoning Appeals and states its powers and duties. The statute with which we are directly concerned is K.S.A. 1965 Supp. 12-715 which provides among other things that:

"* * * The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the

enforcement of the zoning ordinance. The board may also, when it shall deem the same necessary, grant variances and exceptions to the zoning ordinance on the basis and in the manner herein provided: (a) Variances. To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district. * * * "

The last quoted sentence, "Such variance shall not permit any use not permitted by the zoning ordinance in such district," is the sentence that caused the question of the Board's jurisdiction to be raised.

In our opinion, the only question that has to be decided to determine whether the Board has jurisdiction is whether, in granting the requested variance, the Board would, in legal effect, be permitting a use not permitted by the zoning ordinance. We shall therefore turn our discussion to the specific ordinance with which we are presently concerned.

The ordinance in question, 28.04.070, provides under subsection A.12 that no sign may be erected on the premises in "B" zoned districts except "(a) directory-type sign associated with multiple housing or apartment uses provided that it announces only the name of the multiple housing or apartment development, its street address and the name, manager and/or rental agent"

The use, therefore, is that this subsection of the ordinance is concerned with is that of using the property for a "directory-type" sign. If the proposed sign is a "directory-type" sign, regardless of size, the Board has jurisdiction to grant a variance as to the requirements listed in subparts a, b, and c of 28.04.070 A. 12. If it is not, the Board has no power to act.

We have searched in vain for any precedent concerning "directory-type signs." There simply have been no legal decisions construing the meaning of this phrase to the best of our knowledge. The definitions of "directory" contained in the various dictionaries are similarly of no assistance.

The Supreme Court of Kansas has, however, stated that zoning ordinances are to be liberally construed in the property owner's favor because they are in derogation of the right of private property. Koppel v. City of Fairway, 189 Kan. 710, 371 P.2d 113 (1962); Kilcoyne v. City of Coffeerville, 176 Kan. 159, 269 P.2d 418 (1954).

When this rule of construction is applied to the ordinance in question -- as it must be -- then the proposed sign is certainly susceptible of being within the definition of a "directory-type sign," and the Board thus has the right and the power to grant the requested variance if it chooses to do so. We think, and the Board can certainly decide, that the purpose of the ordinance is simply to prevent advertising matter and that is why the term "directory" was used.

Indeed, there being no commonly accepted legal definition of what a "directory-type sign" is, the restrictions in the ordinance itself are the only restrictions that the Board would have to consider. In other words, as long as a proposed sign does not contain anything other than the name of the multiple housing unit, the address and the name, address, and telephone number of the manager or rental agent, the Board would be within its jurisdiction to rule that it is a directory-type sign. The Board could then move to the next question of whether its policy favored permitting such a sign to be erected.

We are of the opinion that the Board should make the decision as to whether it has jurisdiction to grant the requested variance as the matter is essentially one of applying an ambiguous ordinance to a particular set of facts, which is, after all, one of the principal functions of the Board. 2 Am. Jur.2d, "Administrative Law," §§ 241-245; K.S.A. 1965 Supp. 12-715.

In conclusion, we are still of the opinion that the variance we have requested on behalf of the Kansas Masonic Home is within the jurisdiction of the Board of Zoning Appeals. As long as the Board can find that the proposed sign is a "directory-type sign," it has the power to permit its construction. The Board would not be changing its use. It would only be a variance within the use permitted. The proposed sign clearly falls within the specific definition of such a sign contained in the ordinance, and we can find no legal precedent that would require the Board to conclude that such a sign does not qualify as a "directory type sign." Moreover, we are entitled to a liberal construction of the ordinance.

When all of these factors are combined, it seems clear to us that the Board has ample jurisdiction to grant the requested variance, and that the Board itself should first consider whether it feels the sign is a "directory-type sign." If it decides that it is such a sign -- as we think it should decide -- then the Board may consider whether it wishes to grant the Kansas Masonic Home permission to erect the proposed sign.

We are taking the liberty of sending copies of this letter to the various members of the Board so that they will all be fully apprised of our position in this matter prior to the June 27 hearing. Naturally both Ben Langel and I would welcome an opportunity to discuss this matter with you personally if you desire, and we would appreciate knowing your final opinion on the matter.

When we attended the hearing we were not aware of any jurisdictional problem other than the question of whether or not it was a directory sign and were not therefore attempting to evade your question of jurisdiction. I simply did not see the question at all until it was raised and explained.

Very truly yours,



OF FOULSTON, SIEFKIN, POWERS, SMITH & EBERHARDT

GBP:vc

May 24, 1967

Mr. George B. Powers
600 Fourth National Bank Bldg.
Wichita, Kansas 67202

Dear Mr. Powers:

Re: Case No. BZA 13-67 - Request for
a Variance of the sign area re-
quirements in the "B" Multiple
Family District

At the regular meeting of the Board of Zoning Appeals on May 23, 1967, your request for a variance of the sign area requirements in the "B" Multiple Family District in order to erect a sign having an area of 100.75 square feet and a height of 38½ feet on property zoned "B" Multiple Family and located on the west side of Seneca in an area south of Maple, was considered.

It was the action of the Board to defer the application so that the legal council for the Board would have time to review the case and determine whether the Board has jurisdiction.

The Board will consider this application again on June 27, 1967, at 1:30 p.m., prior to which time you will receive notice of the meeting and an agenda.

Very truly yours,

Ronald A. Williamson
Assistant Secretary

RAW:kkj

cc: Kansas Masonic Home, 401 South Seneca
Glen Lytle, Superintendent, Central Inspection
Ralph Eberly, City Clerk

SECRETARY'S REPORT

CASE NO. BZA 13-67

APPLICANT: Kansas Masonic Home, 401 South Seneca, Wichita

AGENT: George B. Powers, or Benjamin C. Langel, 600 Fourth National Bank Building, Wichita

REQUEST: Variance pursuant to Section 2.12.590.2, Code of the City of Wichita, to erect a sign having an area of 100.75 square feet and a height of 38½ feet

GENERAL LOCATION: On the west side of Seneca in an area south of Maple

ZONING: Subject property is zoned "B" Multiple Family as is that to the north, east and west, to the south is "RB" Four Family

LAND USE: Subject property and that to the north and west is Masonic Home, to the south is single-family, to the east is single family and multiple family

JURISDICTION:

The applicant is requesting a variance of the sign area requirements in the "B" District, and it is the opinion of the Secretary that it is questionable as to whether the Board has jurisdiction in this matter. Section 28.04.070.A.12 reads as follows:

"A directory-type sign associated with multiple housing or apartment uses permitted in 28.04.070 above; provided that it announces only the name of the multiple housing or apartment development, the street address, and the name, address, and telephone number of the manager and/or rental agent; and further provided that it shall comply with the following requirements:

- (a) Such sign exclusive of the base on which it is mounted or suspended shall not exceed 6 square feet in area.
- (b) Such sign mounted on or suspended from a single base may be situated at any location on the premises whereon the multiple housing or apartment development is located.

May 23, 1967

- (c) Such sign may be illuminated; provided that flashing or oscillating lights shall not be permitted; and further provided that all such lighting shall be so situated on the premises that it will not illuminate or reflect onto adjacent properties or opposite properties.

As you will note by reading the above, the ordinance specifically states that the only sign permitted is a directory-type sign which announces only the name of the multiple housing or apartment development, street address, and the name, address, and telephone number of the manager and/or rental agent. The ordinance does not further define a directory type sign, but under part (a) of the section it does point out that the sign shall not exceed 6 square feet in area. The applicant is proposing a sign which would consist of some 110 square feet of area which is extremely large for a directory-type sign, and in the opinion of the Secretary, by size alone, no longer constitutes what is commonly interpreted as a directory-type sign. From the plan submitted indicating the design and the size of the sign, it appears that the applicant is proposing to construct an advertising sign which is first permitted as a use in the "LC" district. Therefore, it is the opinion of the Secretary that the applicant is not actually asking for a variance of area, but actually is requesting a use variance. In other words, by the design of the sign submitted, it is what is interpreted by the Central Inspections Division and Planning Department as an advertising sign and not as a directory-type sign. It should be emphasized that the Board does not have jurisdiction to consider a use variance by state statute and, therefore, it is the opinion of the Secretary that the Board does not have jurisdiction in this matter.

Before the Board considers the application for a variance it should first determine whether it has jurisdiction to consider this matter. It is the responsibility of the Board to determine whether the sign proposed by the applicant is a directory-type sign or an advertising sign. If it is determined by the Board that the sign is not a directory-type sign then the Board would not have jurisdiction in this matter and consequently would not consider the variance.

If the Board determines that it has jurisdiction to consider the variance request under the conditions outlined in Section 2.12.590.2, Code of the City of Wichita, the Board may grant the request when all the five of the following conditions are found to exist:

May 23, 1967

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 effect the public health, safety, morals, order, convenience, prosperity or general welfare.
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 Kansas Masonic Home desires to put up a much larger sign than is permitted by ordinance and, therefore, is requesting a variance of the square footage and height requirements relating to signs. The ordinance states that the maximum area of a sign in the "B" Multiple Family district is 6 square feet and according to the interpretation of the ordinance the maximum height is 33 feet. The sign proposed by the applicant, excluding the supports, is to be 50 feet wide and 2½ feet high with an area of 110.75 square feet. The total height of the proposed sign is 38.5 feet.

The applicants point out in their statement of justification that they desire the larger and higher sign so that it will be visible from U. S. 54. The applicant states that U. S. 54 is elevated in this area and due to this fact it is necessary that they have a larger and higher sign so that it is visible from the highway.

It should be pointed out that the applicants propose to place the sign along their south property line approximately 135 feet west of Seneca Street. In reviewing this location in the field, it is apparent that the sign will actually be in the back yards of the homes which front on University Avenue. It is the opinion of the Secretary that this location is not desirable and it certainly would not be of benefit to the adjacent dwellings.

Uniqueness

Uniqueness is a condition which is unusual to the property in question as to limitations caused by an odd shaped lot, severe topography, drainage easements, and other similar circumstances, and which is not ordinarily found in the same zone or district; and is not created by the action or actions of the property owner or applicant. Subject property has no severe physical limitations, and it is the opinion of the Secretary that just because U.S. 54 is elevated at this location is certainly not justification to construct a sign some 20 times larger than that permitted by the ordinance in order for it to be seen from the highway. It should be pointed out at this time that the State Highway Department has cooperated with the Masonic Home in that the Highway Department has cooperated with the Masonic Home in the east bound lane of U.S. 54 just west of Seneca Street. Therefore, it is the opinion of the Secretary that there is not sufficient justification to find that the condition of uniqueness exists.

Adjacent property

It is the opinion of the Secretary that inasmuch as the sign is to be located along the south side of the Masonic Home property or the rear line of the adjacent properties across the alley to the south, that the location would not be desirable for the adjacent residents and would have an adverse affect on their property. The proposed sign is of the same size as used by several of the service stations in the City and simply would not be desirable in a residential neighborhood. It is, therefore, the opinion of the Secretary that the granting of the variance would have an adverse affect on the adjacent properties.

Hardship

It is the opinion of the Secretary that a hardship does not exist in this particular case inasmuch as the State Highway Department has placed a sign on the highway indicating the proper turnoff for the Masonic Home, and that should be adequate notification and designation from Highway U.S. 54.

Public Interest

It is the opinion of the Secretary that the granting of the variance would adversely affect the public interest inasmuch as the area is residential in character and a sign as large as the one proposed would certainly not be compatible.

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 ordinance clearly specifies that the signs in the "B" residential classification are to be directory-type signs very limited in size and the magnitude of the sign proposed by the applicant is completely in opposition to the residential concept.

Recommendation

It is the opinion of the Secretary that all five conditions necessary to the granting of the variance to permit the sign to be increased in area and height can not be found to exist and, therefore, it is recommended that the variance request not be approved.

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

May 5, 1967

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. BZA 13-67

An application has been filed by Kansas Masonic Home, 401 South Seneca, Wichita, by George B. Powers or Benjamin C. Langel, 600 Fourth National Bank Building, Wichita, Kansas, pursuant to Section 2.12.590.2, Code of the City of Wichita, requesting a variance to erect a sign having an area of 110.75 square feet and a height of thirty-eight and one half feet on property zoned "B" multiple family and legally described as follows:

Beginning 135 feet West of the West line of Seneca Street and 224.5 feet North of the North line of University Avenue; thence West 55 feet; North 10 feet; East 55 feet; South 10 feet to place of beginning. All in Lawrence's Sixth Addition to Wichita, Sedgwick County, Kansas. Generally located on the west side of Seneca in an area south of Maple.

This application has been assigned Case No. BZA 13-67, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, May 23, 1967, at 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

STATEMENT OF APPLICANT

Applicant, Kansas Masonic Home, operates a rest home at 401 South Seneca, Wichita, Kansas. This rest home is supported by masonic organizations throughout the State of Kansas and is the only such home operated by masonic organizations located in the State of Kansas.

The variance requested arises from the fact that in order for applicant to erect a sign identifying its operation which will be visible from U. S. Highway #54 it is necessary for the sign to be larger than that permitted by the applicable zoning requirements and that is also slightly higher than that permitted by the applicable zoning regulations. Highway 54 is elevated from the normal ground level as it passes near applicant's property and a small sign erected only to the height permitted by the applicable zoning regulations would not be visible and legible from Highway 54. Applicant points out that this condition is both unique to the property of applicant and was not in any way caused by the applicant.

The granting of a permit for the requested variance will not adversely affect the rights of adjacent property owners or residents. The sign applicant wishes to erect is designed in such a manner that it will not cast light upon the property located to the north of applicant's property both because of the type of low light-output neon tubing that will be used and because of the height at which the sign will be erected. Similarly, because of the nature of the recessed "channel" letters to be used in the sign and the low light output neon tubing to be used, there will be no bothersome light directed on the property located to the east of applicant's property.

The strict application of the provisions of Title 28 will constitute an unnecessary hardship upon the applicant. The nature and design of the proposed sign will not impair the nature of the neighborhood nor detract from its general appearance. The Kansas Masonic Home is not a commercial rest home and the proposed sign will not in any way be in the nature of an advertisement or a billboard.

Furthermore, it is obvious that the proposed sign will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. Indeed, the very purpose of the Kansas Masonic Home is to further and foster the general welfare of the elderly and the proposed sign is intended to assist the home in that effort by making the general public as well as the members of its supporting organizations more aware of the existence and location of the Home.

Similarly, because of the essentially eleemosynary nature of the home and the care with which the proposed sign has been designed to avoid detracting from the general appearance of the neighborhood or inconveniencing nearby landowners, the granting of the requested variance will not in any manner be opposed to the general spirit and intent of the Title 28. In granting the requested variance, therefore, this Board would not need to fear that it would be setting an undesirable precedent for commercially operated rest homes.

The Kansas Masonic Home therefore respectfully and earnestly requests that this Board grant the requested variance so that a sign permit may be issued allowing the home to erect the proposed sign.

THE KANSAS MASONIC HOME

By: George B. Powers
(George B. Powers)

CITY OF WICHITA
CENTRAL INSPECTION DIVISION

To Masonic Home Owner Address 401 South Seneca

To Claude Neon Federal Applicant Address 139 Cleveland

Your application dated April 19, 1967

For a permit for the sign

401 South Seneca at the premises designated as

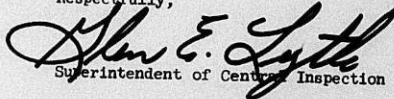
Is hereby refused on this 19th day of April, 1967,

Under Section 28.04.070 F12 & 28.04.070 EA-1 of the Zoning Ordinance.

Reason:

This property is located within a "B" use area. The area of the proposed sign is over that permitted in "B" zone, and is also over the height limitations for accessory structures.

Respectfully,


Superintendent of Central Inspection

NOTE: Any appeal from this refusal must be filed with the Board of Zoning Appeals within ninety (90) days after the date of this refusal. For further information, take this notice to the Planning Department, 4th floor of City Building Annex, 104 South Main, Wichita, Kansas.

41-286

APPLICATION FOR VARIANCE

I. Name of Applicant Kansas Masonic Home
Mailing Address 401 South Seneca, Wichita, Ks. Phone _____
Name of Authorized Agent George B. Powers or Benjamin C. Langel
Mailing Address 600 Fourth Nat'l. Bk. Bldg. Phone AM 4-0372
Relationship of applicant to property is that of owner
(owner, tenant, lessee, other)

II. The variance requested is permission to erect a sign having an
area in excess of twelve square feet and a height of thirty-eight
and one half feet,

for property located at 401 South Seneca On the W side of
Seneca in an area S of Maple
tract commencing at a point 135 feet west
and legally described as: of the west line of Seneca Street and 224½
feet north of the north line of University Avenue; thence west 55 feet;
thence north 10 feet; thence east 55 feet; thence south 10 feet to
the point of beginning,
in the City of Wichita; and which is presently zoned B.

(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.

Kansas Masonic Home
Applicant

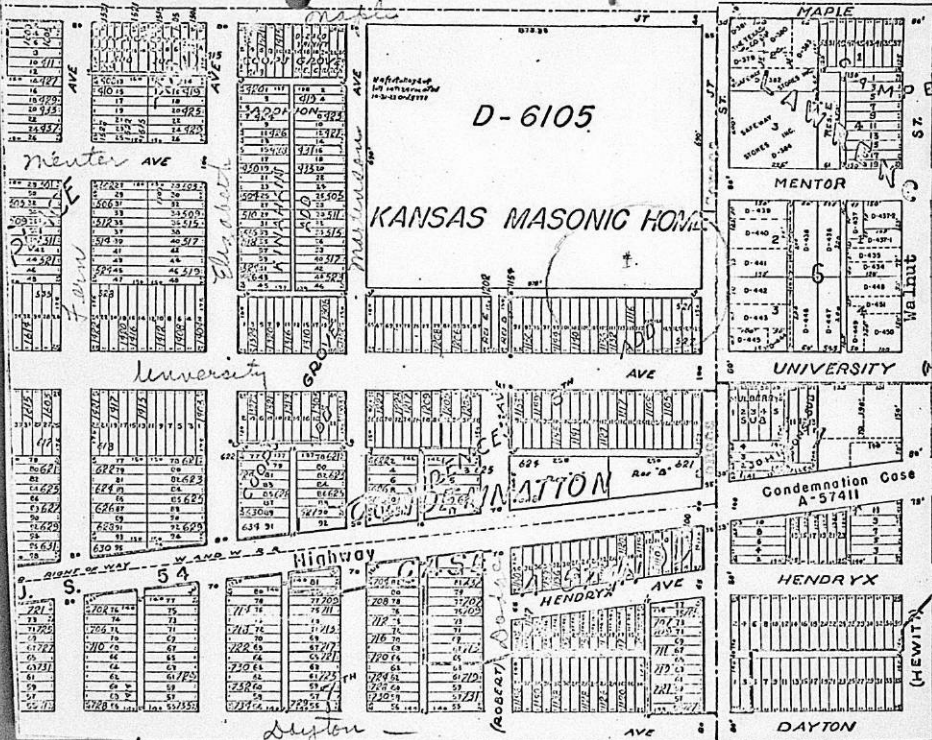
George B Powers
Authorized Agent

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeal
11:15 (a.m.) p.m., April 25, 1967, together with
appropriate fee of \$50.00.

Ronald A Williamson
Signed Plannert
by R Galloway

SEC. 30. TWP. 27. R. 1 E

N. V.



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:
 Beg 135 ft West of the West Line of Seneca Street and
 224.5 ft North of the North Line of University Avenue;
 th West 55 ft; North 10 ft; East 55 ft; South 10 ft to
 place of beginning. All in Lawrence's Sixth Addition to
 Wichita, Sedgwick County, Kansas.

F
Fidelity
Title
Company
inc.

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

LOT	STREET	ADDITION	OWNER
<u>LAWRENCE'S 6th.</u>			
95 & 97	University		✓ Charles V. & Grace M. Woolf, ux R # 1, Cheney, Ks. 67025
99 & 101	"		✓ Henry W. & Janice C. Pfeifer, ux 1144 University Ave. 67213
103 & 105	"		✓ Doren L. & Erma M. Rice, ux 1140 University Ave. 67213
107 & 109	"		✓ Herbert Lee & Thelma June Poff, ux 716 Gouverneur 67207
111 & 113	"		✓ Berneda Crum & A. E. Faulk, jt. 3315 W. 13th St. 67203
115, 117, 119 & 121,	"		✓ Anna M. Hilton & Orin T. Hilton, vir & Mrs. Lettie A. Philapy 1116 University Ave. 67113



LOT	STREET	ADDITION	OWNER
	University	LAWRENCE'S 6th.	
S $\frac{1}{4}$ 123, 125, 127 & 129,	"		Flo Ann Kernal 240 N. Oliver 67208
N $\frac{1}{4}$ 123, 125, 127 & 129,	"		Louise L. Richards % SW Natl Bank, Wichita, Ks. 400 E. Douglas 67202
Beg 40 ft S & 35 ft W of NE cor NE $\frac{1}{4}$ Sec 30-27-1E; th S 690 ft; W 878 ft; N 690 ft; E to beg.			Kansas Masonic Home, 401 S. Seneca 67213

Dated at Wichita, Kansas this 24th day
of April, 1967 at 7:00 A. M.

FIDELITY TITLE COMPANY, INC.

By Chie M Farrell
Sec. OEM

Tracer # 81381

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	Lic. <u>Plan</u>	Mech.
Oil Well	Pav. Cuts	Signs	Plbg. Cert.
Sanitation	Sewer		Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
BZA Insurance	\$50

Frubston, Lippin, Powers
 Address: Smith & Chasardt
 City: Suite 600 Due Date: 4th Nat'l
 Comments:

R-71-C

Date: 4-25-67 By: K Galloway

THE CITY OF



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
AMHERST 2 BLDG. AREA CODE 916
SUITE 900 AT BROWN BUILDING
WICHITA, KANSAS 67202

June 20, 1967

Board of Zoning Appeals
City Building Annex
114 South Main
Wichita, Kansas 67202

RE: Variance pursuant to Section 2.12.590.2,
Code of the City of Wichita, to erect a
sign having an area of 100.75 square feet
and a height of 38½ feet.

Gentlemen:

At the regular meeting of the Board of Zoning Appeals which was held on May 23, 1967, the question was raised as to the jurisdiction of the Board to grant the variance requested by the above applicant.

The request of the applicant is for a variance of Section 28.04.070(A)(12) which provides inter alia as follows:

28.04.070. "B" multiple-family dwelling district regulations. In "B" multiple-family dwelling district, no building or premises shall be used and no building shall be hereafter erected, enlarged, converted or altered, unless otherwise provided in this chapter, except for one or more of the following uses, and all buildings erected, enlarged, converted or altered in the "B" multiple-family dwelling district shall conform to the following area and height regulations:

A. USE REGULATIONS.

12. A directory-type sign associated with multiple housing or apartment uses permitted in 28.04.070 above; provided that it announces only the name of the multiple housing or apartment development, its street address and the name, address and telephone number of the manager and/or rental agent; and further provided that it shall comply with the following requirements:

THE CITY OF
Page Two
June 20, 1967

2

a. Such sign, exclusive of the base on which it is suspended, shall not exceed six square feet in area."

The Board of Zoning Appeals was created by ordinance pursuant to K.S.A. Supp. 12-714 and its authority to grant variances is set forth in K.S.A. Supp. 12-715(a) which provides as follows:

12-715(a). "Variances. To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district." (Emphasis Supplied)

In view of the limitation on usage provided by the State statute hereinabove cited, it is manifest that any attempted alteration of 28.14.070(A)(12) is contrary to said statute and is not within the jurisdiction of the Board.

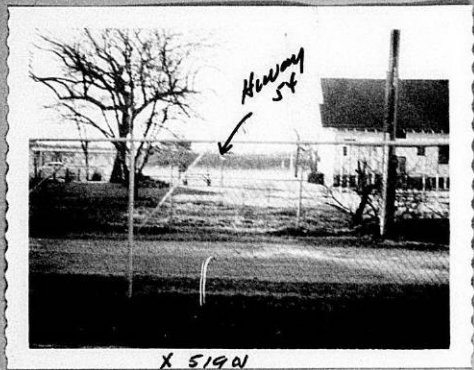
Thus, it is my judgment that the Board of Zoning Appeals does not have jurisdiction to grant the relief sought by the applicant.

Very truly yours,

Arthur G. Johnson,
Assistant City Attorney

AGJ:nrh

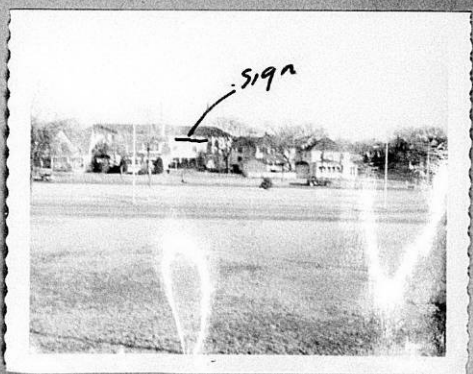
cc: John Dekker, City Attorney
George B. Powers.



X 5190



X 5197





KANSAS MASONIC HOME
WICHITA, KANSAS

Location of Sign
Looking South

Location of Sign
Looking South

Top 54 Hiway
Looking NORTH

Top of 54 Hiway
Looking NORTH



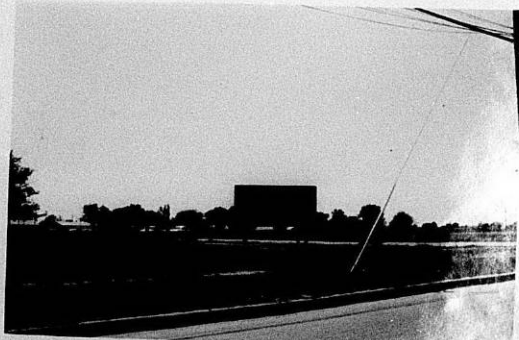
SIGN ON
U.S. 54
PLACED
BY HIGHWAY
DEPT.



VETERANS
ADMINISTRAT
E. KELLOGG

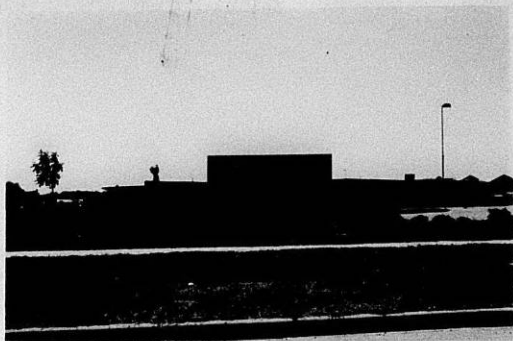


CARE HOME
E. LINCOLN
NEAR HILLTOP



CARE HOME
SENECA &
MAY ST.

SIGN ON
U.S. 54
PLACED
BY HIGHWAY
DEPT.



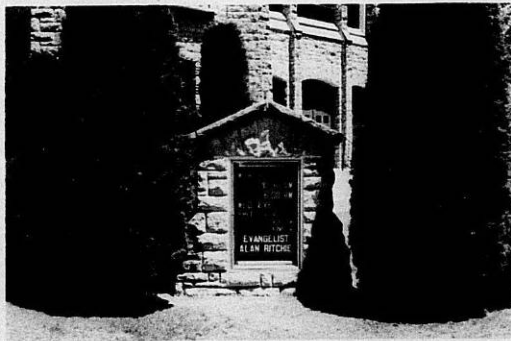
CARE HOME
MAY ST.
WEST OF
SENECA

VETERANS
ADMINISTRATION
E. KELLOGG



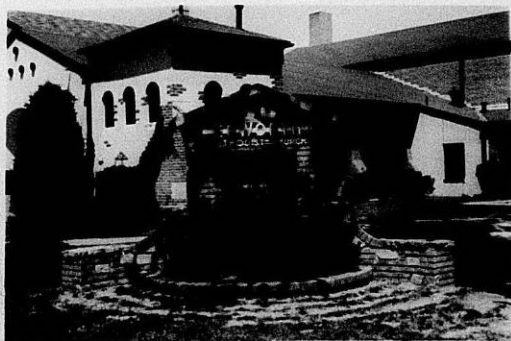
CARE HOME
SE CORNER
WOODLAWN
& HARRY

CARE HOME
E. LINCOLN
NEAR HILLTOP



CHURCH
DIRECTORY-
TYPE SIGN

CARE HOME
SENECA &
MAY ST.



CHURCH
DIRECTORY-
TYPE SIGN



APARTMENTS



APARTMENTS



APARTMENTS



APARTMENTS

75



OFFICE IN
"B" ZONE

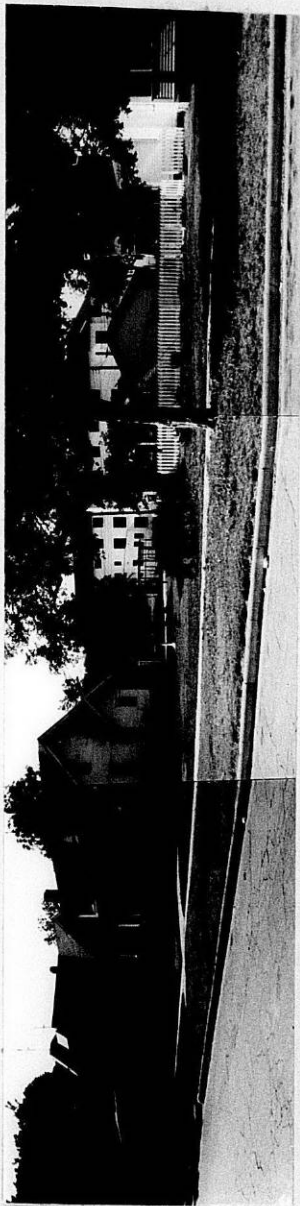
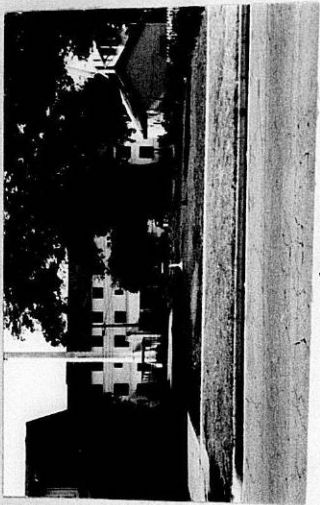
75



OFFICE IN
"B" ZONE



OFFICE IN
"B" ZONE



Map No. 5346
Sec. _____
Twp. _____
Range _____

AREA DATA:

1. Acres: _____
2. Adjoining Zone: _____
3. Land Use: _____
 W _____
4. Sketch Plan: _____
5. Present Land Use: _____
6. Area (is) (are): _____

PHOTO DATA:
Taken by _____



Map No. 5346
Sec. _____
Twp. _____
Range _____

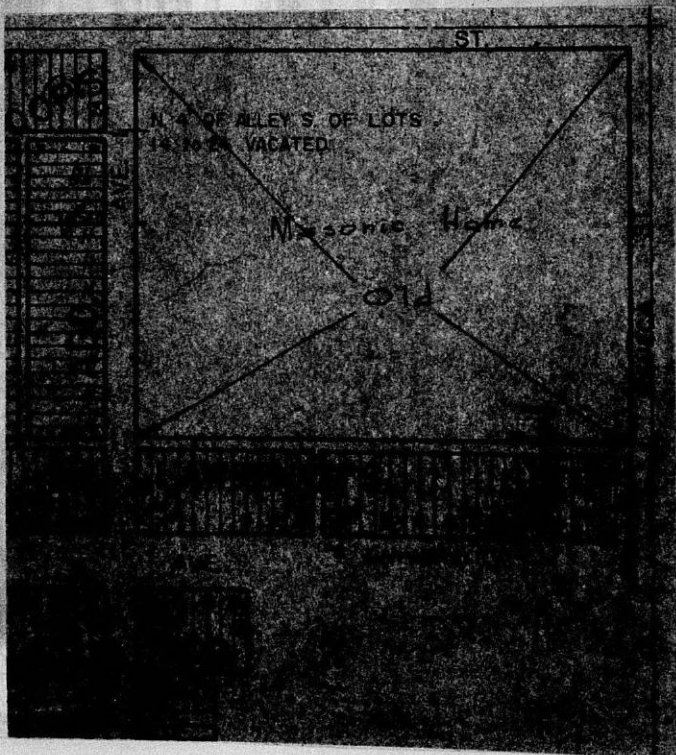
BZA 12-67
SCZ- _____
CU- _____
Filed _____

AREA DATA:

1. Acres: 0.01 (55 ft. by 10 ft.)
2. Adjoining Zoning: E _____ S _____ W _____ N _____
3. Land Use: East Masonic Home South Single Family
West Masonic Home North Masonic Home
4. Sketch Plan Land Use is for: Residential
5. Present Land Use is for: Masonic Home
6. Area (is) (~~not~~) platted.

PHOTO DATA:

Taken by _____ Date _____ Time _____



*

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