

CASE No. 16-50
(274 serial)

ROBERT C. ALLAN
ATTORNEY AT LAW
827 BEACON BUILDING
WICHITA, KANSAS
TELEPHONE 2-7469

TO THE BOARD OF ZONING APPEALS FOR THE CITY OF WICHITA, KANSAS:

In re: Case No. 16-50
O. N. Smith, Appellant
Proposed Construction at 939 North Emporia Avenue

- - - - -
APPEAL STATEMENT

I

The proposed construction consists of an addition to the existing building extending 15 feet to the north to the property line and a maximum of 17 feet to the east to a setback line of 20 feet (all as shown in Sketch C). Construction is to be of concrete block and glass. The present building is used as a flower shop with the rear portion of the same as living quarters for appellant and family. The proposed construction is intended to be the first portion of a permanent building which will replace the present building. It is appellant's intent to complete the present construction then as he is able to replace the present building with an addition to the proposed construction, the whole of which will be a permanent building to be used as a flower shop. Appellant must proceed in this manner because of the high cost of construction and also so he might be able to continue to operate his present business during the transition period of construction from the present building to the ultimately completed new building. At such time as the whole new building is completed the appellant does not intend to use the premises as a residence.

II

The building permit for the proposed construction was refused by the Building Inspector for the City under sections 18, 5a and b, and 19, 5a of the Zoning Ordinance for the reason appellant wants to construct the building without maintaining a 5 foot side yard on the north and extending to a 20 foot front yard setback on the

east. Appellant contends that the permit should be granted under these sections for the reason that the purpose of the ordinance will not be defeated by granting the permit in view of the fact that only two persons whose property might be adversely affected do not object to the granting of the permit. These two parties are the owners of the property directly south of appellant's property and the owners of the property directly north of appellant's property. The properties most likely to be adversely affected if the permit is granted are the properties two lots north of appellant's property at the corner of Ninth Street and Emporia Avenue. As shown in Sketch B the granting of a permit to appellant will not adversely affect any of such owners.

III

Jurisdiction can be assumed for the following reasons:

a. The exception desired arises from a condition which is not ordinarily found in this same zoning district for the reason it is directly across the street from St. Francis Hospital, there are no other flower shops close, and it is extremely desirable and beneficial to both the hospital and surrounding community that a flower shop be present. Many times the appellant has found through experience that visitors from out of town while visiting patients in the hospital have found it extremely convenient to be able to purchase flowers in appellant's place of business since it is so close to the hospital. Appellant has found it necessary to expand the size of his business and to improve the appearance and structure of his place of business, and yet at the same time must continue to operate the business while so doing.

b. The granting of this permit to appellant will not adversely affect the rights of adjacent property owners or residence for the reason that, as shown in Sketches A and B, the property line setback from the property two lots south of appellant's property to the corner of Ninth Street and Emporia Avenue are those primarily affected since the property located at 923 North Emporia, south of appellant, has already extended to within 18 feet and 3 inches of the sidewalk, thus making the affect of appellant's proposed construction of no consequence to the property owners south of 923 North Emporia Avenue. The property owners at 935 North Emporia and 941 North Emporia do not object to the proposed construction and these are the only properties with a setback of over 21 feet in the immediate area concerned.

c. The strict appliance of the terms of this ordinance would constitute an unnecessary hardship on this appellant for the reason, as previously stated, he must expand the size of his place of business and yet he must continue to operate it while so doing. Unfortunately the present building is so located on his lot that in order to expand he must do so in two sections, the first of which must of necessity extend the full distance from the present building to the north property line as well as to a

setback line on the east of 20 feet. Appellant has everything in readiness to proceed immediately with the construction, including a commitment on loan for the same. If appellant is unable to go ahead with construction, it will be a financial loss to him for the expenses already incurred in getting the loan, etc.

d. The exception requested is not against public interest in view of the fact, as previously stated, the appellant will not do material damage to any property owner by extending to a setback line of 20 feet or to the north property line since no definite property line setback exists any longer in the area immediately affected. As a matter of fact appellant's type of business serves a definite public interest and the granting of the permit will be to the benefit of the general public and immediate property owners since the proposed construction and the ultimate building to be completed will enhance the whole area as it would be an improvement on the property which will be an asset and tend to improve the general appearance of the neighborhood which, of course, add to the value of all properties affected.

IV

Appellant submits herewith the sketches above referred to, together with various photographs of the premises and surrounding area.

Respectfully submitted,

Attorney for Appellant

RECEIPT FOR REGISTERED ARTICLE No. 3796

Fee paid 25 (Date) 12-4-50

Class postage paid 1.00 Return receipt fee 0.25
 Special delivery fee 0.75

Declared value, \$ 7.00

Surety paid, \$ _____


Restricted delivery (Accepting postoffice will place initials in proper space) _____ in person _____
 or order _____ Fee paid _____

From City of Wichita

Addressed to City Planning Office
City Building
939 N. Lincoln
Wichita, Kansas

Postmaster per AG

GPO 45-16-15000-5



Post Office Department OFFICIAL BUSINESS

WICHITA, KANSAS
 DEC 5 5:30 PM 1950

POSTMARK OF DELIVERING OFFICE
 SUPPORT YOUR TB ASSOCIATION

Return to City Planning Office
 Street and Number, or Post Office Box, City Building

REGISTERED ARTICLE
 NO. 3796
 INSURED PARCEL

WICHITA, KANSAS.

RECEIPT FOR REGISTERED ARTICLE No. 3796

Fee paid 2.30 (This) 1.24 .40

Class postage paid 1.08 Return receipt fee .25
 Special delivery fee .75

Declared value, \$ 7.00

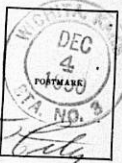
Surcharge paid, \$ _____

Restricted delivery (Accepting employee will place initials in proper space) _____ in person _____
 or order _____ Fee paid _____

From City of Memphis (Post office and State)

Addressed to W. Smith (Post office and State)
939 N. Empress City, MS (Street and number) Postmaster per MS

GPO c7-10-12555-5



Form 3811
 Rev. 1-4-40

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 W. Smith
 (Signature or name of addressee)

2 _____
 (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 12/11, 1950

U. S. GOVERNMENT PRINTING OFFICE 16-32421

STATUS SHEET

Board of Appeals Case No. 16-50
939 N. Emporia Premises in Question
O.M. Smith Appellant's Name
939 N. Emporia Appellant's Address
same Owner's Name
same Owner's Address

12-1-50 Planning or Zoning Application Received by Building Inspector

12-1-50 Decision of Building Inspector refused

12-1-50 Appeal filed with Bond of Zoning Appeals

12-2-50 Hearing notice and receipt

The variance or exception desired arises from some condition which is not uniform in similiar districts. not met

The granting of the permit for the variance will not prejudice the rights of adjacent property owners or residents

12-2-50 Adjoining Property Owners Notified

Protests Received None

Consents Received

Prior Cases on These Premises (Zoning) 9-5-47

12-6-50 Case Hearings

12-6-50 Case Decided No JURISDICTION of Board

Notice of Decision Sent

Court Cases

CITY OF WICHITA
BUILDING INSPECTION DIVISION

To O. M. Smith Owner Address 939 N. Emporia
To Same Applicant Address _____

Dear Sir:

Your Application Dated December 1, 1950
For a Permit for the addition to building
_____ at the premises designated as
939 North Emporia

Is hereby refused on this 1st day of December, 19 50,
Under Sections 18, 5(a) & (b), and of the Zoning Ordinance.
19, 5 (a)

For the reason that since this building is attached to a residence building it
is necessary that residence setbacks be maintained. It is also necessary that
a setback on the front be maintained the same as is required in a "B" district,
since a portion of the block is "B" and the remainder of the block is "LC."

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.

BOARD OF ZONING APPEALS Case No. 16-50

Filed 12-1, 19 50

A P P E A L U N D E R T H E Z O N I N G O R D I N A N C E

TO THE BOARD OF ZONING APPEALS
Room 304, City Hall
Wichita, Kansas

The undersigned, O.M. Smith, hereby appeals
from the decision of the Building Inspector wherein a Building Permit
Is Refused For 939 N. Emporia

OR

Order Or Decision Rendered Because violation of Section 18, 5 a and b
and Section 19, 5a

The Plans, application, and all data heretofore filed with said Building
Inspector 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.

O.M. Smith
Appellant.

NAMES AND ADDRESSES

Appellant	<u>O.M. Smith</u>	Address	<u>939 N. Emporia</u>
Owner	<u>same</u>	Address	<u>same</u>
Lessee		Address	

INSTRUCTIONS

1. This appeal must be typewritten and filed within ninety (90) days
after the date of the decision of the Building Inspector from
which this appeal is taken.
2. The appellant must file an explicit Typewritten statement setting
forth:
 - (a) The principal points on which this appeal is made. These
points shall be the same as those under which the Building
Inspector issued a refusal, order, or decision.
 - (b) A clear and accurate description of proposed work or use.
 - (c) Specific reference to that Section of the Zoning Ordinance
under which it is claimed permit should be issued.
 - (d) Names and addresses of all owners and residents within a
distance of 200 feet of the property concerned.

St. Francis Hospital
 Wichita 5, Kansas

December 4, 1950

TO Whom It May Concern :-

We, the undersigned have examined the building plans of O.M. Smith who is located at 939 N. Emporia and it certainly meets our approval. As this place of business is located just across from St. Francis Hospital so it will be very convenient and a great help to our patients.

We trust and hope that you will consider and grant O.M. Smith the desire to locate his business at 939 N. Emporia and thanking you for your cooperation, We are.

Very truly yours,

St. Francis Hospital

By *Sister M. Aquila*
Sister M. Aquila
Superintendent

September 5, 1947.

A petition was presented by Mr. O. M. Smith requesting that 939 North Emporia be changed from a "B" to a "C" zoning district in order that a floral shop could be constructed in front of the residence located on these premises.

Mrs. S. T. Thurman, Stanley McPherson and Howard McPherson were present in protest. They felt additional commercial zoning would depreciate the value of their property. Mr. Thurman's property on the corner of 9th and Emporia is properly zoned and is vacant at this time.

Moriarty stated that it was the opinion of the Zoning Committee that the "C" zone at Ninth and Emporia should be changed to an "LC" zone since it is a neighborhood center and since a "C" zone in the proximity of the hospital is highly undesirable.

In executive session, it was the Committee's recommendation that the change in zoning should be made from "B" to "LC" on the west side of Emporia, starting at a point approximately 150 feet south of Ninth Street and extending for a distance of 75 feet south because the Committee felt there was a need for additional "LC" establishments in that neighborhood.

Moriarty moved and Bolan seconded that the Committee's recommendation be adopted and that the City Planning Commission recommend to the Board of City Commissioners that the petition as amended be approved. The motion was put and carried unanimously.

✓ Mrs. Jesse D. Wall	1104 N. Market	2-3185
✓ Lillie May Archer	1018 N. Market	4-1798
✓ Mrs. Hulda Urry	1000 N. Topeka	5-7576
✓ Wm. P. Callahan & Wm. P. Callahan, Jr.	8 Lake Side Blvd 41 Mission Road	6-4534 6-8188
✓ Lonnie Williams & Adaline	2328 S. Broadway	4-7018
✓ Maude Gates	732 Pattie	4-5787
J. S. & Mrs. J. S. Prestridge	920 N. Topeka	2-5252
✓ L. P. Brooks	924 N. Topeka	2-6354
✓ Harley G. Guisinger & Marie J. Guisinger	928 N. Topeka	2-0674
✓ Addie E. Dunlap & Helen M. Dunlap	936 N. Topeka	5-1558
✓ Grace D. Sohn	940 N. Topeka	2-3042
✓ Ethel Kempster Pless	917 W. Emporia	
✓ Jas. P. Threlfall	919 N. Emporia	2-4788
✓ Grace McPherson	138 Ohio	3-0484
✓ A. A. Hostetler & Maggie Hostetler	935 N. Emporia	5-8388
✓ Arla M. Smith & Maurine L.	939 N. Emporia	3-3056
✓ St. Francis Hospital & School of Nursing, Inc.	928 N. Emporia	4-6301
✓ Mary L. Green	1638 Arkansas	5-0180

ROBERT C. ALLAN
ATTORNEY AT LAW
827 BEACON BUILDING
WICHITA, KANSAS
TELEPHONE 2-7469

January 9, 1951

Mr. M. P. Jones
City Manager
City Building
Wichita, Kansas

Re: O. N. Smith's Request for
Zoning Variances at 939
North Emporia Avenue.

Dear Mr. Jones:

This letter is being written for the purpose of requesting an appointment with you to discuss various aspects regarding Mr. Smith's request for two variances of the City Zoning Ordinance.

Mr. Smith at present is operating a flower shop at 939 North Emporia, which is directly across the street to the west from St. Francis Hospital. For some time he has contemplated building a new place of business on the same location and to that end drew up plans and prepared to commence work. On December 1, 1950, he requested a building permit at the office of the Building Inspector which was denied under Sections 18-5 (a) and 19-5 (a) of the City Zoning Ordinance. The reason for the denial apparently was based upon his request to hold a 20-foot front yard setback and to not have any side yard setback on the north. Thereafter, on December 6, I represented Mr. Smith before the Board of Zoning Appeals with three of the five members of the Board sitting. We requested two variances of the City Zoning Ordinance, namely, a waiver of the 5-foot setback on the side yard to the north and a waiver of the 30-foot setback in the front yard. The Board refused the variances stating that we had not shown two conditions. First, that the condition was unusual and second, that there was any hardship shown by appellant Mr. Smith.

I have discussed this matter with all parties involved since the hearing and for reasons too numerous to mention I would appreciate having the opportunity to discuss it with you.

Unless my interpretation of the general purpose of such ordinances and my general idea as to equity are entirely in error, there is no just reason why Mr. Smith should not be

Mr. M. P. Jones
Page #2, Jan. 9, 1951

granted these two variances. There are many aspects to the case I would like to present to you for your consideration. Also, I have various drawings, photographs, etc. showing the general situation in the neighborhood which I am sure would be informative to you. Also, I am attaching hereto a copy of the appeal statement which I presented to the Appeal Board at the time of the hearing.

I would appreciate greatly an appointment with you to go over this matter.

Yours very truly,

Robert C. Allan
Robert C. Allan

RCA:o

cc-Fred W. Aley
City Attorney



Notices Mailed December 2, 1950

BOARD OF ZONING APPEALS
Room 304, City Hall
Wichita, Kansas

NOTICE TO PROPERTY OWNERS

December 2, 19 50

An appeal has been filed by O. M. Smith
(Address) 939 N. Emporia on behalf of same
(Address) _____

as provided by Section 33 of the Zoning Ordinance. The appellant
desires to make a commercial addition to a residential building without
maintaining a five foot side yard on the north and a 30 foot front
yard setback on the east on the premises
located at 939 N. Emporia

This appeal has been given Case No. 16-50
and a hearing will be held by the Board of Zoning Appeals on _____
Wednesday, December 6, 1950 at 1:30 p.m.
at which time you may appear, if you so desire, either in person or
by agent or attorney. Room 201, City Building

By order of the Board of Zoning Appeals.

E. N. Smith
Secretary.

17

CERTIFICATE OF OWNERSHIP

Certificate of ownership on the property within 200 ft of Lots 1 & 3 Clio Addition to the City of Wichita.

All the following Lots are in Miller's Addition.

Lots 4-6-8-10 on Topeka Ave

Blanche Edna Royal &
Jesse D. Wall

Lots 12 & 14 on Topeka Ave

Lillie May Archer

Lots 16 & 18 on Topeka Ave

Olive M. Murray & Anna
Subject to Life Estate in
Huldah Urry & John R.

Lots 3 & 5 & N 16½ ft Lot 17
on Emporia Ave

Wm P. Callahan &
Wm P. Callahan Jr.

S 8 ft Lot 7 All Lots 9 & 11
on Emporia Ave

Lonnie Williams & Adaline

Lots 13-15-17 on Emporia Ave

Maude Gates

All the following Lots are
in Clio Addition.

Lots 18-20-22 on Topeka Ave.

Florence T. Dulaney

S 10 ft Lot 12 All Lots 14 & 16
on Topeka Ave

L.P. Brooks

Lot 10 & N 15 ft Lot 12 on Topeka Ave

Harley G & Marie J. Guisinger

Lots 6 & 8 on Topeka Ave

Abbie E. Dunlap & Helen M.

Lots 2 & 4 on Topeka Ave

Grace D. Sohn

Lots 19 & 21 on Emporia Ave

Ethel Kempster Pless

Lots 15 & 17 on Emporia Ave

Jas. P. Threlfall

Lots 9-11-13 on Emporia Ave

Grace McPherson

Lot 5 & Lot 7 Exc S 1 ft
Lot 7 on Emporia Ave

A.A. & Maggie Hostetler

S 1 ft Lot 7

Grace McPherson

Lots 1 & 3 on Emporia Ave

Arla M. Smith & Maurine L.

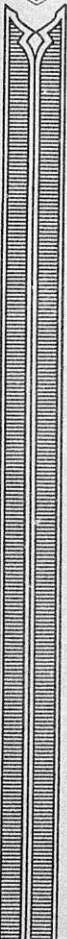
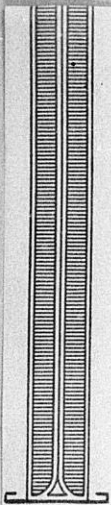
All the following Lots are in
Burleigh's 2nd Addition.

Lots 23 to 53 on Emporia Ave

St. Francis Hospital &
School of Nursing Inc.

Lot 21 on Emporia Ave

Mary L. Myers



THE GUARANTEE ABSTRACT COMPANY INC., hereby certifies that a search has been made of the records in the office of the register of deeds in and for Sedgwick County, Kansas relative to the property owners within a 200 ft Radius of Lots 1 & 3 Clio Addition and that the above and foregoing is a true exhibit of such owners. WITNESS our Hand and Seal this the 1st day of December 1950.

THE GUARANTEE ABSTRACT COMPANY INC

By

Vice President

Order No. 21834-R

ROBERT C. ALLAN
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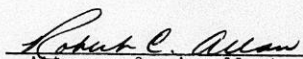
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