

Class Action  
no posting  
to Mayor

ACTION

Bza COMMITTEE Appeal DATE 5-27-75

M.A.P.C.

R.C.C./B.C.C.C.

BZA 21-75 - Wichita Family Child Care, Inc. requests appeal from decision of Supt. of C.I. to require off-street ~~parking~~ loading spaces for Day Care Center at ~~west side of Kansas~~



BOARD OF ZONING APPEALS  
Room 402 City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

May 5, 1975

NOTICE TO ADJOINING PROPERTY OWNERS:

Case No. BZA 21-75

An application has been filed by Wichita Family Child Care, Inc., 1642 North Kansas, Wichita, Kansas, pursuant to Section 2.12.590.A, Code of the City of Wichita, requesting an appeal from the decision of the Superintendent of Central Inspection, who has made the determination that a child care center proposed to be located in the "B" Multiple Family Dwelling District must provide off-street loading spaces in the same manner as required for a child care center when permitted, by exception, to locate in a more restrictive residential zoning district whereas the applicant contends that the imposition of said requirement is outside the scope and jurisdiction of the zoning ordinance.

This application has been assigned Case No. BZA 21-75, and will be considered by the Board of Zoning Appeals at its meeting on Tuesday, May 27, 1975, at 1:30 p.m., in Room 402 City Building Annex, 104 South Main Street, Wichita, Kansas, at which time you may appear, if you so desire, either in person or by agent or attorney.

JACK H. CALERAITH  
Secretary

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JACK H. CALERAITH  
Secretary

RESOLUTION NO. BZA 21-75

WHEREAS, Wichita Family Child Care, Inc., 1642 North Kansas, Wichita, Kansas, pursuant to Section 2.12.590.A, Code of the City of Wichita, has appealed from the decision of the Superintendent of Central Inspection, who has determined that a child care center proposed to be located in the "B" Multiple Family Dwelling District must provide off-street loading spaces in the same manner as required for a child care center when permitted, by exception, to locate in a more restrictive zoning district; and

WHEREAS, the appellant contends that the imposition of said requirement is outside the scope and jurisdiction of the zoning ordinance; and

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

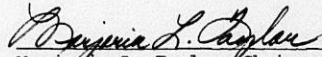
WHEREAS, the Board of Zoning Appeals did, at the meeting of May 27, 1975, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an appeal under the provisions of Section 2.12.590.A, Code of the City of Wichita; and

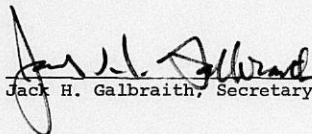
WHEREAS, the Board of Zoning Appeals, has determined that on the date of the decision rendered by the Superintendent of Central Inspection, an off-street loading requirement for child care centers located in the "B" Multiple Family Dwelling District did not exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the appeal be upheld and off-street loading not be required for a child care center to be located on property zoned the "B" Multiple Family Dwelling District.

ADOPTED AT WICHITA, KANSAS, this 27th day of May, 1975.

  
Marjorie L. Taylor, Chairman

ATTEST:

  
Jack H. Galbraith, Secretary

June 16, 1975

Michael Gragert  
Attorney-at-Law  
615 R. H. Garvey Building  
Wichita, Kansas 67202

Subject: Case No. BZA 21-75  
Request - Appeal

Dear Mr. Gragert:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on May 27, 1975, in connection with your request for an appeal from the decision of the Superintendent of Central Inspection that a child care center proposed to be located in the "B" Multiple Family Dwelling District must provide off-street loading spaces in the same manner as required for a child care center when permitted, by exception, to locate in a more restrictive residential zoning district.

This Resolution reflects the official action of the Board to support your appeal and to rule that no off-street loading spaces were required on the date of your application. It is being forwarded to you for your information and files.

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

Sincerely,

Jack H. Galbraith  
Secretary

JHG:js

cc: Wichita Family Child Care, Inc., 1642 N. Kansas, 67214  
Robert Feldner, Supt. of Central Inspection  
Donald Gisick, City Clerk  
Joe Donnelly, Central Inspection

May 30, 1975

Michael Gragert  
Attorney-at-Law  
615 R. H. Garvey Building  
Wichita, Kansas 67202

Subject: Case No. BZA - 21-75  
Request - Appeal

Dear Mr. Gragert:

At the regular meeting of the Board of Zoning Appeals on May 27, 1975, your appeal from the decision of the Superintendent of Central Inspection a determination that a child care center proposed to be located in the "B" Multiple Family Dwelling District must provide off-street loading spaces in the same manner as required for a child care center when permitted, by exception, to locate in a more restrictive residential zoning district, was considered.

It was the action of the Board to support your appeal and to rule that no off-street loading spaces were required on the date of your application. A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as the signatures of the Chairman and Secretary have been obtained.

Following a discussion concerning off-street parking requirements on subject property and the hardship that would be placed upon the applicant in providing the \$50 fee necessary for the filing of a variance application to reduce this requirement, it was the action of the Board to direct the Secretary to waive the filing fee and to accept and advertise a variance request to be heard at the Board's next regularly scheduled meeting of Tuesday, June 24, 1975.

Michael Gregert  
May 30, 1975

We are available to assist you in the filing of this application.  
If you have any questions concerning this, please call.

Sincerely,

Jack H. Galbraith  
Secretary

JHG:js

cc: Wichita Family Child Care, Inc., 1642 N. Kansas, 67214  
Robert Feldner, Supt. of Central Inspection  
Donald Gisick, City Clerk  
Joe Donnelly, Central Inspection

THE CITY OF WICHITA

OFFICE OF Central Inspection Division

DATE May 22, 1975

TO Jack Galbraith, Metropolitan Area Planning

FROM Robert B. Feldner, Superintendent of Central Inspection

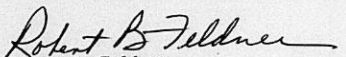
SUBJECT Case No. BZA 21-75

The purpose of the zoning ordinance is to promote public safety, health, convenience, comfort, propriety, general welfare and the preservation of personal and property rights. The most important of these should be public safety and health. The intent of the off-street loading space is to protect the small children from the traffic hazards of the street.

I cannot agree that a child care center would be similar to an elementary school in that the children at a child care center would be under five years of age and those in elementary school are five and older. The younger children are those in need of more protection.

It seems inconsistent to require loading space for a child care center in all residential zoning districts except the "B" district. Is there less potential hazard in the "B" district than in the other residential districts? Logically the hazard should be greater in that there could be a greater density of structures and thus more traffic.

Agreed the ordinance was not specific; and therefore, the interpretation was made to carry out the intent of the ordinance as stated in the first paragraph.

  
Robert B. Feldner  
Superintendent of Central Inspection

RBF:mm1



SECRETARY'S REPORT

CASE NO. BZA 21-75

APPLICANT: Wichita Family Child Care, Inc., 1642 North Kansas, Wichita, Kansas

AGENT: Harry L. Najim, 300 West Douglas, Suite 615, Wichita, Ks.

REQUEST: An appeal pursuant to Section 2.12.590.A, Code of the City of Wichita, appealing from decision of the Superintendent of Central Inspection a determination that a child care center proposed to be located in the "B" Multiple Family Dwelling District must provide off-street loading spaces in the same manner as required for a child care center when permitted, by exception, to locate in a more restrictive residential zoning district; whereas the applicant contends that the imposition of said requirement is outside the scope and jurisdiction of the zoning district.

GENERAL LOCATION: Being a class action type case, this request does not pertain to a specific location.

ZONING: The "B" Multiple Family Dwelling District

LAND USE: N/A

JURISDICTION:

The Board has jurisdiction to consider the appeal under the provisions outlined in Section 2.12.590.A, Code of the City of Wichita.

COMMENTS BY THE SECRETARY

The applicant is appealing a decision of the Superintendent of Central Inspection that requires him to provide off-street loading spaces for a child care center proposed in the "B" Multiple Family Dwelling District.

In response to previous conversations between the applicant and representatives of the Division of Central Inspection, the applicant was notified by a letter dated March 25, 1975, that he would be required to provide off-street parking and off-street loading spaces as detailed in Section 28.04.1B5 of the Code of the City of Wichita. This section of the text pertains to Child Care Center Exceptions, whereby this use may be permitted in the more restrictive residential zoning districts with Board of Zoning Appeals approval, subject to specific conditions. The case

Secretary's Report  
Case No. 832 21-75  
Page No.

On the 1st day of August 1975, the undersigned was present at the meeting of the Board of Directors of the [redacted] and was advised that the [redacted] had been [redacted] by the [redacted] and that the [redacted] had been [redacted] by the [redacted].

The undersigned is advised that the [redacted] has been [redacted] by the [redacted] and that the [redacted] has been [redacted] by the [redacted]. The undersigned is advised that the [redacted] has been [redacted] by the [redacted] and that the [redacted] has been [redacted] by the [redacted].

The undersigned is advised that the [redacted] has been [redacted] by the [redacted] and that the [redacted] has been [redacted] by the [redacted]. The undersigned is advised that the [redacted] has been [redacted] by the [redacted] and that the [redacted] has been [redacted] by the [redacted].

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Secretary's Report  
Case No. BZA 21-75  
Page Two

discussed herein deals with the "D" Multiple Family Dwelling District, which permits child care centers as an outright permitted use without need for an Exception approval.

The applicant is contending that the Superintendent of Central Inspection, in his interpretation of the ordinance, is going beyond the legal requirements of the code to apply a provision from an exception in all cases. The applicant contends that the Superintendent of Central Inspection is limited to the general provisions of the code (Sections 28.04.140, 28.04.141, and 28.04.142) to determine the requirements for off-street parking and loading for any use not requiring Board of Zoning Appeals approval as an exception. The application of these provisions of the ordinance would require all uses to provide off-street parking. Based on the uses listed in 28.04.141, an elementary school would be the most logical to use as the off-street parking requirement for a child care center. At the time this decision was rendered by the Superintendent of Central Inspection, Section 28.04.142 did not list any requirement for off-street loading spaces for any use under 5,000 square feet of floor area.

On May 2, 1975, an amendment to the zoning ordinance became effective that established off-street parking and off-street loading for child care centers under the general provisions of the code. Although this amendment was being prepared at the time of the decision, it should not have been a factor in the determination. In discussing this case with the applicant's agent prior to filing the appeal, it was pointed out that since the ordinance was being amended, that possibly a request for a variance from the off-street loading requirements would be a more logical approach. However, the decision of the applicant's agent was to file an appeal of the interpretation by the Superintendent of Central Inspection.

#### RECOMMENDATION

It is the opinion of the Secretary that the application of any requirement for off-street loading, not included in the general provisions of the ordinance on the date of the application and decision, was going beyond the legal requirements of the zoning ordinance.

If the Board concurs with this opinion, it is recommended that you find in favor of the applicant and rule that no off-street loading was required on the date of the application.

BOARD OF ZONING APPEALS  
Room 402 City Building Annex  
104 South Main Street  
Wichita, Kansas 67202

May 5, 1975

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JACK H. CALBRAITH  
Secretary

10 notices mailed to MAPC on 5-6-75

BOARD OF ZONING APPEALS  
CITY OF WICHITA, KANSAS

CASE NO. 2125  
FILED 4-29-75

APPEAL FROM ORDER OR DECISION OF THE  
SUPERINTENDENT OF CENTRAL INSPECTION

I. Name of Appellant Wichita Family Child Care, Inc.  
Mailing Address 1642 North Kansas, Wichita, Kansas phone 264-6795  
67214  
Name of Agent Harry L. Najim, Attorney  
Mailing Address 300 W. Douglas, Suite 615 phone 263-7228  
Wichita, Kansas 67202  
Relationship of appellant to property is that of Owner  
(Owner, Tenant, Lessee, Other).

II. The appellant herein appeals from a decision, determination or an order of the Superintendent of Central Inspection, ~~xxx xxxxxx~~ of the requirements imposed upon Appellant and contained in paragraph five (5) of the decision of the Superintendent of Central Inspection, a copy of which is attached hereto.

for property located 1642 North Kansas, Wichita, Kansas  
and legally described as: Lots 58, 60 and 62, in Block 6, in  
Kansas Addition to Wichita, Kansas. This application is filed on  
behalf of all similarly situated parties.

in the City of Wichita; and which is presently zoned B. The decision was rendered March 25, 1975, and refers to Section 28.04.185, of the Code of the City of Wichita.

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

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. 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;
- c. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.
- d. That all documents are attached hereto as noted in paragraphs 2, 3, and 4 of the instructions.

Appellant Wichita Family Child Care, Inc.

Authorized Agent Harry L. Najim

OFFICE USE ONLY: Received in office of Secretary, Board of Zoning Appeals, 4:00 (a.m. (p.m.)), 4/29, 19 75, together with appropriate fee of \$50.00.

Signed Larry Dobson

Appellant, Wichita Family Child Care, Inc., does hereby appeal the requirements relating to off-street loading spaces imposed upon Appellant in the decision letter of the representative of the Superintendent of Central Inspection, dated March 25, 1975.

Appellant contends that the imposition of said requirements is outside the scope and jurisdiction of the cited zoning ordinance (28.04.185). Appellant further contends that said requirements would pose an unfair burden and create an inequitable financial hardship upon Appellant. Appellant respectfully requests that the decision of the Superintendent be set aside.

# THE CITY OF WICHITA



DEPARTMENT OF PUBLIC WORKS  
CENTRAL INSPECTION DIVISION  
262-0611 — AREA CODE 316  
CITY BUILDING ANNEX  
104 S. MAIN — WICHITA, KAN. 67202

March 25, 1975

Mr. Henry Burleigh, Jr.  
1642 North Kansas  
Wichita, Kansas 67214

Dear Mr. Burleigh:

I have reviewed the requirements by Central Inspection for your Day Care Center and after consultation with Mr. Robert Feldner, Superintendent of Central Inspection, and the inspector, Mr. Leon Robinson, we have determined that the following requirements will cover the conditions which remain to be done:

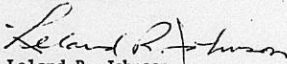
1. One-hour rating for ceiling and east partition of furnace room.
2. Door to furnace room shall be solid core with closer.
3. Access door to crawl space under front part of house to be hinged and spring loaded to maintain it in a closed position.
4. Space under stairways not to be used.
5. Off-street parking and loading spaces provided as required in Section 28.04.185 of the Code of the City of Wichita, (one parking space per teacher or employee and one off-street loading space for each 10 children or major fraction when enrollment exceeds 12). Submit a drawing to scale, showing your proposed parking and loading layout.

March 25, 1975  
Henry Burleigh, Jr.  
Re: 1645 North Kansas  
Page 2

You indicated by our telephone conversation on this date that you have met the heating, plumbing and electrical requirements shown as Items 12, 13, and 14 on the inspector's report. I have, accordingly, asked for final inspections by these sections.

We wish to assure you of our desire to assist in your efforts to make a safe facility that is useful to the community.

Yours sincerely,

  
Leland R. Johnson  
Building Code Engineer

LRJ:mm1

cc: Jack Milburn, Department of Community Health  
Dolan M. Martin, Fire Prevention

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.	Pibg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT
-------------	--------

223 1/2	5000
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Name \_\_\_\_\_

Address \_\_\_\_\_

Type \_\_\_\_\_ Due Date \_\_\_\_\_

Comments: \_\_\_\_\_

Date \_\_\_\_\_ BY \_\_\_\_\_