

ACTION

DATE
12-17-63

Eya COMMITTEE App.

M.A.P.C. _____

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

25

B2A 3-63 - Mr. & Mrs. R.E. Ray and Mr. & Mrs. Jim Smith request variance and or Appeal from Order of BIS to install car washing unit at SE corner of Seneca and Pawnee

June 2, 1964

Mr. Robert H. Nelson, Attorney
511 Union Center Building
Wichita, Kansas

Dear Mr. Nelson:

Re: BZA Resolution 35-63 -
Southeast corner of
Seneca and Pawnee

This is to advise you that the performance bond in the amount of \$7,200 which was submitted in conjunction with the above captioned Board of Zoning Appeals resolution in order to guarantee that the lot would be surfaced and that a fence would be constructed, may now be released to you or either one of the applicants, since these requirements have been complied with.

The performance bond is on file with the City Clerk and you may pick it up at your convenience. If you have any questions, please feel free to call.

Very truly yours,

Jack H. Galbraith
Secretary

JHG:JWH:ber

cc: R. E. Ray) 439 So main
Jim Smith)

Board of Zoning Appeals

June 2, 1964

Robert G. Finch, City Clerk

Jack H. Galbraith, Secretary

BZA Resolution 35-63
Southeast corner of
Seneca and Pawnee

This is to advise you that we have received a memorandum from L. L. Binkley of the Division of Central Inspection which states that all the conditions outlined in Resolution No. BZA 35-63 have been complied with. A thermofax copy of the memorandum is enclosed.

Consequently, the performance bond in the amount of \$7,200 which was submitted in order to guarantee that the lot would be surfaced and that a screen would be constructed, may be released to Mr. A. E. Ray, Mr. Jim Smith or Mr. Robert H. Nelson, who was their authorized agent at the time this case was heard.

If you have any questions, please call.

Jack H. Galbraith
Secretary

JHG:JWH:ber

Attachment

cc: L. L. Binkley

THE CITY OF WICHITA

OFFICE OF CENTRAL INSPECTION DIVISION

DATE June 1, 1964

TO Jack Galbraith, Senior Planner

FROM L. L. Binkley, Maintenance Inspection Supervisor

**SUBJECT BZA RESOLUTION 35-63
1021 WEST PAWNEE**

This will serve to notify your division that the fencing and surfacing as set forth in Items 2 and 4 of subject resolution have been completed.

LLB:ml



Board of Zoning Appeals

February 19, 1964

Robert Finch, City Clerk

James W. Howe, Assistant Secretary

Case No. BZA 35-63

Attached is a copy of a performance bond which has been filed by Wm. H. Snyder, who has leased the property involved in the above numbered case. This bond has been submitted as a result of a requirement made by the Board of Zoning Appeals in the approval of property in the above case for use as a self-service car wash operation. It guarantees that a fence shall be constructed, and that the entire area to be utilized for washing and drying operations, as well as all areas to be used for ingress and egress, shall be hardsurfaced with asphalt, asphaltic concrete or concrete.

This bond should remain on file in your office until such time as the Superintendent of Central Inspection notifies you that the requirements guaranteed by the bond have been complied with.

If you have any questions, please feel free to call.

James W. Howe
Assistant Secretary

JWH:ber

Attachment

cc: Robert H. Nelson, Attorney
511 Union Center Building

Wm. H. Snyder
260 South Dellrose

Glen Lytle, Supt.
Central Insp.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that I, Wm. H. SNYDER as Principal, and the ST. PAUL FIRE AND MARINE INSURANCE COMPANY of St. Paul, Minnesota, as Surety are held and firmly bound unto the City of Wichita, Kansas in the penal sum of SEVEN THOUSAND TWO HUNDRED AND NO/100 (\$7,200.00) DOLLARS lawful money of the United States of America, for the payment of which is to be well and truly made, we and each of us jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns firmly by these presents, the conditions of this obligation are such that,

WHEREAS, the said Wm. H. Snyder, Principal herein, has leased the described property from Mr. and Mrs. R. E. Ray and Mr. and Mrs. Jim Smith of Wichita, Kansas, and has made application for a permit to operate a self-service auto wash as provided in Section 20.04.090 of the Code of the City of Wichita, Kansas on property legally described as the east 100 feet of north 200 feet of Lot 2 and the West 10 feet of the vacated alley, Leonard Powell's Second Addition to the City of Wichita, Sedgwick County, Kansas, which is generally located just East of Seneca on South side of Pawnee; and

WHEREAS, the Board of Zoning Appeals approved a variance of the code, Resolution No. BZA 35-63, subject to guaranteeing that a fence will be constructed as required and the entire area for washing and drying, as well as areas for ingress and egress shall be hard surfaced as required.

NOW, THEREFORE, if the said Wm. H. SNYDER, principal herein shall well and truly perform these guarantees as outlined in Resolution No. BZA 35-63 of the Board of Zoning Appeals dated December 20, 1963 then this obligation shall be null and void; otherwise to be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 10th day of February 1964.

Witness:

Wm. H. Snyder

Principal

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

Charles W. Black, attorney in fact

Class 1

(A Capital Stock Company)

CERTIFIED COPY OF POWER OF ATTORNEY

Original on File at Home Office of Company. See Certification.

FIDELITY AND SURETY DEPARTMENT

ST. PAUL FIRE and MARINE Insurance Company HOME OFFICE: ST. PAUL, MINNESOTA

KNOW ALL MEN BY THESE PRESENTS That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint

Frank L. Priest, Charles J. Slawson, Howard M. Fullington, Charles D. Harrison, James H. Knorr, Raymond L. Mann, Charles W. Black, Harlan L. Smith, William J. Bunch and William B. Gaudreau, individually Tichiba, Kinser

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V, -Section 8, of the By-Laws adopted by the Board of Directors of the St. Paul Fire and Marine Insurance Company at a meeting called and held on the 17th day of January, 1932, of which the following is a true transcript of said Section 8:

"The President or any Vice President, Resident Vice President, Secretary or Resident Secretary, shall have power and authority (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereon, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and

(2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify in copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and

(3) To resume, at any time, any such attorney in fact or Special Attorney-in-fact and revoke the authority given him."

IN TESTIMONY WHEREOF, the St. Paul Fire and Marine Insurance Company has caused this

instrument to be signed and its corporate seal to be affixed by its authorized officer, this

day of February, A. D. 1931

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

STATE OF MINNESOTA County of Ramsey

W. H. ... For President



On this 23rd day of February, 1931, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, this day and year first above written.

C. L. Jarger

C. L. JARGER Notary Public, Ramsey County, Minn. My Commission Expires June 2, 1937.

CERTIFICATION

I, the undersigned officer of the St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and attached, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 10 day of February, 1931

COPY

KAHRS, NELSON, FANNING & WITE

AUSTIN M. COWAN (1895-1940)
W. A. KAHRS
ROBERT H. NELSON
H. W. FANNING
RICHARD C. WITE
DARRELL D. KELLOGG

ATTORNEYS AT LAW
UNION CENTER BUILDING
WICHITA, KANSAS 67202

TELEPHONES
AMHERST 2-3441
AMHERST 2-3442

February 14, 1964

Mr. James Smith
c/o Ray Realty
439 South Main
Wichita, Kansas

Re: Performance Bond
Leonard Powell's Second Addn.
Seneca and Pawnee



Dear Mr. Smith:

In connection with the performance bond that was required by the Board of Zoning Appeals with reference to the construction of the U-Wash-Em system on your property, I wish to advise that I have conferred with Mr. Lakin, Assistant Director of Planning, Metropolitan Area Planning Commission, in connection therewith. He advises that the performance bond may be signed by Mr. Snyder, your lessee, as principal, and the corporate surety as surety and that this will be sufficient for the compliance with the Board of Zoning Appeals' order. This will not need your signature and the signatures of Mr. and Mrs. Ray.

In connection with the description as set forth in the bond, it should be corrected so that it reads as follows:

East 100 feet of North 260 feet of Lot 2,
and West 10 feet of vacated alley.

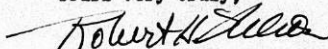
The reason for the reference to the west 10 feet is that that is all that is covered by the light commercial classification.

Mr. Lakin advises that it is understood that the wall which is to be constructed is to be on the east line of the vacated alley and not on the east line of the west 10 feet of said vacated alley.

Mr. James Smith
Page Two
February 14, 1964

With these changes, therefore, I am returning herewith the Performance Bond and suggest that you have Mr. Snyder proceed to obtain the bond and submit same to Mr. Lakin. Should there be any further questions, please advise.

Yours very truly,



OF KAHRNS, NELSON, FANNING & HITE

RHN:blc

Enclosure

cc: Mr. Lakin
Mr. Snyder

December 31, 1963

Mr. Robert H. Nelson
511 Union Center
Wichita, Kansas

Dear Mr. Nelson:

Re: BZA 35-63 - Appeal from the
decision of the Superintendent
of Central Inspection and
Variance

On December 23, 1963 and December 26, 1963, we advised you that the Board of Zoning Appeals had approved subject application for a variance concerning property at the southeast corner of Pawnee and Seneca, legally described as:

The East 100 feet of the north 260 feet of Lot 2,
together with 20 foot vacated alley, in Leonard
Powell 2nd Addition,

subject to certain conditions.

We also advised that the Board's decision might be appealed to the City Commission provided that such appeal was filed on or before December 30, 1963. The City Clerk has advised that no appeal was filed on or before the date indicated, and the decision of the Board of Zoning Appeals is, therefore, final. A copy of the resolution setting forth the action of the Board is attached for your information and files.

Very truly yours,

Robert A. Lakin
Secretary

RAL:ber
Attachment

cc: Mr. and Mrs. R. E. Ray, 511 Union Center Building
Mr. and Mrs. Jim Smith, 511 Union Center Building
Glen Lytle, Superintendent of Central Inspection

R E S O L U T I O N N O . B Z A 3 5 - 6 3

WHEREAS, Mr. and Mrs. R. E. Ray and Mr. and Mrs. Jim Smith, 511 Union Center Building, Wichita, Kansas, by Robert H. Nelson, attorney, 511 Union Center Building, Wichita, Kansas, have appealed from the decision of the Superintendent of Central Inspection that unenclosed self-service car washes are not permitted in "LC" districts, all as provided in Section 2.12.590.1, Code of the City of Wichita, Kansas; and in addition, should the appeal not be upheld, the applicants requested a variance, as provided in Section 2.12.590.2, Code of the City of Wichita, to permit the construction and operation of a car washing unit on property zoned "LC" and legally described as follows:

The east 100 feet of north 260 feet of Lot 2,
and the west 10 feet of the vacated alley,
Leonard Powell Second Addition, in the City of
Wichita, Sedgwick County, Kansas,

generally located at the southeast corner of Pawnee and Seneca; 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, in regular meeting consider said application on the 20th day of December, 1963; and

WHEREAS, the Board determined that said appeal resulted from a decision of the Superintendent of Central Inspection that the construction and operation of an unenclosed self-service car washing unit is not a permitted use under Section 28.04.090 of the Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals determined that it had proper jurisdiction to consider said appeal under the provisions of Section 2.12.590.1, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals, after hearing the report of the Secretary and arguments of the counsel for the applicant, did determine that the Superintendent of Central Inspection was correct in his interpretation of the zoning ordinance; and

WHEREAS, the Board of Zoning Appeals has found that the request for variance arises from a condition which is found to be unique and not ordinarily found in the same zoning district inasmuch as the proposed use is not shown as a permitted use in any district of the Zoning Ordinance and was not a use known at the time of the preparation and adoption of the zoning ordinance; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance, as approved, would not adversely affect the rights of adjacent property owners inasmuch as certain conditions for development of the property are provided, which conditions were concurred in by the adjacent property owners at the public hearing, and which requirements will provide necessary protection for adjoining property owners and residents; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the enforcement provisions of the Zoning Ordinance will constitute unnecessary hardship upon the applicant because at the time the ordinance was written, the use proposed was not in existence, and to deny the applicant the right to use his property as proposed would

be highly unfair, and it was considered a hardship not to allow an owner to develop his property just because the use contemplated is not spelled out in the ordinance, and it was a further determination of the Board that the use proposed, when permitted under certain conditions, would be similar to other uses permitted in the "LC" Light Commercial section of the ordinance; and

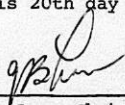
WHEREAS, the Board of Zoning Appeals has found that the variance, as approved, will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare inasmuch as necessary conditions are attached which assure the proper use and operation so far as public interests are concerned; and

WHEREAS, as shown above, each of the four conditions required by Section 2.12.590.2, Code of the City of Wichita, to be present before a variance can be granted, has been found to exist.

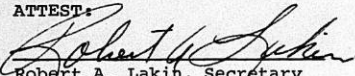
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that the decision of the Superintendent of Central Inspection that a car washing unit is not a permitted use in the "LC" Light Commercial District be upheld; and further, that the variance requested be approved and the Superintendent of Central Inspection be authorized to issue a building permit for the construction and operation of a car washing unit on the above described property, subject to the following:

1. That drainage, both surface and runoff created by the operation, shall be handled in such manner satisfactory to the Superintendent of Maintenance of the Department of Public Works.
2. That a solid brick, concrete or architectural tile type fence or wall to provide screening of the operation and to prevent blowing debris shall be constructed to a height of 5 feet along the east property line for such distance as paving and drive way area is provided for the operation of the car wash. The fence shall be reduced in height from 5 feet to 3 feet beginning at the building setback line and extending to the property line on the north.
3. The hours of operation shall not extend beyond 11 p.m. or commence earlier than 6 a.m., Central Standard Time.
4. The entire area to be utilized by the washing and drying operation, as well as areas of ingress and egress, shall be hard surfaced with either concrete, asphalt or asphaltic concrete.
5. Adequate maintenance shall be provided through inspection twice daily for proper maintenance and removal of trash.
6. A corporate performance bond in the amount of \$7,200 shall be submitted to the Secretary of the Board, to guarantee the construction of the fence as required in No. 2 above, and to guarantee the surfacing of the lot area as required in No. 4 above.
7. No sound projecting devices or loud speakers shall be used so as to be heard outside of any structure.
8. All lights shall be shielded to reflect or direct light away from adjoining residential property. No string type lighting shall be permitted.

ADOPTED AT WICHITA, KANSAS, this 20th day of December,
1963.



E. B. Law, Chairman

ATTEST:

Robert A. Lakin, Secretary

Board of Zoning Appeals

December 27, 1963

Robert G. Finch, City Clerk

Robert A. Lakin, Secretary

BZA 35-63

Attached is a copy of BZA Resolution No. 35-63,
covering action taken by the Board of Zoning Appeals
on the above case.

This case was heard December 20, 1963, and an appeal
may be filed in your office on or before December 30,
1963.

If an appeal is filed, please advise.

Robert A. Lakin
Secretary

RAL:ber

Attachment

December 26, 1963

Mr. Robert H. Nelson
511 Union Center
Wichita, Kansas

Dear Mr. Nelson:

Re: BEA 35-63 - Appeal from the
decision of the Superintendent
of Central Inspection and
Variance

This is to advise you that our original letter of December 23, 1963, was in error in that the condition providing for fencing should read as follows:

2. That a solid brick, concrete or architectural tile type fence or wall to provide screening of the operation and to prevent blowing debris shall be constructed to a height of 5 feet along the east property line for such distance as paving and driveway area is provided for the operation of the car wash. The fence shall be reduced in height from 5 feet to 3 feet, beginning at the building setback line and extending to the property line on the north.

I have also noted that the legal description of the property included in the application included the entire vacated alley to the east (which is 20 feet in width). Although this may be the full extent of the ownership involved, under provisions of Section 28.04.160.B, the Light Commercial zoning by reason of the alley vacation is extended only to the middle of the vacated alley, or to the west 10 feet of the 20 foot alley. This, then, leaves the easterly 10 feet in a residential classification. It is my understanding that Central Inspection will not permit use of this easterly 10 feet for the car wash or drives and appurtenances thereto. It is our understanding, however, that they will allow the use of this easterly 10 feet for the construction of the fence referred to above. I do not believe this would present any

Page 2 - Robert H. Nelson
December 26, 1963

problems as the plot plan submitted with the original application indicated that there would be no pavement or lights in this easterly 10 feet.

Should there be any question concerning this matter, please call.

Very truly yours,

Robert A. Lakin
Secretary

RAL:ber

cc: Robert G. Finch, City Clerk
Glen Lytle, Superintendent of Central Inspection
Mr. and Mrs. R. E. Ray, 511 Union Center Building
Mr. and Mrs. Jim Smith, 511 Union Center Building

CASE NO. BZA 35-63

PREPARATION OF THE SECRETARY'S REPORT
ON THIS CASE HAS BEEN DELAYED PENDING
SUBMISSION OF STATEMENT OF JUSTIFICATION
BY THE ATTORNEY IN THIS CASE.

December 23, 1963

Mr. Robert H. Nelson
511 Union Center
Wichita, Kansas

Dear Mr. Nelson:

Re: BZA 35-63 - Appeal from the decision
of the Superintendent of Central
Inspection and variance

This is to advise you that at its special meeting of December 20, 1963, the Board of Zoning Appeals of the City of Wichita considered your appeal from the order of the Superintendent of Central Inspection, who refused to issue a permit for construction of a self-service car wash operation in an "LC" district, and application for variance to permit such use if the decision of the Superintendent of Central Inspection is upheld, for property generally located at the southeast corner of Pawnee and Seneca, and legally described as:

The East 100 feet of the North 260 feet of Lot 2,
together with 20 foot vacated alley, in Leonard
Powell 2nd Addition.

It was the action of the Board of Zoning Appeals to uphold the decision of the Superintendent of Central Inspection in denying a permit for such use in an "LC" district. With respect to the application for variance, it was the decision of the Board of Zoning Appeals to approve this request, subject to the following:

1. That drainage, both surface and runoff created by the operation, shall be handled in such manner satisfactory to the Superintendent of Maintenance of the Department of Public Works.
2. That solid brick, concrete or architectural tile type walls to provide screening of the operation and to prevent blowing debris, to a height of not to exceed 5 feet, shall be built adjacent to any residential zoning or development.

Page 2 - Robert H. Nelson
December 23, 1963

3. The hours of operation shall not extend beyond 11 p.m. or earlier than 6 a.m., Central Standard Time.
4. The entire area to be utilized by the washing and drying operation, as well as areas of ingress and egress, shall be hard surfaced with either concrete, asphalt or asphaltic concrete.
5. Adequate maintenance shall be provided through inspection twice daily for proper maintenance and removal of trash.
6. A corporate performance bond in the amount of \$7,200 shall be submitted to the Secretary of the Board, to guarantee the construction of the fence as required in No. 2 above, and to guarantee the surfacing of the lot area.
7. No sound projecting devices or loud speakers shall be used so as to be heard outside of any structure.
8. All lights shall be shielded to reflect or direct light away from adjoining residential property. No string type lighting shall be permitted.

Section 2.12.610 of the Code of the City of Wichita provides that the decision of the Board of Zoning Appeals shall be final unless it is appealed to the Board of City Commissioners within ten days of the date of the Board's action. Accordingly, an appeal could be filed in this case on or before December 30, 1963.

Subsequent to the expiration of the appeal period, you will be advised whether or not an appeal has been filed. If no appeal has been filed on or before December 30, 1963, the decision of the Board will be final and the Superintendent of Central Inspection will be in a position to issue the appropriate permit.

Very truly yours,

Robert A. Lakin
Secretary

RAL:JWH:ber

cc: Robert G. Finch, City Clerk
Glen Lytle, Superintendent of Central Inspection
Mr. and Mrs. R. E. Ray, 511 Union Center Building
Mr. and Mrs. Jim Smith, 511 Union Center Building

SECRETARY'S REPORT

CASE NO. BZA 35-63

GENERAL LOCATION

The property represented in this application is generally located at the southeast corner of Pawnee and Seneca.

EXISTING LAND USE

The property in question is vacant. The existing land use to the west is a service station and drive in restaurant. North is a service station and pancake house. East is single family; south is office, single family and Chicken Acres operation.

EXISTING ZONING

The property in question is zoned "LC" Light Commercial. The existing zoning to the north, west and south is "LC" Light Commercial. To the east is "AA" Single Family.

REQUEST

The case is an appeal from an order of the Superintendent of Central Inspection not to issue a permit for construction of a self service car wash operation in the "LC" Light Commercial district. In the event the appeal is turned down, the applicant requests a variance pursuant to Section 2.12.590.2, of the Code of the City of Wichita to allow the self service car wash operation to be located in the "LC" Light Commercial district.

APPEAL - PART I

Mr. Nelson, the attorney for the applicant, has stated that the Superintendent of Central Inspection has refused to issue a permit

for a self service car wash in the "LC" Light Commercial district on the basis that the building to be constructed will not be fully enclosed and because this particular use is not specifically authorized in Section 28.04.090 ("LC" district regulations).

Mr. Nelson contends that this use is within the general classification as set forth in Section 28.04.090 and is of the same general nature as other businesses permitted in light commercial. He states that "one of the uses permitted in "LC" is a filling station which involves the use of the property for such activities as changing of tires, servicing of automobiles, gas, oil, water, antifreeze, repairs on headlights, fenders and similar items, mechanic work and selling of gasoline." All these activities, he suggests, are generally not carried on within an enclosed structure, especially the sale of gasoline. He further contends that "the design of the car washing unit as far as use of the property is concerned is directly compatible with the operation of a filling station-----, drive in restaurants, drive in banks and garages, which are also permitted in "LC"."

It is the opinion of the Secretary that, although a filling station or drive in restaurant (Griffs, Sandys, etc.) may be similar in use to a self service car wash, these other uses are specifically permitted in "LC" (See "1.9 Filling Stations" and "1.19 Restaurants"). Contrary to the attorney's contention that many activities, such as a filling station are carried on outside the station, it is the belief of the Secretary that most of the activities mentioned are, in fact,

carried on within the service station building, with the exception of the sale of gasoline. Most service stations have at least one or two stalls which are used solely for the purpose of servicing automobiles, i.e.; changing of tires, oil, anti-freeze, tires, water, repairs on headlights, fenders, motors, etc.

As far as the sale of gasoline being carried on outside of the service station is concerned, it was evidently the intention of the governing body at the time the ordinance was adopted, to permit this specific activity in the "LC" district by specifically listing it, and it is assumed by recognizing that the character of a service station necessarily involves this much of an outdoor use. Self service car washers have not been so recognized as being a specific activity to be permitted in "LC"

The characteristics of the self service car wash indicate to some degree its dis-similarity to the service station which operates as a neighborhood service. These are:

1. The hours of operation.
2. The quantity of water discharged from the washing operation.
3. Unattended operation.

It appears from the existing self service operation that this is an around the clock operation, whereas most of the activities permitted in "LC" districts and which serve as neighborhood type activities, limit themselves in hours of operation.

Since the sole function of this business is the washing of cars, the quantity of water discharged from the operation should exceed

substantially that of the normal service station. Many of the residential areas in the city, particularly the older areas, are on sewer systems which are at near capacity. The addition of an operation of this nature would in many instances overload these sewers. The alternative for this is the discharge of the water into the open or into storm water sewers. Where storm water sewers are available, the city has allowed this to be done, provided that such connection is constructed in a manner to control surface drainage and with mud traps and baffles to strain the run off water.

The third problem of unattended operation is that it is less likely that the area will be properly maintained as to blowing debris created by the paper towels used to dry the cars. Again, this is a characteristic not normally found in a neighborhood service area, and where it has been found in connection with drive in restaurants, etc. this has been one of the chief complaints against such uses being in the "LC" districts.

The manner in which the zoning ordinance is constructed provides that only those uses which are specifically listed in the "LC" district may be permitted there. If it had been the intent of the governing body to permit car washes, or such similar services without the benefit of being in an enclosed structure, it would have so written the ordinance. Either the phrase "car wash outside of structures" or the phrase requiring the operation to be within an enclosed building would have been re-written. Acknowledging the fact that such uses were unknown at the time the ordinance was adopted, it is the Secretary's opinion that as such uses are created, where there is direction in the construction of the ordinance relative to uses inside enclosed buildings,

that the proper course of action is to:

1. Either amend the ordinance to specifically provide for such uses in the "LC" districts, or
2. Amend the zoning maps to a zoning category in which there is no doubt as to those operations being a permitted use, such a zoning classification is the "C" Commercial district.

It is further the Secretary's opinion that there has not been sufficient showing either through logic or through market research, that these are uses which are of service primarily to neighborhood units. In view of the foregoing, it is recommended that the decision of the Superintendent of Central Inspection be upheld and the permit denied.

VARIANCE - PART II

In the event the ruling of the Superintendent of Central Inspection is upheld and the appeal denied, the applicant requests the Board to grant a variance to allow this use on this specific location in question. Should the Board take jurisdiction in this matter, the following four conditions must be found to exist before the variance can be granted:

1. That the variance desired raises from some condition which is not ordinarily found in the same zoning district.
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 enforcement provisions of this zoning ordinance would constitute an unnecessary hardship upon the property owner represented in the appeal.
4. That the variance desired is not against the public interest.

UNIQUENESS

The attorney for the applicant has submitted nothing in the way of justification for uniqueness. However, it is the belief of the Secretary that this particular property is not unique as to physical characteristics or as to use of the property. This is not an unusual shaped lot, nor are there any unusual ground characteristics or anything of a similar nature which would make the variance unique from a physical standpoint. On certain occasions in the past few months, the Board has considered uniqueness as to the use of the property concerned. However, in this instance, it is the opinion of the Secretary that there is nothing about the self service car wash operation which is unique.

ADJACENT PROPERTY

It is the opinion of the Secretary that if the variance is granted and proper screening is provided, water run off can be properly inhibited, proper ingress and egress are provided and all lights are shielded so as to reflect or direct lighting towards the property, that there should be no adverse affect on adjoining property owners.

HARDSHIP

The attorney for the applicant contends that the "strict enforcement of the zoning ordinance works a hardship on the property owners in that this is a business that is for the benefit of the community and will in no manner adversely affect the public health, safety or general welfare of the community.

The Secretary has taken the position that "hardship" should be so construed as to mean that the property cannot be used for the purpose for which it is zoned. Certainly in this instance, there are uses other than a self service car wash operation which this property could be used for.

It would appear in this particular area that there is a demand for Light Commercial ground for a variety of light commercial uses. This has been shown, in general, by the several rezoning applications recently approved by the governing body and their reasonable rapid development. Should the variance be granted, the applicant would be obtaining a privilege above and beyond that which is enjoyed by other owners of Light commercial property not only throughout the city but in this immediate area, which is likewise zoned Light Commercial.

PUBLIC INTEREST

It is the opinion of the Secretary that the granting of the variance should in no way adversely affect the public interest if the sewer and water run off problems are properly handled.

It is the opinion of the Secretary that uniqueness and hardship have not been shown to exist in this instance and it is, therefore, the recommendation of the Secretary that the variance be denied. In the event the Board wishes to approve the variance, it is recommended that it be approved subject to the following conditions:

1. That drainage, both surface and runoff created by the operation, shall be handled in such manner satisfactory to the Superintendent of Maintenance of the Department of Public Works.

2. That solid brick concrete or architectural tile type walls to provide screening of the operation and to prevent blowing debris, to a height of not to exceed 5 feet shall be built adjacent to any residential zoning or development.
3. The hours of operation shall not extend beyond 10 p.m.
4. The entire area to be utilized by the washing and drying operation, as well as areas of ingress and egress, shall be hard surfaced with either concrete, asphalt or asphaltic concrete.
5. Adequate containers shall be provided for all papers, rags and other debris.
6. A corporate performance bond in the amount of \$_____ shall be submitted to the Secretary of the Board, to guarantee the construction of the fence as required in No. 2 above, and to guarantee the surfacing of the lot area.

EZA ACTION

Motion made by	Seconded by	Action
		Jurisdictions
		FINDINGS OF FACT
		1. Variance desired arises from such condition which is unique and which is not ordinarily found in the same zoning district.
		2. Granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
		3. Strict application of the enforcement provisions of the zoning ordinance will constitute unnecessary hardship upon the property owner represented in the appeal.
		4. Variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
		Determination (Approve or Deny)

CASE NO. BEA 35-62

PREPARATION OF THE SECRETARY'S REPORT
ON THIS CASE HAS BEEN DELAYED PENDING
SUBMISSION OF STATEMENT OF JUSTIFICATION
BY THE ATTORNEY IN THIS CASE.

BEFORE THE BOARD OF ZONING APPEALS OF CITY OF WICHITA

IN THE MATTER OF THE APPLICATION)
OF)
MR & MRS. R. E. RAY &) BZA-35-63
MR. & MRS. JIM SMITH.)
_____)

STATEMENT

This appeal to this Board involves the question of whether or not a self-service car washing unit can be located in an LC zoning classification. The Superintendent of Central Inspection has refused the issuance of a permit authorizing the construction thereof because the building to be constructed and used is not fully enclosed and that the Ordinance, No. 28,04,090 does not specifically authorize this particular use in an LC classification. It is the contention of the petitioners that the use of the property for a car washing unit is within the general classification as set forth in said Ordinance and within the general spirit of the businesses so permitted.

One of the uses permitted in LC is a filling station (1.9) This involves the use of the property for such activities as the changing of tires, servicing of automobiles, gas, oil, water, anti-freeze, repairs on headlights, fenders and similar items, mechanic work and the selling of gasoline, All of these activities take place not within an enclosure. We know that the sale of gasoline never takes place within an enclosure, and the other activities above mentioned generally take place not within an enclosure.

The design of the car washing unit, as far as the use of the property is concerned, is directly compatible with the operation of a filling station. There is also permitted in LC, drive-in restaurants, drive-in banks, garages and, in our opinion, such uses are certainly within the compatible area with that of a self-service car wash.



It is the contention of the petitioners that this Board has the jurisdiction and authority to authorize a variance if it determines this is not a proper use in an LC classification. This is under 2.12.590.2. This is our contention for the following reasons:

1. That the use of the property will have no adverse effect on the adjacent property owners or residents in the area, because this is in the same category as that of a filling station; nothing of an inflammable nature will be used, and no machinery or odors will result therefrom.

2. That the strict enforcement of the zoning ordinance works a hardship on the property owners in that this is a business that is for the benefit of the community and will in no manner effect public health, safety or general welfare of the community.

It is petitioners' further contention that the particular manner and use of an automatic car wash is all enclosed, with the exception of the ends and the roof. That the only activity out from the structure will be the polishing of the cars, which is a quiet, non-disturbing activity.

For these reasons it is urged that the Board of Zoning Appeals authorize this use in an LC classification. In the event the Board holds that it cannot authorize this use, it is urged that a variance be granted for the reasons above set forth.

KAHRS, NELSON, FANNING & HITE

By Robert H. Allen
Attorneys for Petitioners

CASE NO. BZA 35-63

REVISED NOTICES MAILED DECEMBER 4, 1963, FOR MEETING
OF DECEMBER 20, 1963, TO THOSE WHO RECEIVED ORIGINAL
NOTICES MAILED DECEMBER 2, 1963.

REVISED NOTICE

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

December 4, 1963

NOTICE TO ADJOINING PROPERTY OWNERS

Case No. FZA 35-63

An application has been filed by Mr. and Mrs. R. E. Ray and Mr. and Mrs. Jim Smith, 511 Union Center Building, Wichita, Kansas, by Robert H. Nelson, attorney, 511 Union Center Building, Wichita, Kansas, appealing from the decision of the Superintendent of Central Inspection, who has refused to issue a permit for construction and operation of a car washing unit, pursuant to Section 2.12.590.1, Code of the City of Wichita, and in the event this appeal is not upheld by the Board of Zoning Appeals, then the applicant requests a variance, pursuant to Section 2.12.590.2, Code of the City of Wichita, Kansas, to establish a car washing unit, all on property zoned "LC" Light Commercial and legally described as:

The east 100 feet of north 260 feet of Lot 2, together with 20 feet of vacated alley, Leonard Powell's Second Addition, in the City of Wichita, Sedgwick County, Kansas. Generally located at the southeast corner of Pawnee and Seneca.

This application has been assigned Case No. BZA 35-63, and will be considered by the Board of Zoning Appeals on Friday, December 20, 1963, at 2 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.

Robert A. Lakin
Secretary

REVISED NOTICE

REVISED NOTICE

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Room 402 City Building Annex
104 South Main
Wichita, Kansas

December 4, 1963

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Robert A. Lakin
Secretary

REVISED NOTICE

CASE NO. BZA 35-63

NOTICES MAILED DECEMBER 2, 1963 FOR MEETING ON DECEMBER 17, 1963

Mr. and Mrs. R. E. Ray
511 Union Center

Mr. and Mrs. James Smith
511 Union Center

Robert H. Nelson
511 Union Center

Garold C. Hammer
Anna L. Hammer
2430 South Seneca

Mary Harjo
2439 South Walnut

Jose M. Arellano
Katie Arellano
2433 South Walnut

Willard Dale Ritchie
Faye E. Ritchie
2427 South Walnut

Ronald L. Wible
Esther R. Wible
2421 South Walnut

Orlen Lee Green
Maxine Green
2415 South Walnut

Leonard F. Powell
Mildred N. Powell
2403 South Walnut

Fourth National Bank & Trust Co.
200 East Douglas

R. E. Ray
Sadie Ray
James O. Smith
Ruby J. Smith
439 South Main

Administrator of Veterans Affairs
5500 East Kellogg

Elmer E. McKay
3035 Menlo Drive

M. & B. Development, Inc.
2824 East Douglas

15

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

December 2, 1963

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Robert A. Lakin
Secretary

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

December 2, 1963

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Case No. BZA 35-63

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This application has been assigned Case No. BZA 35-63, and will be considered by the Board of Zoning Appeals on Tuesday, December 17, 1963, at 2 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.

Robert A. Lakin
Secretary

BOARD OF ZONING APPEALS
CITY OF WICHITA, KANSAS

CASE NO. _____
FILED _____

500 - Appeals
Appeal from decision of Sept 7 of Robert Dinsdale
out for
APPLICATION FOR VARIANCE

I. NAME OF APPLICANT Mr. & Mrs. R. E. Ray & Mr. & Mrs. Jim Smith
MAILING ADDRESS 511 Union Center PHONE Ar. 2-3441
NAME OF AUTHORIZED AGENT Robert H. Nelson
MAILING ADDRESS Same as above PHONE "
RELATIONSHIP OF APPLICANT TO PROPERTY IS THAT OF Owner
(OWNER, TENANT, LESBEE, OTHER)

II. THE VARIANCE REQUESTED IS Construction and operation of
a car washing unit *as permitted under*
212.590.2

FOR PROPERTY LOCATED AT _____
AND LEGALLY DESCRIBED AS: East 100 feet of north 260 feet
of lot 2 together with 20 feet of vacated alley, Leonard Powell's
Second Addition
IN THE CITY OF WICHITA; AND WHICH IS PRESENTLY ZONED LC.

(GIVE METES AND BOUNDS DESCRIPTION BELOW IF APPROPRIATE):

If A - appeal from decision of Sept 7 of Cmt. Insp. dl (saying the
change use is not permitted in L.C. classification as provided
212.590.1

- III. THE APPLICANT 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 APPEAL OF THE DECISION OF THE BOARD TO THE CITY COMMISSION WITHIN TEN (10) DAYS OF THAT DECISION;
 - D. THAT ALL DOCUMENTS ARE ATTACHED HERETO AS NOTED IN PARAGRAPHS 3 AND 4 OF THE INSTRUCTIONS.

Mr. & Mrs. R. E. Ray and Mr. & Mrs.
APPLICANT Jim Smith
Robert H. Nelson
AUTHORIZED AGENT

OFFICE USE ONLY: RECEIVED IN OFFICE OF SECRETARY, BOARD OF ZONING APPEALS, _____ (A.M. - P.M.), _____, 19____, TOGETHER WITH APPROPRIATE FEE OF \$50.00.

SIGNED

T21-402



OWNERSHIP LIST

Lot	Block	Addition	Property Owner
2	1	Leonard Powell Addition	Garold C. Hammer Anna L. Hammer 2430 S. Seneca
9	"	"	"
10	"	"	"
11	"	"	Mary Harjo 2439 S. Walnut
12	"	"	Jose M. Arellano Katie Arellano 2433 S. Walnut
13	"	"	Willard Dale Ritchie Faye E. Ritchie 2427 S. Walnut
14	"	"	Ronald L. Wible Esther R. Wible 2421 S. Walnut
15	"	"	Orlen Lee Green Maxine Green 2415 S. Walnut
16	"	"	Leonard F. Powell Mildred N. Powell 2403 S. Walnut
17	"	"	"
N 125' of W. 125' of lot 1		Leonard Powell 2nd Addition	David T. Marantette Address unknown <i>was</i>
S 15' of lot 1 and Vacated alley adj. on the S.		"	Fourth National Bank & Trust Co. 200 E. Douglas
Lot 1, exc. S. 15' and exc. the N 125' of the W. 125', together with Vacated alley adj. on the East		"	R. E. Ray Sadie Ray James O. Smith Ruby J. Smith 439 S. Main
7	A	Schallmo Add.	Administrator of Veteran Affairs 5500 E. Kellogg
S 165' of W 165' of 8	"	"	Elmer E. McKay 3035 Menlo Drive
8 exc. S. 165' of W 165'	"	"	M. & B. Development Inc. 2824 E. Douglas

We, The Security Abstract and Title Company, Inc., hereby certify the foregoing to be a true and correct list of property owners within a 200 foot radius of The East 100 feet of the North 260 feet of Lot 1, Leonard Powell 2nd Addition to Wichita, Sedgwick County, Kansas, together with the vacated alley adjoining said tract on the East, as shown by the deeds on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on this 27th day of November, 1963 at 7:00 A. M.

THE SECURITY ABSTRACT AND TITLE COMPANY, INC.

J. N. M. ...

By

Vice-President

Order No. 109186

2:45 PM PAYMENT NOTICE
City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Bld'g & Elev. _____ Elec. _____ Elev. Insp. _____
Exam Fees _____ Hse. Mvr. _____ Hse. Moving _____
Licse. _____ Mech. _____ Oil Well _____ Pav. Cuts _____
Plan. Pib'g. _____ Pib'g. Cert. _____
Sanitation _____ Sewer _____ Signs _____ Sidewalk _____
Street _____ Trailers _____

DESCRIPTION	AMOUNT
Variance	50 00

Name Robert H. Nelson
Address 511 Lawrence St. Wichita, Kan.
Type R-712 Due Date _____
Comments _____

Date 11-29-63 By M. Livingston
20M 5-60

*

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