

MINUTES OF INFORMAL JOINT MEETING
of

BOARD OF ADJUSTMENT & APPEALS
and
CONTRACTORS' LICENSING BOARD

Civic Auditorium - 7:30 P.M. - May 11, 1961

RE: THE 640 WHITE AVENUE BUILDING CASE

Present: Messrs. Ray Hume, Glen Hopper, Bruce E. Brownson, Floyd Felt, Tom Elder, Carl Alstatt, James Stockton, Don Warner, C. E. McCormick, and Joe Lacy.
Mr. H. E. Anderson and Mr. Clifford Robison came in during the latter part of the meeting.

Chairman Lacy called the meeting to order and said that the purpose of this joint meeting was to attempt to straighten out the complicated condition of factors relating to the building at 640 White Avenue.

At this time, Mr. Floyd Felt asked to be disqualified as a member of the Board of Adjustment, due to the nature of this meeting.

Mr. Lacy read the memorandum which had been sent out to all members of both boards on April 27, 1961 regarding the "Floyd Felt Building Case at 640 White Avenue" (copy attached). He then read City Attorney Ashby's written opinion on the case, which is as follows:

"Mr. Joe Lacy, City Manager
City Hall
Grand Junction, Colo.

May 11, 1961

Dear Joe:

You have requested that I furnish you with a written opinion in regard to the Floyd Felt building case concerning the property at 640 White Avenue in this city.

1. The first question seems to be in regard to a possible revocation or suspension of the Contractor's License held by Mr. Felt. In view of the fact that the building permit for the property in question was held by the S & M Supply Company and the construction was conducted under their license, and even though Mr. Felt at the time was employed by the S & M Supply Company, it does not seem proper to revoke Mr. Felt's license for the violation of the building code connected with this particular building.

2. A more important question would seem to be what could be done to enforce the particular building code requirements in this controversy, since apparently, we are at somewhat of a stand-off. As you are certainly well aware, the problem that constantly confronts the City in its public relations is the problem of insisting upon certain things merely because the book says they must be done, even though it is agreed upon by all concerned, that the particular requirement is outmoded or unnecessary in a particular circumstance. From everything that I have been able to

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gather this is the situation here. An attempt has been made to insist upon compliance with a portion of the building code which even the enforcers admit is not necessary in this particular instance.

It would seem at this stage of the proceedings that the only way of enforcement of this matter would be through court action. I believe that we would be in a very ridiculous position if we appeared in Court and the testimony was that the requirement existing in the building code was a useless requirement in this situation. I feel that the Court would not require compliance.

3. A basic problem exists in a matter of this type in that a uniformity of construction in the provisions of the building code is very important, as is a uniformity of the application of the code. At the present time there are no provisions for variation from the building code other than through our system of variances, which do not, necessarily, lend themselves to the uniformity of application. The problem is, as our building code becomes out-moded or inapplicable in certain proceedings, there is no way at all the code can offer the necessary protection and also, the uniformity which must be present.

I would suggest that the Board of Adjustment or some board of its type be empowered, when a situation such as this arises, to provide an alteration of the building code of uniform application.

Yours very truly,

/s/ Gerald J. Ashby

Gerald J. Ashby
City Attorney"

Mr. Lacy said both Boards have had occasion to rule on this matter which has become quite involved and complicated but as yet remains undecided. He noted that it casts reflection on the administrative and enforcement arms of the City government as to whether or not they are enforcing City Ordinances.

Mr. Hume stated that the Board of Adjustment had passed on this case previously and felt that it was now out of their hands. When asked by Mr. Lacy if the Board still felt the same about the matter in view of certain other matters that have come up, Mr. Hume said that they have had no chance to get together and discuss it.

Mr. Hopper asked why a joint meeting had been called and said he would like a clarification of the reason for this meeting.

Mr. Lacy replied that this meeting had been called because both groups have been working on this from different approaches which are apparently conflicting, and the enforcing officials seemingly have not followed through with the ultimate intent of both Boards. In the first place, the Board of Adjustment had denied the request for a variance requested by the S&M Supply Company for a variance from Table 17-A, Chapter 17 of the Uniform Building Code, 1958 Edition, to eliminate the requirement for fire protection of structural columns and said

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that this phase of the Code must be complied with to the letter. However, it has been alleged that this particular requirement is not necessary and it might be one of the things that the Board of Adjustment would want to reconsider. If it is now decided that this part of the Code is not necessary and it is taken out, would it be fair to make Mr. Felt comply to this and then not require it of others?

Mr. Hume said that in the first meeting to consider this request the Board was not sure on the matter and for that reason asked to have an interpretation from the International Conference of Building Officials. Their decision to deny the request was based primarily on the report received from them.

Mr. Lacy then read the Minutes of the Board of Adjustment meetings of June 22, 1959 and August 12, 1959 (full copy in P.R.)

Mr. Alstatt said that the reason the Licensing Board was concerned was not so much as to whether the building was built right or not, but because of the fact that it was a direct disobedience of an order from the building inspector. He stated that the Building Inspector's office was being criticized by the contractors' association that a certain chosen few were not paying attention to the building inspector's orders and the enforcing agencies were doing nothing to see that they did comply.

Mr. Lacy said that he had assumed that a reinterpretation had been made on this; however, it must be resolved one way or the other. If both Boards feel that the original interpretation is right, we must enforce it. But it would not be fair to enforce it in this one case and then not require it any more because it is not really necessary.

Mr. Hopper asked the question of what the precedent would be if the case were reopened and reconsidered. "What would be the future responsibility of the Board?" He then said, "What kind of a variance or change of the Code are we talking about? Can this Board of Adjustment change the Code?"

Mr. Lacy explained that this would be a variance from the Code, not an ordinance, and that the Board can grant a variance. He then pointed out that there are two types of variances: (1) a variance for one building under specific circumstances which would apply to that one building only; and (2) if something is not necessary or a hardship, this phase can be interpreted to apply to all similar cases that might arise (there have been two such cases recently).

Mr. Hopper then asked what fire zone the building is in, and also what kind of a position the City would be in if the Board grants this variance and then in two or three years a similar situation should arise, only the City felt their occupancy might be of a somewhat more combustible nature. Should they have to live up to the Code, even though they felt their use was the same as this one?

Mr. Alstatt replied that this is rather a border-line case. Actually, Group G occupancy comprises the sales and storage of noncombustible goods. In checking, Mr. Alstatt said it was found that other cities classify electronic firms as being in Group G and as "mostly incombustible" and the Code allows a certain percent of incombustible uses.

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Originally this use was in Group F and then went back to Group G. This use is not highly combustible, so there is a question as to whether it should be in "G" or "F" where everything has to be fire protected. The Building Code does not say which group it has to be put in; we have to decide this. Mr. Alstatt said that his personal opinion was that it should be necessary for these columns in the building in question to be fire protected, but he would like to talk to some major contractors and architects to find out what their feeling on this would be. He pointed out that well-trained people have written the Code and although it may not fit Grand Junction in every respect, before any changes are made we should be sure we are right.

Mr. Brownson asked why the side wall columns should be protected but not the roof, since it would seem that the roof would be more critically in need of protection.

Mr. Alstatt explained that the reason the beams and roof members do not have to be fire protected is because in Group G only storage of "mostly incombustible" material is allowed so fire within the building is unlikely. What they fear is fire from adjoining buildings spreading to the building.

Mr. Lacy pointed out that if these columns were on the outside then they should be protected, but in this case they are on the inside of the firewall and are automatically protected from outside fires. Mr. Stockton added that there are some columns on the outside in the front of the building, but they are mostly decorative.

Attorney Tom Elder spoke in behalf of Mr. Felt. Regarding Mr. Ashby's letter, Mr. Elder said that Mr. Felt was only an employee of the S&M Company at the time and if any license should be taken away it would be that of the S&M Company, also if it should go to court, it would have to go as S&M Company (however, the S&M Company is no longer in business).

Mr. Elder said it seemed that the matter should be able to be resolved and interpreted from a practical standpoint. The Fire Chief and most of the contractors agree that this requirement being discussed is needless, he said. The Building Code requires it and the letter from the International Conference of Building Officials says a variance should not be granted, yet the people who should know about it state that it is not necessary.

Mr. Elder pointed out that Mr. Felt was not personally at fault just because he was an employee of the S&M Company and he could see no reason for calling this the "Floyd Felt Building Case". He stated if it is determined that a variance should be entered on this matter it certainly seemed ridiculous to back up and force S&M to comply and then not require it of all others.

Mr. Hopper mentioned that the S&F Company is a new organization; they did not buy out S&M. According to the state's bulk sales law the purchaser is liable if there isn't a full release on a business purchased or if all of the liability is not fully described or taken care of at time of purchase.

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Mr. Felt said that the S&F Company was organized eight months before Minerals Engineering bought S&M Company and that he did not work for S&M when the opinion was rendered.

Mr. Lacy said that this matter would be called "The 640 White Avenue Building Case" hereafter.

It was pointed out that the Building Code is changed every three years. Mr. Hume asked if there is anything in the 1961 Code that would affect this case. Mr. Stockton replied that he was quite sure there was not but that he would check more thoroughly before the next meeting.

Mr. Elder asked Mr. Stockton his opinion on this building in question.

Mr. Stockton replied that, personally, he thought there should be some relief on a one-story building. The Code is used in some 40 states and is broad and general enough to cover all areas and conditions. What is allowed in one place is not necessarily allowed in another. The requirement like protection of all steel columns is a general thing and is made to cover many-storied buildings as well as a single-story building. Mr. Stockton added that he could not see much justification for additional fire protection on this building since the structural members are inside of a protective wall, also considering the type of occupancy that it has. He said also that this item is just one of several in the Building Code that need clarification.

Mr. Lacy said that inasmuch as Carl Alstatt has some additional information since the receipt of the letter from the International Conference of Building Officials, the Board of Adjustment may want to consider this in the form of an interpretation for the building inspector to enforce. "It all boils down to - if others get away with it, should be enforce it in this case", he said.

Mr. Alstatt said that this is the only building that does not conform with the Code that has been built since the town was fire zoned; some others are in variance but they were built earlier.

Mr. Felt said that his building was the first one after the fire zoning was put into effect, although just a short time before this the City Market on North Avenue was built and it has exposed beams. He said that he had checked on fire insurance rates on buildings with covered columns and those with exposed columns and found that they were no lower for those with the covered columns, therefore he could see no reason for covering the columns. He stated that according to the Bureau of Fire Insurance Underwriters this has no bearing on fire rates.

Mr. Felt also said that the Fire Chief and the building department have both told him that they think the covering of these columns would be an unnecessary thing to do. It has never been his intention to ignore the ruling, he said, however it has drug on because of this and he feels that the matter should be settled through the Building Department and not through the Board of Adjustment. Also, he said that he had understood that the matter was all settled, but now believes that someone is opening it up to cause him some trouble.

Mr. Hume said that the Board of Adjustment would be willing to meet and discuss this matter again and felt that they should have the additional information that Mr. Alstatt has.

Mr. Lacy suggested that the Board of Adjustment should meet and consider this matter along with two or three other items that are not practical requirements and that they meet with the Fire Chief, the Building Inspector, Development Director, and architects and contractors, as suggested by Mr. Alstatt, and consider these things all together. If it is found that this requirement is impractical, then an interpretation can be given to allow this variance and the question at hand will be disposed of; but if sufficient evidence is not found to change the Building Code, then it will have to be left as it is and enforced to the letter.

No definite time was set for this meeting.

Meeting adjourned.

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