

File No. 46845 Continued

addressed to your Board in connection with the subject by Mr. James E. Tippet, Attorney-at-Law, together with an ordinance (Council No. 1244) on the subject.

Your Secretary, Mr. Grinnalds, advised me that the facts substantially are: Mr. West applied to the Building Inspector for a permit to erect the three apartment houses. The Building Inspector refused the permit because the plans did not conform to the area and height provisions of Ordinance No. 922, approved May 19, 1923. Thereafter, Mr. West made an appeal to your Board and he was furnished with a form of advertisement and notice to cover the subject. He did not, however, avail of this notice. Later on, an ordinance was introduced in the Council, which has since, I believe, become effective, authorizing Mr. West to erect three apartment houses on his premises at the S. E. corner of Edgewood Street and Walbrook Avenue.

The question now before the Board is whether the ordinance grants Mr. West authority to erect the apartment houses according to his plans and without regard to Ordinance No. 922?

I express the opinion that the ordinance must be given a strict construction, and Mr. West is only permitted under it to construct his apartment houses within the limits specified in the ordinance. Wherever the special ordinance is silent on the points of construction, then all the provisions of the Building Code and Ordinance #922 would apply.

One of the points, as I understand it, not covered by the special ordinance is to approve a set-back 30 feet, and Mr. Tippet, Mr. West's attorney, now asks your Board to pass that resolution pursuant to Paragraph F, Section 22 of Ordinance No. 922.

In my opinion, your Board has no power to pass that resolution unless the case is properly before you on appeal. The section designated authorizes the Board, with the concurring vote of five members, in cases of practical difficulties, or unnecessary hardships, to vary or modify the regulations, etc. But that section, however, limits the exercise of that power to cases where the Board acts "in passing upon appeals".

I return the papers in the case.

Very truly yours,

(Signed) CHARLES C. WALLACE

City Solicitor

W/H
Encl.