

# CITY OF WICHITA BOARD OF ZONING APPEALS

## MINUTES

July 23, 2015

The regular meeting of the City of Wichita Board of Zoning Appeals was held on Thursday, July 23, 2015 at 1:35 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby, Chair; David Foster; Debra Miller Stevens; M.S. Mitchell; Bill Ramsey and Lowell E. Richardson. David Dennis was absent. Staff members present were: W. David Barber, Interim Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Planning Staff; Jeff Vanzandt, Assistant City Attorney; and Robert Parnacott, Assistant County Counselor.

1. **BZA2015-00026** - Raul Castillo Hernandez and Hortencia Castillo (Owner/Applicant) request a City variance to reduce the interior side yard setback to zero feet (south property line) to allow an existing carport to remain on site on property described as:

Part of Lots 21 and 23, on Water Street, now Wellington Place, Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas, being more particularly described as follows: Beginning at the Northeast corner of said Lot 21; thence West along the North line said Lot 21, 106.5 feet; thence South to a point on the South line of said Lot 23, said point being 106.5 feet West of the Southeast corner of said Lot 23; thence East 106.5 feet to the Southeast corner of said Lot 23; thence North to the place of beginning.

**JURISDICTION:** The Board has jurisdiction to consider the Variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required interior side building setback from six feet to zero feet in order to keep an existing carport on the site. The zoning code requires a six-foot interior side yard building setback in the MF-29 Multi-family Residential ("MF-29") zoning district. The application area is developed with a home, an attached carport along the south side of the house and two accessory structures in the rear part of the property. According to the applicant, the carport was existing when the house was purchased. When the applicant tried to make changes to the carport in the past, he was told to leave the carport alone and that it would be fine. This current variance application is the case of the property owner to the north of the subject site wanting to place a carport on his property similar to the applicants. The neighbor then reported the applicants existing carport when they were notified that they could not put up a carport of their own.

Currently, separation between the existing attached carport and the residential structure to the south is 7'-3". Building and fire code would require a minimum six-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the

property owner to the north, ensuring that any future improvements on either property would maintain a minimum of six feet between buildings. All surrounding properties are also zoned MF-29 and developed with single-family residences, except for the property directly west of the subject site and it is developed with a parking lot.

**ADJACENT ZONING AND LAND USE:**

NORTH	MF-29	Single-family Residence
SOUTH	MF-29	Single-family Residences
EAST	MF-29	Single-family Residences
WEST	MF-29	Church Parking Lot

*The five criteria necessary for approval as they apply to Variances requested.*

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the existing carport has been in place since before the current property owners purchased the property. The applicants just want to keep the carport as is with no modifications.

**ADJACENT PROPERTY:** It is staff's opinion that granting the requested variance for an interior side setback reduction may not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of six feet between buildings.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the applicant would have to remove a structure that came with the property and was one of the main selling points of the property for the applicants.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a side setback reduction from six to zero feet will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reductions, and provided that building and fire codes are followed.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance for a side setback reduction from six to zero feet does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

**RECOMMENDATION:** It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary then recommends that the variance for a interior side setback reduction from six to zero feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The applicant shall obtain all permits necessary for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots (south property), and prior to receiving a building permit or certificate of occupancy for the proposed structure.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

**DERRICK SLOCUM**, Planning Staff presented the Secretary's Report.

**FOSTER** asked since this is an existing condition is the requirement for development and permitting so this can go to the Appraiser for tax purposes.

**SLOCUM** said it could be reworded to indicate that the site cannot change from what is currently present. He said technically the variance is a permit to allow the structure to stay there legally.

**FOSTER** commented that he thinks rewording would help clarify the situation.

**RICHARDSON** asked about recommendation #3 to file a joint building setback with the neighbor. He asked what if the neighbor refuses. He said that is recommended on two of the BZA cases to be heard today.

**SLOCUM** said the neighbor to the south is also the applicant for BZA2015-00030 to be heard today, so he does not believe they will have a problem with this request. He said he can't answer that question. He said both structures are already there.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** said historically that request has been made in case the adjacent land changes ownership. He said it is a recommendation not a requirement.

**RICHARDSON** said it looks like if the BZA approves this subject to staff recommendation, then it is a requirement.

**SLOCUM** said the Board can eliminate recommendation #3 if they approve the variance.

**MOTION:** To approve subject to staff recommendation, as revised at today's meeting.

**MITCHELL** moved, **RAMSEY** seconded the motion, and it carried (6-0).

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2. **BZA2015-00028** - Clear Channel Outdoor, Inc. c/o David Holllhagen (Owner/Applicant) request a City Variance to the sign code to increase height of an off-site sign from 30 feet to 41.3 feet on property described as:

Lot 15 EXCEPT beginning at the Northwest corner; thence East to the Northeast corner; thence South 25 feet; thence West 78.3 feet; thence Southwesterly to the West line; thence North 48.3 feet to the point of beginning for CC A-29960 and 84 C 2867 along with all of lot 16, Block 5, Eureka Gardens Addition to Wichita, Sedgwick County, Kansas.

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant's company, Clear Channel Outdoor, has a 30-foot high off-site sign at the location of 648 S. Knight Street, right along the south side of Kellogg (US-54). The applicant is requesting a variance to increase the height of the off-site sign to 41.3 feet. The applicant is requesting this variance because the sign will need to be moved to the south 24 feet due to the acquisition of additional right-of-way for Kellogg to make room for turn lanes for the future improvement of the I-235/US-54 interchange. The sign at its new location would be obstructed from the east approach by an existing structure. The height increase to 41.3 feet would allow for the sign to be seen from the east approach unobstructed. The sign has been in its present location since 1998.

Section 24.04.222 (3) of the Sign Code limits off-site signs in LI Limited Industrial ("LI") zoning to 35 feet in height. Section 24.04.251 of the Sign Code permits increasing the maximum allowed height of an off-site sign located within seventy-five feet of a zoning lot line that directly abuts the right-of way of an elevated portion of a highway structure to a height at the top of the sign that does not exceed twenty feet above the height of the top of the highest railing or barrier along the traffic deck or decks within the right-of-way at a point perpendicular the sign. However, the location of the subject off-site sign is not located along the elevated portion of the Kellogg Expressway, thus the variance request on the increase in height.

All property surrounding the application area is zoned LI and developed with warehouses, offices salvage yard, recycling center, sports complex and US-54/Kellogg Expressway.

**ADJACENT ZONING AND LAND USE:**

NORTH	US-54/Kellogg	Kellogg Expressway
SOUTH	LI	Warehouse-Office, Sports Complex
EAST	LI	Salvage, Recycling Center
WEST	LI	Warehouse-Retail, Future expressway expansion

*The five criteria necessary for approval as they apply to variances requested.*

**UNIQUENESS:** It is staff's opinion that this property is unique inasmuch that the north property line is being moved further from Kellogg to allow for the expansion of the freeway and thus decreasing visibility of the subject off-site sign by having to relocate it 24 feet south of its present site. This relocation will cause the sign to lose direct sight from the east approach due to being obstructed by an existing structure.

**ADJACENT PROPERTY:** It is staff's opinion that the requested variance would not adversely affect the rights of adjacent property owners inasmuch that the off-site sign is located along an expressway and adjacent properties are zoned LI Limited Industrial and developed with industrial type uses. The sign has been at this location since 1998 with no issues and is a legal, conforming sign.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the Sign Code would constitute a hardship upon the applicant inasmuch as the relocation of the off-site sign was not the fault of the applicant/owner. This relocation is the result of right-of-way acquisition for the I-235/US-54 interchange improvement. This sign relocation, if the sign is kept at the current height, will experience significant obstruction and would not be visible from the east approach on US-54.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance is not adverse to the public interest inasmuch as the expansion of the I-235/US-54 interchange is in the public interest, permitting a sign with adequate visibility for this site, due to right-of-way acquisition for said expansion, is also in the public interest.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance does not oppose the general spirit and intent of the Sign Code inasmuch that the spirit and intent of the Sign Code is for adequate visibility of signs without negative impacts on surrounding properties. The Sign Code does not anticipate such situations such as right-of-way acquisition that could be detrimental to existing signage.

**RECOMMENDATION:** Should the Board determine that the conditions necessary for the requested variance exist, the Secretary recommends that a variance to increase the height of an off-site sign from 30 to 41.3 feet in LI Limited Industrial ("LI") zoning be GRANTED, subject to the following conditions:

1. The sign shall be developed in conformance with the approved site plan and elevation drawing.
2. The variance shall be to increase the height of the subject sign from 30 to 41.3 feet only; the sign shall conform to all other Sign Code requirements unless a separate variance or adjustment is granted.
3. The applicant shall obtain all permits necessary to relocate/construct the sign and the sign shall be completed within one year of the variance granting, unless such time period is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

**DERRICK SLOCUM**, Planning Staff presented the Secretary's Report.

**FOSTER** asked for clarification on the existing sign height so they are all consistent, especially in the conditions.

**SLOCUM** said the sign height should be 35 feet and that he would correct that. That is increased from 35 feet to 41.3 feet.

**MOTION:** To approve subject to staff recommendation.

**RAMSEY** moved, **MITCHELL** seconded the motion, and it carried (6-0).

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3. **BZA2015-00029** - City variance request to reduce the rear yard setback on Lots 1, 3 and 25 from 20 feet to 9 feet for the construction of duplexes, generally located south and east of the intersection of North Ridge Road and West Central Avenue.

**CHAIR GOOLSBY** announced that this request was deferred indefinitely.

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4. **BZA2015-00030** – Martiniano and Bernadine Lumbreras (Owner/Applicant) request a City variance to reduce the side yard setback from 6 feet to 1 foot for a carport on property described as:

Lots 25 and 27, on Water Street, now Wellington Place, in Gossard’s Subdivision of Gossard’s Addition to Wichita, Sedgwick County, Kansas

**JURISDICTION:** The Board has jurisdiction to consider the Variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required interior side building setback from six feet to one foot in order to keep an existing carport on the site. The zoning code requires a six foot interior side yard building setback in the MF-29 Multi-family Residential (“MF-29”) zoning district. The application area is developed with a home, an attached carport along the south side of the house and two accessory structures in the rear part of the property. According to the applicant, the carport was built in November 2014. No one reported the carport, but the house directly across the street located at 2132 Wellington Place was having major remodeling done, and a compliance officer was over at that house. That officer noticed the carport and started asking the applicant questions. It was during this time that the officer notified the applicant that they would need to apply for a variance for the carports setback encroachment.

Currently, separation between the existing attached carport and the residential structure to the south is 7’-3”. Building and fire code would require a minimum 6-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the property owner to the north, ensuring that any future improvements on either property would maintain a minimum of 6 feet between buildings. All surrounding properties are also zoned MF-29 and developed with single-family residences.

**ADJACENT ZONING AND LAND USE:**

NORTH	MF-29	Single-family Residence
SOUTH	MF-29	Single-family Residences
EAST	MF-29	Single-family Residences
WEST	MF-29	Single-family Residences

*The five criteria necessary for approval as they apply to Variances requested.*

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the existing carport has been in place for many years with no issues. The applicants just want to keep the carport as is with no modifications.

**ADJACENT PROPERTY:** It is staff's opinion that granting the requested variance for an interior side setback reduction may not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of 6 feet between buildings.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the applicant would have to remove a structure that has caused no issues and does keep more than 6 feet of separation between the subject structure and the residential structure to the south.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a side setback reduction from six to one foot will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reductions, and provided that building and fire codes are followed.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance for a side setback reduction from six to one foot does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

**RECOMMENDATION:** It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary then recommends that the variance for an interior side setback reduction from six to one foot be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The applicant shall obtain all permits necessary for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots (south property), and prior to receiving a building permit or certificate of occupancy for the proposed structure.

4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

**DERRICK SLOCUM**, Planning Staff presented the Secretary's Report.

**MOTION:** To approve subject to staff recommendation.

**RAMSEY** moved, **FOSTER** seconded the motion, and it carried (6-0).

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The City of Wichita Board of Zoning Appeals adjourned at 1:41 p.m.

State of Kansas            )  
Sedgwick County        ) <sup>SS</sup>

I, W. David Barber, Interim Secretary of the City of Wichita Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the City of Wichita Board of Zoning Appeals, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Board.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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W. David Barber, Interim Secretary  
City of Wichita Board of Zoning Appeals