

CITY OF WICHITA BOARD OF ZONING APPEALS

MINUTES

September 3, 2015

The regular meeting of the City of Wichita Board of Zoning Appeals was held on Thursday, September 3, 2015 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby; Chair; David Dennis; David Foster and Lowell E. Richardson. Debra Miller Stevens; M.S. Mitchell and Bill Ramsey were absent. Staff members present were: W. David Barber, Interim Director; Dale Miller, Current Plans Manager; Derrick Slocum, Administration Supervisor; Jeff Vanzandt, Assistant City Attorney and Maryann Crockett, Recording Secretary.

1. Approval of June 18, BZA Minutes.

MOTION: To approve the June 18, 2015 BZA Minutes.

FOSTER moved, **RICHARDSON** seconded the motion, and it carried (3-0-1). **DENNIS** – abstained.

Approval of the July 23 BZA minutes.

MOTION: To approve the July 23, 2015 BZA Minutes.

RICHARDSON moved, **FOSTER** seconded the motion, and it carried (3-0-1). **DENNIS** – abstained.

Approval of the August 20, 2015 BZA minutes.

MOTION: To approve the August 20, 2015 BZA Minutes.

DENNIS moved, **RICHARDSON** seconded the motion, and it carried (4-0).

2. **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 on property described as:

Lots 1, 2, 3, 4, 5, 23 EXCEPT the Northwesterly 14 feet of lot 23, together with lots 24 and 25, Block E, Country Acres 6th 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 three subject lots are currently vacant. Lots 1 and 25 are 59 feet x 119 feet and Lot 3's northeast property line is 71 feet, southeast line 119 feet, southwest line 49 feet and northwest line at 114 feet. In the TF-3 Two-family Residential zoning district, the Unified Zoning Code (UZC) requires a rear setback of 20 feet, a 6 foot interior side setback and a 15 foot street side setback, which for Lots 1 and 25, would be the Wayside Lane frontage. The applicant desires to build 38-foot wide by 85-foot long duplexes on these three lots, which is only possible with a rear setback reduction of eleven feet. For Lots 1 and 25, the fifteen foot side yard street setback reduces the amount of space to build to the side, thus the additional length of the structure and the request of the rear setback reduction. For Lot 3, the lot has a unique shape where the widest part of the lot fronts the road and then tapers down 22 feet in the rear creating a site for a narrower and longer structure, thus the need for the rear yard setback reduction on Lot 3. Therefore, the applicant requests a variance to reduce the rear yard setback from 20 feet to 9 feet (see the attached applicant's letter and site plan). The lots in question, planned for the duplex development, have always been undeveloped, with the earliest aerial pictures of that area showing the sites as being undeveloped.

Immediately surrounding properties are zoned SF-5 Single-family Residential, TF-3 Two-family Residential or MF-18 Multi-family Residential to the west and south and developed with single-family residences and duplex dwellings. Properties to the east and north are zoned TF-3, MF-18 and LC Limited Commercial and are developed with a YMCA, duplexes or undeveloped land.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	YMCA, fitness center
SOUTH:	MF-18	Duplexes
EAST:	MF-18	Duplexes
WEST:	SF-5	Single-family residences

The five criteria necessary for approval as they apply to the requested variance.

UNIQUENESS: It is staff's opinion that this property is unique. The property was rezoned to TF-3 with a lot split providing lots large enough for duplexes. However, due to the zoning setback requirements in the TF-3 zone district, those with side street frontage have a narrower buildable area, thus redesigning the duplexes to fit the lots. Lot 25 has a unique design with the width of the lot reducing from the front to the rear.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for rear yard setback reductions for the three lots would not adversely affect the rights of adjacent property owners. The proposed setback reduction is adjacent to the related lots and would not impact adjacent property on other developments. All surrounding properties do meet the 15-foot street side setback requirement, but these three lots in question will match in rear setback.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant. Without the requested rear yard setback variance, the applicant could not feasibly improve the property with a two-family dwelling.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a setback reduction will not adversely affect the public interest, as further improving this property is in the public interest. The setback variance will not encroach into any public right-of-ways or easements.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a setback reduction does not oppose the general spirit and intent of the Zoning Code. Rear yard building setbacks are intended to ensure adequate separation between structures. In this case, the structures will still not encroach into the utility setback in the rear yards and will still provide 18 feet of separation between structures.

RECOMMENDATION: It is staff's opinion that the requested variance of the Zoning Code to reduce the rear yard setback on Lots 1, 3 and 25 from 20 feet to 9 feet for the construction of duplexes is appropriate for these sites. Should the Board determine that the criteria necessary to grant a variance exists, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The rear yard building setback reduction shall apply to Lots 1, 3 and 25 shown on the site plan only. Any future buildings shall conform to Zoning Code required setbacks unless a separate Administrative Adjustment or Variance is approved.
3. The site shall meet building code, fire code and all other applicable code requirements. The applicant shall obtain all permits necessary to build the structure within one year of variance approval, unless such time is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **RICHARDSON** seconded the motion, and it carried (4-0).

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3. **BZA2015-00037** - City sign code variance request to reduce the distance between off-site signs from 330 feet to 265 feet and to reduce the setback of the off-site sign to zero feet on the front property line on property described as:

The S 200 feet of the West 200 feet of lot 1, Western 2nd 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 application area is .91 acres located north of West Kellogg, on the east side of North Hoover that contains an existing billboard. The Kansas Department of Transportation (KDOT) will be expanding and improving the West Kellogg/I-235 interchange, and has acquired additional right-of-way which currently contains the existing billboard. As a result of the KDOT purchase, the applicant is required to move the billboard out of KDOT's newly

acquired right-of-way. The applicants are wishing to re-establish the billboard on the remaining piece of land located just north of the billboard's current location. However, the new proposed location of the sign would place it on the front property line and place it within 265 feet of another off-site sign. Billboards are treated as structures, and are required to observe building setback standards and also, the sign code requires that off-site signage have a separation of at least 330 feet. The site is zoned General Commercial (GC) that has the following setbacks: front-20 feet; rear-0 feet; interior side-0 or five feet and street side-0 feet. The Kellogg frontage is the application area's front yard. The subject site has 200 feet of frontage along Kellogg. The applicant is requesting a zero building setback from the application area's front yard (Kellogg) and a reduction of the required 330 foot separation between off-site signs.

ADJACENT ZONING AND LAND USE:

NORTH:	GC	Hotel
SOUTH:	GC (& Kellogg)	Bar (Expressway)
EAST:	GC	Hotel Parking Lot
WEST:	GC	Restaurant

The five criteria necessary for approval as they apply to the requested variance.

UNIQUENESS: It is staff's opinion that the circumstances causing this request are unique in that the applicant has the site that contains a legally conforming billboard that abuts the west-bound access ramp from I-235 to west-bound Kellogg. With the loss of a portion of the applicant's property to right-of-way the site is just deep enough to permit an off-site sign within the limits of the site. A variance is the most reasonable solution to reducing building setbacks and sign separation that would permit the re-installation of a billboard on the site.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance would not adversely affect the rights of adjacent property owners because there has been a billboard on the property for several years and so the variance is not facilitating the installation of a new use. Land surrounding the site is either GC General Commercial, right-of-way or is owned by KDOT.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicants. Without the requested variance, the applicant would not be able to re-install a full size, off-site billboard. Presumably such a restriction would significantly reduce the economic value of the sign.

PUBLIC INTEREST: It is staff's opinion that the requested variance promotes the public interest to the extent that billboards provide an alternate approach to advertising in radio, television or print media.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance does not oppose the general spirit and intent of the Zoning Code which is to protect the public health, safety and welfare.

RECOMMENDATION: It is staff's opinion that the requested variance complies with the required criteria noted above. Should the Board determine that the criteria necessary to grant a

variance exists, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

1. The front building setback shall be reduced to zero and the off-site sign separation shall be reduced to 265 feet, but only for a billboard. All other uses on the site shall comply with applicable zoning, building, fire, sign and other applicable codes.
2. The applicant shall obtain all permits necessary to build the structure within one year of variance approval, unless such time is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **RICHARDSON** seconded the motion, and it carried (4-0).

Other Business – Public Comment

CHAIR GOOLSBY announced that a citizen requested to speak to the BZA regarding an issue. He said although the Board cannot take any action, they can receive and file his comments.

RICHARD HENDRICKS, 2331 N. CARDINAL said he wanted to make members of the board and other City officials aware of a severe violation of the zoning laws at 2828 Benjamin Drive. He said his neighbor constructed two buildings and a pool. He said one of the buildings sits more than 15 feet within the 20 foot setback and 4 feet within a utility easement. He said Planning Staff told him because the building sits over water and sewer lines, it poses a danger to anyone connected to those water and sewer lines. He said no permits were issued for the structures, no inspections were conducted and there are no contractors of record. He said a permit for demolition was issued first, and shortly after that, a retroactive building permit was issued. He stated that he believes the building permit has fraudulent information in the public record and asked Board Members to familiarize themselves with the permit.

HENDRICKS said the property is currently for sale and any future buyer stands to be defrauded. He said because of the problem with the water and sewer lines the City may need to demolish the building to take care of any issue. He said Westar power poles are also located within the easement in question. He concluded by stating that this is an intolerable situation for himself and my wife and they felt the more people who know about it in city government, the better.

CHAIR GOOLSBY asked if the Board needed to make a motion to receive and file the information.

FOSTER asked Mr. Hendricks if he paid for the survey by Savoy and Company.

HENDRICKS replied yes.

HENDRICKS said he hand delivered a letter to Mr. Stoltz and then sent e-mails to Mr. Meyer and Mr. Longnecker and other people and none of his e-mails were answered. He said Mr. Meyer actually visited the property with an inspector.

RICHARDSON requested clarification about where Mr. Hendricks lives in relationship to the lot in question and also asked if the encroaching building was a pool house.

HENDRICKS said his home is located at the rear of 2828 Benjamin. He added that he has never been in the yard, but the retroactive building permit refers to the building as a “pool cabana”.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY indicated that the Board could take no other action on this item other than to receive and file Mr. Hendrick’s comments. He said this was not the proper procedure for filing a complaint.

HENDRICKS asked what form would be appropriate to ask that zoning laws be followed.

CHAIR GOOLSBY explained that this was the Board of Zoning Appeals and if Mr. Hendricks was the owner of the property that does not conform to zoning, then this body would review the situation and possibly make an exception.

MILLER indicated that the Zoning Code is enforced by the MABCD. He referred to legal counsel and said he does not know if there was any other recourse other than filing a case in District Court if Mr. Hendricks is unhappy with the way things are being done.

HENDRICKS said as long as he has a copy of the minutes of this meeting he will be happy to take the issue to District Court.

RICHARDSON asked staff to clarify what would have happened if this variance had been done properly. He also asked if neighbors are given notice on variances.

MILLER briefly indicated that the property owner would have had to file for a vacation of the platted setback, which would have gone to the Subdivision Committee and Planning Commission for review and approval. He said surrounding property owners are given individual notices of variances and a sign is also posted on the property.

VANZANDT said there are some administrative procedures to address MABCD which he said he could explain to Mr. Hendricks after this meeting.

MOTION: To receive and file.

GOOLSBY moved, **DENNIS** seconded the motion, and it carried (4-0).

Other Business - Department Director Candidates

RICHARDSON said he understands the City is interviewing candidates for head of the Planning Department. He asked if the Planning Commission has any input in the process.

INTERIM DIRECTOR BARBER indicated that two Planning Commissioners (John McKay and Debra Miller Stevens) are on the interview panel; however, he does not know how they were selected to participate in the interview process.

RICHARDSON said his point was the Planning Commission has a vested interest in who is selected to head the Planning Department. He said he also understands that the selection of a new Planning Director is a joint City/County decision.

BARBER suggested that any concerns be addressed to the City and County Manager’s Offices since they are in charge of the hiring process.

RICHARDSON said “for the record” he thinks the Planning Commission should have more involvement.

The City of Wichita Board of Zoning Appeals adjourned at 1:48 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Derrick Slocum, 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.

Derrick Slocum, Secretary
City of Wichita Board of Zoning Appeals