

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
AGENDA
March 15, 2016**

The regular meeting of the Sedgwick County Board of Zoning Appeals will be held on **Tuesday, March 15, 2016, at 3:00 p.m.**, in the **Planning Department Conference Room, Wichita City Hall - 10th Floor, 455 N. Main St., Wichita, KS.**

1. Minutes of the August 18, 2015 and September 15, 2015 CoBZA meetings

2. **Case Number:** **BZA2016-00006**

Request: County BZA Appeal of Administrative Interpretation of the General Provisions of Planned Unit Development (PUD) #44.

Applicant: Aaron Pauly

Agent: Greg Ferris

General Location: Mid-mile between 263rd and 247th Streets West on the south side of 63rd Street south (25501 W. 63rd St., S.)

3. 2016 Sedgwick County Board of Zoning Appeals Schedule

4. Other business

Derrick Slocum, Secretary

SEDGWICK COUNTY BOARD OF ZONING APPEALS

MINUTES

August 18, 2015

The regular meeting of the Sedgwick County Board of Zoning Appeals was held on Thursday, August 18, 2015 at 3:00 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: John McKay Jr., Chair; Douglas Kutilek; Vice Chair; Jeff Black; Bill Johnson and Max Weddle. Staff members present were: Dale Miller, Current Plans Manager; Derrick Slocum, Secretary; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Organization and election of Officers: Chair, Vice Chair and Secretary.

MOTION: To nominate John McKay, Jr. as Chair.

JOHNSON moved, **BLACK** seconded the motion, and it carried by acclamation (5-0).

MOTION: To nominate Doug Kutilek as Vice Chair.

WEDDLE moved, **JOHNSON** seconded the motion, and it carried by acclamation (5-0).

MOTION: To nominate Derrick Slocum as Secretary.

MCKAY moved, **KUTELIK** seconded the motion, and it carried by acclamation (5-0).

It was voted to hear the variance case out of order and then address the Bylaws, Calendar and Other Business.

2. **BZA2015-00032** – John and Pamela Horner request a County BZA Variance to reduce the front setback requirement from 30 feet to 15 feet in the RR Rural Residential zone district for a new structure on property located at 4th Street and Avenue E in unincorporated area of Furley (10610 E. 4th Street).

JURISDICTION: 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 front setback from 30 feet to 15 feet for a new structure in RR Rural Residential (“RR”) zoning. The application area is within the subdivision of Furley, platted in 1887. This subdivision is within the unincorporated County, but is divided on smaller lots than those typical of the RR zoning district. The applicant’s entire parcel is less than one acre in size, while the Zoning Code would now require a minimum of two acres in the RR district for a single-family residence. The site is currently developed with a home and accessory structures. The applicant desires to remove the existing structure that, according to GIS, is a few feet over the front property line. Due to the location of the principal structure and trees, the applicant wishes to build a new structure 15 feet from the front property line. This variance request is for the proposed 15 foot front setback of the zoning districts 30 foot setback requirement. Overall, the applicant is wanting to remove an

existing structure that currently lies on the front property line and is 20 feet from the east property line with a new structure that will be setback 15 feet from the front property line and 30 feet from the east property line.

All surrounding properties to the north, south, east and west are also zoned RR. North of the site are agricultural fields. South and east of the site are single-family residences. West of the site is an LI Limited Industrial (“LI”) zoned railway and grain elevator.

ADJACENT ZONING AND LAND USE:

NORTH	RR	Agriculture
SOUTH	RR	Single-family residences
EAST	RR	Single-family residences
WEST	LI	Railway, grain elevator

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 it was platted in 1887 on smaller lots than those typical in RR zoning, and therefore does not have adequate space for the required building setbacks in RR zoning. The property is also unique in that it borders a railway to the west and unimproved public right-of-way to the east, where no future buildings are anticipated.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for a front setback reduction from 30 feet to 15 feet would not adversely affect the rights of adjacent property owners, inasmuch, that the request would actually allow for a new building that would be less impactful to the area than the existing structure. The existing structure is not currently setback from the front property line, and the new building will be setback 15 feet.

HARDSHIP: It is staff’s opinion that the strict application of the code would constitute a hardship upon the applicant, inasmuch, that the property is small with existing features which creates a hardship to build an accessory structure within the required setbacks of the RR zoning district.

PUBLIC INTEREST: It is staff’s opinion that the requested variance for a front setback reduction from 30 feet to 15 feet will not adversely affect the public interest, inasmuch, that fire and building codes are followed, and no public right-of-way is affected by the proposed setback reduction. This request will allow for the removal of an existing structure currently within the public right-of-way.

SPIRIT AND INTENT: It is staff’s opinion that granting the requested variance for a front setback reduction from 30 to 15 feet does not oppose the general spirit and intent of the Zoning Code, inasmuch, at the desired separation between buildings is still maintained due the existing public right-of-way to the south and east of the subject site.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance be APPROVED. Should the Board determine that the necessary conditions exist to grant a variance, the Secretary recommends that the variance to reduce the front setback from 30 feet to 15 feet for a new accessory structure be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The front setback reduction from 30 feet to 15 feet is for the identified new accessory structure. All future building projects must conform to the Zoning Code unless additional variances or adjustments are granted.
3. The accessory structure shall obtain all necessary permits, and shall conform to all other codes including but not limited to zoning and building.
4. The above conditions are subject to enforcement by any legal means available to Sedgwick County.

KUTELIK said he guessed the old structure was built when codes were not enforced and that's how it ended up on the property line.

SLOCUM said that would be his guess also but suggested they ask the applicant.

JOHN HORNER, 10610 EAST 4TH STREET, VALLEY CENTER, KANSAS said the house was originally built in the 1880's or 1890's and is over 100 years old.

KUTELIK asked then the structure has not been used as a residence in a while?

HORNER clarified that the structure has not been used as a residence for about 15 years or so.

KUTELIK asked about the small structure behind the house.

HORNER indicated that structure and the shed will also disappear if the permit is granted.

KUTELIK asked what kind of building the applicant was planning.

HORNER indicated a Morton style metal building for a workshop.

WEDDLE asked if the applicant owned the triangle of land west of the site.

HORNER responded yes he did.

KUTELIK clarified that land is separate from the property being considered on the application.

HORNER said yes.

WEDDLE asked if the driveway and garage door would open at the south end of the building.

HORNER said the garage door would open to the west approximately where the carport is located now. He said it will be a circular driveway.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **WEDDLE** seconded the motion, and it carried (5-0).

3. Adoption of Bylaws.

MOTION: To approve and adopt the Bylaws as presented.

KUTELIK moved, **JOHNSON** seconded the motion, and it carried (5-0).

4. Approval of 2015 Meeting Calendar.

MOTION: To approve the 2015 Meeting Calendar as presented.

JOHNSON moved, **BLACK** seconded the motion, and it carried (5-0).

Other Business

There was brief discussion concerning ex parte communication; lack of use exceptions in Sedgwick County; it was noted that bringing up information from any outside discussions you have had at a meeting is helpful for other board members so they have the same information you do.

PARNACOTT explained that the BZA was a quasi-judicial body. He said Board members are fact finders and determination of cases is based on the evidence they hear. He said Board members need to be fair and impartial when hearing evidence which will all become part of the record. He said if Board members have conversations outside of the meeting, they need to disclose those in an open meeting. He gave an example of disclosing ex parte communication. He said generally there is an attorney present if Board members have any questions about disclosure.

PARNACOTT mentioned conflicts of interest such as if Board members own property in the notification area of a case, or if they work for a company who is the applicant in a case, they are not allowed to participate in decision making. He mentioned that there was more information on this issue in the Bylaws and said determinations are on a case-by-case basis depending on the nature of the case. He said if they feel they have to abstain from a vote because they can't be impartial, they need to let the Chair know and abstain from voting.

MCKAY said Board members can always ask legal questions before or during a meeting.

PARNACOTT said staff is also available to answer questions between meetings by contacting him at the County Counselor's Office or talking to Planning Staff.

JOHNSON added that a Board member may not have a conflict of interest but it may appear they do. He said it is a good idea to run that by legal counsel so he can make a determination whether you should vote or not.

PARNACOTT said because the BZA is a public body, they are subject to the Kansas Open Meetings Act which is a State Law that dictates that discussion on a case take place in an open meeting. He said there are some exceptions; however, some of the key points to know is that a majority of the Board cannot have conversations outside the meeting about the business of the Board. For an example he said three (3) Board members could not get together and discuss a case. He said another issue is serial or interactive communication. As an example he said one Board member may talk to another Board member and then that Board members talks to still another Board member. He said Board members need to avoid that type of communication and confine their discussion to the open meeting. He continued by saying that the Board is allowed to do two (2) things outside of an open meeting which were to recess into executive session to have a conversation with legal counsel or recess into executive session for quasi-judicial deliberations. He said any vote as a result of the deliberations in executive session needs to take place in the open meeting along with the reasons for the vote. For an example, on today's case the Board was following staff recommendation so they did not have to provide their own separate set of findings. He said in the future, if staff recommends certain findings, and the Board disagrees, the Board will have to make their own separate findings for the record.

PARNACOTT said if there are any questions regarding parliamentary procedure the Bylaws state that the Chair or Legal Counsel will resolve those issues.

PARNACOTT concluded by stating that there would be a meeting September 15, 2015. He mentioned the possible appeal of an administrative interpretation that may be coming before the Board where outside Counsel has been hired to represent the Board because the County Staff has been involved in an enforcement action.

MILLER commented that the applicant has applied for a variance so the Board may or may not hear the appeal depending on the action on the variance.

PARNACOTT said if the variance is denied, the applicant will need to move forward with an appeal.

There was brief discussion concerning the difference between a variance and an appeal. He said they are two different types of cases.

The Sedgwick County Board of Zoning Appeals adjourned at 3:26 p.m.

State of Kansas)
Sedgwick County) ss

I, Derrick Slocum, Secretary of the Wichita-Sedgwick County Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the Sedgwick County 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
Sedgwick County Board of Zoning Appeals

DRAFT

SEDGWICK COUNTY BOARD OF ZONING APPEALS

MINUTES

September 15, 2015

The regular meeting of the Sedgwick County Board of Zoning Appeals was held on Thursday, September 15, 2015 at 3:00 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jeff Black; Bill Johnson and Max Weddle. Douglas Kutilek and John McKay Jr. was absent. Staff members present were: Dale Miller, Current Plans Manager; Derrick Slocum, Secretary; Justin Waggoner, Assistant County Counselor and Maryann Crockett, Recording Secretary.

MILLER reported that since the Chair was absent, the Board needed to elect a Chair Pro Tem.

It was voted that Board Member Bill Johnson be appointed Chair Pro Tem for the meeting.

JUSTIN WAGGONER, ASSISTANT COUNTY COUNSELOR reported that an appeal for a variance to permit a billboard might be coming to the Board for review. He said Ms. Langworthy was present because the Sedgwick County Counselors office would be conflict in terms of representing the Board if the appeal were to come up because they would be representing staff on any appeal. He said the appeal was not in front of the Board for consideration at today's meeting, simply the request for a variance. He said he will be representing Sedgwick County on any matters that came before the Board today and Ms. Langworthy will be the attorney representing the Board for the first agenda item.

1. **Case Number: BZA2015-00039** – County Variance to allow the placement of an off-site sign on property zoned SF-5 Single-family Residential generally located east of South Zelta Street, on the north side of East Kellogg Street (US-54).

JURISDICTION: 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 permit the placement of a billboard in the County on property zoned SF-5 Single-family Residential. This billboard has been in this location for over 20 years, however was damaged by a storm at one time, and consisted of just its frame. During the time it took for the applicant to redevelop the billboard sign, another sign was constructed nearby, across Kellogg. This sign added a fifth sign within a particular mile of Kellogg, which is the maximum number allowed in a mile. Also, since the subject sign had been in its location since before County zoning, the new zone district in which the sign is currently placed does not allow for billboard type signs. So the applicant is requesting variances to the sign code to allow the placement of the billboard sign with variances to the five sign per mile regulation and the placement of a billboard sign in the SF-5 zone district.

The applicant requests this variance because they state that the sign has been in use, even when it was damaged and thus should be grandfathered. The sign was in the current location before the current zoning and no changes have been made, except for any repairs needed when it was damaged. Also, the applicant argues the five signs in a mile decision due to the ambiguity in how the mile needs to be measured. It does not state in the County Sign Code how the mile should be measured, unlike the City Sign Code which states the mile be measured between section line

roads. Thus, the mile area the applicants used to measure the number of sign would be sufficient and show only five billboards within the mile, the subject billboard included in that five. The sign is already at its current location and the applicant was denied the sign permit due to the five signs in a mile stipulation in the Sign Code. The applicant argues that the permit should be allowed due to the lack of guidance in the Sign Code for how that measurement should be measured.

Property north of the subject site is zoned SF-20 Single-family Residential and is currently agricultural land. Property south of the site is zoned GC General Commercial and is developed with warehouse, office and retail uses. Property east of the site is zoned SF-20 and LC Limited Commercial and is developed with agricultural land. Property to the east of the site is zoned SF-5 and is currently vacant residentially zoned property.

ADJACENT ZONING AND LAND USE:

NORTH	SF-20	Agricultural
SOUTH	GC	Warehouse/Office/Retail
EAST	SF-20 and LC	Agricultural
WEST	SF-5	Vacant Residential

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 sign has been in its location for over twenty years, before its current zoning, and by measuring a mile this billboard is the fifth billboard. Also, the site is right near the City limits, along the expressway where uses like the subject sign is common.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for the placement of the billboard would not adversely affect the rights of adjacent property owners, inasmuch, that the surrounding properties are either commercially zoned and developed as such or vacant farm ground. Also, the location is along the Kellogg Expressway and prime location for a billboard and the high traffic volume at this location has more of an effect on the surrounding properties than the billboard sign.

HARDSHIP: It is staff's opinion that the strict application of the code would constitute a hardship upon the applicant, inasmuch, that the sign has been in this location for over twenty and in constant use except for the short time it was damaged. The billboard was at the location before the property was zoned and the Sign Code does not state how the five signs in a mile should be measured. These are factors that have cause a hardship on keeping the sign at its current location.

PUBLIC INTEREST: It is staff's opinion that the requested variance for the placement of a billboard will not adversely affect the public interest, inasmuch, that the sign has been in the same location for over 20 years, and no public right-of-way or easements are affected by the proposed setback reduction.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance the placement of a billboard sign does not oppose the general spirit and intent of the Zoning Code, inasmuch, that the sign has been in its current location for over twenty years and proper spacing between billboard sign are met, as well at proper setbacks.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance be APPROVED. Should the Board determine that the necessary conditions exist to grant a variance, the Secretary recommends that the variance to allow the placement of an off-site sign be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The off-site sign shall obtain all necessary permits, and shall conform to all other codes including but not limited to zoning and building.
3. The above conditions are subject to enforcement by any legal means available to Sedgwick County.

DERRICK SLOCUM, Planning Staff presented the Secretary's Report. He reported that he meant to add a condition that the sign be removed after one year because the location is earmarked to be taken for the future Kellogg expansion, which the applicant mentioned in their application.

WEDDLE asked when the one year would start.

SLOCUM said a year from the date of approval or September 15, 2016.

BLACK asked about the one year condition.

SLOCUM reiterated that the applicant mentioned one year in the application because it will have to be removed for right-of-way acquisition for Kellogg expansion.

KEVIN MCMASTER 8405 GREENBRIAR COURT, WICHITA, KS AGENT FOR THE APPLICANT JAMES MCMASTER who he indicated was also present to answer questions. He said there was some miscommunication on the one year requirement. He said the new sign across the street, which creates the five signs within one mile, will be coming down within a year due to condemnation. He said the entire parcel across the street is being condemned so they will not have the opportunity to replace that sign. He apologized and said they thought the need for the variance was only temporary if the Board was focusing on the five signs within a mile requirement. He said they wouldn't like a limitation of one year for their sign. He said a portion of their property has been condemned and added that they are working with the Kansas Turnpike Authority (KTA) for some ground to exit the turnpike.

SLOCUM indicated that he misunderstood that part of the application so the limitation of a year should be removed.

MCMASTER briefly explained that they have a sign that existed for more than 20 years and was grandfathered in at the current location. He said the sign was damaged by a storm in April, 2012 and temporary repairs were done. He said during the final repair work they got a citation or notice of violation. He said the structure has always been there and used for advertisement but not continuously from April 2012 to the present. He said their position was that the sign is grandfathered in and should be allowed to exist. He said in working with zoning staff they

decided it would be more effective and easier to apply for a variance before moving forward with an appeal. He added that the reason the County has an attorney is they are just making sure this is being done right in the event the variance doesn't pass and goes to the appeals stage. He wanted to make sure that the Board did not think they were accusing the County of doing something wrong.

MCMASTER said the key to approval of this variance is when staff pointed out the difference in the Codes and that how the five signs within one mile is measured in the County Code. He said the hardship and strict application ties into those two characteristics and stated that the variance should be passed and avoid a whole lot of problems. He concluded by stating that this was located in the County and it was zoned SF-5; however, he said if you look around the location, there are no single-family homes in the area. He said with the condemnations and expansion of Kellogg and the turnpike taking some land it was reasonable to assume that there never will be single family homes in the area. He said he would answer questions.

JOHNSON asked since the sign has been there, what triggered the need for a variance or appeal.

WAGGONER explained that County Staff determined that a permit could not be granted due to the five signs within a mile condition and SF-5 zoning in the area in addition to the amount of time of non-use. He said it was decided that the only way a permit could be granted was with a variance.

JOHNSON asked why a permit needed to be pulled if this was an existing sign.

WAGGONER said the permit applies if the sign has not been in use for 6 months or longer. He added that he wanted to make it clear that the County was not opposing the request for a variance.

MOTION: To approve subject to staff recommendation.

BLACK moved, **WEDDLE** seconded the motion, and it carried (3-0).

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2. **Case Number: BZA2015-00043** - County Variance to reduce the interior side yard setback from 20 feet to 3 feet on property zoned RR Rural Residential ("RR") for an accessory building generally located north of E. Cherokee Trail and west of South 143rd St. East (14220 E. Cherokee Trail)

JURISDICTION: 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 setback from 20 to 3 feet from the east property line in RR Rural Residential ("RR") zoning. This subdivision, platted and developed in the 1960's, is within the unincorporated County, but is divided on smaller lots than those typical of the RR zoning district. The applicant's entire parcel is less than one acre in size, while the Zoning Code would now require a minimum of two acres in the RR district for a single-family residence. The site is currently developed with a home and accessory structures. The applicant desires to remove the existing structure and place a larger structure in the same location. The property has site restrictions that reduces the amount of

buildable area which make this location on the property the most desirable. A large drainage easement runs diagonally from the northeast portion of the property to the southwest and there is a large septic lateral field located in the northeast part of the property as well. As shown on the site plan, the location of the proposed structure is really the only viable location on the property. The structure will meet the front setback of 30 feet and will be separated between 3 to 5 feet from the principal structure, with a 1 hour firewall for the wall adjacent to the principal structure. There will be more than 50 feet of separation between the proposed structure and the residence to the east.

All surrounding property is also zoned RR. Property south, east and west of the site is primarily developed with larger lot single-family residences. North of the site is agricultural property.

ADJACENT ZONING AND LAND USE:

NORTH	RR	Agricultural
SOUTH	RR	Single-family residence
EAST	RR	Single-family residence
WEST	RR	Single-family residence

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 it was platted in the 1960's on smaller lots than those typical in RR zoning, and therefore does not have adequate space for the required building setbacks in RR zoning. The property is also unique in that it contains easements and a lateral field that takes up a large are of the property where no future buildings can be built.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for a side yard interior setback reduction from 20 feet to 3 feet would not adversely affect the rights of adjacent property owners, inasmuch, that the request would still have separation of over 50 feet and would not be impacting any easements or sight lines. Even though the setback is 20 feet at this location, the existing structure is only 10 feet from the east property line because it was built before the property was zoned to RR.

HARDSHIP: It is staff's opinion that the strict application of the code would constitute a hardship upon the applicant, inasmuch, that the property is small with existing features which creates a hardship to build an accessory structure within the required setbacks of the RR zoning district.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a side yard setback reduction from 20 feet to 3 feet will not adversely affect the public interest, inasmuch, that fire and building codes are followed, and no public right-of-way is affected by the proposed setback reduction.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a side yard setback reduction from 20 to 3 feet does not oppose the general spirit and intent of the Zoning Code, inasmuch, at the desired separation between buildings is still maintained due to the existing placement of principal structures to the west and east of the subject site.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance be APPROVED. Should the Board determine that the necessary conditions exist to grant a variance, the Secretary recommends that the variance to reduce the side yard setback from 20 feet to 3 feet for an accessory structure be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The side yard setback reduction from 20 feet to 3 feet is for the identified accessory structure. All future building projects must conform to the Zoning Code unless additional variances or adjustments are granted.
3. The accessory structure shall obtain all necessary permits, and shall conform to all other codes including but not limited to zoning and building.
4. The above conditions are subject to enforcement by any legal means available to Sedgwick County.

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

WEDDLE mentioned the background and the fire wall adjacent to the principal structure. He said that is not a zoning requirement and wanted to know if that was in the Building Code.

SLOCUM said the applicant voluntarily offered to do that.

MOTION: To approve subject to staff recommendation.

WEDDLE moved, **BLACK** seconded the motion, and it carried (3-0).

The Sedgwick County Board of Zoning Appeals adjourned at 3:20 p.m.

State of Kansas)
Sedgwick County) ss

I, Derrick Slocum, Secretary of the Wichita-Sedgwick County Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the Sedgwick County 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
Sedgwick County Board of Zoning

SEDGWICK COUNTY
BOARD OF ZONING APPEALS
Wichita, Kansas

AGENDA ITEM NO. 2
CoBZA Meeting: March 15, 2016

SECRETARY'S REPORT

CASE NUMBER: BZA2016-00006

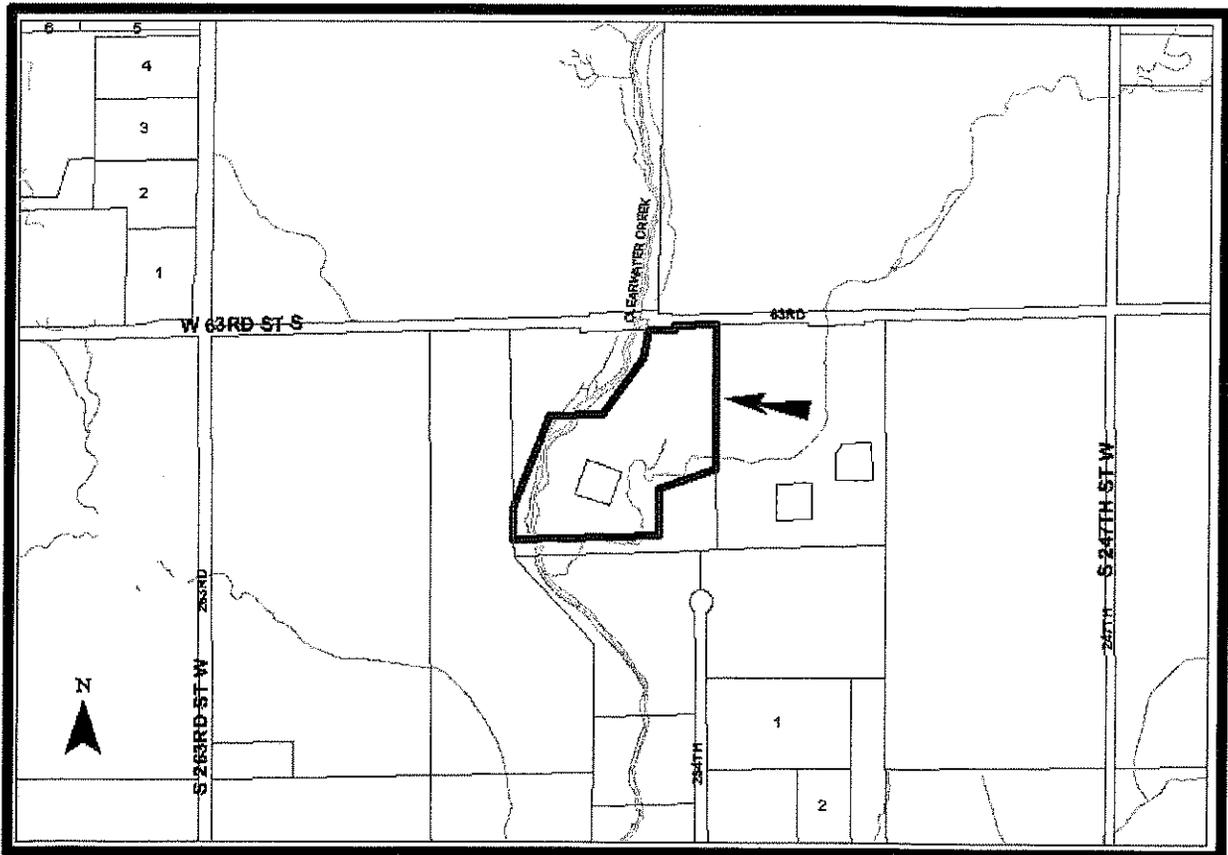
APPLICANT/AGENT: Aaron Pauly (Appellant) / Greg Ferris (Agent)

REQUEST: County Appeal of Administrative Interpretation of the General Provisions of PUD #44.

CURRENT ZONING: Planned Unit Development ("PUD") and RR Rural Residential ("RR")

SITE SIZE: 20.52 acres

LOCATION: South of West 63rd Street South and west of South 247th Street West (25717 W. 63rd St. S.)



JURISDICTION: Under the Unified Zoning Code (UZC) the BZA is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination by the administering or enforcing officer in administering or enforcing any provisions of the UZC.

Appeals typically arise from situations where a particular Code provision, or in this particular case a Planned Unit Development (PUD) provision, is ambiguous or undefined as it pertains to a specific situation. In such situations, staff will interpret the provision and issue an order, requirement, decision, or determination. In making the interpretation, staff will evaluate the specific situation in light of the context or intent of the Code, the Official Zoning Map, the Comprehensive Plan, and any other relevant documents. If an applicant believes the interpretation of staff is in error, an Appeal of Administrative Interpretation application can be filed. Only a written interpretation can be appealed, and the Appeal must be filed no later than 20 days after the date the written interpretation was issued.

When deciding an Appeal, the BZA presumes that the administrative interpretation is correct and places the burden of persuasion of error on the applicant. In exercising its powers, the BZA may reverse or affirm wholly or partly or may modify the interpretation (and to that end has the powers of the staff member from whom the appeal is taken) may attach appropriate conditions, and may issue or direct the issuance of a permit. After the public hearing, but in no event later than 40 days from the hearing date (unless the applicant consents to a longer time period), the BZA will make a decision on the Appeal. The BZA may also determine that it is necessary to obtain additional evidence in order to resolve the Appeal and may remand the Appeal to obtain such evidence.

BACKGROUND: This appeal is in regard to the General Provisions 1, 6 and 9 for PUD #44. The applicant was a part of the initial group of neighbors who opposed the original PUD application, which was approved by the Board of County Commissioners on March 4, 2015. On January 8, 2016, the applicant requested an official written interpretation of the 22 approved General Provisions for PUD #44. The Planning Director and Zoning Administrator provided the interpretation of those provisions in a letter dated January 20, 2016 (letter attached.) Then on January 28, 2016, the applicant and his agent filed an appeal of the administrative interpretation of the General Provisions of PUD #44, specifically addressing General Provisions 1, 6 and 9. Attached is the agent's justification for the interpretation appeal. The agent is contending that General Provision 1 was interpreted incorrectly and believes that a day or event means any time non-residents utilize the property. The applicant is also contending that General Provision 6 was interpreted incorrectly and that the PUD clearly states the approved location of the trash receptacles. Finally, General Provision 9 is being contested by the applicant because they believe that the parking lot and driveway should be located outside the 50-foot landscape buffer. Please see the attached letters from the agent for the applicant and the Director of Planning and Zoning Administrator.

BZA PROCESS: In determining the appeal, the BZA must determine if the Zoning Administrator's interpretation of the UZC and PUD provision was correct. Unlike variances that come before the Board, neither state law nor the UZC set forth criteria or factors that the BZA can use to evaluate whether the Zoning Administrator's interpretation was correct. Further, the factors set forth in determining if a variance is appropriate generally are not applicable in determining if a decision of the Zoning Administrator is correct.

The UZC does, however, provide the Board with guidance in several areas in the evaluation of appeals. First, Section V-H.1. of the UZC authorizes the Zoning Administrator to issue written interpretations

of the Zoning Code. Second, Section V-H.6. of the UZC places a presumption of correctness on the Zoning Administrator's interpretation. The appellant has the burden of persuasion in showing that the interpretation was in error. Third, Section V-H.6. of the UZC gives the Board the authority to reverse or affirm wholly or partly or modify the interpretation of the Zoning Administrator.

In rendering its decision, it is important for the BZA to issue an order that summarizes the evidence and outlines the basis for its decision. Based on the presumption of correctness of the Zoning Administrator's interpretation, a motion to affirm the interpretation of the Zoning Administrator will be provided to the Board at the hearing. Should the appellant meet the burden of persuasion in showing that the interpretation of the Zoning Administrator was in error, the Board should make a motion in a similar form based on the appropriate findings of fact that either partially affirms, reverses wholly or partially, or modifies the interpretation of the Zoning Administrator.

January 20, 2016

Aaron Pauly
25717 W. 63rd St. S.
Viola, KS 67149

Re: Written Interpretation of PUD #44, Rustic Timbers – PUD Conditions

Dear Mr. Pauly:

This is the official written interpretation of PUD #44 conditions you requested by email on January 8, 2016.

I have consulted with the Metropolitan Area Planning Department and other staff; reviewed and evaluated the request in light of the text of this Code and any other relevant documents; and hereby render the following written interpretation. The zoning code provides, regarding PUDs:

Interpretations of PUDs and P-Os. The Zoning Administrator shall have authority to make written interpretations of any provisions of an approved PUD plan or an approved P-O in the manner set forth in Sec. V-H. These interpretations may include interpretations permitting Uses other than those listed if they are similar to and no more intensive than Uses listed in the PUD plan. Where the PUD provisions involve codes other than this Code, such as but not limited to the Sign Code and the Landscape Code, the Zoning Administrator shall also have authority to make written interpretations of those provisions in the same manner.

General Provision 1.

Question 1. A day equals a calendar day. A year is a calendar year. An “event” counts as a day; however, preparation for an event does not, clean up after an event does not count. Example: set-up and rehearsal for a wedding on a Friday night for a wedding scheduled on Saturday night is not an event and does not count against the 30 day limit. Clean up for a wedding on Sunday would not count towards the 30 days. But set-up and rehearsal for a wedding that includes a dinner or dancing or some form of entertainment for the participants would count against the 30 day total.

Question 2. Per the Wichita-Sedgwick County Unified Zoning Code (UZC) Article VIII, Section VIII-E., there are a number of enforcement actions available; everything from revoking permits or permits to fines up to \$500. Depends on the type and extent of violation.

Question 3. Metropolitan Area Building and Construction Department 660-1840

Question 4. A non-personal event is one of the listed activities or similar use listed in the PUD where the Stroupe's are collecting a fee or some form of remuneration for the use of their facilities. It is not intended that they be prevented from having full private use of their property and facilities for events not covered by the PUD.

Question 5. The PUD does not require the Stroupe to provide a calendar of events.

General Provision 2.

Question 1. The property is also permitted all uses permitted by right in the RR district; therefore, anyone or group of people who meet the definition of a family would be allowed to reside there. Family is roughly defined as individuals related by blood or marriage or five or fewer unrelated people.

Question 2. The home is identified on the site plan and is part of the PUD, so they would be able to use the home as part of event center activities.

Question 3. The PUD applies to the property, all buildings located on the site can be used as allowed by the PUD or as permitted by the site plan.

Question 4. All alleged violations are investigated by the appropriate enforcement agency. If a violation was found they would be given a notice to correct the violation or be subject to additional enforcement remedies determined to be appropriate by the County Counselor's office.

General Provision 3.

As noted above, all buildings are subject to the PUD's development standards regardless of how they are labeled.

General Provision 4.

Question 1. Staff has reviewed the original document, and there is a signature there, but it is very faint does not show up on copies.

General Provision 6.

Question 1. I am advised by MABCD that there are trash receptacles on the east side of the building that are for event center use. The PUD does not restrict the family from having trash receptacles for private use in other locations.

Question 2. Solid Waste Code requires pick-up at least once per week or more often is directed by Environmental Resources.

General Provision 9.

Question 1. The required buffer is as shown on the site plan. General Provision 9 did not require additional plantings. There are no requirements for additional materials.

Question 2. The approved site plan shows a portion of the driveway and a portion of the parking lot in the buffer area, making those uses appropriate.

General Provision 11.

Question 1. PUD requires parking for 150 people. The typical standard has been one space per four people which equals 38 spaces.

General Provision 12.

Question 1. The fire department reviewed the building plans and site plan

General Provision 17.

Question 1. Any music that is heard off-site is supposed to be at a low level as to not be a nuisance. Normal speaking voices and sound generated by rural residents can often be heard a long way away. Any sound generated by the event center would have to be significantly louder than normal levels typically found in rural areas to be considered a nuisance.

General Provision 18.

Question 1. Enforcement of alcohol serving and consumption statutes and regulations can be by the sheriff's officers or by the state Alcoholic Beverage Control officers. Off-duty sheriff officers serving as private security have the discretionary authority to enforce laws they have probable cause to believe are being violated.

Question 2. It is up to the venue operator to ensure licensed caterers are used. If there is a complaint on whether or not a caterer is licensed, MABCD would investigate.

General Provision 21.

Question 1. See response to General Provision 17, Question 1.

General Provision 22.

Question 1. The existing PUD does not establish time limits.

Appeal Rights

The Unified Zoning Code provides anyone disagreeing with the interpretations provided above may appeal the matter to the Sedgwick County Board of Zoning Appeal (the BZA)::

Appeals of the Zoning Administrator's written interpretation may be taken to the Board of Zoning Appeals by filing an appeal with the Board of Zoning Appeals' Secretary within the time limit specified by the rules of the Board of Zoning Appeals. The Board of Zoning Appeals shall grant to the Zoning Administrator's interpretation a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the interpretation of the Zoning Administrator. If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the Zoning Administrator with directions to obtain such evidence and to reconsider the decision in light of such evidence.

Following the decision of the BZA, the following persons may appeal the matter to the district court:

Any person, official or governmental agency dissatisfied with the decision of the Board of Zoning Appeals may bring an action in the district court of the Eighteenth Judicial District to determine the reasonableness of such decision. Such appeal shall be filed within 30 days of the final decision of the Board of Zoning Appeals.

Sincerely,

Dale Miller
Director of Planning/Zoning Administrator
Metropolitan Area Planning Department

c: Tom Stolz, Director, MABCD

FERRIS CONSULTING

PO BOX 573 WICHITA, KS 67201
PHONE 316-516-0808 EMAIL ferrisco@aol.com

January 27, 2016

Dale Miller, Director
Metropolitan Area Planning Department
City Hall, 10th Floor
455 N. Main
Wichita, KS 67202

Re: Appeal of Written Interpretation of an Administrative Interpretation regarding PUD #44 conditions; set forth in your letter emailed to Aaron Pauly dated January 20, 2016.

Dear Dale:

Mr. Pauly seeks to appeal some of your interpretations to the conditions of PUD#44. He requests that a hearing be set before the County Board of Zoning Appeals to appeal these interpretations. There are three interpretations of conditions that are being appealed. They are:

General Provision 1: This provision of the PUD clearly sets as the restriction to the property that the events allowed in the PUD shall be limited to 30 days. The PUD does not allow 30 events rather limits the use of commercial activity allowed in the PUD to 30 days a year. This provision is intended to restrict the PUD from disrupting the area a limited number of days. The County Commission in its approval spoke that this PUD would not intrude on the neighborhood because it was limited to 30 days per year. The clear intent of this provision was to limit the non-residential use of the facility to 30 days per year.

An event is when people who do not live on the property are using the property. A rehearsal could include anything from five people to one-hundred people. What number determines a use? Under this circumstance this property is clearly being used by non-owners of the property. People are driving through the area, parking on the property, utilizing the commercial buildings or out areas of the property.

There can be no interpretation that does not make this type of use of the property a "day" in this General Provision. Your interpretation the event would be considered a "day" if the rehearsal includes "a dinner or dancing or some form of entertainment" is impossible to enforce and/or regulate. The PUD clearly states an event would be a "photo session". If someone took photos at the rehearsal is it an event or not? Your interpretation requires someone on site policing what goes on at an activity to determine whether it is happening on the property to determine a "day." This is not the purpose of a PUD.

The PUD should not lend itself to ambiguous interpretation or open ended use. These additional days of usage impact the gravel road, impact the noise, and bring strangers into a quiet neighborhood more than the PUD allows. If the applicant wanted to use the property more than 30 days for non-residential uses; the PUD should have reflected that. The County Commission then could have considered that number in overriding the Planning Commission. Instead the Commission specifically stated that the PUDs limitation of 30 days protected the surrounding areas. **We request that the BZA reject your interpretation and rule that a "day" as listed in the PUD is anytime non-residents utilize the property.**

General Provision 6: This provision states that: "Trash receptacles shall be located as shown on the approved PUD." Your interpretation that the PUD does not restrict the family from having trash receptacles for private use is incorrect. The PUD replaces the zoning code therefore governs the use. The PUD in its language places the restriction on the entire property. The PUD does not differentiate between the uses of the trash receptacles; only that they must be placed where shown. Your interpretation also makes the PUD impossible to enforce. Unless someone is going to go through the trash to make sure what is residential trash and what is commercial trash there is no way to make sure that all the commercial trash is in one location. The drafter of the PUD could have placed trash receptacles in any location. Then the County Commission could have determined if all the locations were appropriate. **We request that the BZA reject your interpretation and rule that the PUD clearly states the approved location of trash receptacles.**

General Provision 9: The landscape buffer as shown on the PUD approved by the County Commission did not have either the driveway or the parking lot within the buffer. By definition the landscape buffer is not for the driveway or the parking lot. The erroneous survey done by the PUD owner does not eliminate the buffer. The site plan that was approved as part of the PUD should take priority. Staff should not have approved a site plan that violated the intent of the approved CUP and allow encroachment in the landscape buffer. That was to establish a 50-foot buffer from the parking lot and the driveway. **We request that the BZA reject your interpretation and require that the parking lot and driveway be located outside of the 50-foot buffer.**

Sincerely,



Gregory Ferris

2016 CALENDAR

SEDGWICK COUNTY BOARD OF ZONING APPEALS MEETING AND CLOSING DATE SCHEDULE

<u>CLOSING DATE</u> (BY 4:00 PM)	<u>NOTICE TO OFFICAL</u> <u>NEWSPAPER</u>	<u>ADVERTISING DATE</u>	<u>BZA HEARING DATE</u> (Tuesday 3:00 PM)
December 14, 2015	December 24, 2015	December 29, 2015	January 19, 2016
January 11, 2016	January 20, 2016	January 25, 2016	February 16, 2016
February 8, 2016	February 18, 2016	February 23, 2016	March 15, 2016
March 14, 2016	March 24, 2016	March 29, 2016	April 19, 2016
April 11, 2016	April 21, 2016	April 26, 2016	May 17, 2016
May 9, 2016	May 19, 2016	May 24, 2016	June 21, 2016
June 13, 2016	June 23, 2016	June 28, 2016	July 19, 2016
July 11, 2016	July 21, 2016	July 26, 2016	August 16, 2016
August 8, 2016	August 25, 2016	August 30, 2016	September 20, 2016
September 12, 2016	September 22, 2016	September 27, 2016	October 18, 2016
October 10, 2016	October 20, 2016	October 25, 2016	November 15, 2016
November 14, 2016	November 24, 2016	November 29, 2016	December 20, 2016
December 12, 2016	December 22, 2016	December 27, 2016	January 17, 2017

The County Board of Zoning Appeals meets at 3:00 pm on the dates indicated above in the Planning Department Conference Room, 10th Floor, City Hall, 455 N. Main, Wichita, KS, or as specified on their meeting agenda. For information on procedures and applications, contact the Secretary of the Board of Zoning Appeals at 268-4421.

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT
10th Floor, City Hall, 455 N. Main
WICHITA, KS 67202-1688