

**BOARD OF ZONING APPEALS
MINUTES
AUGUST 24, 2004**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on August 24, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM,
RANDY PHILLIPS, JOHN ROGERS, JAMES SKELTON.

SHARON DICKGRAFE – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL, Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, June 22, 2004, BZA meeting minutes.

PHILLIPS moves, SKELTON seconds to approve June 22, 2004, BZA meeting minutes.

Motion carries 7-0.

RUANE Item 2, Case No, BZA2004-52, Request variances to reduce the off-street parking requirements for a baseball field from 239 to 164 spaces and to permit the parking area to be located within the front and street side setback in a residential zoning district on property zoned “SF-5” Single-family Residential, generally located north of I-235 and east of Seneca. Applicant USD259 c/o Joe Hoover.

KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY’S REPORT

CASE NUMBER: BZA2004-00052

APPLICANT/AGENT: USD 259 c/o Joe Hoover (Owner/Applicant)

REQUEST: Variances to reduce the off-street parking requirements for a baseball field from 239 to 164 spaces and to permit the parking area to be located within the front and street side setback in a residential zoning district

CURRENT ZONING: “SF-5” Single Family

SITE SIZE: 6.8 acres

LOCATION: North of I-235 and east of Seneca

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: For athletic fields, the Unified Zoning Code (UZC) requires one parking space per three spectator seats, plus 1 space per 1,000 square feet of field area, plus 1 space per 250 square feet of office area. The applicant proposes to construct a baseball field (see attached site plan) on the former site of Enterprise Elementary School, which was located on 6.8 acres north of I-235 and east of Seneca. The UZC requires 239 parking spaces for the proposed baseball field. The applicant indicates (see attached justification) that the required parking is in excess of the number of parking spaces needed, which the applicant estimates at 164 parking spaces. A variance is required to reduce the off-street parking requirement by more than 25% for redeveloped sites. The applicant is requesting a 31% reduction of the parking requirement.

The UZC also requires that parking areas for institutional uses located in residential zoning districts be located behind the required front and street side setback lines. Due to the lack of space on the property, the applicant is proposing to construct the parking area within the front and street side setback areas in order to provide as many parking spaces as possible. Parking areas may be allowed to be located within front and street side setback areas by granting a variance.

Planning staff researched the parking requirements for several dozen jurisdictions, and the most common parking requirement for athletic fields is one parking space per four spectator seats, which would only require 72 parking spaces for the proposed baseball field. Additionally, none of the jurisdictions researched would require as many parking spaces as proposed by the applicant. Therefore, the applicant's proposal to provide 164 parking spaces is reasonable in the opinion of planning staff.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-5"	Single-family residences
SOUTH	"GC"	Restaurant
EAST	"SF-5"	Athletic fields
WEST	"SF-5"	National Guard Armory

The following criteria are applicable for both variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property will be developed with a baseball fields for high school baseball. The UZC parking requirements are general and are intended to cover all types of athletic fields for all age groups, and in the instance of the subject property, they result in a unique situation where the subject property is required to provide significantly more parking than needed.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant owns adjacent property at which users of the subject property might reasonably park, and the applicant has indicated that overflow will be permitted to use the parking at South High School. On-street parking on the residential streets to the north should be limited in amount and duration. Parking within the setback areas should not negatively impact adjacent properties, as the parking area is not located adjacent to residential front yards.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would limit the ability to develop a community recreational asset.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in providing recreational facilities at a reasonable cost.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for an athletic field because it will be a high school baseball complex.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variances can be found to exist, then it is the recommendation of the Secretary that the requested variances be GRANTED, subject to the following conditions:

1. The parking requirement shall be 164 parking spaces.
2. The site shall be developed in substantial conformance with the approved site plan, and spectator seating shall be limited to 288 seats.
3. All parking areas shall be paved and marked, and shall be located no closer to the street right-of-way than 8 feet.
4. The applicant shall obtain all permits necessary to construct the improvements.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER Has there been any discussion about changing the standard in the regulations?

KNEBEL Yes, we have discussed changing this, and many other zoning regulation standards, and this would be one of them when the time came to do an amendment of the Zoning Code.

RUANE What is the distance between this parking lot and the South High School lot?

KNEBEL It is 3 blocks to the south end of that South High School parking lot.

JOE HOOVER, USD 259 I spoke to a friend about the attendance at both league and non-league, and he said typically you don't have a 100 total people there at a baseball game. So we felt our parking that we were putting in there, 164 spaces, would be adequate. If there would be a special need, there is a very large parking area at South High that we could do something for special events and do a shuttle.

RUANE Does limiting the spectator seating to 288 seats mean that is the capacity? Or does that mean the number of spectator will be limited?

HOOVER I think that would be more than enough seating unless we had a huge rivalry. Some year that we had both teams being undefeated, that year that we might need extra parking.

RUANE I understand 288 seats is the number of seats, would that be the maximum also the maximum number of attendees?

HOOVER That is what I am thinking. Most of the games are typically in the evenings or weekends.

RUANE So the South High lot would be full use by South High too?

HOOVER Typically the players would be out, but the students wouldn't be out yet, so you wouldn't see a lot of support, and then you will see reduced parent support until after they are off work.

FOSTER This indicates that the baseball fields are for high school baseball. This will not be used for little league or anybody else?

HOOVER I don't know because of the way that is set up if they will allow others to play on there; although, I know at Heights they do. I don't know if this field will be set-up for that because the raised mound provides an obstacle when you are playing with shorter bases for the younger age groups. In those cases that parking would be more than sufficient.

FOSTER Are most of the school sites used by other teams during the summer?

HOOVER I don't know that. This may be setup so it can be too. I am not sure.

FOSTER There are houses on the north side there, and it looks like some of them face into it, but the houses on the east side face into it; and this would reduce the setback from 25 feet to 8 feet, what is your plan for landscaping in that 8 feet?

HOOVER We have to meet the landscaping requirements.

FOSTER Landscaping is not mentioned as part of the conditions is why I ask that, and it is not shown on your site plan.

HOOVER We will still have to meet the codes in order to get the building permits.

KNEBEL It is in condition 4 to obtain all necessary permits. There is a landscaping requirement to get a permit.

HOOVER I have already spoken to Donna Goltry already about this too. We are willing to spread the trees out on Seneca to make it look better.

FOSTER Is it possible to park in that street on the north side?

HOOVER I don't know on the north, but I attend football games at South High, and they park all up and down those street, but I haven't walked that far.

FOSTER How far would they would go if they would park on the high school site? Is that where the parking is over to the right there, two blocks?

HOOVER Two blocks away, yes, the high school parking is about 2 1/2 blocks to the east.

FOSTER I don't think it is going to happen do you?

HOOVER If we felt there was going to be a huge crowd there, it would be possible for us to do something like a shuttle from South High School.

GREENLEE Does the 164 spaces improve the availability for the other sport complexes, the track, football, and soccer and those type of events.

HOOVER I don't know if people will walk that far for the football. For soccer, there is a tournament down there every year, and it will greatly improve the situation for that.

GREENLEE So it will help relieve the parking that may be taking place in the neighborhood?

HOOVER Yes, I think most people would like to get their car off the street rather than having a chance of getting it hit.

RUANE Where is the Enterprise School that this is site of?

HOOVER Yes, Enterprise is moved to the other side, to the southeast corner of the South High complex.

RUANE So is the 6.8 acres the entire site that Enterprise was located on?

HOOVER Yes, we moved the fence when there was some land taken off by the exit there off I-235. It took off about an acre there, so we moved the fence over.

RUANE So you are utilizing every inch you can?

HOOVER Yes.

FOSTER What about lighting, would the permit include a standard on the lighting?

KNEBEL There is a standard in the Zoning Code on the permit process, and the lighting is included in there.

PHILLIPS In reference to the question about what other age groups that use this field, this is specifically designed as a high school field. It would take some adjustment to put some other age groups on there.

PHILLIPS MOVED GREENLEE SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

RUANE As a taxpayer I hate not to be enthused about this, but I personally see the parking requirements as an important safety issue, including high school kids and believe that if the parking requirement needs to be changed that is not something we can do. We can make variances, but I am afraid this is not enough parking for the players from both teams and their cars and the parents, and we are creating a problem with this variance.

PHILLIPS We have been fortunate to be able to design some baseball facilities, and I have to agree with staff. What we have found if you do comply with the code you spend a lot of money on excess paving that is required but not utilized. His number of 1 per 4 seats is closer. Even if you went 1 per 3 seats, which would be more restrictive, that is closer to reality.

MARKHAM When you are having these games you have to remember at the end of a game you have some parents leaving and some parents coming, so there is a transient audience.

MOTION carries 6-1. (RUANE opposed)

The Board adopts the following resolution:

BZA RESOLUTION NO. 2004-00052

WHEREAS, USD 259 c/o Joe Hoover (Owner/Applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances to reduce the off-street parking requirements for a baseball field from 239 to 164 spaces and to permit the parking area to be located within the front and street side setback in a residential zoning district on property zoned "SF-5" Single-family Residential legally described as follows:

BEG SW COR SW1/4 NW1/4 N 10 RDS E 32 RDS S 10 RDS W TO BEG EXC W 50 FT FOR ST.; AND N 225 FT W 774.4 FT N 1/2 SW 1/4 EXC N 20 E 246 FT DED FOR ST & EXC W 50 FT FOR ST & EXC PT DEEDED TO CITY SEC 8-28-1E; AND THAT PART N1/2 SW1/4 LY N OF HWY I-235 EXC N 225 FT & EXC E 202 FT & EXC SOUTH HIGH SCHOOL ADD & EXC HWY ON W & EXC PT DEEDED TO CITY OF HWY SEC 8-28-1E. Generally located north of I-235 and east of Seneca.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 24, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property will be developed with a baseball fields for high school baseball. The UZC parking requirements are general and are intended to cover all types of athletic fields for all age groups, and in the instance of the subject property, they result in a unique situation where the subject property is required to provide significantly more parking than needed.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant owns adjacent property at which users of the subject property might reasonably park, and the applicant has indicated that overflow will be permitted to use the parking at South High School. On-street parking on the residential streets to the north should be limited in amount and duration. Parking within the setback areas should not negatively impact adjacent properties, as the parking area is not located adjacent to residential front yards.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would limit the ability to develop a community recreational asset.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in providing recreational facilities at a reasonable cost.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for an athletic field because it will be a high school baseball complex.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that variances be granted to reduce the off-street parking requirements for a baseball field from 239 to 164 spaces and to permit the parking area to be located within the front and street side setback in a residential zoning district on property zoned "SF-5" Single-family Residential legally described as follows:

BEG SW COR SW1/4 NW1/4 N 10 RDS E 32 RDS S 10 RDS W TO BEG EXC W 50 FT FOR ST.; AND N 225 FT W 774.4 FT N 1/2 SW 1/4 EXC N 20 E 246 FT DED FOR ST & EXC W 50 FT FOR ST & EXC PT DEEDED TO CITY SEC 8-28-1E; AND THAT PART N1/2 SW1/4 LY N OF HWY I-235 EXC N 225 FT & EXC E 202 FT & EXC SOUTH HIGH SCHOOL ADD & EXC HWY ON W & EXC PT DEEDED TO CITY OF HWY SEC 8-28-1E. Generally located north of I-235 and east of Seneca.

The variances are hereby GRANTED, subject to the following conditions:

1. The parking requirement shall be 164 parking spaces.
2. The site shall be developed in substantial conformance with the approved site plan, and specatator seating shall be limited to 288 seats.
3. All parking areas shall be paved and marked, and shall be located no closer to the street right-of-way than 8 feet.
4. The applicant shall obtain all permits necessary to construct the improvements.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24th DAY of AUGUST, 2004.

RUANE Item 3, Case No, BZA2004-54, Request variance to reduce the off-street parking for a manufacturing facility from 54 to 32 spaces on property zoned “GC” General Commercial, generally located at the northeast corner of Blake and Southeast Boulevard. Bomhoff Investments, LLC c/o Russell Bomhoff (Owner); Aero Tech Engineering/Manufacturing c/o Thomas Simon (Applicant); Spangenberg Phillips Architecture c/o Brad Teeter and Commerce Construction Services c/o Doug Henning (Agents).

PHILLIPS I have a conflict of interest as the architect and will be abstaining and removing myself from the decision and leaving for the day.

KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY'S REPORT

CASE NUMBER: BZA2004-00054

APPLICANT/AGENT: Bomhoff Investments, LLC c/o Russell Bomhoff (Owner); Aero Tech Engineering/Manufacturing c/o Thomas Simon (Applicant); Spangenberg Phillips Architecture c/o Brad Teeter and Commerce Construction Services c/o Doug Henning (Agents)

REQUEST: Variance to reduce the off-street parking requirements for a manufacturing facility from 54 to 32 spaces

CURRENT ZONING: “GC” General Commercial

SITE SIZE: 1.39 acres

LOCATION: Northeast corner of Blake and Southeast Boulevard

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 proposes to convert an existing warehouse to a manufacturing facility (see attached site plan). The subject property currently provides 32 parking spaces, which met the parking requirement for a warehouse but does not meet the parking the parking requirement for the proposed manufacturing facility. For the proposed manufacturing facility, the Unified Zoning Code requires one parking space per 250 square feet of office space, plus one parking space per 500 square feet of manufacturing space, plus one parking space per 1,000 square feet of warehouse space, for a total parking requirement of 54 parking spaces. While sufficient land is available east of the building to construct the additional parking spaces needed to meet the parking requirement, the applicant indicates that the additional spaces are unnecessary because there will only be 20-25 employees on first shift and 5-10 employees on second shift. Therefore, the applicant has requested a variance to reduce the parking requirement from 54 to 32 parking spaces. A variance is required to reduce the off-street parking requirement by more than 25% for remodeling projects. The applicant is requesting a 40% reduction of the parking requirement.

ADJACENT ZONING AND LAND USE:

NORTH	“LC”, “GC”, & “TF-3”	Strip center, vacant, single-family residences
SOUTH	“LC”	Retail
EAST	“GC”	Warehouse
WEST	“LC” & “TF-3”	Restaurant, single-family residence

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is of sufficient size to meet the parking requirements; however, the proposed use of the property is such that meeting the parking requirement is unnecessary and would result in a unused paved parking area adjacent to single-family residences that instead could be maintained as an open space buffer.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the number of parking spaces provided should be sufficient for the number of employees and visitors to the site. Additionally, there are sufficient on-street parking spaces in front of the business on Blake street to meet overflow parking needs without creating the need for parking on the parking areas for adjacent businesses.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would be an unnecessary expense that might preclude redevelopment of an existing commercial property.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting the redevelopment of existing commercial properties by providing reasonable flexibility in development regulations.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for a manufacturing facility because it will have fewer employees per square foot of manufacturing area than anticipated by the code due to machinery used in the manufacturing process.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the requested variance be GRANTED, subject to the following conditions:

1. The parking requirement shall be 32 parking spaces for a facility containing 4,000 square feet of office space, 17,600 square feet of manufacturing space, and 2,500 square feet of warehouse space. If an increase in building square footage and/or a change in use occurs, then additional parking spaces shall be provided to meet the Unified Zoning Code requirements unless a separate Zoning Adjustment or Variance is granted.
2. The maximum number of employees permitted on a single shift shall be 25, and the maximum number of total employees permitted on the subject property shall be 35. If the number of employees exceeds either maximum, then additional parking spaces shall be provided to meet Unified Zoning Code requirements unless a separate Zoning Adjustment or Variance is granted.
3. The site shall be developed in substantial conformance with the approved site plan.
4. The applicant shall obtain all permits necessary to construct the improvements.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

BRAD TEETER, Spangenberg Phillips, I don't have anything to add. I will be happy to answer any questions you might have. The owner is here, and the President of Aero Tech is.

RUANE I am curious about the need for the parking spots. First shift 20-25 is employees. Who comes and goes from this building other than the employees that work here?

THOMAS SIMON, President Aero Tech Engineering/Manufacturing Currently we have 23 employees on 1st shift. Any day to day operations that take place right now doesn't include visitors or customers that come by. Normally on a customer we go and visit them. We have trucks in and out of there dropping material off, but none of them are there longer than 10 minutes. As far as shift change going from 1st to 2nd shift, we have 3 people on 2nd shift. With only 24 employees on 1st shift right now there is ample parking for 2nd shift to come in and make that shift change without any additional spaces.

RUANE Do you ship your finished product directly from here?

SIMON Yes we do.

RUANE Will the parking and paving here allow you ample space for the trucks to move in and out, load and unload?

SIMON Yes, inside the building is where we keep our shipping and receiving, and all of our inventories. We ship everything on our own trucks. We don't send anything UPS. We deliver to our customers on our on trucks.

RUANE Do you load inside or outside?

SIMON Both depending on the nature of the product.

TEETER Your question about the loading or unloading, the 32 spaces do not include any of the paving right in front of the overhead doors, so if a truck came in they could park there and not take up any of those 32 spaces.

RUANE Can you give me a gross estimate what it would cost to construct and pave 22 park spaces.

TEETER Approximately \$50,000.

ROGERS I have a question for staff. On your recommendation, Item #2 talks about the number of employees permitted on a shift. What is the process for monitoring any companies?

KNEBEL There wouldn't be any monitoring or formal process. It would be on a compliant basis. Say if an other owner would call and complain, then we would have to go in and sit down and discuss the parking problem.

SKELTON MOVED MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

MOTION carries 6-0-1. (PHILLIPS, abstains)

The Board adopts the following resolution:

BZA RESOLUTION NO. 2004-00054

WHEREAS, Bomhoff Investments, LLC c/o Russell Bomhoff (Owner); Aero Tech Engineering/Manufacturing c/o Thomas Simon (Applicant); Spangenberg Phillips Architecture c/o Brad Teeter and Commerce Construction Services c/o Doug Henning (Agents) pursuant to Section 2.12.590.B, Code of the City of Wichita, request a Variance to reduce the off-street parking requirements for a manufacturing facility from 54 to 32 spaces on property zoned "GC" General Commercial legally described as follows:

Lot 2, excluding the north 170 feet thereof, Bomhoff 2nd Addition. Generally located at the northeast corner of Blake and Southeast Boulevard.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 24, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property is of sufficient size to meet the parking requirements; however, the proposed use of the property is such that meeting the parking requirement is unnecessary and would result in a unused paved parking area adjacent to single-family residences that instead could be maintained as an open space buffer.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the number of parking spaces provided should be sufficient for the number of employees and visitors to the site. Additionally, there are sufficient on-street parking spaces in front of the business on Blake street to meet overflow parking needs without creating the need for parking on the parking areas for adjacent businesses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as providing the code-required number of parking spaces is cost prohibitive and would be an unnecessary expense that might preclude redevelopment of an existing commercial property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting the redevelopment of existing commercial properties by providing reasonable flexibility in development regulations.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the parking requirements of the zoning regulations are not appropriate in all cases. Therefore, variances to relieve the parking requirement are permitted if proper justification is available. The zoning regulations attempt to provide sufficient parking to meet the demand of the use. The use of the property requires less than the typical number of parking spaces for a manufacturing facility because it will have fewer employees per square foot of manufacturing area than anticipated by the code due to machinery used in the manufacturing process.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to reduce the off-street parking requirements for a manufacturing facility from 54 to 32 spaces on property zoned “GC” General Commercial legally described as follows:

Lot 2, excluding the north 170 feet thereof, Bomhoff 2nd Addition. Generally located at the northeast corner of Blake and Southeast Boulevard.

The variance is hereby GRANTED, subject to the following conditions:

1. The parking requirement shall be 32 parking spaces for a facility containing 4,000 square feet of office space, 17,600 square feet of manufacturing space, and 2,500 square of warehouse space. If an increase in building square footage and/or a change in use occurs, then additional parking spaces shall be provided to meet the Unified Zoning Code requirements unless a separate Zoning Adjustment or Variance is granted.
2. The maximum number of employees permitted on a single shift shall be 25, and the maximum number of total employees permitted on the subject property shall be 35. If the number of employees exceeds either maximum, then additional parking spaces shall be provided to meet Unified Zoning Code requirements unless a separate Zoning Adjustment or Variance is granted.
3. The site shall be developed in substantial conformance with the approved site plan.
4. The applicant shall obtain all permits necessary to construct the improvements.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24nd DAY of AUGUST, 2004.

RUANE Item 4 Report from Central Inspection regarding compliance with requirements of various cases.

HERB SHANER, OCI Case No. BZA 2003-00037, Mark and Caldonia McClellan, pursuant to Section 2.12.590B, Code of the City of Wichita, requests a variance to increase the height of a billboard sign on property zoned “GI” General Industrial, generally located along the west side of I-135 and south of 21st St. N. This case is in compliance.

BZA2004-40 Variances for a ground-mounted sign to increase the height from 25 feet to 42 feet, to eliminate the requirement that a corner sign be angled to face both streets, and to exempt sign from the requirement that both faces of the sign be no more than 3 feet apart on property zoned “GC” General Commercial, generally located at the southeast corner of Kellogg and Main. This case is in compliance.

FOSTER What happened to the man who had a garage that he built out into the setback?

SHANER That was on Madison, that was turned down?

FOSTER You don't know what they have done to it since.

SHANER That would revert back to a housing problem, and a housing inspector would have to take care of that. I haven't been back since.

FOSTER I think that ought to be on your list.

SHANER I can do that.

RUANE What should happen in an instance like that where someone has been given a year to correct the problem and they don't?

DICKGRAFE It would be up to the housing inspector to file a complaint in the Municipal Court, and it would proceed through the court that way. The City could determine they want to bring a injunction and have him remove it or tear it down. I think the latter is drastic, but the Court could order the removal or alteration through that process. This Board does not have the authority to order it torn down. That would have to be from a judicial tribunal, but that would be the option.

RUANE I have understood these were reports regarding compliance and non-compliance and without that sort of information, we don't know where we are at. I had requested we do the next Item 5 in a workshop format so that we could have a candid exchange and learn more and better and that this is not an item affecting anybody specifically but rather our performance as a Board generally. Is that possible?

DICKGRAFE I think what you may want to do from a procedural standpoint is to go into executive secession for legal advice from me regarding these issues. Then we would come back on the record, set a time how long we want to discuss this, and we can close the door if you want to or not and that would be the more appropriate way. It is on the Agenda. It has been advertised. There is no public participation and then come back on the record.

RUANE moved MARKHAM seconds to go into Executive Session until no later than 3 p.m. so that we may receive advice from our legal counsel in regard to this Item 5 and we will take no action that will affect any Agenda Item present, or past.

MOTION Carries 6-0.

MARKHAM moved GREENLEE seconds meeting adjourned from Executive Session and each of us have been given By Laws and the Item will be continued later after we have had a chance to individually read the By Laws and Sharon will provide some alternative language for Article II Section E and the Roberts Rules of Order.

MOTION Carries 6-0.

FOSTER moved RUANE seconds to go into Executive Session for 5 minutes so that we may receive advice from our legal counsel.

MOTION Carries 6-0.

RUANE moved FOSTER seconds we request that the report from Central Inspection regarding compliance and non-compliance of various cases also provide us with updates and information as to the inclusions of appeals taken from our decisions.

FOSTER I think we ought to have a regular rule that we get copies back of these court cases. I have been on 5-6 years now, and I have never gotten one.

DICKGRAFE There hasn't been very many. There have been 2-3.

RUANE But if there were one and we were spun on appeal or reversed on appeal because of something we had done, I would like to have that feedback, and that is why I think we need to get reports of the conclusions and not status reports.

DICKGRAFE You will not get status reports. There would be ethical issues with me reporting that to you.

MOTION Carries 6-0.

Meeting adjourned 3:30 p.m.