

BOARD OF ZONING APPEALS
MINUTES
June 24, 2008

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on June 24, 2008 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:
BICKLEY FOSTER, DWIGHT GREENLEE, JERRY HOGGATT, CHARLES YOUNG arrives at 1:35pm, and STEVE ANTHIMIDES, JOSHUA BLICK arrives at 1:48pm.

Board members absent:
BENJAMIN STIFF

City of Wichita staff present:
HERB SHANER – Office of Central Inspection present.
SHARON DICKGRAFE– Law Department

The following Planning Department staff members were present:
JESS MCNEELY, Secretary.
DALE MILLER, Current Plans Supervisors
YOLANDA ARBERTHA, Recording Secretary

FOSTER We will start the BZA hearing at 1:32PM on JUNE 24, 2008. The first thing on our agenda is to approve the minutes of 4/29/08.

GREENLEE I move that the minutes be approved.

ANTHIMIDES Seconded

FOSTER All in favor say Aye?

Motion carries 4-0 unanimously

FOSTER First case we have is BZA2008-22 on property zone "LI" limited in

Good afternoon, I am Jess McNeely with the MAPD staff here to present BZA2008-22.
BACKGROUND: The applicant requests a variance to increase the height of an existing sign from the permitted height of 25 to 42 feet, a 17-foot increase above the maximum height allowed by the Sign Code. The existing pole sign faces east and west, and is visible from east and west bound Kellogg, the Kellogg/I-235 elevated interchange, and the I-235 entry ramp from Kellogg. The application area is a separate lot, not part of a larger commercial development, and has 114 feet of frontage along Westdale Drive. The application area is used as a retail store for a cell phone company. The retailer on this site indicates that customers have difficulty finding the store.

The sign code administratively permits signs to increase their height to 20 feet above elevated portions of highways if the property abuts an elevated highway. This sign is visible from elevated portions of highway, but the site abuts Westdale Drive and not the highway. Therefore, this sign is not eligible for a height increase based on the elevated highway.

Properties immediately north, east and west of the site are also zoned LI Limited Industrial (“LI”) and developed with commercial and office uses. Further north and west is the LC Limited Commercial (“LC”) zoned Town West Square commercial development within a Community Unit Plan (DP-71).

A Town West Square multi-tenant sign for a restaurant and retail store exists 650 feet east of the subject sign; the multi-tenant sign is permitted at 42.5 feet. A 35-foot tall off-site billboard exists 130 feet east of the subject sign. A hotel northwest of this site is in a similar situation as the application area; it has frontage along Westdale Drive, but is visible from the Kellogg/I-235 elevated interchange. The hotel received a variance in 1992 (BZA10-92) to raise its sign from the permitted 35 feet to 50 feet in height.

The applicants feel that the existing sign lacks visibility from westbound Kellogg due to the larger, taller signs east of it. The applicants also feel that the sign lacks visibility from the interchange and northbound I-235 access ramp due to the elevation of these portions of highway, and relative distance to this sign’s location.

ADJACENT ZONING AND LAND USE:

NORTH	LI, LC with CUP	Office, regional shopping mall
SOUTH	LI	Kellogg/US-54
EAST	LI, LC with CUP	Restaurant, regional shopping mall
WEST	LI	Offices, hotel

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

UNIQUENESS: It is staff’s opinion that this property is unique, as it is visible from elevated portions of highway but does not abut elevated portions of highways. The site is also unique in that taller surrounding signs are permitted due to Community Unit Plan standards and previous variances, yet this site is one stand-alone property without the benefit of shared, increased height signage.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance for a 17-foot height increase would not adversely affect the rights of adjacent property owners, as all surrounding properties are commercially zoned and developed along highway frontage. Also, several adjacent properties have taller signs than this requested sign height. Finally, the requested sign height will not affect the visibility of surrounding signs.

HARDSHIP: It is staff’s opinion that the strict application of the provisions of the sign code would constitute a hardship upon the applicant, as the 25-foot height limit prevents this sign from achieving the same level of visibility as surrounding signs.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a 17-foot sign height increase will not adversely affect the public interest, as increased visibility of this sign will aid customers in finding the site. The requested sign height is appropriate relative to the surrounding sign heights of 35, 42.5, and 50 feet.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for increased sign height does not oppose the general spirit and intent of the Sign Code, as the sign height increase will make it more visible from nearby highways. The sign code intends for signs near elevated highways to be allowed increased height for sufficient visibility, this site is in a unique location with highway visibility without directly abutting an elevated highway. This variance request is consistent with the Community Unit Plan and previous variances in the immediate area.

RECOMMENDATION: It is staff's opinion that the requested variance for a 17-foot height increase, from 25 to 42 feet, is appropriate. Should the Board determine that the conditions necessary for the granting of a variance exist, and then the Secretary recommends that the variance to permit an increase in the maximum height of a pole sign from 25 to 42 feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

The agent for the applicant is here. Are there any questions of staff?

FOSTER Jess, if they had place this on Westdale drive, they would not be here?
MCNEELY The only frontage that they have is along Westdale and Anna. If Westdale did not exist then they would not be here because their frontage would be along the 235 access ramp.

FOSTER Do we have any questions from the members? I will call on the agent, please give us your name and address.

Andy Edwards, with Verizon's Wireless, Corporate at Overland Park, Kansas at 10740 Null Avenue. I handle the real estate for Verizon Wireless in this region. We have concerns over our signage with this unique situation with Kellogg and the highway ramp over to 235. There are larger signs in the area and we are getting missed in this location. The access in this area is unique. Therefore, we need our signage to be top-notch to help our patrons find our location. With our signage now, we get 3 - 4 calls today inquiring where our location is because they keep going past it.

FOSTER Is there anyone else here today to speak to the board? Any discussions?

FOSTER Do you have any problems with the conditions?

EDWARDS No.

GREENLEE Mr. Chairman, I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B 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 in the secretary's report.

ANTHIMIDES Seconded

Motion carries unanimously 5-0

FOSTER Next we will hear the second case BZA2008-26, variance of the zoning code to reduce the parking requirement to zero and variance to waive the landscape code.

Jess McNeely, Planning staff, here to present BZA 2006-26. **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code parking requirement to zero and to waive the Landscape Code. The application area is developed with a 1920 zero-lot line building. The applicant wishes to redevelop the building with a 20-seat restaurant. The Zoning Code requires one parking space per three seats for a restaurant; the site has no room to develop parking, therefore the applicant requests this variance. Also, the Landscape Code would require a landscape plan in order to redevelop the site; because the building on the site is built to all property lines, there is no room for landscaping. The site is within the Delano Overlay District, where the City has provided on-street parking along Douglas and on side streets. Also, the City has public parking within one block for the Lawrence-Dumont Baseball Field. City streetscape improvements to this portion of Douglas include landscaped planters along the sidewalk; a landscaped planter exists in front of the application area.

All surrounding properties are also within the Delano Overlay District, many are also developed with zero-lot line buildings. North of the site is an LI Limited Industrial ("LI") zoned office and warehouse. South of the site is a GC General Commercial ("GC") zoned credit union. East and west of the site are LC Limited Commercial ("LC") zoned row buildings with retail and other commercial uses.

ADJACENT ZONING AND LAND USE:

NORTH	LI	Warehouse and office
SOUTH	GC	Credit union
EAST	LC	Commercial uses
WEST	LC	Commercial uses

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

UNIQUENESS: It is staff's opinion that this property is unique, as it is a zero-lot line building developed in 1920 before current parking and landscape standards existed. The site is also unique in that city provided parking exists around the site, and city developed landscaping exists around the site.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for a parking and landscaping waiver would not adversely affect the rights of adjacent property owners, as most surrounding properties are similarly developed with little or no parking or landscaping, and most rely on city provided parking.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicant, as the space required to meet the parking and landscape standards would require demolition of some portion of the existing building.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a parking and landscape waiver will not adversely affect the public interest, as redevelopment of this site is in the public interest, and specifically planned for in creating parking and landscaping within the city right-of-way.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a parking and landscape waiver does not oppose the general spirit and intent of the Zoning and Landscape Codes, as city provided landscaping and parking are provided and adequate.

RECOMMENDATION: It is staff's opinion that the requested variance of the Zoning Code to reduce the parking requirement to zero and variance to waive the Landscape Code is appropriate. Should the Board determine that the conditions necessary for the granting of a variance exist, and then 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 applicant shall obtain all permits necessary to redevelop the site with a restaurant, and improvements shall be complete within one year of the variance granting, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

The agent for the applicant is present. Are there any questions of staff?

FOSTER This is a 20 seat restaurant. How many parking spaces did you say were required?

McNEELY It is 1 parking space required per 3 seats. So, it would be under 7 parking spaces required. The parking immediately east of their building is City owned on-street parking. The parking along the side of their building in the right does in fact meet their requirement.

FOSTER What about across the street from the restaurant?

McNEELY Are you saying across Douglas or across Oak? There is parallel parking over there; so that does not work as well as the ones on Oak Street.

FOSTER Can you recall what type of business is across from there?

MCNEELY There is a furniture store, a leather goods store, a coffee shop and other services and retail businesses in there.

FOSTER How do you determine parking for retail?

McNEELY Retail is based on retail square footage.

FOSTER Any more questions?

HOGGATT What happens when the pizza hut goes away from there, will the parking variance stay there?

McNEELY The variance stays with that property. This type of issue is going to happen in Delano anytime a property has not been granted a variance for their parking and the make a change in use. When they apply for their building permits to renovate, OCI requires that they come into conformance with all zoning codes requirements. This is one of the issues where we encourage redevelopment of older commercial areas, but these older commercial areas do not have any parking available, and our zoning standards require parking. In my professional opinion, this is the right type of scenario that requires variances. If our zoning code is going to required parking per square foot in the case of retail then we have to have a method where people can reuse and redevelop properties such as in this case. You will have more in the future.

FOSTER What was the previous business?

McNEELY It was retail store that sold billiards supplies, pool tables.

FOSTER We will call the applicant now.

My name is Diane Campbell, Landscape Architect with MVP. Pat Coulter whose name is on the agenda is out of town today and I am standing in for him. Jess did a fine job at presenting our case; I need to say that our seating was scaled down from 20 to 18 seats. If you have any questions, I will be happy to answer them.

FOSTER Are you okay with the conditions?

CAMPBELL I have read them and I have no question. We are fine with them.

FOSTER Do we have anyone else that wish to speak?

I am Larry Brown, the President of the Delano neighborhood association. The area was designed for businesses and historical preservation. The purpose of the Association is to preserve the historic look and stimulate the business district. We believe this variance will meet the requirements and we want to attract business. We are pleased with the way things are going. We are sorry we lost pizza hut. There are none in the Delano area and we would love to have it back. We believe that this variance will meet their requirements. We want to encourage business to continue with the business street line and maintain open area along the street. I presume there is no drive through business along this roadway. We hope that some of the businesses will be able to serve people that walk through on that trail.

FOSTER Does it have a drive through? The applicant is shaking her head no.

FOSTER Mr. Brown, does this meet the Historic Preservation for the Delano District?

BROWN Yes, it meets the Historic District and the business is good for the survival of the neighborhood.

DICKGRAFE The preservation office has already looked at this case and has approved this use with some minor modifications that are required to the entrance to make it ADA compliant, and the board members were happy with those minor modifications.

FOSTER Is there anyone else to speak to this? We will confine this discussion to the board members.

FOSTER I think we are stretching this a bit. I think this is unique and I believe we will have similar problems like this in the future.

McNEELY The uniqueness, the property is unique in that it is being developed commercially under limited commercial zoning which will require parking under the current zoning code. It was already developed under the 1920 zoning standards, not 2008 standards, which at that time did not require parking. The Delano District could have used a Protective overlay like Old Town that requires property owners to pay into a parking district program for any parking that they are not providing on their site. The other potential option would have been for this entire area to rezone to CDB, which would not have a parking requirement. I believe Delano weighed all their options and decided to go with this.

FOSTER Blick, you have a question?

BLICK Is this dining and delivery also?

CAMPBELL Yes.

BLICK Most of these businesses have 5 or more workers, and each one could have a vehicle with one or two delivery vehicles, and I do not see that there is access limited parking in the alley. What I see is that most of the parking spots will be taken up by the employees unless they park a block away and walk to work.

FOSTER I can see that they will need to managed that by controlling where their employees parks.

ANTHIMIDES Mr. Chairman, I move that the board accept the finding of fact as set forth in the secretary’s report that all five conditions set out in 2.12.590 B 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 in the secretary report.

GREENLEE Seconded

FOSTER All in favor say aye?

MOTION CARRIES 6-0

FOSTER Okay, I will call the next case BZA2008-27, this is a Wesley Sign request to authorize 184 and 228 square foot building signs, where no additional sign area exists in “B” Multi-family zoning.

Jess McNeely to present BZA2008-27.

BACKGROUND: The application area is zoned B Multi-family (“B”) which permits medical clinics, and allows up to 48 square feet of signage for any one use. The applicant intends to construct a 38 square foot monument sign on the site, near the parking entrance from Murdock Street (see the attached site plan and elevation). Because the monument sign will consume most of the available 48 square feet for signage on the site, the applicant requests a variance to authorize 184 and 228 square foot building signs on the south and east facing two-story building facades (see the attached elevations). The existing medical clinic is a part of the greater Wesley Medical Campus, most of which is zoned GO General Office (“GO”) and has received numerous variances for signage.

Property north of this site is zoned B and TF-3 Two-family Residential (“TF-3”) and developed with the Wichita Children’s Home. South of the site, across Murdock is the GO zoned Wesley Medical Complex. East of the site is a TF-3 zoned former school building which is under redevelopment for apartment units. West of the site is another GO and B zoned medical clinic, also a part of the Wesley Campus.

ADJACENT ZONING AND LAND USE:

NORTH	B, TF-3	Group residence
SOUTH	GO	Hospital
EAST	TF-3	Multi-family residential Medical uses
WEST	B, GO	Medical Clinic

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

UNIQUENESS: It is staff's opinion that this property is unique, as it is developed with a large, two-story medical clinic within B Multi-family zoning, which is intended primarily for apartment residences. The site is also unique as it is a part of a larger hospital complex. Visitors to the hospital complex will need to distinguish various buildings from each other.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for two additional building signs will not adversely affect the rights of adjacent property owners. No other property owners directly face the proposed signs, likewise landscaping and screening along the north and east property lines will mitigate any visual impact from these signs. Were this site not developed with a medical clinic under B Multi-family zoning, the owners could seek a zone change to commercial zoning, which would permit uses with greater affects on surrounding property owners.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the sign code would constitute a hardship upon the applicant, as the clinic would not be authorized any building signage. Visitors who are not familiar with the campus may have difficulty finding this clinic without adequate building signage.

PUBLIC INTEREST: It is staff's opinion that the requested variance for two additional building signs would not adversely affect the public interest, as increased visibility of the clinic location would serve in the community interest. The requested signage size is at an appropriate, legible scale relative to the larger building.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for two additional building signs does not oppose the general spirit and intent of the Sign Code, as the signage will make it easier to locate the clinic. The limitations within the Sign Code for B Multi-family zoning are not adequate for large medical clinics, particularly those within larger medical complexes. This variance request is consistent with variances previously approved for similar medical clinics in the Wichita area.

RECOMMENDATION: It is staff's opinion that the requested variance to authorize 184 and 228 square foot building signs, where no additional sign area exists, is appropriate. Should the Board determine that the conditions necessary to the granting of the variance exist, then the Secretary recommends that the variance to authorize a 184 and a 228 square foot building sign be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

Agent for the applicant is here. Are there any questions of staff on this request?

FOSTER Where is the monument sign?

MCNEELY The monument sign does not exist yet but it will go on the drive and roadside corner.

FOSTER Are there any other question of staff?

HOGGATT Was there any opposition to these signs?

McNEELY No, we did not receive any opposition.

My name is Brian Kirkland with Miracle Signs, at 3611 N Broadway. I am standing in on behalf of Cantrell who is out the country. I think we are requesting only what we need and it is appropriate for this size building and it is in compliance with all the Wesley previous signage. We have reviewed the recommendation and we have no problem following the basic signage regulations.

FOSTER Do you have any problems with the condition of staff?

KIRKLAND No, we have no problem with the conditions of staff.

FOSTER Do they like to call themselves MOB?

KIRLAND I do not know why they call themselves that.

ANTHIMIDES It stands for Medical Office Building

GREENLEE Are there any lights around the sign?

KIRKLAND Yes, there is halo lighting around the sign. It is a soft light around the letters.

FOSTER Any other questions? I will confine the discussions to the board.

ANTHIMIDES I do believe it needs some signage.

FOSTER It looks like good signage.

YOUNG Mr. Chairman, I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B 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 in the secretary's report.

BLICK Seconded

FOSTER Any further questions. All in favor say aye?

Motion carries 6-0

FOSTER Next on the agenda is Herb Shaner.

SHANER With Office of Central Inspection, I have a close out from 2007 for a sign at Mawn & Kellogg near Friend University. It has been installed and permits have been pulled and the site inspector closed it out.

FOSTER Was this signage the one that was going to have a video with multiple signs on it?

SHANER You are thinking about the one across the street with Kansas Newman.

McNEELY Is this a pole sign along Kellogg?

SHANER Yes, Kellogg and Bonn.

SHANER Next one is BZA2006-00059, the one with the apartment building at 1146 N Topeka, they were to reduce parking from 40 to 22 spaces in the back and the alley. They have paved the alley and the handicap sign is up and they are ready whenever they get the building done. We have BZA 2007-57, that was for Douglas and Maple at 160 S. West Street where the photo place had to move their pole sign because of the widening of West Street. They had to pull their sign down. They pulled the permits and reinstalled the sign.

FOSTER Didn't we allow them to enlarge their sign?

SHANER No, they did not enlarge their sign. Sorry I can not take up anymore of your time.

FOSTER Do we have any cases for next month Jess?

McNEELY We will have a case in August and at the August meeting we will need to elect officers.

FOSTER Anyone moving to adjourn?

GREENLEE moved.

ANTHIMIDES Seconded

Adjourns at 2:36pm