

BOARD OF ZONING APPEALS  
MINUTES  
May 12, 2009

The regular meeting of the City of Wichita, Kansas Board of Zoning Appeals was held at 1:30 p.m., on May 12, 2009 in the MAPC Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:  
BICKLEY FOSTER, DWIGHT GREENLEE, STEVE ANTHIMIDES, AND CHARLES YOUNG

Board members absent:  
JOSHUA BLICK,  
JOHN MARKER,  
AND BENJAMIN STIFF

City of Wichita staff present:  
JEFF VANZANDT – Law Department

City of Wichita staff absent:  
J R COX- Office of Central Inspections

The following Planning Department staff members were present:  
JESS MCNEELY, Secretary.  
YOLANDA ANDERSON, Recording Secretary

GREENLEE We will start the meeting at 1:30PM. We have a quorum. I want to advise that it takes 4 favorable votes for approval of the requested variance. The first thing on our agenda is to approve the minutes of February 24, 2009.

YOUNG I move that the minutes of 2.24.09 be approved.

ANTHIMIDES Seconded

GREENLEE All in favor say Aye?

**Motion carries 4-0 unanimously**

GREENLEE We will now hear case request on BZA2009-12 a variance request to allow a 120 square foot pole sign with electronic messaging. Jess, Are you ready to present the case?

McNEELY BZA2009-12 a variance request for a 120 foot pole sign with electronic messaging. **BACKGROUND:** The Sign Code limits institutional use signs in SF-5 Single-family Residential (“SF-5”) zoning to a maximum of 100 square feet in size. Also, the sign code requires an administrative adjustment for institutional use electronic message board signs in residential zoning. The sign code prohibits moving images on electronic message board signs in residential zoning, and limits brightness. The applicant wishes to have a 120

square-foot electronic message board pole sign on the west side of the application area along the I-235 frontage (see the attached drawings), and therefore requests this variance. The proposed sign location is over 400 feet from the nearest residences to the north and south, and over 500 feet from the nearest residences to the east. The church on the application area had a sign at the proposed location which was weather damaged and removed. The church also has a permitted sign along Bullinger Drive. All properties to the north, south and east of this site are zoned SF-5 and developed with single-family residences. West of the site is I-235.

**ADJACENT ZONING AND LAND USE:**

NORTH	SF-5	Single-family Residential
SOUTH	SF-5	Single-family Residential
EAST	SF-5	Single-family Residential
WEST	NA	I-235

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

**UNIQUENESS:** It is staff’s opinion that this property is unique in that as residentially zoned property, it has frontage along I-235. The site is further unique in that the church property is nine acres in size, and the sign location is over 400 feet from the nearest residence.

**ADJACENT PROPERTY:** It is staff’s opinion that granting the requested variance to increase the size of a pole sign would not adversely affect the rights of adjacent property owners. The proposed sign will face I-235 traffic to the northeast and southwest. Mitigating landscaping could ensure that the sign does not affect nearby residences.

**HARDSHIP:** It is staff’s opinion that the strict application of the provisions of the sign code would constitute a hardship upon the applicant. The 100-square foot pole sign size limit was developed to be compatible with residential neighborhoods; this limitation did not anticipate freeway frontage. The applicant feels that the requested 120 square-foot sign will be more visible from I-235 than the 100 square-foot sign limitation.

**PUBLIC INTEREST:** It is staff’s opinion that the requested variance for a 20 square-foot increase in size for a pole sign would not adversely affect the public interest. The requested variance is 20%, a common range for administrative adjustments in other situations. Adequate visibility of this sign from I-235 is in the public interest.

**SPIRIT AND INTENT:** It is staff’s opinion that granting the requested variance for increased sign size does not oppose the general spirit and intent of the Sign Code. The Sign Code restriction for pole sign size in residential zoning does not take into consideration freeway frontage. The spirit and intent of the sign code is for adequate identification of facilities without negative effects on residences, this variance request is consistent with that spirit and intent.

**RECOMMENDATION:** It is staff’s opinion that the requested sign size for a church on this site is appropriate. Landscaping mitigation would ensure that the sign does not negatively affect nearby residences. 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 size of an electronic message board pole sign for an institutional use in SF-5 zoning from 100 to 120 square feet be GRANTED, subject to the following conditions:

1. The sign shall be developed in conformance with the approved elevation drawing.
2. The applicant shall submit a site plan, to be approved by staff, demonstrating the orientation of the sign, and evergreen landscaping to effectively screen the sign face from any residences.
3. No animated, flashing or moving images or text shall be displayed on the sign; the sign shall not make copy or graphics changes faster than once per second.
4. Portable signage shall not be permitted on the subject property.
5. 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.
6. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

Are there any questions of staff? The applicant is here to speak.

GREENLEE Does the Board have any questions for Jess?

FOSTER What are the actual dimensions of the signage going atop the 120 foot pole?

MCNEELY The square footage is 120 square feet. The signage is fourteen feet, 11 inches across the top and six and one half feet for the bottom portion. If you have specific question regarding the sign, you can speak to the signage agent.

FOSTER Who owns the land north to the site?

MCNEELY This vacant land is part of the church and they use it for athletic purposes.

GREENLEE That tract of land that is called Bullinger Garden's Addition belongs to the church?

MCNEELY Yes.

FOSTER If you want to screen, it would be better to move it to the back of the church rather than that location. I live about 5 blocks from there, so I know the area. I have been on the site. It would screen the neighbors better if they move it south in back of their building instead of out there.

MCNEELY They intended to place the sign on the property so it would be visible to the traffic along 235. So, the face of the sign will not show towards the residential neighborhood but rather only the side of the sign will face the residential areas. Our main concern with the screening was the residential area to the south and the north.

YOUNG If they put it further to the south, I think the trees along that side there would need to be taken out wouldn't it?

MCNEELY They do have existing vegetation along there. This aerial is a few years old. It would take a landscape plan to determine what is there now and what landscaping needs would serve as screening.

FOSTER How would you go about screening a sign like that?

MCNEELY You can put some landscaping to the Northeast of it and the Southwest of it to screen the face of the sign from area residents that would still allow viewing from I-235. That would probably be my recommendation. If there are no more questions, the Agent can answer any further questions of the board.

GREENLEE Are there any questions for Jess? Okay, Mr. Atherton, does the board have any questions for Mr. Atherton?

ATHERTON Jim Atherton, with Signworks, are there any questions about signage?

FOSTER Jess mentioned the limitations about the changeable sign, what are your plans there?

ATHERTON Before we get the sign permit, we instruct the end users of the requirements and conditions of the signage and get it signed by the applicant that they are aware of those conditions.

FOSTER How many sign changes will there be?

ATHERTON We don't know, but we do know it will change about 10 to 30 seconds before the next frame.

FOSTER Jess knows that I have concerns about the number of changes. One time, I counted as many as nine changes. I can see two or three changes but it is getting like a television set and I think it makes it more dangerous to view while you're driving.

ANTHIMIDES It is one change per second, right? I do not think this will be a problem with the drivers on I-235.

MCNEELY Mr. Blickley has been very concern with a LED signs with regards to how many sequential changes that it could potentially be on the sign. The code does not address how many sequential changes take place. The code addresses that only one change per second, not being an animated sign, but not how many sequential changes could take place.

ANTHIMEDESI do not see why any one would have that many sequential changes.

GREENLEE Any additional questions?

BUSBY No.

GREENLEE You do not have any problems with a landscape plan requirement?

BUSBY No.

GREENLEE We will bring the discussion to the board. My concern with a LED sign is with the brightness although I agree with your that changes could be distracting.

FOSTER Does the code address that?

GREENLEE I know that the computer programming can control by increasing and decreasing the brightness.

McNEELY Yes, the code does address the brightness. Also, they are required to have the ability to turn it the brightness down. They measure in a measurement called nits and they have to be able to control it by turning it down. The sign company has to verify the brightness meets code.

GREENLEE Is there a motion?

ANTHIMEDESI 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.

FOSTER Seconded.

GREENLEE All in favor say aye?

**Motion carries 4-0 unanimously**

GREENLEE Next we will hear BZA2009-14 a variance to reduce the number of parking spaces from 58 to three on the corner of Osage and Douglas. Jess, are you ready?

McNEELY **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code parking requirement from 58 spaces to three. The application area is developed with a 1928 zero-lot line building with only three available parking spaces on the site. The site is currently used as a music shop, and is legal non-conforming (or "grandfathered") with its lack of parking. Any change in use on this site, or renovation which would cost more than 50% of the property's value, would require the property to come into conformance with the Zoning Code. Because the building encompasses the entire site, any redevelopment for any use would require demolition of the building or a variance of the Zoning Code parking standards.

The applicant wishes to redevelop the building with a tavern and arcade; the proposed

business is in an 1,800 square-foot space with a 116-person occupancy. The Zoning Code requires one parking space per two patrons for a tavern; the site has only three spaces, therefore the applicant request this variance. A tavern is a permitted use by right on this LC Limited Commercial (“LC”) zoned site. The site is within the Delano Overlay District, where the City has provided on-street improvements and amenities to include parking.

All surrounding properties are also within the Delano Overlay District, most are also developed with zero-lot line buildings. The Pizza Hut within this same block received a variance of the parking requirement within the past year. Within a three-block radius, Douglas Street has 122 on-street public parking spaces. The north-south side streets have dozens more on street parking spaces, and the City owned Lawrence-Dumont Stadium parking lot has over 700 more spaces within two blocks of the application area. Currently within a three-block radius there are three restaurants, another tavern, and a dance studio which also may use evening hour public parking.

North of the site is an LI Limited Industrial (“LI”) zoned warehouse. South of the site is a GC General Commercial (“GC”) zoned credit union. East of the site are LC zoned row buildings with retail and other commercial uses. West of the site is a GC zoned engineering firm.

**ADJACENT ZONING AND LAND USE:**

NORTH	LI	Warehouse and office
SOUTH	GC	Credit union
EAST	LC	Commercial uses
WEST	GC	Office 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 1928 before current parking standards existed. The site is also unique in that over 200 City provided on-street parking spaces exist within the three-block radius of the Douglas Street Delano commercial district, and over 700 City provided public parking spaces exist at Lawrence Dumont Stadium, within two blocks of the site. The site is further unique in that it is a redevelopment site within an older neighborhood with businesses and residential areas within walking distance. Redevelopment on this pedestrian accessible site will not require the amount of parking envisioned by the Zoning Code for new areas.

**ADJACENT PROPERTY:** It is staff’s opinion that granting the requested variance for a parking waiver would not adversely affect the rights of adjacent property owners, as adequate public parking exists in the immediate area. Most surrounding properties are similarly developed with little or no parking and also rely on city provided public parking. Nearby properties with private parking lots could experience patrons from the application area parking on their site. These business owners currently take steps to prevent use of their private lots, and will continue to have full rights to prevent use of their private lots.

**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 standards would require demolition of the existing building.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a parking waiver will not adversely affect the public interest, as redevelopment of these commercial buildings is in the public interest, as expressed in the Delano Plan and Design Guidelines.

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

**RECOMMENDATION:** It is staff's opinion that the requested variance of the Zoning Code to reduce the parking requirement from 58 to three spaces is appropriate for redevelopment of this site. Planning staff was contacted by the engineer's office west of the site with concerns regarding use of his private lot. The credit union south of the site is opposed to this variance request with similar concerns, see the message attached to this report. Should the Board determine that the conditions necessary to grant a variance exist, 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 tavern and arcade, 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.

We have the applicant present to answer questions, are there any questions of staff?

FOSTER        Jess, you and I were not around, but this area was developed 100 years ago as an alternative to downtown of Wichita. This was rowdy side of downtown. Today 100 years later, we still we do not recognize it as part of downtown area. It raises the question whether it is still unique and that the zoning needs to be changed for that area because of the parking issues. There are dozens of buildings that will have parking issues. We are not voting on the tavern right?

MCNEELY      Right you are voting on a reduction for the parking requirements.

FOSTER        If it was a retail store what would the parking be based on?

MCNEELY      Parking would be base on the square footage used for the retail business.

FOSTER        For those concerned about a tavern going in, this variance is not going to control the type business. It will only affect the parking.

GREENLEE     I think it is irresponsible for the Delano neighborhood association not to take up the parking issues or change the code to resolve these issues. Also is the realtor required to disclose what the parking requirements are?

MCNEELY      If they were doing their job well they would disclose the amount of parking. We will deal with parking issues as these properties redevelop. As far as

Delano not going for the CBD zoning, it was for a host of reasons not just parking issues. I understand the issues they wrestled with in making their decisions.

GREENLEE They have taken the parking issues in that area and thrown it back at our board. We may deal with a number of parking cases over the next several years. It put this board in the middle of this problem. I think we need to toss the parking issues back to the Delano Neighborhood Association so they can deal with the problem they created.

FOSTER I agree with the chairman that they are ignoring something that should be addressed and it is costing people effort, time and money to resolve the parking issues.

BLICK How has the Pizza Hut parking affected the area?

MCNEELY The Pizza Hut variance has no negative impact that we are aware of.

GREENLEE We did not have any objections for the Pizza Hut. There may be some bias.

MCNEELY I can understand. The up side of this business is that it starts after 7pm and there will be enough parking in the area for this business. Unfortunately, the code requires that you have parking on the site. I understand the surrounding businesses concerns regarding the use of their parking and leaving trash debris on their property.

GREENLEE We will open up discussions to the public since there are no more questions of staff. May we hear from the owner or applicant?

Sierra McRAE, the applicant purchasing the property. Does anyone have any questions about how I will work with other area businesses?

GREENLEE Any questions for the applicant?

FOSTER Have you any prior experience about parking and how far people are willing to walk?

McRAE Old town currently has several businesses in the Central Business District that has parking in areas where many have to walk in order to get to the establishment. The public is use to walking. There is parking available. I have a very large public parking area only 2 and ½ blocks away. There will not be a problem for the patrons to walk from the public parking to the establishment.

FOSTER Is there another competing type of business nearby?

McRAE There is another establishment called the Vagabond. It is a bar and coffee shop. They are open earlier in the day 7-2AM.

FOSTER How nearby are they on Douglas?

McRAE They are about two blocks away on the same side of the street.

FOSTER Is there a break between them?

McRAE Yes

FOSTER Is fifty-eight parking spaces enough for the size of the tavern? Do you have any relationship idea of what your parking needs will be based on occupancy or seating? Are 58 parking spaces enough for what you will need?

MCNEELY The zoning requires 1 parking space per two occupants. The fire marshal determines what the business occupancy will be and the parking is determined by the occupancy limits 1 space per two.

FOSTER Jess is the parking based on the amount of seats that you have?

MCNEELY The applicant can determine how many seats they want to have in their establishment. It is up to the fire marshal to determine the occupancy for that establishment.

McRAE The occupancy is set for 140 people and that is without the bar, table and chairs.

FOSTER 140 seats?

McRAE You take the 140 occupancy allowance, minus the space for the bar area along with the table and chairs area; we are estimating 100 people. We are going to use 100 people capacity as not to have it over crowded. However, we are using the 115 count as the maximum capacity to figure the parking spaces. From there, we calculated 58 parking spaces were needed.

FOSTER Are you saying 115 chairs?

MCNEELY No. 115 people. It is not a requirement that everyone sits down.

FOSTER Well I am not going unless I can sit down. Jess, how did you figure the 58 parking spaces? Base on the space or the number of chairs?

FOSTER It is nothing to do with the chairs. They can run it without any chairs. It is based on the occupancy set by the fire marshal.

FOSTER I wanted to understand how the parking spaces were derived.

GREENLEE Any questions? Any one else here to speak?

Nancy Nevens, I am William Nevens' wife. During the River Festival, there of thousand of

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people that park downtown and walk. Usually by mid-afternoon the traffic dies down and I do not see parking being a problem there. With the street parking available on Douglas and Osage with the public parking, I do not see parking as a problem.

GREENLEE Any questions?

Harlan Foraker, 810 W Douglas, I run the business across the street to the west. I have a parking area with 20 spaces. I can enforce my parking lot. I can do that but I will make people unhappy to tow off their car. However, I can do it. I want the same consideration as other property owners to get signs to post in order to keep unauthorized vehicles off my property. I do not want to come at 7:30am in the morning and have to pick up beer bottles off my lot. I also have tenants that use my parking as long as they can come in and find their parking I will not have a problem. As long as they agree to be a good neighbor and as long as we can work out that problem and monitor the trash, I will work with the owner. Of course, if I come in and can't find parking, I will not be a happy camper.

FOSTER What time does your business close?

FORAKER I leave at 5pm and others leave at 6pm or 7pm.

McRAE I will work out the same deal as I did with Jane. I will pay for the parking signage for your parking area. I will also post signage inside my business to warn patrons. I will campus the area to make certain trash is not left in the area. I will give you all my contact information. Please give me a call at any time.

GREENLEE Can you tell us what exactly are you doing?

McRAE It is a bar with arcades from the 70's and 80's some live music once a week with pizza and beer.

Jane Hammil with Credit Union of America, 711 W Douglas, and Jackie Heyen. I talked with Jess regarding the tavern parking. Our position is we oppose this variance. Our main concerns when you see the number 58, it is a large amount of parking. We are concerned about vehicles parking on our lot. We have had parking on our lots with the Shiner's circus, river festival, and even with the pizza hut patrons parking on our lot. In that aerial, you will see the ATM is on our lot. We discuss putting a chain across the entrance but that is not an option for us because patrons have to access the ATM machine. Over there is the place where we park our repossessed vehicles and we are concerned about vandalism. Also Jess, we do not remember getting a notice on the Pizza Hut parking variance. Pizza Hut patrons park in our lot all the time. Pizza Hut is a carry out business and there are not as many patrons frequenting, so it is a different dynamic going on with that business. Nevertheless, we have not changed our position on the parking variance basically because we know there will be people parking on our lot.

However, I do wish Ms McRae the best success with her business.

- HAYEN The biggest problem is we have 6 entrances on our lot and it is hard to maintain control. We try to be good neighbors and some have asked us to use our parking lot after hours. They have come in given us their insurances and organized a clean ups to take care of our parking lot or any damage while on our parking lot. This is a type of business that could have vacated cars there for a while.
- HAMMIL Another thing, it is not that easy to get a tow truck out after hours to remove vehicles off private property. Next thing you know you are getting calls as to the location of the vehicle, next your using time and resources to handle problems associated with someone else's business. I understand that streetscape was approved. We are not anti-business. We want to go on record as opposing it because we have valid reasons.
- FOSTER Jess, I don't know if you remember this or not. We voted on a club in a DAB meeting on 21<sup>st</sup> street. My son voted against it.
- FOSTER Is there any thing related to taverns that requires owner's to do the clean-up?
- MCNEELY Are you talking out the new night club ordinance that is being proposed?
- FOSTER Does it cover taverns?
- MCNEELY It covers anyone with a liquor license. The proposed ordinance would require owners to police their parking lots. That is where fighting and vandalism problems are. In this variance, this owner only has 3 parking spaces on their site. So, people are to park in the public parking spaces. The owner would not be required under that ordinance to police the public parking spaces, because those do not belong to the owner.
- FOSTER Where are the public parking spaces again?
- MCNEELY Here about 2 ½ blocks away from the establishment.
- GREENLEE Let's turn the discussions back over to the board.
- YOUNG I will re-iterate to the chairman comments that we need to notify the Neighborhood Association about the problems with the parking issues in this area. These parking issues will continue to come. There will always be two sides to every parking issue. I think it is best for the Neighborhood Association to come up with a plan to deal with these parking issues as these variances will continually come as the area become more artsy. Where they eat, drink and do these sorts of things. Maybe we need to send a letter to the Delano Neighborhood Association requesting them to resolve parking issues in this area or send a recommendation. Despite what we decide here as long as everyone keeps open communication, things will work out.

ANTHIMEDES Yes, a recommendation.

FOSTER We should send them a letter but separate from this case, right?

YOUNG I appreciate all the people who came out and in good faith dealt with one another.

FOSTER We have to look upon this positively. I spent a week in Minneapolis. The area was much larger than this area. Of course the sidewalks were broader. Also, they had parking garages but everyone was willing to walk. My wife was willing to walk eight blocks to go shopping. I was impressed that everyone was willing to walk.

GREENLEE Are we ready for a motion?

YOUNG 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. May the minutes reflect the neighbors comments.

ANTHIMIDES Seconded.

GREENLEE All in favor say aye.

**Motion carries 4-0 unanimously**

VANZANDT The current public parking will eventually become exhausted, especially if those kinds of business increase. I agree with getting the Neighborhood Association to resolve the parking issues.

FOSTER They may need more spaces for public parking. There are plenty of spaces behind these old buildings. It would be worth while to take a few down to make more parking.

MCNEELY There are several things going on down there at night. There is a dance studio, several eateries going on earlier, the French restaurant, the BBQ place, Ty's Burgers, and the Pizza Hut. Right now in the evening, other than the dance place, there is this tavern and the vagabond. There was a club called the biker's edge right here. They have closed and when they open again, they will be here to get a parking variance. With 122 parking spaces on Douglas, along with Lawrence Dumont Stadium 700 parking spaces, right now there is enough parking. The capacity is there for the mix of businesses. Planning Staff would like to see a change for the zoning standards in this area. They can do an overlay district or rezone to CBD. I understand why Delano did not select the CBD zoning. If they chose an overlay district, they do not have to have the required parking.

GREENLEE Two things here, we do not appreciate being placed in the middle of their

property owners and we want them to consider and zoning change.

FOSTER It puts our board in a uncomfortable position. These issues will be repetitive. The BZA does not serve this area well to solve their problems.

ANTHIMIDES It is a waste of taxpayer's money, the commissioners' time.

McNEELY Also, an inconvenience to the property owners. We can send a recommendation to them.

YOUNG I make a motion that the BZA work with staff to work with the Delano Associated to write a letter to address the parking issues in that area.

ANTHIMEDES Seconded.

GREENLEE All in favor say aye.

**MOTION CARRIES 4-0 UNANIMOUSLY**

McNEELY By the way, there is a Delano Neighborhood Association and a Delano Business Association. I will draft a letter and send it to the board members.

GREENLEE Are there any special reports?

McNEELY No, and the Office of Central Inspections has nothing to report.

GREENLEE Let's adjourn

ADJOURNMENT 3:05pm