

CITY OF WICHITA BOARD OF ZONING APPEALS

AGENDA

Thursday, September 3, 2015

1:30 p.m.

The regular meeting of the City of Wichita Board of Zoning Appeals will be held on **Thursday, September 3, 2015**, in the Planning Department Conference Room, 10th Floor, Wichita City Hall, 455 North Main, Wichita, Kansas **no earlier than 1:30 p.m.**

1. Approval of June 18, July 23 and August 20, 2015 BZA minutes.
2. **BZA2015-00029** - City variance request to reduce the rear yard setback on Lots 1, 3 and 25 from 20 feet to 9 feet for the construction of duplexes, generally located south and east of the intersection of North Ridge Road and West Central Avenue.
Planner: Derrick Slocum
3. **BZA2015-00037** - City sign code variance request to reduce the distance between off-site signs from 330 feet to 265 feet and to reduce the setback of the off-site sign to zero feet on the front property line, generally located at the northeast corner of Kellogg and Hoover (5500 W. Kellogg).
Planner: Derrick Slocum

WICHITA-SEDGWICK COUNTY BOARD OF ZONING APPEALS

MINUTES

June 18, 2015

The regular meeting of the Wichita-Sedgwick County Board of Zoning Appeals was held on Thursday, May 7, 2015 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby; Chair; Carol Neugent, Vice Chair; John Dailey; David Foster; Bill Johnson; John McKay Jr.; Bill Ramsey; Lowell E. Richardson; Debra Miller Stevens and Chuck Warren. David Dennis; Joe Johnson and Don Klausmeyer were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary

1. Approval of the minutes of the May 7, 2015 meeting.

MOTION: To approve the May 7, 2015 BZA minutes.

WARREN moved, **NEUGENT** seconded the motion, and it carried (10-0-1).

B. JOHNSON – Abstained.

The Wichita-Sedgwick County Board of Zoning Appeals adjourned at 1:35 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Board of Zoning Appeals, held on _____, is a true and correct copy of the minutes officially approved by such Board.

Given under my hand and official seal this _____ day of _____, 2015.

John L. Schlegel, Secretary
Wichita-Sedgwick County Board of
Zoning Appeals

CITY OF WICHITA BOARD OF ZONING APPEALS

MINUTES

July 23, 2015

The regular meeting of the City of Wichita Board of Zoning Appeals was held on Thursday, July 23, 2015 at 1:35 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby, Chair; David Foster; Debra Miller Stevens; M.S. Mitchell; Bill Ramsey and Lowell E. Richardson. David Dennis was absent. Staff members present were: W. David Barber, Interim Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; and Robert Parnacott, Assistant County Counselor.

1. **BZA2015-00026** - Raul Castillo Hernandez and Hortencia Castillo (Owner/Applicant) request a City variance to reduce the interior side yard setback to zero feet (south property line) to allow an existing carport to remain on site on property described as:

Part of Lots 21 and 23, on Water Street, now Wellington Place, Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas, being more particularly described as follows: Beginning at the Northeast corner of said Lot 21; thence West along the North line said Lot 21, 106.5 feet; thence South to a point on the South line of said Lot 23, said point being 106.5 feet West of the Southeast corner of said Lot 23; thence East 106.5 feet to the Southeast corner of said Lot 23; thence North to the place of beginning.

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 requests a variance to reduce the Zoning Code required interior side building setback from six feet to zero feet in order to keep an existing carport on the site. The zoning code requires a six-foot interior side yard building setback in the MF-29 Multi-family Residential ("MF-29") zoning district. The application area is developed with a home, an attached carport along the south side of the house and two accessory structures in the rear part of the property. According to the applicant, the carport was existing when the house was purchased. When the applicant tried to make changes to the carport in the past, he was told to leave the carport alone and that it would be fine. This current variance application is the case of the property owner to the north of the subject site wanting to place a carport on his property similar to the applicants. The neighbor then reported the applicants existing carport when they were notified that they could not put up a carport of their own.

Currently, separation between the existing attached carport and the residential structure to the south is 7'-3". Building and fire code would require a minimum six-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the

property owner to the north, ensuring that any future improvements on either property would maintain a minimum of six feet between buildings. All surrounding properties are also zoned MF-29 and developed with single-family residences, except for the property directly west of the subject site and it is developed with a parking lot.

ADJACENT ZONING AND LAND USE:

NORTH	MF-29	Single-family Residence
SOUTH	MF-29	Single-family Residences
EAST	MF-29	Single-family Residences
WEST	MF-29	Church Parking Lot

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

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the existing carport has been in place since before the current property owners purchased the property. The applicants just want to keep the carport as is with no modifications.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for an interior side setback reduction may not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of six feet between buildings.

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 applicant would have to remove a structure that came with the property and was one of the main selling points of the property for the applicants.

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

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a side setback reduction from six to zero feet does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary then recommends that the variance for a interior side setback reduction from six to zero feet 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 for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots (south property), and prior to receiving a building permit or certificate of occupancy for the proposed structure.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

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

FOSTER asked since this is an existing condition is the requirement for development and permitting so this can go to the Appraiser for tax purposes.

SLOCUM said it could be reworded to indicate that the site cannot change from what is currently present. He said technically the variance is a permit to allow the structure to stay there legally.

FOSTER commented that he thinks rewording would help clarify the situation.

RICHARDSON asked about recommendation #3 to file a joint building setback with the neighbor. He asked what if the neighbor refuses. He said that is recommended on two of the BZA cases to be hard today.

SLOCUM said the neighbor to the south is also the applicant for BZA2015-00030 to be heard today, so he does not believe they will have a problem with this request. He said he can't answer that question. He said both structures are already there.

JEFF VANZANDT, ASSISTANT CITY ATTORNEY said historically that request has been made in case the adjacent land changes ownership. He said it is a recommendation not a requirement.

RICHARDSON said it looks like if the BZA approves this subject to staff recommendation, then it is a requirement.

SLOCUM said the Board can eliminate recommendation #3 if they approve the variance.

MOTION: To approve subject to staff recommendation, as revised at today's meeting.

MITCHELL moved, **RAMSEY** seconded the motion, and it carried (6-0).

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2. **BZA2015-00028** - Clear Channel Outdoor, Inc. c/o David Hollhagen (Owner/Applicant) request a City Variance to the sign code to increase height of an off-site sign from 30 feet to 41.3 feet on property described as:

Lot 15 EXCEPT beginning at the Northwest corner; thence East to the Northeast corner; thence South 25 feet; thence West 78.3 feet; thence Southwesterly to the West line; thence North 48.3 feet to the point of beginning for CC A-29960 and 84 C 2867 along with all of lot 16, Block 5, Eureka Gardens Addition to Wichita, Sedgwick County, Kansas.

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant's company, Clear Channel Outdoor, has a 30-foot high off-site sign at the location of 648 S. Knight Street, right along the south side of Kellogg (US-54). The applicant is requesting a variance to increase the height of the off-site sign to 41.3 feet. The applicant is requesting this variance because the sign will need to be moved to the south 24 feet due to the acquisition of additional right-of-way for Kellogg to make room for turn lanes for the future improvement of the I-235/US-54 interchange. The sign at its new location would be obstructed from the east approach by an existing structure. The height increase to 41.3 feet would allow for the sign to be seen from the east approach unobstructed. The sign has been in its present location since 1998.

Section 24.04.222 (3) of the Sign Code limits off-site signs in LI Limited Industrial ("LI") zoning to 35 feet in height. Section 24.04.251 of the Sign Code permits increasing the maximum allowed height of an off-site sign located within seventy-five feet of a zoning lot line that directly abuts the right-of way of an elevated portion of a highway structure to a height at the top of the sign that does not exceed twenty feet above the height of the top of the highest railing or barrier along the traffic deck or decks within the right-of-way at a point perpendicular the sign. However, the location of the subject off-site sign is not located along the elevated portion of the Kellogg Expressway, thus the variance request on the increase in height.

All property surrounding the application area is zoned LI and developed with warehouses, offices salvage yard, recycling center, sports complex and US-54/Kellogg Expressway.

ADJACENT ZONING AND LAND USE:

NORTH	US-54/Kellogg	Kellogg Expressway
SOUTH	LI	Warehouse-Office, Sports Complex
EAST	LI	Salvage, Recycling Center
WEST	LI	Warehouse-Retail, Future expressway expansion

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

UNIQUENESS: It is staff's opinion that this property is unique inasmuch that the north property line is being moved further from Kellogg to allow for the expansion of the freeway and thus decreasing visibility of the subject off-site sign by having to relocate it 24 feet south of its present site. This relocation will cause the sign to lose direct sight from the east approach due to being obstructed by an existing structure.

ADJACENT PROPERTY: It is staff's opinion that the requested variance would not adversely affect the rights of adjacent property owners inasmuch that the off-site sign is located along an expressway and adjacent properties are zoned LI Limited Industrial and developed with industrial type uses. The sign has been at this location since 1998 with no issues and is a legal, conforming sign.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the Sign Code would constitute a hardship upon the applicant inasmuch as the relocation of the off-site sign was not the fault of the applicant/owner. This relocation is the result of right-of-way acquisition for the I-235/US-54 interchange improvement. This sign relocation, if the sign is kept at the current height, will experience significant obstruction and would not be visible from the east approach on US-54.

PUBLIC INTEREST: It is staff's opinion that the requested variance is not adverse to the public interest inasmuch as the expansion of the I-235/US-54 interchange is in the public interest, permitting a sign with adequate visibility for this site, due to right-of-way acquisition for said expansion, is also in the public interest.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance does not oppose the general spirit and intent of the Sign Code inasmuch that the spirit and intent of the Sign Code is for adequate visibility of signs without negative impacts on surrounding properties. The Sign Code does not anticipate such situations such as right-of-way acquisition that could be detrimental to existing signage.

RECOMMENDATION: Should the Board determine that the conditions necessary for the requested variance exist, the Secretary recommends that a variance to increase the height of an off-site sign from 30 to 41.3 feet in LI Limited Industrial ("LI") zoning be GRANTED, subject to the following conditions:

1. The sign shall be developed in conformance with the approved site plan and elevation drawing.
2. The variance shall be to increase the height of the subject sign from 30 to 41.3 feet only; the sign shall conform to all other Sign Code requirements unless a separate variance or adjustment is granted.
3. The applicant shall obtain all permits necessary to relocate/construct the sign and the sign shall be completed within one year of the variance granting, unless such time period is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

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

FOSTER asked for clarification on the existing sign height so they are all consistent, especially in the conditions.

SLOCUM said the sign height should be 35 feet and that he would correct that. That is increased from 35 feet to 41.3 feet.

MOTION: To approve subject to staff recommendation.

RAMSEY moved, **MITCHELL** seconded the motion, and it carried (6-0).

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3. **BZA2015-00029** - City variance request to reduce the rear yard setback on Lots 1, 3 and 25 from 20 feet to 9 feet for the construction of duplexes, generally located south and east of the intersection of North Ridge Road and West Central Avenue.

CHAIR GOOLSBY announced that this request was deferred indefinitely.

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4. **BZA2015-00030** – Martiniano and Bernadine Lumbreras (Owner/Applicant) request a City variance to reduce the side yard setback from 6 feet to 1 foot for a carport on property described as:

Lots 25 and 27, on Water Street, now Wellington Place, in Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas

JURISDICTION: The Board has jurisdiction to consider the Variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant requests a variance to reduce the Zoning Code required interior side building setback from six feet to one foot in order to keep an existing carport on the site. The zoning code requires a six foot interior side yard building setback in the MF-29 Multi-family Residential ("MF-29") zoning district. The application area is developed with a home, an attached carport along the south side of the house and two accessory structures in the rear part of the property. According to the applicant, the carport was built in November 2014. No one reported the carport, but the house directly across the street located at 2132 Wellington Place was having major remodeling done, and a compliance officer was over at that house. That officer noticed the carport and started asking the applicant questions. It was during this time that the officer notified the applicant that they would need to apply for a variance for the carports setback encroachment.

Currently, separation between the existing attached carport and the residential structure to the south is 7'-3". Building and fire code would require a minimum 6-foot separation between buildings, unless the buildings have increased fire-rated walls and roofs. The only legal assurance of this building separation would be to record a joint setback agreement with the property owner to the north, ensuring that any future improvements on either property would maintain a minimum of 6 feet between buildings. All surrounding properties are also zoned MF-29 and developed with single-family residences.

ADJACENT ZONING AND LAND USE:

NORTH	MF-29	Single-family Residence
SOUTH	MF-29	Single-family Residences
EAST	MF-29	Single-family Residences
WEST	MF-29	Single-family Residences

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

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the existing carport has been in place for many years with no issues. The applicants just want to keep the carport as is with no modifications.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for an interior side setback reduction may not adversely affect the rights of adjacent property owners, provided that the property owner to the south of the site does not desire to build at the normally required six foot building setback. The applicants will be required to file a signed legal assurance with the register of deeds regarding any future improvements on either property that would maintain a minimum of 6 feet between buildings.

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 applicant would have to remove a structure that has caused no issues and does keep more than 6 feet of separation between the subject structure and the residential structure to the south.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a side setback reduction from six to one foot will not adversely affect the public interest, as no public right-of-way is affected by the proposed setback reductions, and provided that building and fire codes are followed.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a side setback reduction from six to one foot does not oppose the general spirit and intent of the Zoning Code, especially provided that the adequate separation between buildings is maintained and utilities, rights-of-way and easements would not be affected.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary then recommends that the variance for an interior side setback reduction from six to one foot 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 for any improvements, and any improvements shall be completed within one year of the granting of the variance.
3. The applicant shall file a joint building setback agreement, ensuring a minimum six foot separation between buildings on adjoining lots (south property), and prior to receiving a building permit or certificate of occupancy for the proposed structure.

4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

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

MOTION: To approve subject to staff recommendation.

RAMSEY moved, **FOSTER** seconded the motion, and it carried (6-0).

The City of Wichita Board of Zoning Appeals adjourned at 1:41 p.m.

State of Kansas)
Sedgwick County) ss

I, W. David Barber, Interim Secretary of the City of Wichita Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the City of Wichita Board of Zoning Appeals, held on _____, is a true and correct copy of the minutes officially approved by such Board.

Given under my hand and official seal this _____ day of _____, 2015.

W. David Barber, Interim Secretary
City of Wichita Board of Zoning Appeals

DRAFT

CITY OF WICHITA BOARD OF ZONING APPEALS

MINUTES

August 20, 2015

The regular meeting of the City of Wichita Board of Zoning Appeals was held on Thursday, July 23, 2015 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Matt Goolsby, Chair; David Dennis; David Foster; Debra Miller Stevens; Bill Ramsey and Lowell E. Richardson. M.S. Mitchell was absent. Staff members present were: W. David Barber, Interim Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; and Robert Parnacott, Assistant County Counselor.

1. **BZA2015-000235** – Wesley Medical Center (Applicant); City of Wichita, c/o John Philbrick (Owner); and George Huddleston (Agent) request a city variance to reduce the front side setback from 20 feet to 6 feet for a proposed canopy on property described as:

Lots 1 and 2 EXCEPT that part deeded for street, Wesley Medical Center Addition to Wichita, Sedgwick County, Kansas.

JURISDICTION: The Board has jurisdiction to consider the Variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: Wesley Medical Center is requesting a variance to reduce the 20 foot front yard setback along Hillside to allow for a proposed new canopy to be located in the setback. Currently, as shown on the existing site plan, there is a circular drive with openings to Hillside Avenue and an existing canopy. In 1998, BZA26-98 was approved to provide a setback reduction from 20 feet to 9 feet for the existing canopy.

The existing pediatric unit is proposing a massive overhaul, and one of the elements of the renovation will be to provide a larger canopy at the pediatric entrance. This canopy is needed to be larger in order to adequately provide cover for the patient drop-off area. According to the site plan, very little will change in regards to the new canopy, except for the additional three feet to provide increased coverage to patients.

Property to the north of the site is zoned GO General Office and is developed with related hospital facilities. Property to the south is zoned GO and PUD Planned Unit Development and is developed with hospital parking and a retail area. The property to the east is zoned GO and is developed with additional hospital facilities and parking, while the properties to the east is zoned LC Limited Commercial, B Multi-family Residential and GC General Commercial and is developed with restaurants and additional hospital facilities.

ADJACENT ZONING AND LAND USE:

NORTH	GO	Hospital Facilities
SOUTH	GO and PUD	Retail
EAST	GO	Hospital Facilities
WEST	LC, B and GC	Restaurants and Hospital Facilities

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

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch the applicant was attempting to alleviate traffic and pedestrian problems in this area with the original variance. The hospital is located in an area which is highly developed with little room for expansion, therefore there is no other location which the applicant could build upon to relieve those problems. This request is to improve upon the existing canopy and the 6 foot setback is needed to complete this improvement.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the property is surrounded by commercial and related hospital facilities. The 6 foot setback will not interfere with the surrounding uses or public right-of-way.

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 it would require a significant reconfiguration of the existing hospital building and site in order to provide adequate cover for the drop-off area.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction in the building setback and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations, inasmuch the code requirements provide setbacks in order to provide buffer distance between buildings, properties and the public right-of-way. This allows for pedestrian accommodations and provides sight-lines for vehicles at intersections. The proposed canopy does not limit sight-distance or pedestrian circulation, and thus is not opposed to the general spirit and intent of the code.

RECOMMENDATION: It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance, and recommends that the variance be APPROVED. Should the Board determine that the conditions necessary for the granting of a variance exist, the Secretary then recommends that the variance for front setback reduction from 20 feet to 6 feet 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 for any improvements, and any improvements shall be completed within one year of the granting of the variance.

3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

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

MOTION: To approve subject to staff recommendation.

DENNIS moved, **RICHARDSON** seconded the motion, and it carried (6-0).

The City of Wichita Board of Zoning Appeals adjourned at 1:31 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, W. David Barber, Interim Secretary of the City of Wichita Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the City of Wichita Board of Zoning Appeals, held on _____, is a true and correct copy of the minutes officially approved by such Board.

Given under my hand and official seal this _____ day of _____, 2015.

W. David Barber, Interim Secretary
City of Wichita Board of Zoning Appeals

SECRETARY'S REPORT

CASE NUMBER: BZA2015-00029

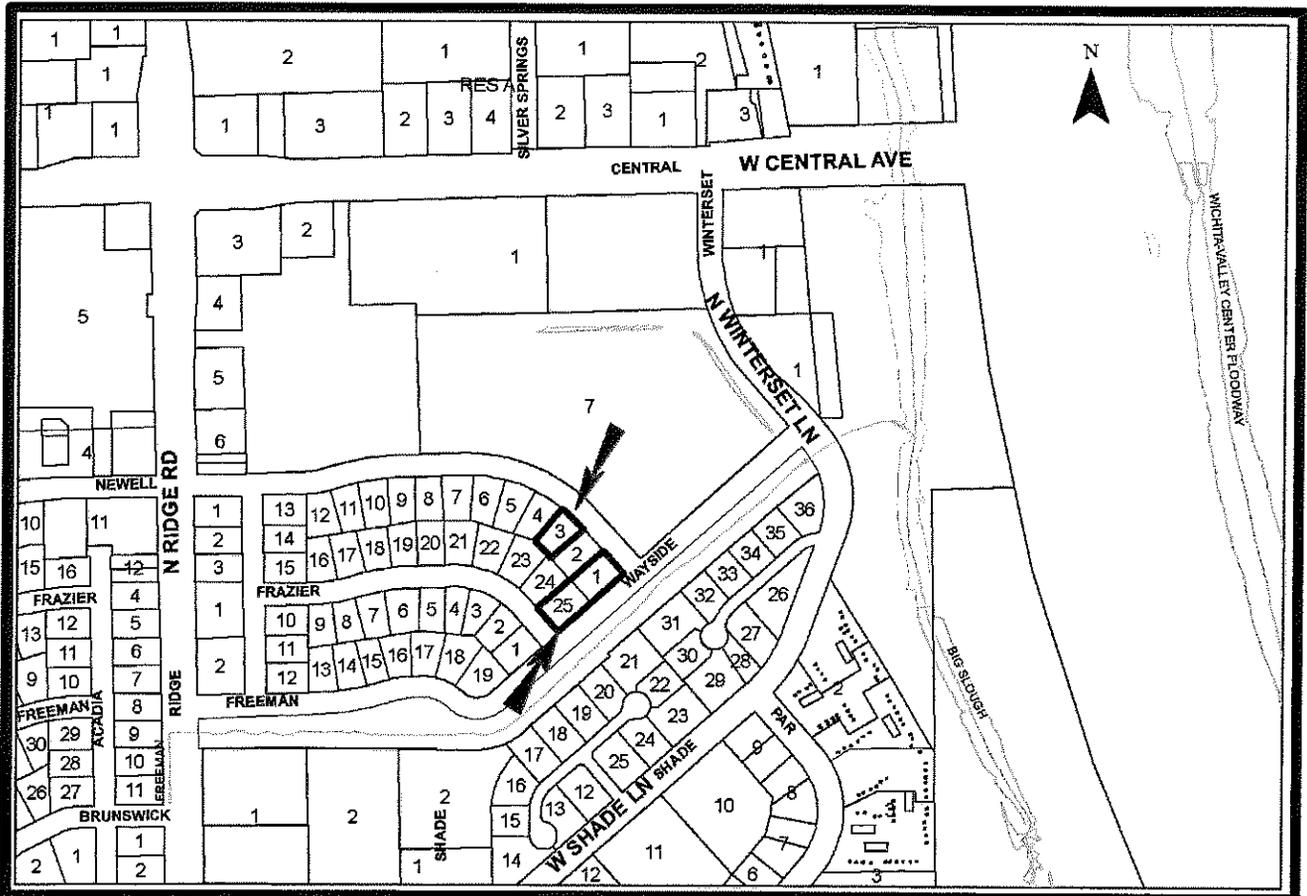
APPLICANT/AGENT: BATC, LLC (owner)
Armstrong Land Surveying, c/o Don Armstrong (agent)

REQUEST: City BZA Variance request to reduce the rear yard setback on Lots 1, 3 and 25 from 20 feet to 9 feet for the construction of duplexes.

CURRENT ZONING: TF-3 Two-family Residential (TF-3)

SITE SIZE: 0.24 acres

LOCATION: South and east of the intersection of North Ridge Road and West Central Avenue.



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

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

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

ADJACENT ZONING AND LAND USE:

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

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

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

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

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

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

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

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

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

Armstrong Land Survey, P.A.

1601 E. Harry
WICHITA, KS 67211



Ph (316)263-0082
fax (316)263-0092

June 15, 2015

To whom it may concern:

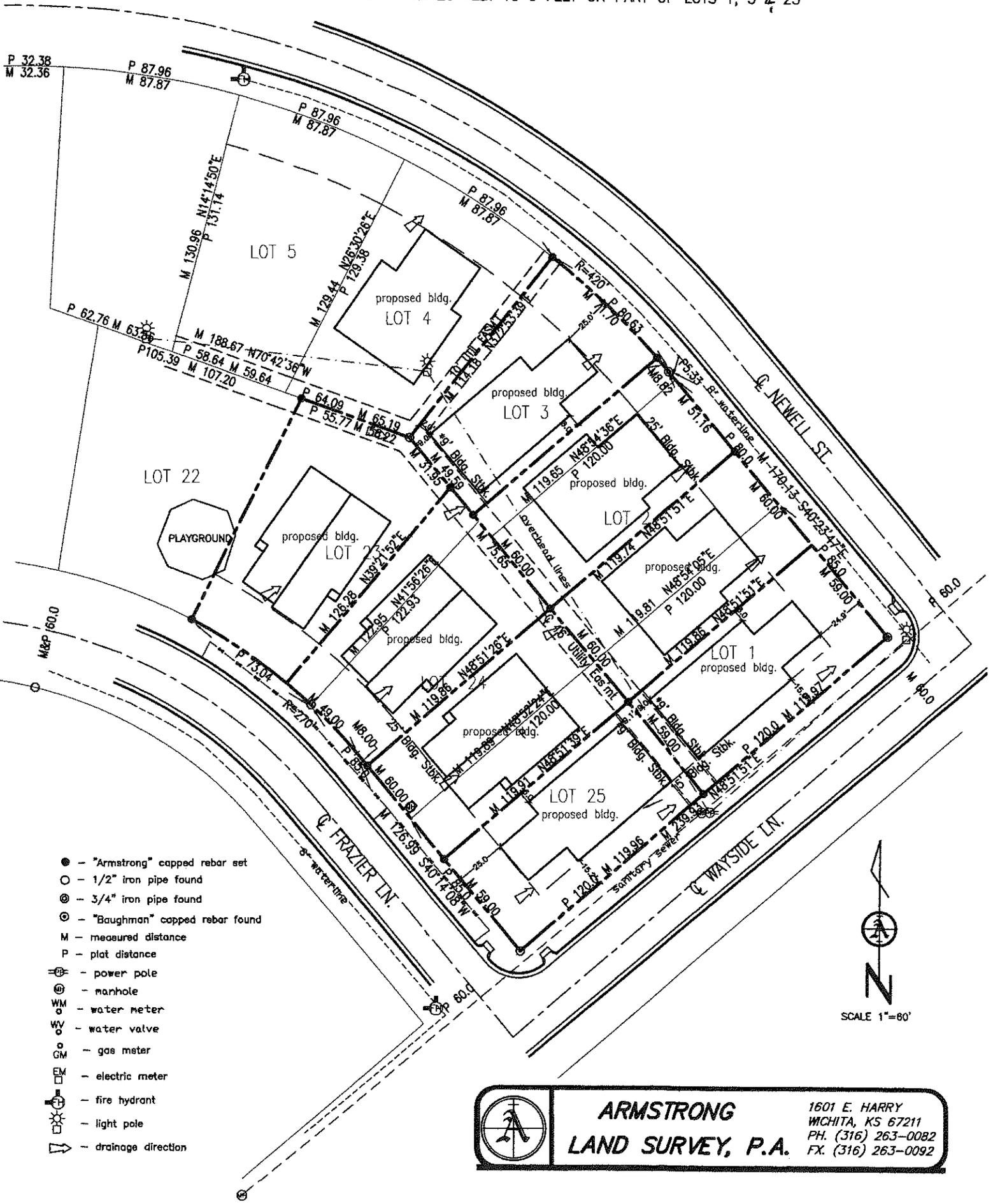
- a. The property owner has submitted requests for both a zoning change and a lot split to enable him to build duplexes which have been approved by the applicable governing bodies. The owner has also hired an architect to design duplexes for the new property layouts. The surveyor who created the new lot layouts didn't realize that the rear line setback was 20 feet. It wasn't until the owner submitted the plot plans for the permit that he was informed of the required setback. Therefore it was not an action of the property owner for which the variance is now requested.
- b. The granting of the permit for variance will not adversely affect the rights of adjacent property owners because the owner of subject property is also owner of all the adjacent property.
- c. The strict application of the provisions of the applicable Code from which a variance is requested will create a hardship upon the property owner due to the expense and time spent on redesigning the duplexes and or require the lot splits to be redone and may make the lots too small for duplexes.
- d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, general welfare, or harmonious development of the community because although the distance between the proposed buildings on lots 1 and 25 will only be 18 feet making the backyards relatively small, by the fact of them being on corner lots, they will be 15 feet from the street side property lines which adds additional yard space for the lots. There is also a public playground within 300 feet of the properties. It is the desire of the property owner to provide affordable housing to those who need it most.
- e. Due to the reasons stated above it is our opinion that granting the variance desired will not be opposed to the general spirit and intent of the applicable Code.

Donn Armstrong

Registered Land Surveyor

UTILITY MAP

*REQUEST REAR LINE SETBACK FROM 20 FEET TO 9 FEET ON PART OF LOTS 1, 3 & 25



- - "Armstrong" capped rebar set
- - 1/2" iron pipe found
- ⊙ - 3/4" iron pipe found
- ⊗ - "Baughman" capped rebar found
- M - measured distance
- P - plat distance
- ⊕ - power pole
- ⊙ - manhole
- WM - water meter
- ⊕ - water valve
- ⊕ - gas meter
- ⊕ - electric meter
- ⊕ - fire hydrant
- ⊕ - light pole
- ↗ - drainage direction



ARMSTRONG

LAND SURVEY, P.A.

1601 E. HARRY
 WICHITA, KS 67211
 PH. (316) 263-0082
 FX. (316) 263-0092

SECRETARY'S REPORT

CASE NUMBER: BZA2015-00037

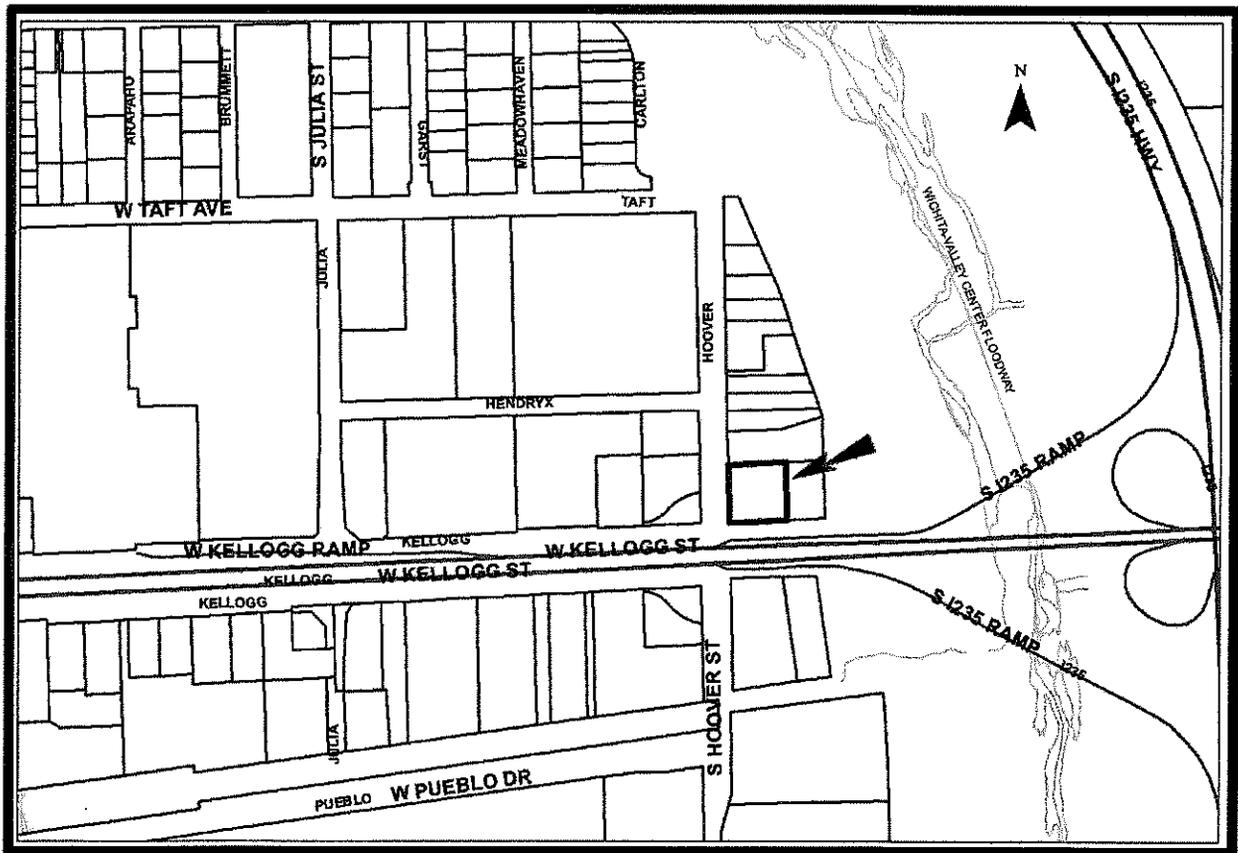
APPLICANT/AGENT: Sunstar Wichita Inc. (Applicant)
Clear Channel Outdoor Inc. (Agent)

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

CURRENT ZONING: GC General Commercial

SITE SIZE: 0.91 acres

LOCATION: At the northeast corner of Kellogg and Hoover (5500 W. Kellogg).



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The application area is .91 acres located north of West Kellogg, on the east side of North Hoover that contains an existing billboard. The Kansas Department of Transportation (KDOT) will be expanding and improving the West Kellogg/I-235 interchange, and has acquired additional right-of-way which currently contains the existing billboard. As a result of the KDOT purchase, the applicant is required to move the billboard out of KDOT's newly acquired right-of-way. The applicants are wishing to re-establish the billboard on the remaining piece of land located just north of the billboard's current location. However, the new proposed location of the sign would place it on the front property line and place it within 265 feet of another off-site sign. Billboards are treated as structures, and are required to observe building setback standards and also, the sign code requires that off-site signage have a separation of at least 330 feet. The site is zoned General Commercial (GC) that has the following setbacks: front-20 feet; rear-0 feet; interior side-0 or five feet and street side-0 feet. The Kellogg frontage is the application area's front yard. The subject site has 200 feet of frontage along Kellogg. The applicant is requesting a zero building setback from the application area's front yard (Kellogg) and a reduction of the required 330 foot separation between off-site signs.

ADJACENT ZONING AND LAND USE:

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

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

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

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

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

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

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

RECOMMENDATION: It is staff's opinion that the requested variance complies with the required criteria noted above. Should the Board determine that the criteria necessary to grant a variance exists, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

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

June 29, 2015

John Schlegel, Director
Wichita Board of Zoning Appeals
455 N. Main
Wichita, KS 67202

RE: Request for a Variance to Section 24.04.222(5) of the Sign Code

Dear Mr. Schlegel:

Attached is an application for a variance for an off-site sign. The variance requested is to allow an offsite sign to be built on the front property line and removing the restriction of complying with the building setback lines and being within 330 feet of another off-site sign.

This offsite sign replaces a sign condemned by the Kansas Department of Transportation, KDOT, for the I-235/Kellogg Interchange Reconstruction Project. KDOT has informed us that we are required to move the structure out of the new right of way, back onto the remaining property if possible. Please see the attached condemnation paperwork which establishes the taking of the parcel and the ability through KDOT to relocate the sign on the parcel.

We believe this application meets the criteria for a Variance as follows:

- a) **The variance requested arises from a condition with is unique to the property in question and which is not ordinarily found in the same zone or district.** This situation is unique to this property. KDOT has acquired part of this property for additional right of way area for Kellogg. During the acquisition, Clear Channel Outdoor negotiated an agreement with KDOT and the property owner for the property owner to keep a part of the lot to use for the replacement of the offsite sign. This unique situation was not caused by Clear Channel Outdoor and is unique to this property.
- b) **The granting of this Variance will have no adverse effect on the rights of the adjacent property owners or residents.** There has been an off-site sign on this property for many years. There is not residential property that is close to this sign. This is a commercial area with numerous signs and commercial uses. The property owner adjacent to this parcel is KDOT to the east. There is a billboard sign on the east side of this site but needs to be moved to the west side of the property, out of the taking that KDOT requires. This will move the sign to within 265 feet of another off-site sign. 65' short of the code requirement. This Variance will have no adverse effects.
- c) **The strict application of the provisions of the Code will constitute an unnecessary hardship on the property owner.** Clear Channel negotiated an agreement with KDOT and the property owner in good faith to re-build the sign on the parcel that remains. The property owner would have had a completely different position if they knew we could not construct an off-site sign on this parcel. This makes for a hardship on both the property owner and Clear Channel for a loss that was previously enjoyed prior to the taking from KDOT.

- d) **The Variance desired will not adversely affect the public health, safety morals, order, convenience, prosperity, general welfare, or the harmonious development of the community.** This was a legal conforming off-site that has been in place and has been for years. This area has been developed as an industrial area and is suited for the continuance of the off-site sign. It would be a detriment to the prosperity of the property owner to not be able to continue with the best use practices for his parcel.
- e) **The spirit and intent of the provisions in the Sign Code was to have conformity in the placement of the off-site signs in the Limited Commercial, General Commercial and Industrial zones within the City of Wichita.** Approval of this application will not violate the spirit and intent of the Sign code.

This application clearly meets the required tests for a Variance to be approved. We hope that the staff will support our Application and recommend that it be approved by the Board of Zoning Appeals. If you have any questions or concerns, please contact me.

Sincerely



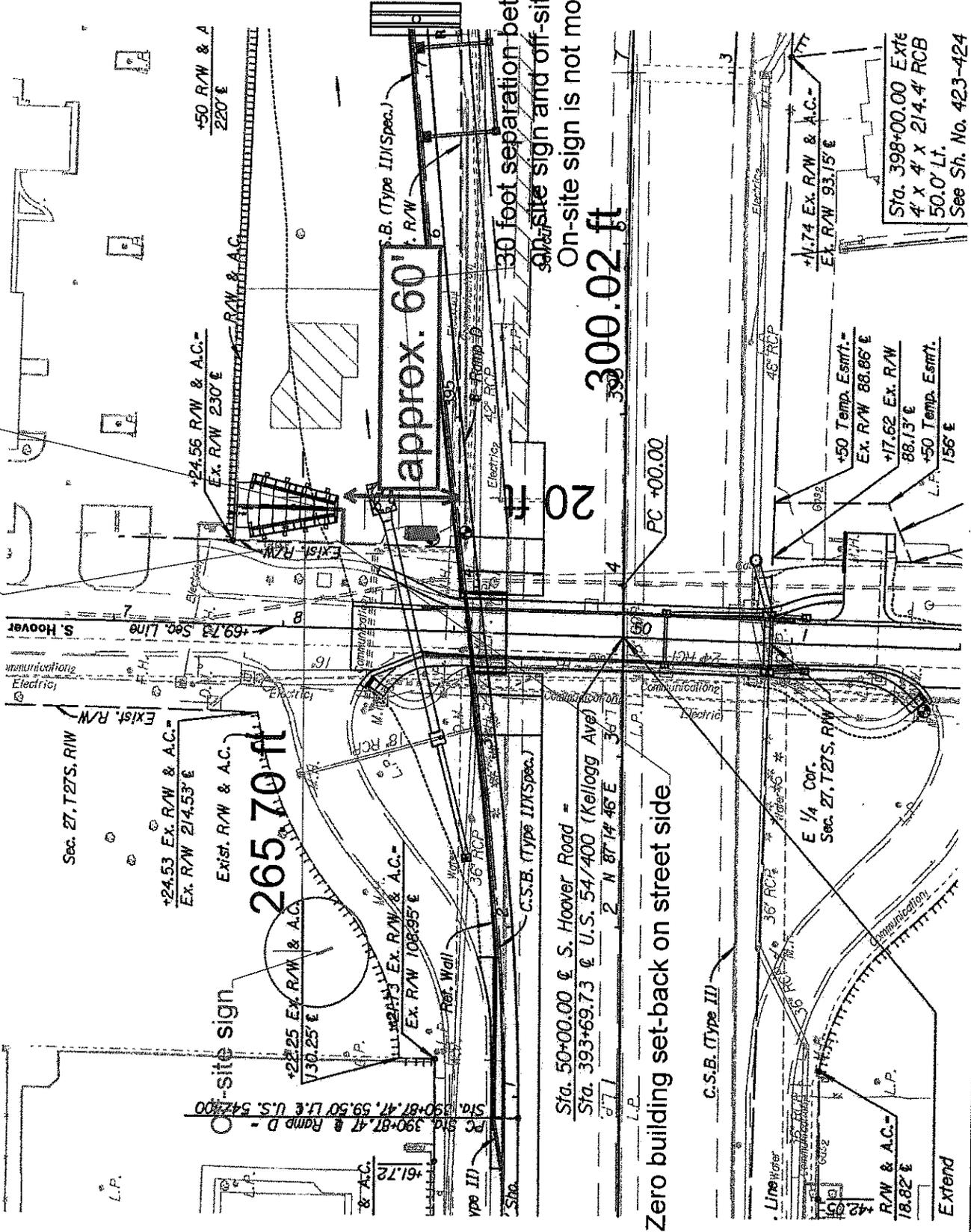
David W. Mollhagen
Real Estate Manager, Wichita Division
Clear Channel Outdoor, Inc.
davidmollhagen@clearchannel.com

Enclosures

CC: Sunstar Wichita Inc.

On-site sign to be aligned with off-site sign

Side setback of zero



approx. 60'

30 foot separation between on-site sign and off-site sign
On-site sign is not moving

300.02 ft

Zero building set-back on street side

Sta. 398+00.00 Exite
4' x 4' x 214.4' RCB
50.0' Lt.
See Sh. No. 423-424

+50 Temp. Esmt. =
Ex. R/W 88.86' €
+17.62 Ex. R/W
88.13' €
+50 Temp. Esmt.
156' €

+N.74 Ex. R/W & A.C. =
Ex. R/W 93.15' €

+24.53 Ex. R/W & A.C. =
Ex. R/W 214.53' €

Exist. R/W & A.C.

265.70 ft

+22.25 Ex. R/W & A.C.
130.25' €

+24.56 R/W & A.C. =
Ex. R/W 230' €

Sta. 390+87.47 @ Ramp D - U.S. 54/400
Sta. 390+87.47 @ U.S. 54/400

Sta. 50+00.00 @ S. Hoover Road =
Sta. 393+69.73 @ U.S. 54/400 (Kellogg Ave)
Sta. 390+87.47 @ Ramp D - U.S. 54/400

R/W & A.C. =
18.82' €

Extend

C.S.B. (Type III)

Line Hooper

Electric

Communication

Water

Gas

Light

Telephone

Fire

Police

Sanitary

Storm

Drainage

Other