

CITY OF WICHITA BOARD OF ZONING APPEALS

AGENDA

Thursday, June 16, 2016

1:30 p.m.

The regular meeting of the City of Wichita Board of Zoning Appeals will be held on **Thursday, June 16, 2016**, in the Planning Department Conference Room, 10th Floor, Wichita City Hall, 455 North Main, Wichita, Kansas **no earlier than 1:30 p.m.**

1. **BZA2016-00019** - City BZA Variance request to allow an off-site sign within the required building setback, and to allow the sign height 20' above the elevated freeway in GC General Commercial zoning, generally located north of Kellogg and west of Zelta Street (11716 E. Kellogg).

SECRETARY'S REPORT

CASE NUMBER: BZA2016-00019

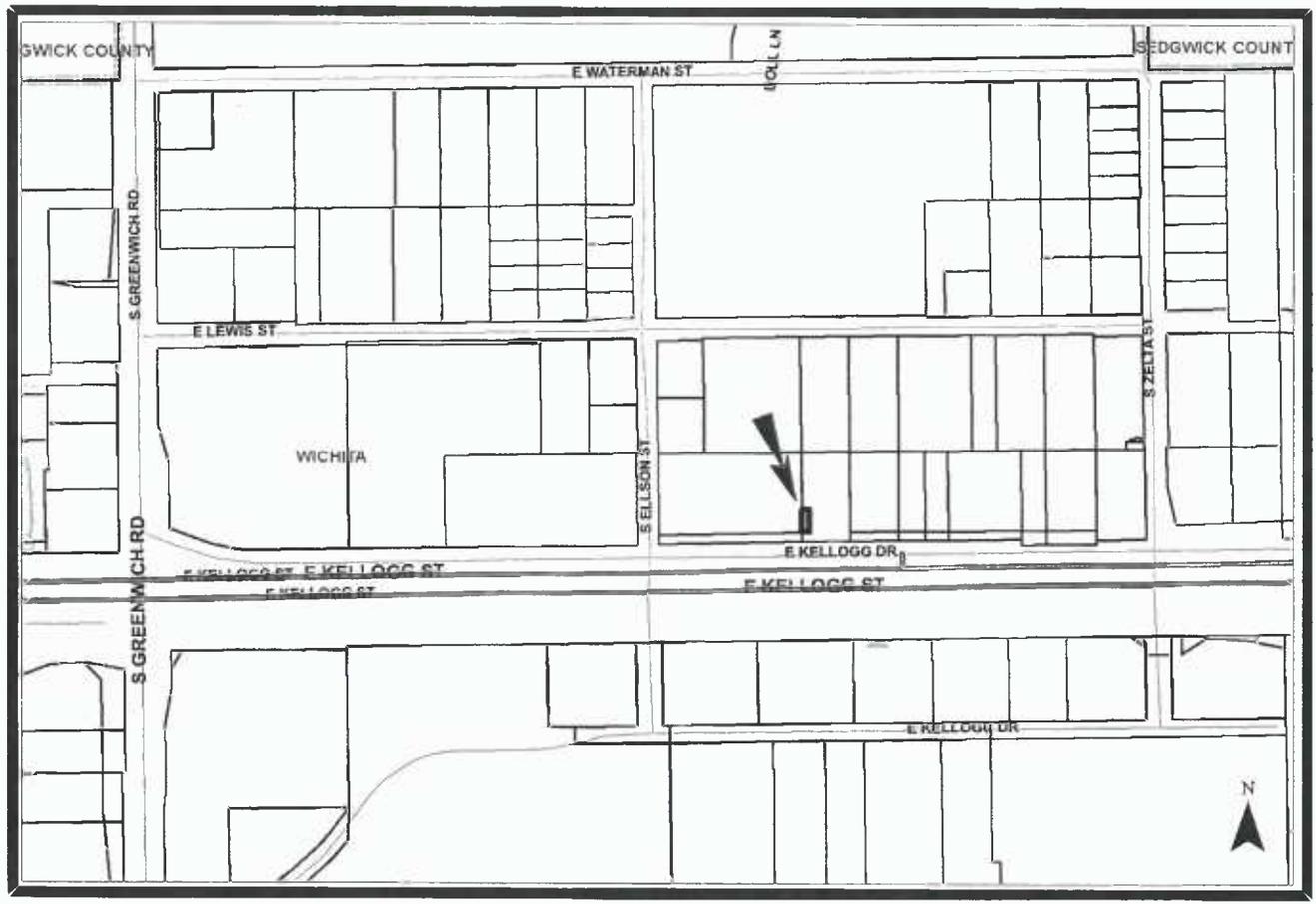
APPLICANT/AGENT: Ashby St. Outdoor, LLC. c/o David Mollhagen
(agent/owner/applicant)

REQUEST: City Sign Code variance to allow an off-site sign within the required building setback and to allow the sign height to be 20 feet above the elevated freeway.

CURRENT ZONING: GC General Commercial

SITE SIZE: 0.30 acres

LOCATION: Generally located along the north side of East Kellogg, east of Ellison Street.



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, Ashby St. Outdoor LLC, has an 18-foot high off-site sign at the location of 11716 E. Kellogg, right along the north side of Kellogg (US-54). The applicant is requesting a variance to increase the height of the off-site sign to 38 feet. The applicant is requesting this variance because the sign will need to be moved to the north due to the acquisition of additional right-of-way for the Kellogg construction. The new location will be setback zero feet from the new front property line and the sign at its new location would be obstructed by the future new elevated expressway. The height increase to 38 feet would allow for the sign to be seen from the east and west directions on Kellogg unobstructed.

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 located along the elevated portion of the Kellogg Expressway, thus the variance request on the increase in height. Billboards are treated as structures, and are required to observe building setback standards. The site is zoned General Commercial (GC) that has the following setbacks: front-20 feet; rear-zero feet; interior side-zero or five feet and street side-zero feet. The Kellogg frontage is the application area's front yard. The applicant is requesting a zero building setback from the application area's front yard (Kellogg).

All property surrounding the application area is zoned GC General Commercial and developed with retail, vehicle dealerships, restaurants and Kellogg (US-54).

ADJACENT ZONING AND LAND USE:

NORTH	GC	Retail
SOUTH	GC	Kellogg, Restaurant, Fast Food Restaurant
EAST	GC	Retail
WEST	GC	Car Dealership

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 south 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 further north of its present site. This relocation will cause the sign to lose direct sight from the east and west approach due to being obstructed by the expressway.

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 GC General Commercial and developed

with commercial type uses. The sign has been at this location for many years 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 continued construction on the Kellogg expressway project. This sign relocation, if the sign is kept at the current height, will experience significant obstruction and would not be visible from the east and west 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 improvement of the Kellogg expressway is in the public interest, permitting a sign with adequate visibility for this site, due to right-of-way acquisition for said improvement, 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 reduce the front building setback to zero feet and to increase the height of an off-site sign from 18 to 38 feet in GC General Commercial ("GC") zoning be GRANTED, subject to the following conditions:

1. The sign shall be developed in conformance with the approved site plan.
2. The variance shall be to reduce the front building setback to zero feet and to increase the height of the subject sign from 18 to 38 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.



April 21, 2016

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

RE: Request for a Variance to Section 24.04.222(5) and Sec 24.04.251 of the Sign code adjustment.

Dear Mr. Cox:

Attached is an application for a variance for an off-site sign. The variance requested is to allow an offsite sign to be modified on the front property line and removing the restriction of complying with the building setback lines and to be allow to modify the existing sign that is situated in a private utility easement.

This offsite sign modification is for a sign condemned by the Kansas Turnpike Authority, KTA, for the I-35/Kellogg Interchange Reconstruction Project. KTA has informed us that we may stay however, the roadbed will be raised making our signs visibility diminished, causing us harm.

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. KTA has acquired part of this property for additional right of way area for Kellogg. During the acquisition, Ashby St Outdoor negotiated an agreement with KTA to keep a part of the lot to use for the replacement of the offsite sign. This unique situation was not caused by Ashby St 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 no residential property that is close to this sign. This is a commercial area with numerous signs and commercial uses. 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.** Ashby St Outdoor negotiated an agreement with KTA in good faith to modify the sign on the parcel that remains. Our sign would not be totally visible if we were not able to get above the barriers. The road adjustment and barriers will diminish the viability of our sign and cause a great hardship for us.
- 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.** There is an off-site currently in this place for over a decade. This community 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. It is the Spirit of the Code to allow signs in areas of commercial development.

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.

We are also requesting a sign code adjustment, sec 24.04.251(h). To increase the height of this sign that abuts the right-of-way of an elevated portion of the new highway structure to a height at the top of the sign not exceeding 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 to the sign.

We have been provided a height of 18 feet to the highest barrier height by KTA, please see attachment. We request an adjustment from 30' overall height of the sign to 38' overall height of the sign.

If you have any questions or concerns, please contact me.

Sincerely

A handwritten signature in black ink, appearing to read "David W. Mollhagen", with a long horizontal flourish extending to the right.

David W. Mollhagen

Real Estate Manager, Wichita Division

Ashby St Outdoor LLC

dmollhagen@ashbystoutdoor.com

Enclosures

CC: Brad Stout

ASHBY ST OUTDOOR LLC

3405 North Hydraulic Wichita, KS 67219

Call 316.838.0871 / Fax 316.838.4108 / Direct 316.448.7423

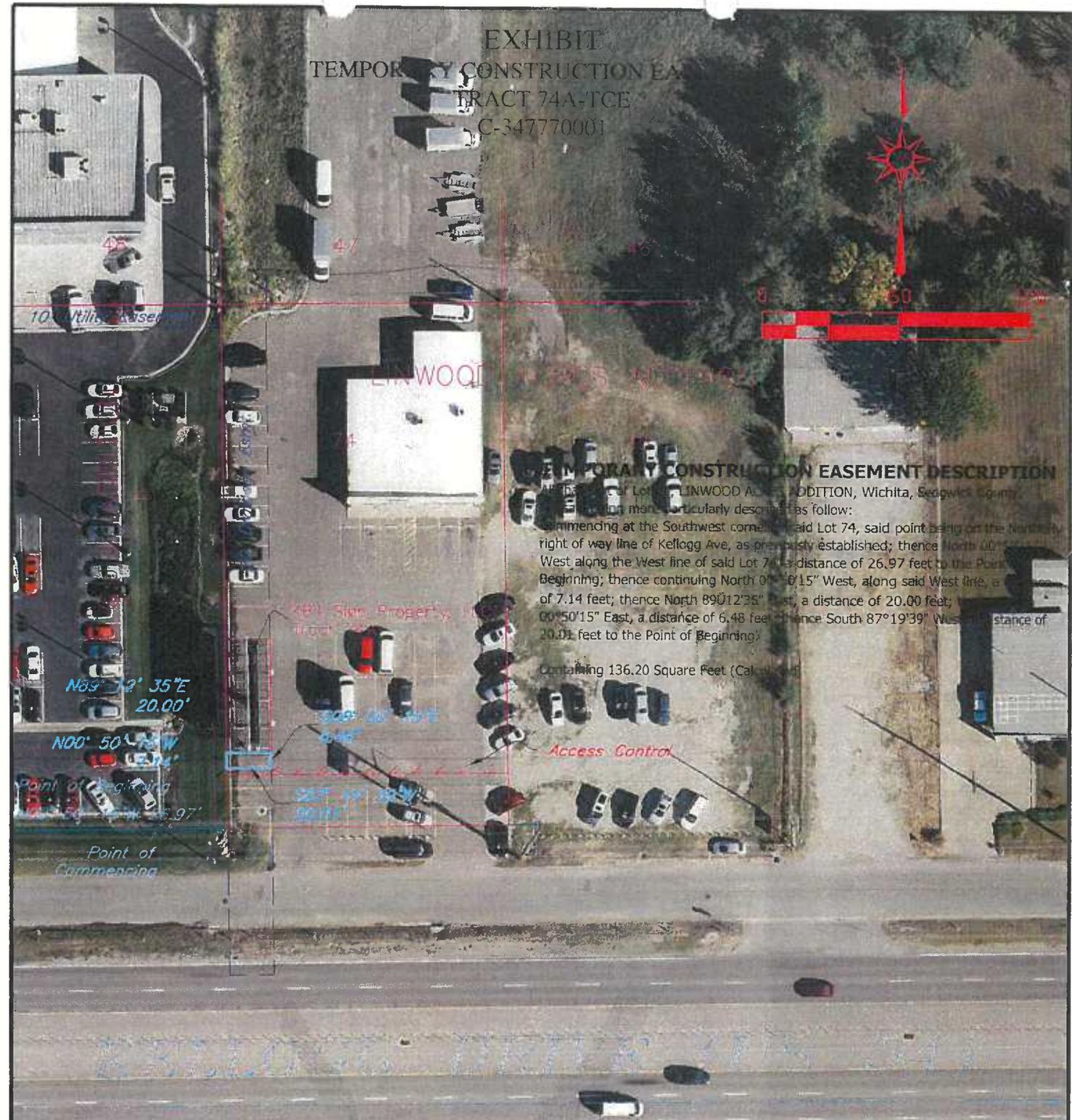
EXHIBIT
 TEMPORARY CONSTRUCTION EASEMENT
 TRACT 74A-TCE
 C-347770001



TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

THIS TRACT OF LAND, LINWOOD AVE., ADDITION, Wichita, Sedgewick County, Kansas, is more particularly described as follows:
 Commencing at the Southwest corner of said Lot 74, said point being on the Northern right of way line of Kellogg Ave, as previously established; thence North 00° 50' 15" West along the West line of said Lot 74 a distance of 26.97 feet to the Point of Beginning; thence continuing North 00° 50' 15" West, along said West line, a distance of 7.14 feet; thence North 89° 12' 35" East, a distance of 20.00 feet; thence South 87° 19' 39" West, a distance of 20.01 feet to the Point of Beginning;

Containing 136.20 Square Feet (Calculated)



EXHIBIT

**KTA I-35/US-54(400)/K-96
 INTERCHANGE PROJECT**

PROJ NO:	P125140013
SCALE:	1"=60'
DATE:	JAN. 19, 2016
DESIGNED BY:	
DRAWN BY:	PDB
CHECKED BY:	KRB