CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

May 28, 2014

Michaelis Real Estate #9, LLC
PO Box 247
Wichita, KS 67201

Baughman Company, PA
Attn: Russ Ewy
315 Ellis
Wichita, KS 67211

RE: **BZA2014-26** – City BZA Variance of Section III-E.1.e(1)(g) of the Unified Zoning Code to increase the code-permitted five-foot encroachment to a 20-foot encroachment into a building setback East of South Spruce Avenue, 380 feet north of East Industrial Avenue (one-quarter mile south of Wassall Street and one-half mile east of Hydraulic, 2914 South Spruce Avenue)

Dear Applicants:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **May 8, 2014.** This resolution reflects the official action of the Board, it is forwarded for your information and files.

If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,

Dale Miller
Current Plans Manager
Current Plans Division

BZA RESOLUTION NO. BZA2014-26

WHEREAS, Michaelis Real Estate #9, LLC (owner), Baughman Company c/o Russ Ewy (agent), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section III-E.1.e(1)(g) of the Unified Zoning Code to increase the code permitted five-foot encroachment to a 20-foot encroachment into a platted building setback for property zoned LI Limited Industrial (LI) generally located east of South Spruce Avenue, 380 feet north of East Industrial Avenue (2914 South Spruce Avenue).

Legal Description:

The Southeast 100 feet of Lot 2 and all of Lot 3, Block F, Industrial Addition to Wichita, Sedgwick County, Kansas.

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

WHEREAS, the Board of Zoning Appeals did, at the meeting of May 8, 2014, consider said application; and

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

WHEREAS, the Board of Zoning Appeals has found that this property is unique. It is staff's opinion that the sixty-foot platted front setback found in the Industrial Addition is excessive and somewhat unique when compared to the current zoning code setback requirement of 20 feet.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance for an encroachment into the front building setback would not adversely affect the rights of adjacent property owners. The property is located on a somewhat isolated block that is separated from the rest of the subdivision by South Spruce Avenue, which is a short one-block long street segment that "Y's" off of the longer north-south South Madison Avenue. South Madison Avenue can be viewed as a dividing line between the property served by South Spruce Avenue and the remainder of the Industrial Addition located further west.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the code would constitute a hardship upon the applicant. Without the requested variance, the applicant does not appear to be able to provide the required ADA access, which would significantly reduce the buildings value and usefulness.

WHEREAS, the Board of Zoning Appeals has found that the requested variance for a setback reduction will not adversely affect the public interest, as improvements to this property are in the public interest. Compliance with ADA accessibility is a significant public interest activity.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance for a setback reduction does not oppose the general spirit and intent of the Zoning Code. Building setbacks are intended to ensure separation between structures and the public right-of-way. In this case, reduction of the setback by 20 feet leaves 40 feet of setback, which is still in excess of that currently required by the UZC.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, are found to be present for a variance to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section III-E.1.e(1)(g) of the Unified Zoning Code to increase the code permitted five-foot encroachment to a 20-foot encroachment into a platted building setback for property zoned LI Limited Industrial (LI) generally located east of South Spruce Avenue, 380 feet north of East Industrial Avenue (2914 South Spruce Avenue) has been approved.

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

1. The site shall be developed in conformance with the approved site plan.
2. The front building setback reduction shall apply to the west frontage along South Spruce Avenue. Any future building additions, not including open, outside stairways, decks, entrance hoods, terraces, canopies and balconies, stairs, ramps or other improvements required for compliance with ADA access, shall conform to the platted or UZC required setbacks unless a separate Administrative Adjustment or Variance is approved.
3. The addition 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.

ADOPTED AT WICHITA, KANSAS, this 8th Day of May, 2014.

Don Klausmeyer

BZA Chair, Don Klausmeyer

ATTEST:

Dale Miller for

Jess McNeely, AICP
Asst. BZA Secretary

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. 2
May 8, 2014

SECRETARY'S REPORT

CASE NUMBER: BZA2014-00026

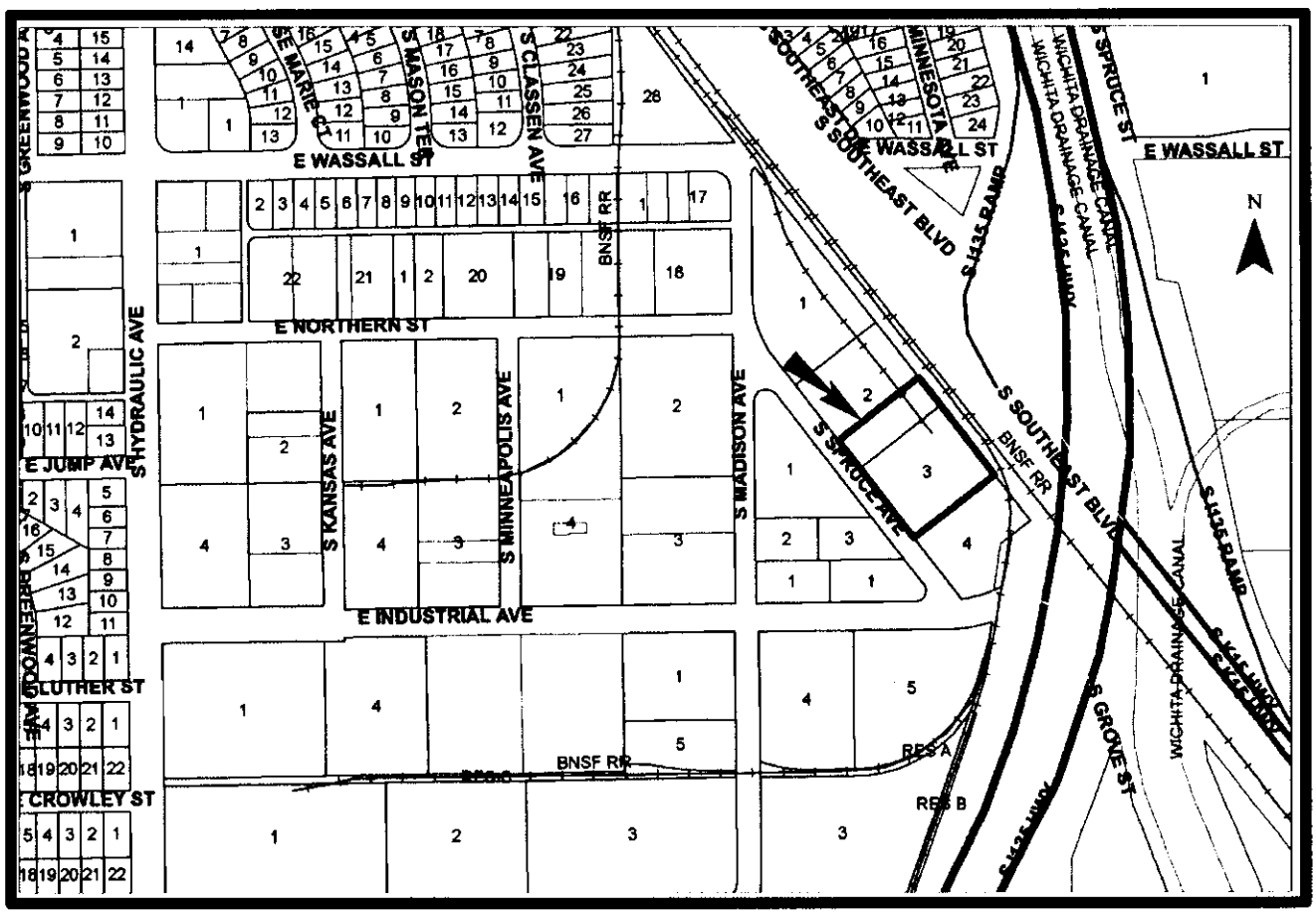
APPLICANT/AGENT: Michaelis Real Estate #9, LLC (L. Thomas Veatch) / Baughman Company, P. A. (Russ Ewy)

REQUEST: City BZA Variance of Section III-E.1.e(1)(g) of the Unified Zoning Code to increase the code-permitted five-foot encroachment to a 20-foot encroachment into a building setback

CURRENT ZONING: LI Limited Industrial

SITE SIZE: 2.35 acres

LOCATION: East of South Spruce Avenue, 380 feet north of East Industrial Avenue (one-quarter mile south of Wassall Street and one-half mile east of Hydraulic, 2914 South Spruce 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 subject property was platted as the Industrial Addition in 1951 with a 60-foot front building setback along South Spruce Avenue. The current Unified Zoning Code (UZC) requires only a 20-foot front setback in LI Limited Industrial zoning. The property is developed with a combination warehouse-office building that has a building footprint of approximately 35,636 square feet that does not meet Americans with Disability Act (ADA) accessibility requirements. It appears the building was constructed with the notion the building was primarily going to function as a loading and unloading facility for semi-tractor trailer trucks as most of the entrances to the building are elevated. There are two doorways at ground level on the west side of the building, but they do not provide ADA access. The other elevated entrances also do not provide ADA accessibility. Also, the building was constructed or remodeled so that different portions of the interior of the building may be leased to multiple users, which does not allow for direct internal connection from one part of the building's interior to another part of the building's interior. To further complicate ADA access to the building, the front of the building was built on the platted 60-foot setback. In order for the building to be occupied, the building and its individual leasable spaces must have ADA access.

The building's owner has a tenant that is attempting to locate in the middle section of the building; however, that space does not have ADA ramps. The applicant attempted to gain approval to locate ADA ramps at the rear of the building; however, that proposed location does not meet ADA requirements of providing direct access since the interior of the building is divided into separate lease spaces that either do not connect to one another or may provide only a circuitous connection that does not comply with the ADA requirement to provide a direct connection to the building's interior. The applicant is requesting the 20-foot encroachment in order to install ADA access not only to the middle section of the building that is currently under consideration, but also to be able to locate other ADA access to separate uses that may be established in other parts of the building.

The front 60-foot platted setback; the elevated doorway entrances and the non-connecting nature of the building's interior trigger the need for a variance to Section III-E.1.e(1)(g) of the Unified Zoning Code (UZC). Section III-E.1.e(1)(g) deals with "features allowed within setbacks," which states that "open, outside stairways, decks, entrance hoods, terraces, canopies and balconies that do not project more than five feet into a required front or rear setback nor more than two feet into a required side setback." It has been determined that a variance to allow an increase from five feet to 20 feet encroachment into the front required building setback is the fastest means to resolve the buildings ADA accessibility issue.

Lots located north, south and west of the subject site are also part of the Industrial Addition, are also zoned LI and also have 60-foot front setbacks. The subject site backs up to railroad tracks. The lots within the addition are developed with uses similar to the applicants or are vacant. North Spruce Avenue has 60 feet of full right-of-way and is paved.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Single-family residences
SOUTH:	LI	Single-family residences
EAST:	unzoned right-of-way	Railroad tracks, Southeast Boulevard
WEST:	LI	Single-family residences

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

UNIQUENESS: It is staff's opinion that the sixty-foot platted front setback found in the Industrial Addition is excessive and somewhat unique when compared to the current zoning code setback requirement of 20 feet.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance would not adversely affect the rights of adjacent property owners. The property is located on a somewhat isolated block that is separated from the rest of the subdivision by South Spruce Avenue, which is a short one-block long street segment that "Y's" off of the longer north-south South Madison Avenue. South Madison Avenue can be viewed as a dividing line between the property served by South Spruce Avenue and the remainder of the Industrial Addition located further west.

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 does not appear to be able to provide the required ADA access, which would significantly reduce the buildings value and usefulness.

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. Compliance with ADA accessibility is a significant public interest activity.

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. Building setbacks are intended to ensure separation between structures and the public right-of-way. In this case, reduction of the setback by 20 feet leaves 40 feet of setback, which is still in excess of that currently required by the UZC.

RECOMMENDATION: It is staff's opinion that the requested variance of the Zoning Code to reduce the front setback from 60 feet to 40 feet is appropriate for this site. 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 front building setback reduction shall apply to the west frontage along South Spruce Avenue. Any future building additions, not including open, outside stairways, decks, entrance hoods, terraces, canopies and balconies, stairs, ramps or other improvements required for compliance with ADA access, shall conform to the platted or UZC required setbacks unless a separate Administrative Adjustment or Variance is approved.
3. The addition 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.