CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

June 17, 2016

Ashby St. Outdoor LLC
c/o: David Mollhagen
3405 N. Hydraulic Avenue
Wichita, KS 67219

RE: BZA2016-00019 – City Variance to the sign code 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; generally located along the north side of East Kellogg, east of Ellison Street.

Dear Applicants:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **June 16, 2016.** 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,

Derrick Slocum
BZA Secretary

cc: Tom Stolz, MABCD
Mike Gable, MABCD
JR Cox, MABCD
Pete Meitzner, WCC II CM
Laura Rainwater, CL II

BZA RESOLUTION NO. BZA2016-00019

WHEREAS, Ashby St. Outdoor, LLC. c/o David Mollhagen (owner/applicant) pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, request 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; generally located along the north side of East Kellogg, east of Ellison Street.

Legal Description: That part of Lot 74, Linwood Acres Addition, Wichita, Sedgwick County, Kansas described as Commencing at the northwest corner thereof; thence S00 degrees 48'36"E along the west line of said Lot 74, 151.14 feet for the Point of Beginning; thence N88 degrees 17'50"E, 20 feet; thence S01 degree 33'31"E, 58.16 feet; thence S87 degrees 22'46"W, 20.77 feet to the W line of said Lot 74; th. N 00 degrees 48'36"W along said west line to the point of beginning.

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 June 16, 2016, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759 *et. seq.*; and

WHEREAS, the Board of Zoning Appeals has found 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.

WHEREAS, the Board of Zoning Appeals has found 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.

WHEREAS, the Board of Zoning Appeals has found 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.

WHEREAS, the Board of Zoning Appeals has found 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.

WHEREAS, the Board of Zoning Appeals has found 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.

WHEREAS, each of the five conditions required by Kansas Statutes Annotated 12-759 *et. seq.*, are found to be present for a variance to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759 *et. seq.*, request 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; generally located along the north side of East Kellogg, east of Ellison Street.

Legal Description: That part of Lot 74, Linwood Acres Addition, Wichita, Sedgwick County, Kansas described as Commencing at the northwest corner thereof; thence S00 degrees 48'36"E along the west line of said Lot 74, 151.14 feet for the Point of Beginning; thence N88 degrees 17'50"E, 20 feet; thence S01 degree 33'31"E, 58.16 feet; thence S87 degrees 22'46"W, 20.77 feet to the W line of said Lot 74; th. N 00 degrees 48'36"W along said west line to the point of beginning.

The variance is hereby <u>GRANTED</u>, 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.

ADOPTED AT WICHITA, KANSAS, this 16th Day of June, 2016.

~~BZA Board Chair, David Dennis~~
Lawell Richardson
BZA Board Chair Pro-tem

ATTEST:

Derrick Slocum
Asst. BZA Secretary

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. 1
June 16, 2016

SECRETARY'S REPORT

CASE NUMBER: BZA2016-00019

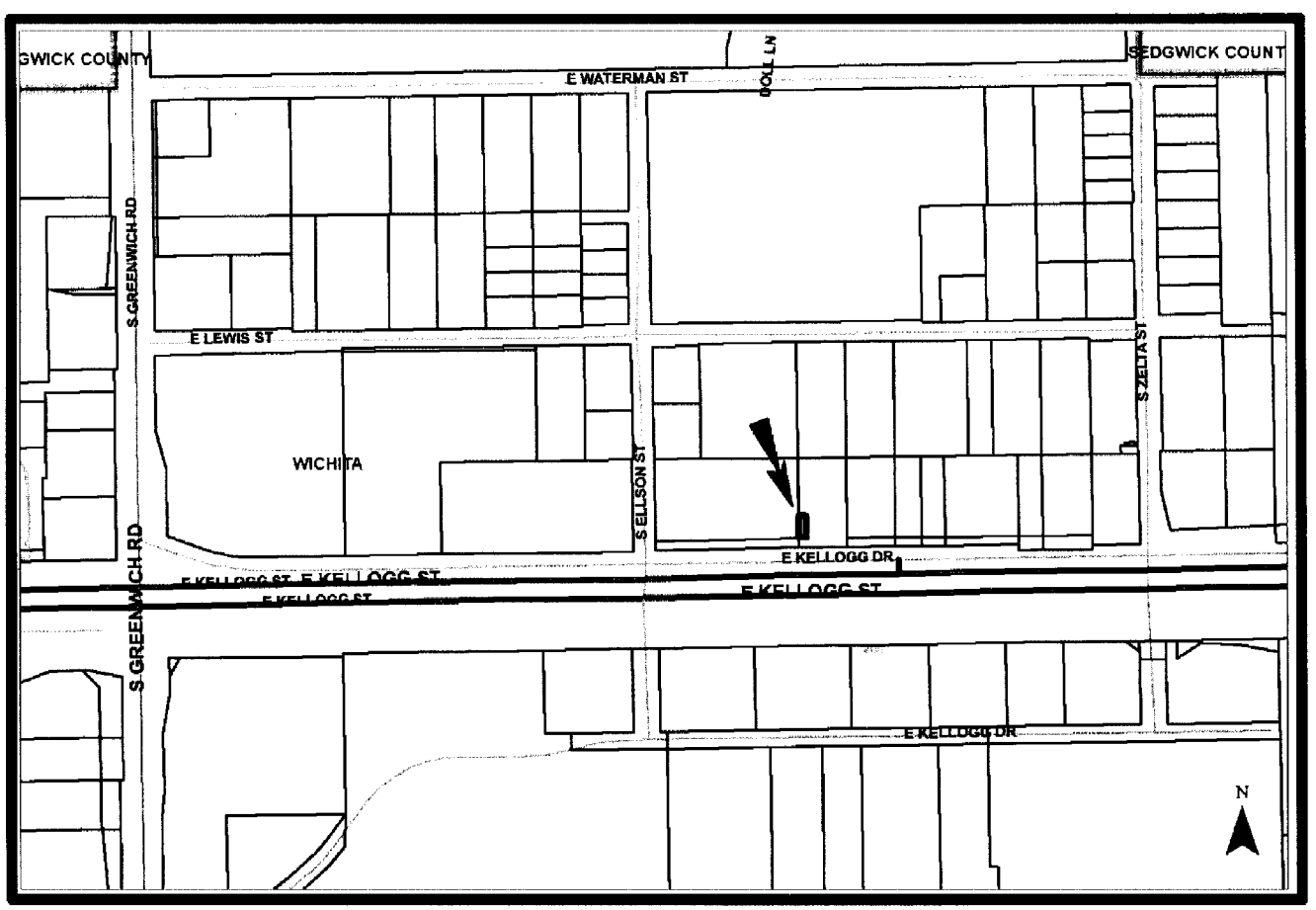
APPLICANT/AGENT: Ashby St. Outdoor, LLC. c/o David Mollhagen (agent/owner/applicant)

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.