CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

November 29, 2006

Clear Channel Outdoor Inc.
Attn: David Mollhagen
3405 N Hydraulic
Wichita KS 67219

RE: BZA2006-00078 City variance to permit offsite sign at the northeast corner of Rock and Kellogg

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **November 28, 2006.** This resolution reflects the official action of the Board. It is forwarded to you for your information and files.

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

Sincerely,

Jess McNeely, BZA Secretary
Current Plans Division

JM/ya

Cc Greg Ferris, PO Box 573, Wichita, KS 67219
Sharon Dickgrafe, Law Dept, 1-132
Herb Shaner, OCI, 1-72
Susan Schlapp, WCC District II, 1-13
City of Wichita, John Philbrick, Mail Stop 1-134

BZA RESOLUTION NO. 2006-00078

WHEREAS, The City of Wichita (owner), and Clear Channel Outdoor, Inc. c/o David Mollhagen (applicant); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests two variances: 1. Variance to the Sign Code section 24.04.222(2) to allow a second off-site sign with less than 3000 linear feet of "LC" Limited Commercial zoning within one mile. 2. Variance to the Sign Code section 24.04.222(3) to increase the permitted size of an off-site sign along an arterial street from 300 square feet to 672 square feet in "LC" Limited Commercial zoning.

The East 44 feet of Lot 2 and the East 44 feet of the South 75 feet of Lot 3 and the South 20 feet of the North 40 feet of Lot 3, Clemons Addition to Wichita, Sedgwick County, Kansas, generally north of Kellogg East of Rock Rd at 8018 E Kellogg.

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 November 28, 2006, 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 the variance arises from such condition which is unique, inasmuch as the property was purchased and altered for an expressway, eliminating the original off-site sign. It is also unique in that City officials agreed to continued off-site sign use, and off-site sign regulations changed before the sign was replaced.

WHEREAS, the Board of Zoning Appeals has found that the granting the requested variance would not adversely affect the rights of adjacent property owners, as immediately surrounding properties are commercial uses at a major intersection of an arterial street and an expressway. Likewise, the proposed sign will no more affect adjacent property than the off-site sign which existed at this location for many years. Likewise, nearby residential zoning and development is greater than 300 feet from the proposed sign site. 300 feet is the Sign Code minimum separation distance between off-site signs and residential property.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the zoning regulations would constitutes an unnecessary hardship upon the applicant. The applicant's original off-site sign was removed because of a public need to expand Kellogg. Interim changes in the Sign Code would prohibit an off-site sign at this location, and would significantly reduce the size of the applicant's original sign.

WHEREAS, the Board of Zoning Appeals has found that the requested variance would not adversely affect the public interest, as the proposed off-site sign will have no more impact on the public than the original permitted sign at this location.

WHEREAS, the Board of Zoning Appeals has found that granting the requested variance would not oppose the general spirit and intent of the Sign Code as the original billboard at this site met the sign regulations when it was constructed, and regulations do make provisions for legal non-conforming use rights. In

this case, expressway expansion/construction prevented the applicant from maintaining legal non-conforming use rights.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, a variance to the Sign Code section 24.04.222(2) to allow a second off-site sign with less than 3000 linear feet of "LC" Limited Commercial zoning within one mile; and a variance to the Sign Code section 24.04.222(3) to increase the permitted size of an off-site sign along an arterial street from 300 square feet to 672 square feet in "LC" Limited Commercial zoning, on property legally described as follows:

The East 44 feet of Lot 2 and the East 44 feet of the South 75 feet of Lot 3 and the South 20 feet of the North 40 feet of Lot 3, Clemons Addition to Wichita, Sedgwick County, Kansas, generally north of Kellogg East of Rock Rd at 8018 E Kellogg.

The variances are hereby GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the the variance approval, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recomendations to staff regarding enforcement of conditions.
4. The sign shall comply with all other existing conditions of the City of Wichita Sign Code.

ADOPTED AT WICHITA, KANSAS, this 28th Day of November 2006.

C. Bickley Foster
BZA Board Chair, Bickley Foster

ATTEST:

Jess McNeely, BZA Secretary

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. _____
November 28, 2006

SECRETARY'S REPORT

CASE NUMBER: BZA2006-78

OWNER/APPLICANT: City of Wichita (Owner); Clear Channel Outdoor, Inc c/o David Mollhagen (Applicant)

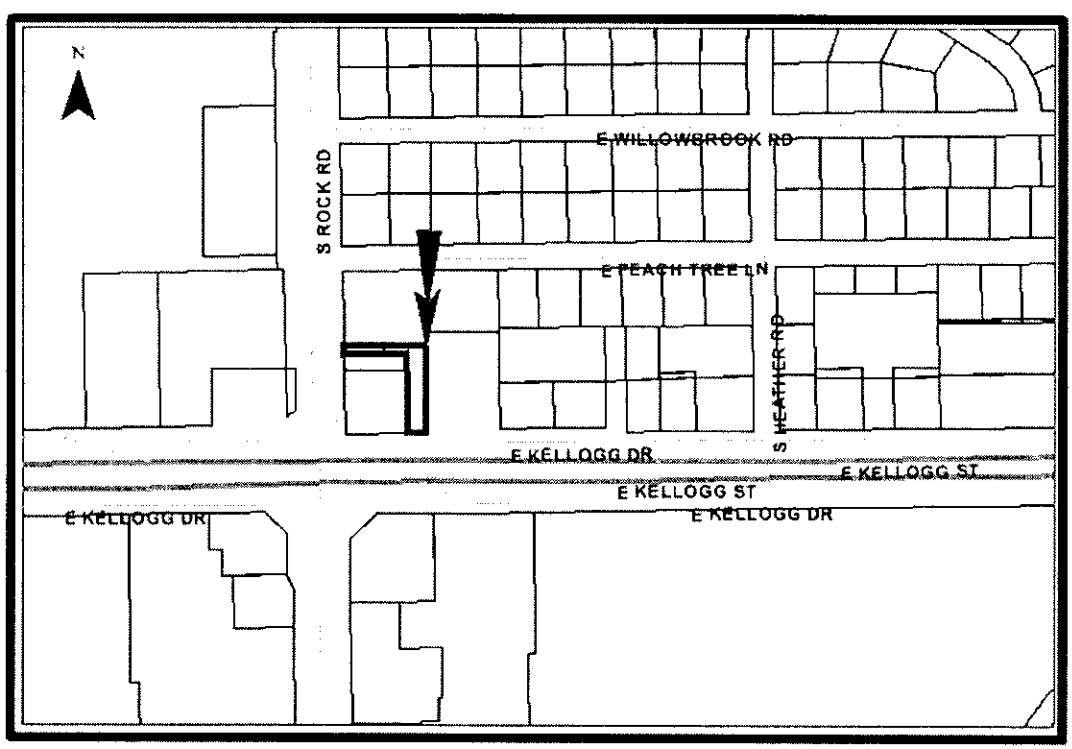
AGENT: Greg Ferris (Agent)

REQUEST: 1. Variance to the Sign Code section 24.04.222(2) to allow a second off-site sign with less than 3000 linear feet of "LC" Limited Commercial zoning within one mile.
2. Variance to the Sign Code section 24.04.222(3) to increase the permitted size of an off-site sign along an arterial street from 300 square feet to 672 square feet in "LC" Limited Commercial zoning.

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: 0.01 Acres

LOCATION: North of Kellogg and east of Rock Road. The proposed sign would be along the Rock Road frontage.



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 requested off-site sign is to replace a sign condemned by the City of Wichita for the Rock Road overpass, which will be constructed over Kellogg. As the City acquired this property for Kellogg right of way, an agreement in 2002 gave the applicant the right to replace the sign on this property. The sign could not be physically replaced until site demolition took place. During the interim time, the Sign Code was revised (in 2005) to limit off-site signs along arterials in LC zoning to 300 square feet, and to exclude property within Community Unit Plans (CUPs) from counting towards the linear feet of frontage required for an off site sign in LC zoning.

The application area is east of the Town East Mall, which is a CUP for a half-mile along Rock. This mile has an existing additional off-site sign at the Douglas intersection. This mile has over 3000 linear feet of LC zoning, the minimum required for a second off-site sign within a mile. However, property within CUPs (which cannot count towards the linear foot requirement) accounts for all but 475 feet of the LC zoning within this mile along Rock. The applicant does not have legal non-conforming use rights to the previous sign, as the time without a sign on the site exceeds code time requirements for retaining non-conforming use rights.

ADJACENT ZONING AND LAND USE:

NORTH	"LC"	Retail commercial
SOUTH	"LC"	Limited access freeway, retail commercial
EAST	"LC"	Vacant commercial, retail commercial
WEST	"LC"	Regional shopping mall

UNIQUENESS: It is staff's opinion that this property is unique, as the property was purchased and altered for an expressway, eliminating the original off-site sign. It is also unique in that City officials agreed to continued off-site sign use, and off-site sign regulations changed before the sign was replaced.

ADJACENT PROPERTY: It is staff's opinion that the requested variance will not adversely affect the rights of adjacent property owners, as immediately surrounding properties are commercial uses at a major intersection of an arterial street and an expressway. Likewise, the proposed sign will no more affect adjacent property than the off-site sign which existed at this location for many years. Likewise, nearby residential zoning and development is greater than 300 feet from the proposed sign site. 300 feet is the Sign Code minimum separation distance between off-site signs and residential property.

HARDSHIP: It is staff's opinion that the strict application of sign regulations would constitute an unnecessary hardship upon the applicant. The applicant's original off-site

sign was removed because of a public need to expand Kellogg. Interim changes in the Sign Code would prohibit an off-site sign at this location, and would significantly reduce the size of the applicant's original sign.

PUBLIC INTEREST: It is staff's opinion that the requested variance would not adversely affect the public interest, as the proposed off-site sign will have no more impact on the public than the original permitted sign at this location.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance would not oppose the general spirit and intent of the Sign Code as the original billboard at this site met the sign regulations when it was constructed, and regulations do make provisions for legal non-conforming use rights. In this case, expressway expansion/construction prevented the applicant from maintaining legal non-conforming use rights.

RECOMMENDATION: Should the Board determine that the conditions necessary to grant the variance exist, then the Secretary recommends approval of a variance to the Sign Code section 24.04.222(2) to allow a second off-site sign with less than 3000 linear feet of "LC" Limited Commercial zoning within one mile. And, the Secretary recommends approval of a variance to the Sign Code section 24.04.222(3) to increase the permitted size of an off-site sign along an arterial street from 300 square feet to 672 square feet in "LC" Limited Commercial zoning. The Secretary recommends that these variances be GRANTED subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the the variance approval, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recomendations to staff regarding enforcement of conditions.