CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

08/28/2008

John Wheeler
10301 Bella Vista
Wichita, KS 67212

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

RE: BZA2008-31 City Variance of the Sign Code to permit an off-site billboard in CBD Central Business District zoning, and variance to permit more off-site billboards in a mile than permitted by the Sign Code, generally located west of Washington and south of Waterman.

Dear Applicants:

The City Board of Zoning Appeals on heard the above request on August 26, 2008. The action of the Board was to deny both variance requests. Unless this action is appealed to the district court 30 days, the action of the BZA will be considered final.

This is a reminder that the zoning adjustment signs should now be removed from the property. If you have any questions concerning this matter, please call our office at 268-4421.

Sincerely,

Jess McNeely, AICP
BZA Secretary
Current Plans Division

JM/ya

Cc Sharon Dickgrafe, Law Dept, 1-132
Herb Shaner, OCI, 1-72
Lavonta Williams, WCC District I, 1-13
Kurt Schroeder, OCI, 1-72
JR Cox, OCI, 1-72

BOARD OF ZONING APPEALS
WICHITA, KANSAS

AGENDA ITEM NO. _____
August 26, 2008

SECRETARY'S REPORT

CASE NUMBER: BZA2008-31

OWNER/APPLICANT: John Wheeler (Owner)

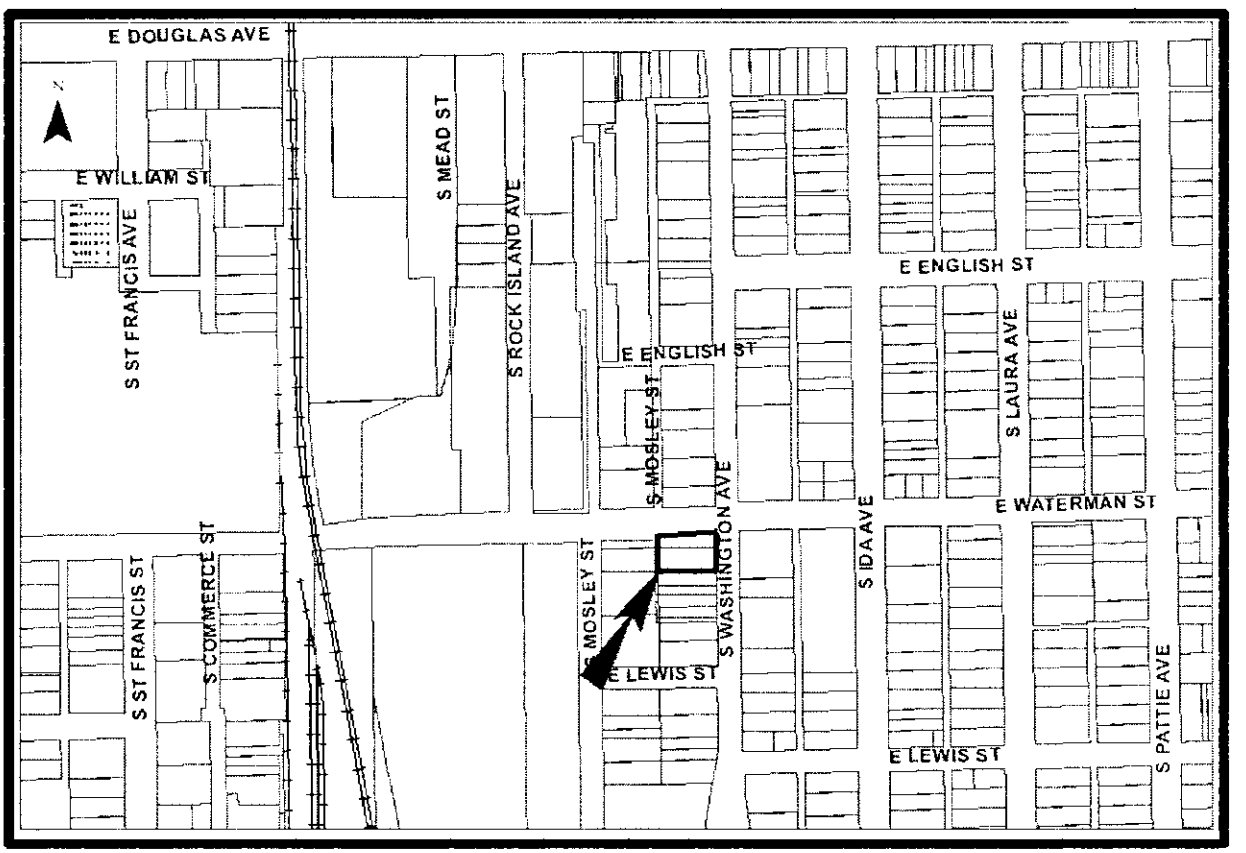
AGENT: Baughman PA c/o Russ Ewy (Agent)

REQUEST: 1. Variance to the Sign Code section 24.04.197 to allow an off-site sign in CBD Central Business District zoning.
2. Variance to the Sign Code section 24.04.222(2) to allow more than five off-site signs within one mile.

CURRENT ZONING: "CBD" Central Business District

SITE SIZE: 0.2 acres

LOCATION: South of Waterman and west of Washington. The proposed two-sided sign would be oriented east-west, for visibility primarily from Washington Ave. traffic.



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 wishes to construct a 300 square-foot (10x30) off-site billboard sign on a site developed with an auto service business. The proposed sign would have LED technology, would be 38 feet tall, and would be placed above an existing building (see the attached applicant's site plan and elevation graphic). The CBD Central Business District ("CBD") zoning does not permit off-site signs. This mile on Washington (between Kellogg and Central) already has five off-site signs; therefore another off-site sign would exceed the Sign Code limitation of five off-site signs in a mile. The Sign Code specifies that a mile is measured between section lines, which exist at Kellogg and Central in this situation. Because of these two issues, the applicant requests a variance of the Sign Code for an off-site sign.

The City rezoned this site from LI Limited Industrial ("LI") to CBD in 2005 as part of a larger expansion of CBD zoning. The LI zoning district permits off-site signs, and the applicant could have requested a zone change back to LI through the Metropolitan Area Planning Commission (MAPC). However, the issue of more than five off-site signs in a mile would still require a variance. Of the five existing off-site signs in this mile, one exists approximately 900 feet south of this site, and the other four exist over 1,800 feet north of the site, north of Douglas (see the attached area graphic).

The application area is south of Waterman and west of Washington; the proposed two-sided sign would be oriented east-west, for visibility primarily from Washington. Properties north, south, and west of this site are also zoned CBD. Washington became the eastern boundary of CBD zoning in this area, east of this site (across Washington) is zoned LI. Properties north and west of this site are developed with warehouse and office uses. South of the site is another auto service business, and east of the site is developed with offices, wholesaling and more warehousing. The application area is approximately 1000 feet southeast of the Sedgwick County Downtown Arena Site, which has stimulated interest and development in the area. The application area is not within the Arena Neighborhood Plan, as the eastern boundary is the railroad tracks and Santa Fe Street. The Arena Neighborhood Plan does not address off-site signs outside the plan boundaries.

ADJACENT ZONING AND LAND USE:

NORTH	CBD	Warehousing, office
SOUTH	CBD	Auto service, manufacturing, warehousing
EAST	CBD	Offices, wholesaling, warehousing
WEST	CBD	Warehousing, office

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

UNIQUENESS: On the first variance request, staff is of the opinion that this property is unique, as the property was rezoned by the City and not the owner from LI (which permits off-site signs) to CBD (which prohibits off-site signs). However, this uniqueness would also apply to

other property owners in the immediate area where CBD zoning was expanded from the railroad tracks eastward to Washington.

On the second variance request, staff is of the opinion that this property is not unique regarding a request to exceed five off-site signs in one mile. Most of the off-site signs in this mile are over 1,800 feet north of this site; the Sign Code does not address this separation, but simply limits the number of signs in a given mile. Two of the signs north of this site do not meet the Sign Code required 330-foot separation. However, if these two signs did meet the 330-foot Sign Code separation, the separation of all signs in this mile from the application area would not substantially change. Therefore staff does not feel that the distance separation from other signs in this mile makes the property unique warranting a variance.

ADJACENT PROPERTY: It is staff's opinion that the requested variances would not adversely affect the rights of adjacent property owners, as immediately surrounding properties are developed with warehousing, auto service, and office uses that would not be negatively affected by an off-site sign. No residential development or zoning exists within view of the proposed sign.

HARDSHIP: On the first variance request, staff is of the opinion that the strict application of sign regulations would not constitute an unnecessary hardship upon the applicant. The applicant does not have a self-imposed hardship, as the property was rezoned by the City and not the owner from LI to CBD, but all surrounding CBD zoned properties are under the same restrictions prohibiting billboards.

On the second variance request, staff is of the opinion that the strict application of sign regulations would not constitute an unnecessary hardship upon the applicant. The Sign Code applies evenly across the City jurisdiction, and the fact that off-site sign development rights are now depleted in this mile is not a hardship unique to this property. The property is viably used and will continue to be viably used under CBD zoning without off-site signage.

PUBLIC INTEREST: It is staff's opinion that the requested variances may not adversely affect the public interest, as the proposed off-site sign would not necessarily detract from surrounding development. However, the Wichita City Council approved a zone change to CBD in this area, making Washington the east boundary of the CBD district, demonstrating that it is in the public interest to allow CBD uses and restrictions in this area – the edge of the CBD and an entry into the Arena Neighborhood.

The Wichita City Council adopted the Sign Code, determining that off-site signs in the CBD district are not in the public interest, and that more than five off-site signs in one mile are not in the public interest. Granting the requested variances could negatively affect the public interest by setting a precedent that could result in more off-site signs than intended by the code at other locations within the city.

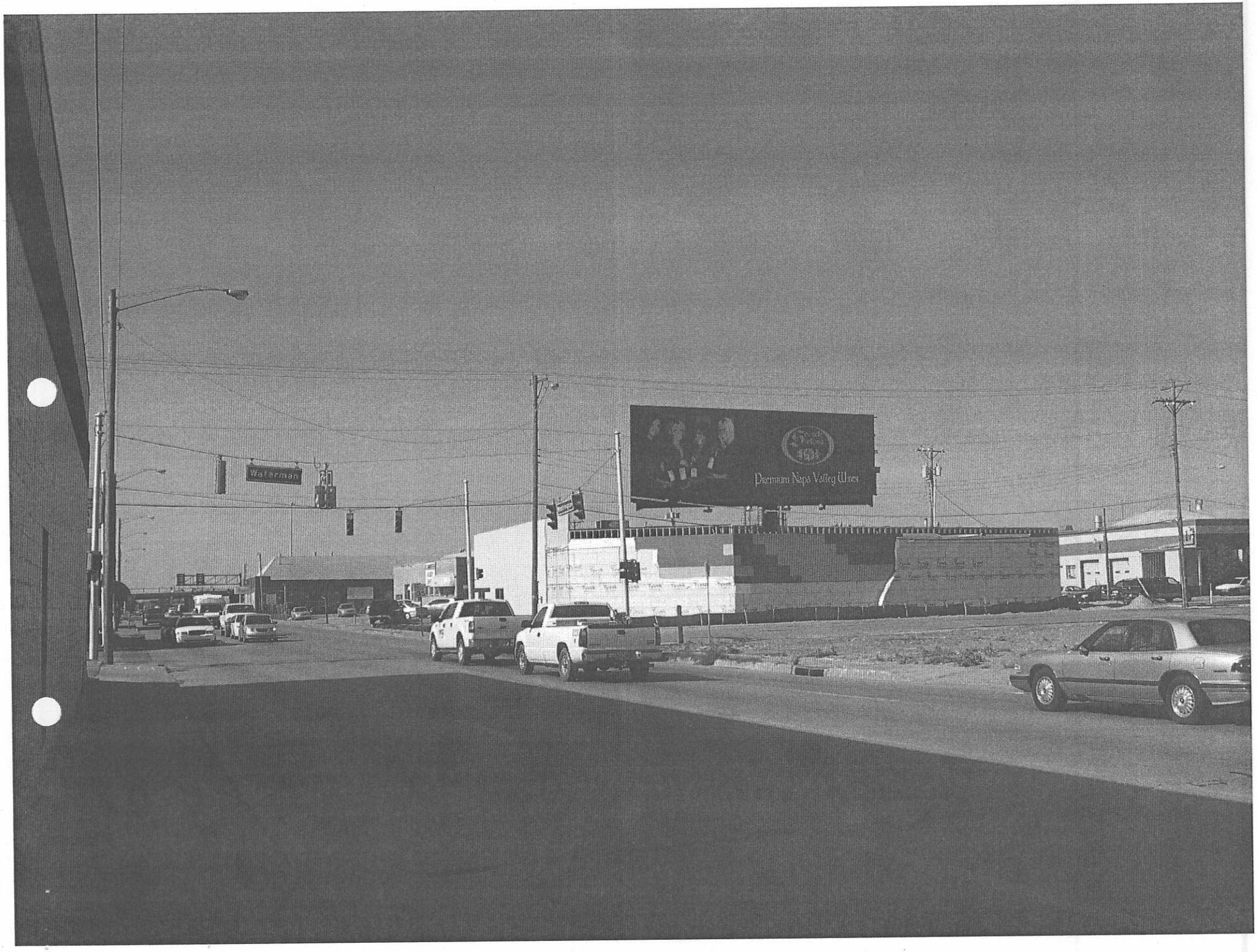
SPIRIT AND INTENT: On the first variance request, staff is of the opinion that granting the variance would oppose the general spirit and intent of the Sign Code. The intent of the code is

to prohibit off-site signs in CBD zoning, and this location was determined appropriate for CBD zoning.

On the second variance request, staff is of the opinion that granting the variance would oppose the general spirit and intent of the Sign Code. The restriction of five off-site signs in one mile is meant to limit the number of signs in that mile, and thereby prevent sign clutter and protect visual qualities. A variance to permit more than five off-site signs in this mile would be contrary to the spirit and intent of this limitation in the Sign Code.

RECOMMENDATION: It is staff's opinion that all the conditions necessary for granting both variances do not exist. The Secretary recommends that the requested variance to the Sign Code section 24.04.197 to allow an off-site sign in CBD Central Business District zoning be DENIED. And, The Secretary recommends that the requested variance to the Sign Code section 24.04.222(2) to allow more than five off-site signs within one mile be DENIED. If, however, the Board should determine that all the conditions necessary to grant both variances exist, then the Secretary recommends that the variances be subject to the following conditions:

1. The off-site sign and location shall be in substantial conformance with the graphics submitted with this application.
2. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the approval of the variances, unless such time period is extended by the BZA.
3. The above conditions are subject to enforcement by any legal means available to the City of Wichita.


Waterman
Premium Napa Valley Wines

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