



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

January 28, 2004

Ralph Shaver
Cheryl M. Shaver
1662 N. Chambers
Wichita, KS 67212

RE: BZA2003-00069 – Variance to Section 24.04.200 (g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River on property zoned “GC” General Commercial. Generally located north of MacArthur and east of I-135. (District III)

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on January 27, 2004, this resolution reflects the official action of the Board to grant your requests and sets out the conditions of approval. 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,

Scott Knebel
Senior Planner

SK/rs

Cc: Bralton Outdoor Advertising, %Jeff Cowan, 4307 SW 30th Street, Topeka, KS 66614
Greg Ferris, Ferris Consulting, P O Box 573, Wichita, KS 67201
Phil Lambke, WCC, District III, Mail Stop 1-13
Sharon Dickgrafe, Law Department, Mail Stop 1-132
Herb Shaner, OCI, 1-72

BZA RESOLUTION NO. 2003-00069

WHEREAS, Ralph and Cheryl Shaver (Owner); Bralton Outdoor Advertising, %Jeff Cowan (Applicant); Ferris Consulting, %Greg Ferris (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section 24.04.200 (g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River on property zoned "GC" General Commercial legally described as follows:

Lot 1, Shaver 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located north of MacArthur and east of I-135.

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 January 27, 2004, 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. It is the opinion of the Board that this property is unique, inasmuch as the property is developed with a billboard for which a permit was erroneously issued, and the property would otherwise be permitted a billboard where it not for the code section from which the variance is requested.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the general vicinity without any noticeable detrimental impacts on adjacent properties.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be removed will result in significant expense and lost of income to the applicant without any corresponding benefit to the public good.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from the Arkansas River. Since there are no public improvements along the river in this vicinity and the view of the billboard from the river corridor is extremely limited, the principles of public interest will not be adversely impacted by granting the variance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for not removing an erroneously permitted billboard will provide a reasonable balance with the visual qualities of the community.

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.

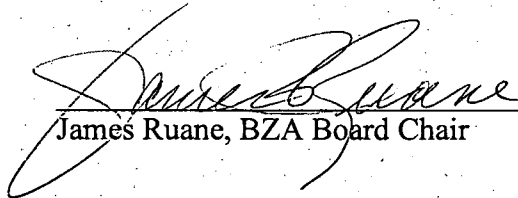
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section 24.04.200 (g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River on property zoned "GC" General Commercial and legally described as follows:

Lot 1, Shaver 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located north of MacArthur and east of I-135.

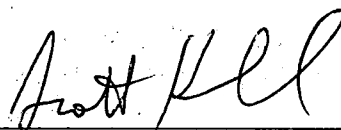
The variance is hereby GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that it shall be permitted on the subject property a minimum of 414 feet from the bank line of the Arkansas River.
2. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 27th DAY of JANUARY, 2004.


James Ruane, BZA Board Chair

ATTEST:


Scott Knebel, BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2003-00069

OWNER/APPLICANT: Ralph and Cheryl Shaver (Owner); Bralton Outdoor Advertising c/o Jeff Cowan (Applicant)

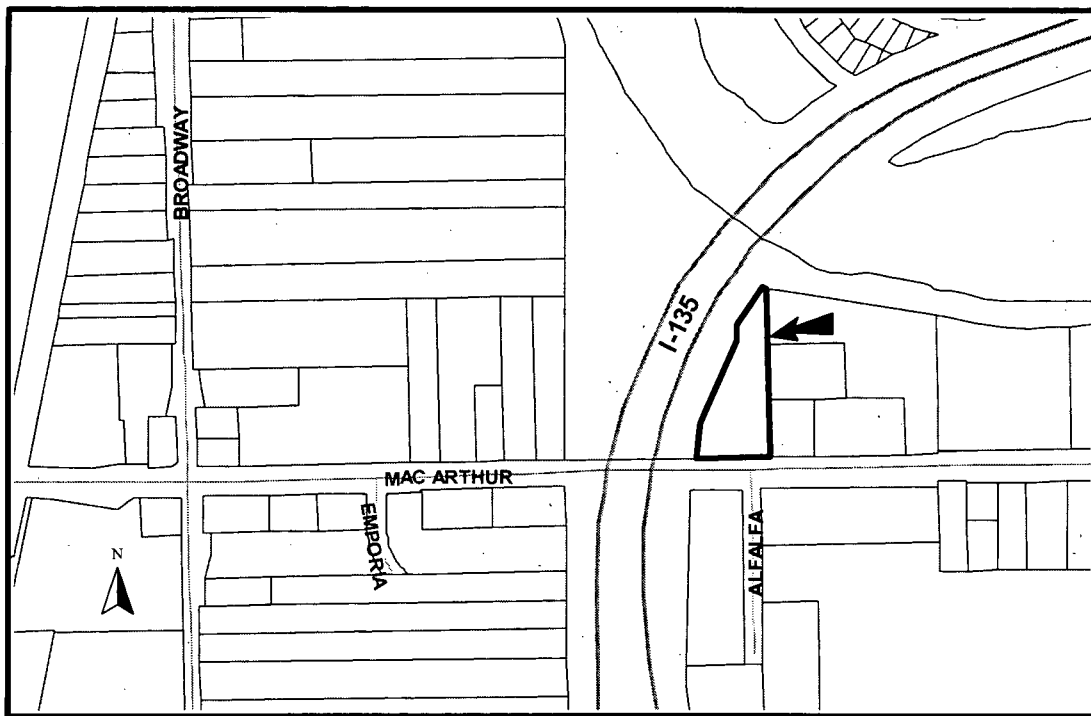
AGENT: Ferris Consulting c/o Greg Ferris

REQUEST: Variance to Section 24.04.200(g) of the Sign Code to permit an off-site sign to be located within 414 feet of the Arkansas River

CURRENT ZONING: "GC" General Commercial

SITE SIZE: 2.22 Acres

LOCATION: North of MacArthur and east of I-135



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 is requesting a variance to Section 24.04.200(g) of the Sign Code to permit an existing off-site sign (billboard) to remain located within 414 feet of the Arkansas River. The subject property is located north of MacArthur and east of I-135 at 1002 E. MacArthur. The subject property is zoned "GC" General Commercial and is used as an outdoor storage facility.

The applicant received a permit from the Office of Central Inspection in October 2002 to construct a 14-foot by 48-foot billboard on the western edge of the subject property that faces the direction of travel along I-135. Section 24.04.200(g) of the Sign Code prohibits billboards within 660 feet of the bank line of the Arkansas River, which borders the northern edge of the subject; however, the billboard is located only 414 feet from the bank line of the Arkansas River. Also, Section 24.04.222.3.d. prohibits a billboard within 330 feet of another billboard, and the nearest billboard is located 294 feet south of the point on the subject property that is 660 feet from the bank line of the Arkansas River. Therefore, the Sign Code does not permit a billboard on the subject property, and the permit for the billboard should not have been issued. The applicant has requested a variance to allow the existing billboard to remain located within 414 feet of the Arkansas River. The applicant submitted the attached justification outlining how the request meets the criteria for the granting of a variance.

ADJACENT ZONING AND LAND USE:

NORTH	R.O.W.	Arkansas River
SOUTH	"B"	Mobile home park
EAST	"GC"	Warehousing, mini-storage
WEST	R.O.W.	I-135

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is developed with a billboard for which a permit was erroneously issued, and the property would otherwise be permitted a billboard where it not for the code section from which the variance is requested.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the general vicinity without any noticeable detrimental impacts on adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be removed will result in significant expense and lost of income to the applicant without any corresponding benefit to the public good.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from the Arkansas River. Since there are no public improvements along the river in this vicinity and the view of the billboard from the river corridor is extremely limited, the principles of public interest will not be adversely impacted by granting the variance.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for not removing an erroneously permitted billboard will provide a reasonable balance with the visual qualities of the community.

RECOMMENDATION: It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that it shall be permitted on the subject property a minimum of 414 feet from the bank line of the Arkansas River.
2. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.