



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

April 30, 2004

Brad Snow
Kansas and Oklahoma Railroad
315 W. 3rd
Pittsburg, KS 66762

RE: BZA2004-00023 – Variances for a billboard to increase the permitted height from 50 feet to 71.3 feet and to eliminate the front and west side setback requirements on property zoned “LI” Limited Industrial. Generally located south of I-235 and west of West Street. (District IV)

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on April 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: David Bressler, 425 W. New England Ave #500, Winter Park, FL 32789
Greg Ferris, Ferris Consulting, P O Box 573, Wichita, KS 67201
Mike Case, Attorney, 150 N. Main Ste 400, Wichita, KS 67202
Paul Gray, WCC, District IV, Mail Stop 1-13
Sharon Dickgrafe, Law Department, Mail Stop 1-132
Herb Shaner, OCI, 1-72
Pat Longwell, OCI, Mail Stop 1-72
Kurt Schroeder, OCI, Mail Stop 1-72

BZA RESOLUTION NO. 2004-00023

WHEREAS, Kansas and Oklahoma Railroad c/o Brad Snow (Owner); Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant); Ferris Consulting, c/o Greg Ferris; Mike Case (Attorney); pursuant to Section 2.12.590.B, Code of the City of Wichita, request variances for a billboard to increase the permitted height from 50 feet to 71.3 feet and to eliminate the front and west side setback requirements on property zoned "LI" Limited Industrial legally described as follows:

A tract of land lying in the Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas being more particularly described as follows: Commencing at the Southeast Corner of Lot 1, Block 1, Big Lake Addition, Wichita, Sedgwick County, Kansas; thence along the East line of said Lot 1 for a distance of 1232.86 feet to the Northeast corner of said Lot 1 to a point of beginning; thence North on said East line extended North for a distance of 8.00 feet to the intersection of the South line of Interstate 235 Highway right-of-way; thence Southeasterly along said Highway right-of-way for an arc length of 135.55 feet, a radius of 2112.04 feet, delta of 3 degrees 40'38" to the intersection of said Highway right-of-way and the right-of-way of the Missouri Pacific Railroad; thence South along the right-of-way line of the Missouri Pacific Railroad, said line being the West line of Mid Kansas Addition, Sedgwick County, Kansas, for a distance of 19.68 feet; thence West at right angles to said line for a distance of 100.00 feet to the East line of said Big Lake Addition; thence North along said East line to the point of beginning. Generally located south of I-235 and west of West Street.

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 April 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 would permit a billboard were it constructed in conformance with the height and setback requirements of the Sign Code; however, the applicant was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities in terms of height and setbacks could have been identified prior to construction, and the proposed billboard could have been constructed with a different height and setbacks.

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 adjacent properties are used primarily for industrial purposes and are located along an interstate freeway where billboards are common. The increased height and reduced setbacks for the billboard do not significantly increase the impacts of the billboard 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 the applicant relied upon an Office of Central Inspection interpretation that a permit was not required and constructed the billboard in good faith based on this written interpretation. Lowering the height and relocating the billboard outside the setbacks would entail significant expense to applicant in order to remedy an error by the Office of Central Inspection.

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 the billboard is not significantly out of scale and the setback encroachments do not detrimentally impact uses or projects of public interest.

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 the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

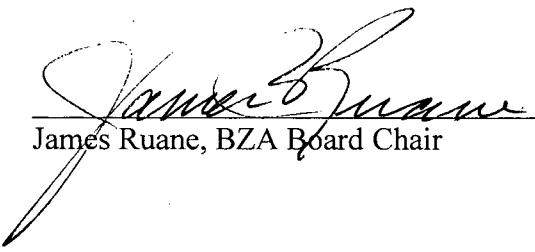
WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

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 variances be granted for a billboard to increase the permitted height from 50 feet to 71.3 feet and to eliminate the front and west side setback requirements subject to the billboard complying with all other regulations of the Sign Code on property zoned "LI" Limited Industrial described as follows:

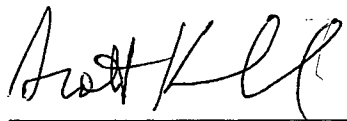
A tract of land lying in the Northeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th Principal Meridian, Sedgwick County, Kansas being more particularly described as follows: Commencing at the Southeast Corner of Lot 1, Block 1, Big Lake Addition, Wichita, Sedgwick County, Kansas; thence along the East line of said Lot 1 for a distance of 1232.86 feet to the Northeast corner of said Lot 1 to a point of beginning; thence North on said East line extended North for a distance of 8.00 feet to the intersection of the South line of Interstate 235 Highway right-of-way; thence Southeasterly along said Highway right-of-way for an arc length of 135.55 feet, a radius of 2112.04 feet, delta of 3 degrees 40'38" to the intersection of said Highway right-of-way and the right-of-way of the Missouri Pacific Railroad; thence South along the right-of-

way line of the Missouri Pacific Railroad, said line being the West line of Mid Kansas Addition, Sedgwick County, Kansas, for a distance of 19.68 feet; thence West at right angles to said line for a distance of 100.00 feet to the East line of said Big Lake Addition; thence North along said East line to the point of beginning. Generally located south of I-235 and west of West Street.

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


James Ruane, BZA Board Chair

ATTEST:


Scott Knebel, BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2004-00023

OWNER/APPLICANT: Kansas and Oklahoma Railroad c/o Brad Snow (Owner);
Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant)

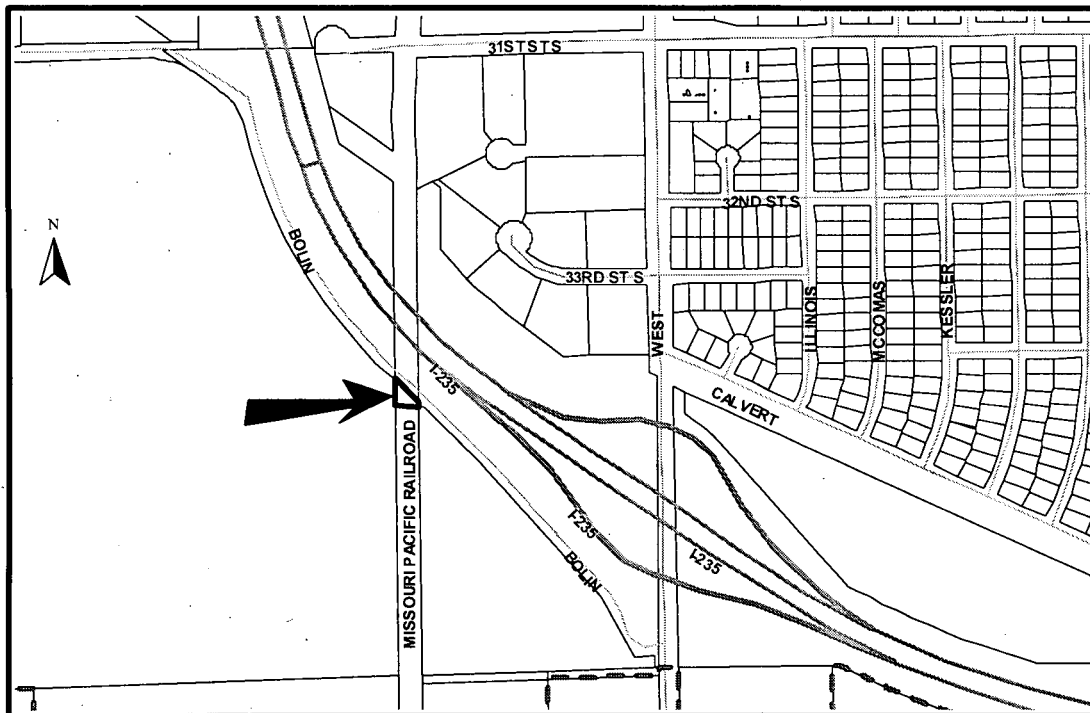
AGENT: Greg Ferris (Agent); Mike Case (Attorney)

REQUEST: Variances for a billboard to increase the permitted height from
50 feet to 71.3 feet and to eliminate the front and west side
setback requirements

CURRENT ZONING: "LI" Limited Industrial

SITE SIZE: 0.05 Acres

LOCATION: South of I-235 and west of West Street



JURISTDICTION: 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: On March 26, 2003, the Office Central Inspection issued the attached letter indicating that no sign permit was required to construct a billboard on the subject property, which is a portion of railroad right-of-way that is zoned "LI" Limited Industrial and is located south of I-235 and west of West Street. On June 17, 2003, the applicant sent the attached letter asking for confirmation that no sign permit was required, and on that same date, the Office of Central Inspection issued the attached letter confirming that no sign permit was required for the proposed billboard. The applicant subsequently constructed a billboard on the subject property. On September 5, 2003, the Office of Central inspection issued the attached letter indicating that previous correspondence regarding no sign permit being required was in error.

The billboard that was constructed on the subject property does not conform to the height and setback requirements of the Sign Code. Section 24.04.222.2. of the Sign Code limits the height of a billboard located adjacent to an elevated freeway to 14 feet above the top of the railing or barrier along the traffic deck. For the subject property, a billboard would be limited to 50 feet in height since the freeway railing is 36 feet in height. The billboard on the subject property is 71.3 feet in height, as illustrated on the attached sign elevation drawing; therefore, the applicant is seeking a variance to permit the increased height at which the billboard was constructed. Section 24.04.222.4. of the Sign Code requires billboards to meet all building setback requirements. For the subject property, a setback along the north property line of 20 feet is required, and a setback along the east and west property lines of either at least five feet or zero feet is required. The billboard is set back approximately two feet from both the north and west property lines, as illustrated on the attached site plan; therefore, the applicant is seeking a variance to permit the setbacks at which the billboard was constructed. The applicant submitted the attached letter dated March 22, 2004, that addresses how the request meets the criteria for granting the variances requested.

ADJACENT ZONING AND LAND USE:

NORTH	"LI"	Various industrial uses
SOUTH	"LI"	Various industrial uses
EAST	"LI"	Concrete plant
WEST	"MH"	Vacant

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property would permit a billboard were it constructed in conformance with the height and setback requirements of the Sign Code; however, the applicant was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities in terms of height and setbacks could have been identified prior to construction, and the proposed billboard could have been constructed with a different height and setbacks.

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

adjacent properties are used primarily for industrial purposes and are located along an interstate freeway where billboards are common. The increased height and reduced setbacks for the billboard do not significantly increase the impacts of the billboard 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 the applicant relied upon an Office of Central Inspection interpretation that a permit was not required and constructed the billboard in good faith based on this written interpretation. Lowering the height and relocating the billboard outside the setbacks would entail significant expense to applicant in order to remedy an error by the Office of Central Inspection.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the billboard is not significantly out of scale and the setback encroachments do not detrimentally impact uses or projects of public interest.

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 the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

RECOMMENDATION: Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variances for a billboard to increase the permitted height from 50 feet to 71.3 feet and to eliminate the front and west side setback requirements be GRANTED subject to the billboard complying with all other regulations of the Sign Code.

SITE EXHIBIT

INTERSTATE 235 HWY. AND BOLIN DRIVE SIGN LOCATION WICHITA, KANSAS

