



Wichita-Sedgwick County Metropolitan Area Planning Department

September 27, 2011

Thomas A. Krebs and John D. Krebs Jr
c/o MAXAC LLC, CO-CO, Inc.
9435 E. Central, Bldg. 200
Wichita, KS 67206

Michael E. Steven
6411 E. Kellogg
Wichita, KS 67218

Miracle Signs
Attn: Luke Lukens
3611 N. Broadway
Wichita, KS 67229

FILE COPY

RE: BZA2010-00007 – City Sign Code variance to increase the height of a sign from 26 feet nine inches to 55 feet, generally located on the southeast corner of Woodlawn and Kellogg.

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the City Board of Zoning Appeals on SEPTEMBER 27, 2011. 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,

Derrick Slocum, Associate Planner
Asst. Secretary to the BZA
Current Plans Division

cc: Jeff VanZandt, Law Dept, 1-132
Kurt Schroeder, Office of Central Inspections
Paul Hays, Office of Central Inspections
J R Cox, Office of Central Inspection
Pete Meitzner, CM District II, Mail Stop 1-13
Robert Kaplan, 301 N. Main Street, Suite 1600, Wichita, KS 67202
Randy Sparkman, 7825 Prestwick, Wichita, KS 67212
Ferris Consulting, Attn: Greg Ferris, PO Box 573, Wichita, KS 67201
City Hall • 10th Floor • 455 North Main • Wichita, Kansas 67202-1688

T 316.268.4421 F 316.268.4390

www.wichita.gov

BZA RESOLUTION NO. BZA2010-00007

WHEREAS, Thomas A. Krebs and John D. Krebs Jr c/o MAXAC LLC, CO-CO, Inc. (owner), Mike Steven (applicant), Robert Kaplan (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a sign code variance to Section 24.04.221(3) of the City of Wichita Sign Code to increase the height of a sign from 26-feet nine inches to 55-feet on property zoned LC Limited Commercial ("LC"); generally located at the southeast corner of Woodlawn and Kellogg.

Lot 1; Englewood 2nd Addition to Wichita, Sedgwick County, Kansas

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 September 27, 2011, 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 this property is unique in terms of signage visibility. The condition that is causing the variance request was created by the City of Wichita with the construction of Kellogg, turning it into a six-lane expressway with an underpass at the location of the subject site. The property is zoned LC and, up to the time of the Kellogg project, had adequate signage along Kellogg. As a result of the Kellogg underpass, the sign is not visible from Kellogg in time for someone to take the correct exit to access the applicant's business. The sign and other signs at the corner are visible along the access roads of Kellogg and Woodlawn, however, the construction of the underpass has cause the applicant's sign to lose up to half its visibility to the passing traffic on Kellogg.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the view of the signage will be indirect, since the signage will face east and west and nearby residential properties primarily are located primarily south and southwest of the subject property. Properties surrounding the site to the east and west are commercially zoned and developed along highway frontage. Also, other properties along Kellogg currently have taller signs than this requested sign height.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the car dealership is located in a heavily traveled, commercial area with limited access points to the dealership. Customers looking for the dealership cannot see current signage of 26 feet until it is too late to take the proper exit off of Kellogg. Additionally, other businesses along Kellogg have been granted variances or approved through zone changes or amendments to allow increased height for signs, which places a competitive hardship on the car dealership on the subject property.

WHEREAS, the Board of Zoning Appeals has found that the requested variance would not adversely affect the public interest at this location, as increased visibility of this sign will aid customers in finding the site. The requested sign height is appropriate relative to the sign heights along Kellogg.

WHEREAS, the Board of Zoning Appeals has found that the granting the requested variance would not be opposed to the general spirit and intent of the zoning and sign regulations. The sign height increase will make it more visible from Kellogg. The sign code intends for signs near elevated highways to be allowed increased height for sufficient visibility, this site is in a unique location with highway visibility without directly abutting an elevated highway. This variance request is consistent with Community Unit Plan amendments, zone changes and previous variances along Kellogg near this area.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, are found to be present for a variance to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a sign code variance to Section 24.04.221(3) of the City of Wichita Sign Code to increase the height of a sign from 26-feet nine inches to 55-feet on property zoned LC Limited Commercial ("LC"); generally located at the southeast corner of Woodlawn and Kellogg.

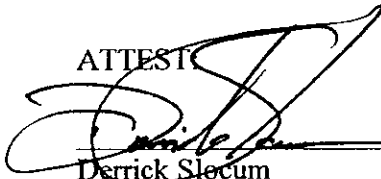
Lot 1; Englewood 2nd Addition to Wichita, Sedgwick County, Kansas


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

1. The sign shall be limited to a height of 55 feet above grade.
2. A revised site plan will be required reflecting the new height of the sign.
3. The signage shall be placed in the location that is in substantial conformance with the approved site plan.
4. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

ADOPTED AT WICHITA, KANSAS, this 27th Day of September, 2011.

ATTEST


Derrick Slocum
Assistant BZA Secretary


BZA Board Chair, Steve Anthimides

**BOARD OF ZONING APPEALS
WICHITA, KANSAS**

AGENDA ITEM NO. 32

First Hearing: March 23, 2010

Second Hearing: August 23, 2011 (Deferred)

Third Hearing: September 27, 2011

SECRETARY'S REPORT

CASE NUMBER: BZA2010-00007

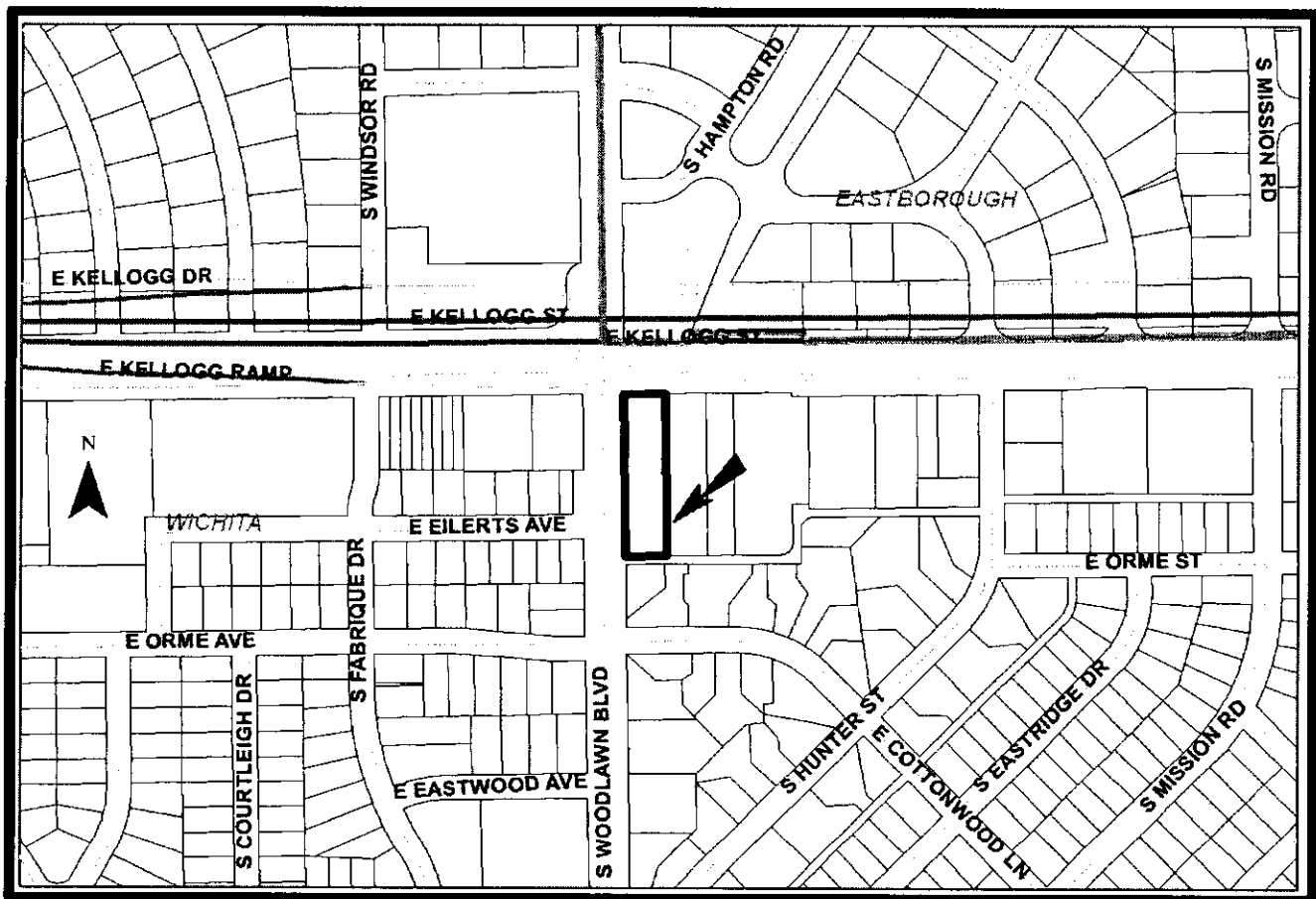
APPLICANT/AGENT: Thomas A. Krebs and John D. Krebs Jr c/o MAXAC LLC, CO-CO, Inc. (owner), Mike Steven (applicant), Miracle Signs (agent)

REQUEST: City Sign Code variance to increase the height of a sign from 26-feet nine inches to 55-feet

CURRENT ZONING: LC Limited Commercial ("LC")

SITE SIZE: 0.90 acres

LOCATION: Generally located at the southeast corner of Woodlawn and Kellogg.



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.

SUMMARY: This case was originally heard by the City of Wichita Board of Zoning Appeals (“BZA”) on March 23, 2010. During that meeting the BZA voted to deny the request of the applicant to increase the height of the on-site pole sign from 26-feet to 65-feet. The vote was 5-0 to deny the request based on the effect of an unusually high sign on the surrounding area and their concern for possibly setting a precedent for these types of signs near underpasses. The applicant appealed the decision of the BZA to the 18th Judicial District Court. The District Court, on May 23, 2011, found “that the matter should be remanded to the City of Wichita, Board of Zoning Appeals, for re-hearing at such date as is determined by the Defendant City of Wichita.” For the re-hearing, the applicant has revised their request for a lower sign height. The applicant is now requesting an increase to 55-feet instead of 65-feet.

The case was to be heard at the August 23, 2011 meeting, but the agent for the case requested a deferral to the next meeting so that more time could be spent discussing the request with staff and the applicant. It was deferred to the September 27, 2011 BZA hearing.

BACKGROUND: The applicant has requested a variance to increase the height of a sign at the southeast corner of Kellogg and Woodlawn Boulevard from 26-feet nine inches to 55-feet. The site is described as Lot 1; Eastridge Addition Replat currently zoned LC Limited Commercial (“LC”). The proposed sign is a dual panel sign with the bottom panel displaying the name of the business and the top panel displaying a continuous movement LED video board. Total size of the sign shown on the diagram is 232 square feet.

The Sign Code limits the height of onsite signs in the LC Limited Commercial (“LC”) zoning district to 25 feet, with the ability to increase the height by five feet by giving up sign rights to a second sign, based on sufficient frontage for spacing of 150 feet between sign locations. The applicant’s request limits the variance to Lot 1, Englewood 2nd Addition. However, this 0.87 acre lot is part of a larger zoning lot utilized for Mike Steven KIA dealership. The entire zoning lot, comprised of Lots 1-4 Englewood 2nd Addition plus the vacated right-of-way of Hampton Road, would have allowed a total of three sign locations. Currently, two separate signs are located on the site.

The current sign was stated by the applicant as being 26 feet nine inches in height. At this height, it would have been considered occupying a second sign location, but could have been a maximum of 30 feet in height without variance or Sign Code administrative adjustment. Additionally, a Sign Code administrative adjustment could have been sought by the applicant to increase the height of the sign by up to 20 percent or up to 36 feet.

The applicant stated that the condition requiring the variance was created by the City of Wichita, due to the construction of the Kellogg freeway. Kellogg is depressed adjacent to the site. The applicant has said it needs the variance to a height of 55 feet because it does not have as good of visibility as other signs on the far side of intersections in the direction of travel and because people need to be able to exit at interchange traveling at 60 miles an hour after they see the sign. At the depressed segments of the freeway, signs cannot be seen as well along the frontage road parallel to the site, especially on the inside lanes.

The property is zoned LC and is similar in use to other car dealership businesses along the south side of Kellogg. It is a KIA dealership. Other uses along the south side of Kellogg between Oliver and Rock Road are zoned mostly LC and include many car dealerships offering Buick, Chrysler, Dodge, GMC, Honda, Hyundai, KIA, Lincoln-Mercury, Mitsubishi, Nissan, Toyota, and used cars, plus a variety of other uses such as several hotels, restaurants, and furniture businesses. The property immediately to the west of Woodlawn is zoned LC and GO General Office (“GO”) and has a commercial center with retail and office uses; a billboard is located on this site. The property to the south is zoned B Multi-Family Residential (“B”) and is occupied by four-plex style apartments. The property to the north of Kellogg is located in the City of Eastborough and is the city’s park.

ADJACENT ZONING AND LAND USE:

NORTH	Eastborough zoning	Kellogg, park
SOUTH	B	Four-plex apartments
EAST	LC	Vehicle sales
WEST	LC, GO	Commercial center, office

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

UNIQUENESS: It is staff’s opinion that this property is unique in terms of signage visibility. The condition that is causing the variance request was created by the City of Wichita with the construction of Kellogg, turning it into a six-lane expressway with an underpass at the location of the subject site. The property is zoned LC and, up to the time of the Kellogg project, had adequate signage along Kellogg. As a result of the Kellogg underpass, the sign is not visible from Kellogg in time for someone to take the correct exit to access the applicant’s business. The sign and other signs at the corner are visible along the access roads of Kellogg and Woodlawn, however, the construction of the underpass has cause the applicant’s sign to lose up to half its visibility to the passing traffic on Kellogg.

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 the view of the signage will be indirect, since the signage will face east and west and nearby residential properties primarily are located primarily south and southwest of the subject property. Properties surrounding the site to the east and west are commercially zoned and developed along highway frontage. Also, other properties along Kellogg currently have taller signs than this requested sign height.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the car dealership is located in a heavily traveled, commercial area with limited access points to the dealership. Customers looking for the dealership cannot see current signage of 26 feet until it is too late to take the proper exit off of Kellogg. Additionally, other businesses along Kellogg have been granted variances or approved through zone changes or amendments to allow increased height for signs, which places a competitive hardship on the car dealership on the subject property.

PUBLIC INTEREST: It is staff’s opinion that the requested variance would not adversely affect the public interest at this location, as increased visibility of this sign will aid customers in finding the site. The requested sign height is appropriate relative to the sign heights along Kellogg.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance would not be opposed to the general spirit and intent of the zoning and sign regulations. The sign height increase will make it more visible from Kellogg. The sign code intends for signs near elevated highways to be allowed increased height for sufficient visibility, this site is in a unique location with highway visibility without directly abutting an elevated highway. This variance request is consistent with Community Unit Plan amendments, zone changes and previous variances along Kellogg near this area.

RECOMMENDATION: It is staff's opinion that the signage requested is appropriate for the intended purpose of relaying the location of the car dealership to potential customers. Should the Board determine that the five conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variance to permit a on-site pole sign at a height of 55-feet on the subject site's northwest corner be GRANTED, subject to the following conditions:

1. The sign shall be limited to a height of 55 feet above grade.
2. A revised site plan will be required reflecting the new height of the sign.
3. The signage shall be placed in the location that is in substantial conformance with the approved site plan.
4. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the variance granting, unless such time period is extended by the BZA.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.