



**Wichita-Sedgwick County Metropolitan Area Planning Department**

January 25, 2006

NDS Associates, LLC  
Norman H Glickman, Manager  
391 N Main Suite 1700  
Wichita, KS 67202

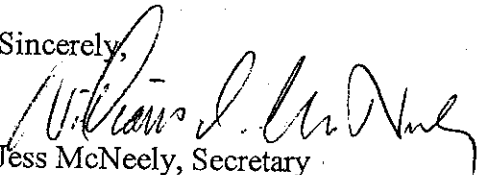
**RE: BZA2005-85 – Variance to Section 24.04.100 of the Sign Code to increase the height of a legal non-conforming off-site sign on property zoned “CBD” Central Business District to a height of 20 feet above the rail on Kellogg, increasing the permitted height from 41.6 feet to 49 feet. Generally located North of Kellogg and west of St Francis. (District I)**

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution adopted by the Board of Zoning Appeals on **January 24, 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.

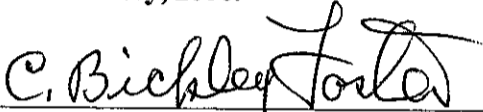
Sincerely,

  
Jess McNeely, Secretary  
Current Plans Division

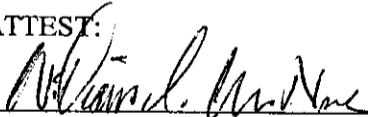
JM/ya

Cc: Clear Channel Outdoor, David Mollhagen, 3405 N. Hydraulic, Wichita, KS. 67219  
Ferris Consulting, Greg Ferris, PO Box 573, Wichita, KS. 67201  
Carl Brewer, District I, Wichita City Council 1-13  
Sharon Dickgrafe, Law Department, Mail Stop 1-132  
Herb Shaner, OCI, Mail Stop, 1-72

**ADOPTED AT WICHITA, KANSAS, this 24th DAY of January, 2006.**

  
\_\_\_\_\_  
BZA Board Chair, Bickley Foster

ATTEST:

  
\_\_\_\_\_  
Jess McNeely, BZA Secretary

**BZA RESOLUTION NO. 2005-00085**

**WHEREAS**, NDS Associates, LLC; and Clear Channel Outdoor Inc., c/o David Mollhagen (Owner/Applicant); Greg Ferris, (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variance to Section 24.04.100 of the Sign Code to increase height by eight feet to allow a sign 20 feet above the height of the rail on Kellogg for a nonconforming off-site sign on property zoned "CBD" Central Business District:

All of Lot 23 and lot 25, except beginning at the Southwest corner; thence North 63 feet; thence Southeasterly to a point 40 feet East and 53 feet North of the southwest corner; thence Easterly to the East line; thence South 50 feet to the Southeast corner; thence West to beginning for highway, CC A-33119 & CC A7-6055, on 4th Now St. Francis Ave., English's 5th Addition. Generally located North of Kellogg and west of St Francis.

**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 24, 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. It is the opinion of the Board that this property is unique, inasmuch as the applicant's property was rezoned by an action not initiated by the applicant, creating the legal non-conforming use. Property immediately south and west of this site retained "LI" Limited Industrial zoning, which permits off-site (billboard) signs. Also, Kellogg was elevated after this sign was built, limiting the visibility of the sign.

**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 commercial and industrial purposes and are located along a state highway where billboards are common. The requested variance would not significantly increase the impact of the billboard on adjacent properties.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the sign ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. The sign became legal non-conforming as a result of a zone change not initiated by the applicant. Likewise, elevation of Kellogg made the sign less visible, another action over which the applicant had no control. If the sign is to remain legal non-conforming, the Board's opinion is that the applicant should not be penalized for actions over which they had no control.

**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 requested variance does 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 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, variance be granted to Section 24.04.100 of the Sign Code legally described as follows:

All of Lot 23 and lot 25, except beginning at the Southwest corner; thence North 63 feet; thence Southeasterly to a point 40 feet East and 53 feet North of the southwest corner; thence Easterly to the East line; thence South 50 feet to the Southeast corner; thence West to beginning for highway, CC A-33119 & CC A7-6055, on 4th Now St. Francis Ave., English's 5th Addition. Generally located North of Kellogg and west of St Francis.

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

1. The legal non-conforming off-site sign shall be permitted an increase in height from 41.6 feet to 49 feet.
2. The applicant shall obtain all permits necessary to construct the sign and the sign shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.
3. The resolution authorizing this 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.

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

**RECOMMENDATION:** Should the Board determine that the conditions necessary to grant the variance exist, then it is the recommendation of the Secretary that a variance for increased permitted height from 41.6 feet to 49 feet for a legal non-conforming off-site sign be GRANTED subject to the sign complying with all other regulations of the Sign Code.

**SECRETARY'S REPORT**

**CASE NUMBER:** BZA2005-00085

**OWNER/APPLICANT:** NDS Associates LLC (Owner); Clear Channel Outdoor, Inc c/o David Mollhagen (Applicant)

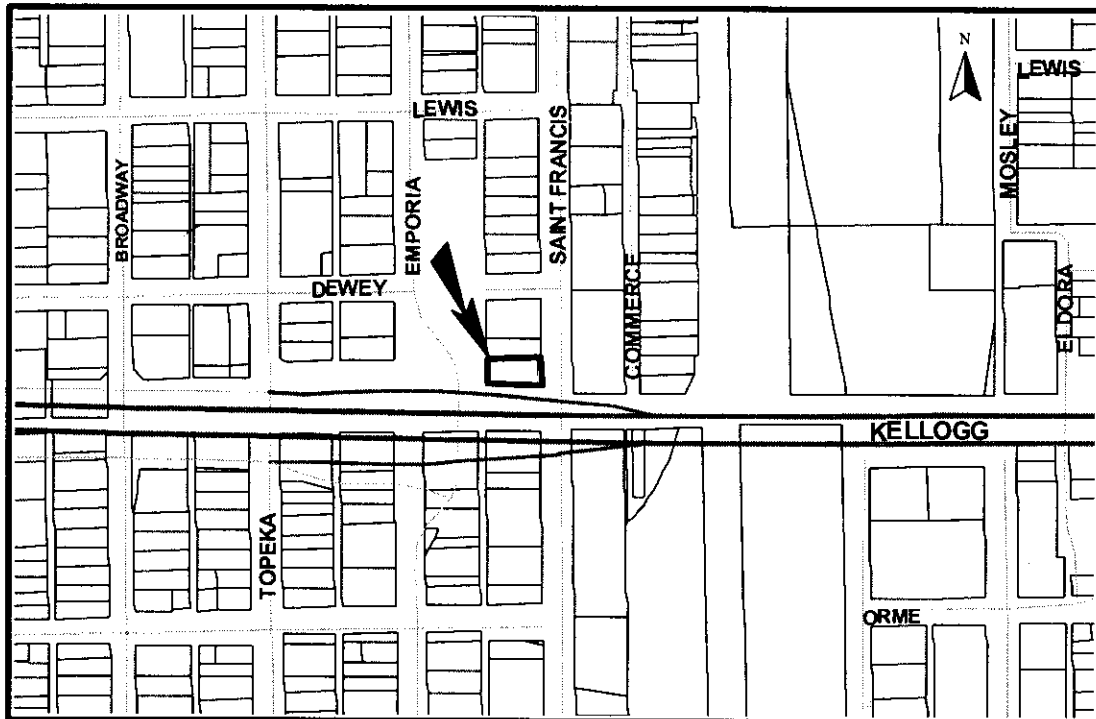
**AGENT:** Greg Ferris (Agent)

**REQUEST:** Variance to increase the height of a legal non-conforming off-site sign by eight feet to allow a sign 20 feet above the height of the rail on Kellogg.

**CURRENT ZONING:** "CBD" Central Business District

**SITE SIZE:** 0.16 Acres

**LOCATION:** North of Kellogg and west of St. Francis



**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 legal non-conforming off-site sign at the application area was originally built as a legal, permitted sign. A zone-change to "CBD" Central Business District made the sign non-conforming, as off-site signs are not permitted in the CBD district; the property owner did not initiate this zone change. The property owner retains the legal non-conforming right to the off-site (or billboard) sign. Also following the construction of this sign, Kellogg was elevated, making the sign less visible. If the sign were not legal non-conforming, the Sign Code would allow elevation of the sign, to 20 feet above the Kellogg rail, by administrative adjustment. The applicant submitted the attached letter dated December 15, 2005, addressing how this request meets the variance criteria.

**ADJACENT ZONING AND LAND USE:**

NORTH	"CBD"	Warehousing, contractor yard
SOUTH	"LI"	Elevated freeway, skateboard park, warehousing, salvage
EAST	"LI"	Industrial uses (Wichita Bindery)
WEST	"CBD"	Automobile service garage

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the applicant's property was rezoned by an action not initiated by the applicant, creating the legal non-conforming use. Property immediately south and west of this site retained "LI" Limited Industrial zoning, which permits off-site (billboard) signs. Also, Kellogg was elevated after this sign was built, limiting the visibility of the sign.

**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 commercial and industrial purposes and are located along a state highway where billboards are common. The requested variance would 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 would constitute an unnecessary hardship upon the applicant. The sign became legal non-conforming as a result of a zone change not initiated by the applicant. Likewise, elevation of Kellogg made the sign less visible, another action over which the applicant had no control. If the sign is to remain legal non-conforming, staff's opinion is that the applicant should not be penalized for actions over which they had no control.

**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 requested variance does 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