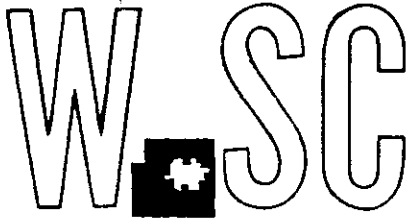


WICHITA — SEDGWICK COUNTY



August 25, 1999

METROPOLITAN AREA PLANNING  
DEPARTMENT

CITY HALL — TENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202-1688  
(316) 268-4421  
FAX (316) 268-4390

Wildhorse Real Estate  
%Robert L. Patton  
10 Colonial Ct.  
Wichita, KS 67207

**FILE COPY**

**RE: BZA 21-99 Variance #1 and Variance #2 – Variance to allow encroachment of 10 feet into 20-foot front setback AND to allow a roof sign. Generally located at the southeast corner of First Street and Washington (138 Washington).**

Dear Mr. Patton:

At its regular meeting on August 24, 1999, the Board of Zoning Appeals (BZA) considered the above-captioned request. The action of the BZA was:

- A. To APPROVE the variance 21-99 #1 request for the encroachment of 10 feet into 20-foot front setback. This action of the BZA is FINAL.
- B. To DEFER until the next official meeting of the Board of Zoning Appeals the variance 22-99 #2 request to allow a roof sign to allow the applicant to review signage options for this site.

This letter will also serve as official notice that a public hearing to consider BZA 21-99 #2, request to allow a roof sign, has been scheduled before the Wichita Board of zoning Appeals on **Tuesday, September 28, 1999**. The meeting will begin at 1:30 p.m., in the conference Room on the 10<sup>th</sup> Floor, Wichita City Hall, 455 N. Main, Wichita, Kansas.

If you have any questions concerning this case, please contact our office at 268-4421.

Sincerely,

Lisa Verts

BZA Assistant Secretary

LV/rs

Cc: Terry L. McLeod, P. O. Box 503, Wichita, KS 67201  
Kurt Schroeder, Office of Central Inspection  
Randy Sparkman, Office of Central Inspection  
Paul Hays, Office of Central Inspection  
J.R. Cox, Office of Central Inspection  
Yolanda Anderson  
Surrounding Property Ownership List  
File

**BZA RESOLUTION NO. 21-99**  
**VARIANCE #1**

**WHEREAS**, Wildhorse Real Estate, % Robert L. Patton (applicant/owner), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to allow encroachment of 10 feet into 20-foot front setback AND to allow a roof sign on property zoned "LI" Limited Industrial and legally described as follows:

Part of Lot 2 and Reserve A in Supplemental Plat of Mathewson's Addition to Wichita, Sedgwick County, Kansas, described as beginning 501 feet North and 30 feet East of the Southwest corner of the Northeast Quarter of Section 21, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East 120 feet; thence North 101 feet; thence West 120 feet; thence South 101 feet to the beginning, exc. The W 10 feet taken by condemnation Case A-20636. Generally located at the southeast corner of First Street and Washington (138 Washington).

**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 August 24, 1999, 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 to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique inasmuch as it is a small lot (0.38 acres) and the building to be placed on the lot is a modular structure. The applicant has secured additional off-site parking with the property owner to the east. If the variance to reduce the 20-foot front setback is not allowed, placement of the modular structure will eliminate required parking spaces and require additional off-site parking. The applicant could leave the vestibule off; however, the vestibule will add comfort to patrons of the diner. The 20-foot front setback requirement is somewhat unique to historical uses in this area, in that most of the other uses in the area have setbacks less than 20 feet, some even have zero setback along Washington.

**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 staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the protrusion of the vestibule will not project into the sight lines for vehicular traffic on Washington to the intersection of First Street. The use to the south is an outdoor vehicle storage lot with no building that requires visibility

**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 staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has already contracted with the property owner to the east for additional parking spaces. Placing the vestibule in conformance with the 20-foot front setback requirement would require an additional off-site parking space contract because of the small size of the lot. Customer comfort would also be lost, possibly causing a loss of patronage.

**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 staff that the requested variance would not adversely affect the public interest, inasmuch as the width of the encroaching vestibule is only 12 feet, rather than the entire building frontage. It will further the public interest to revitalize this corner along Washington and First as it is adjacent to the Old Town Overlay District and a corridor into downtown.

**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 staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the encroachment will only extend for 12 feet along and 10 feet into the Washington Street setback and the vestibule provides protection from the elements to the public who would be dining at this restaurant.

**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.

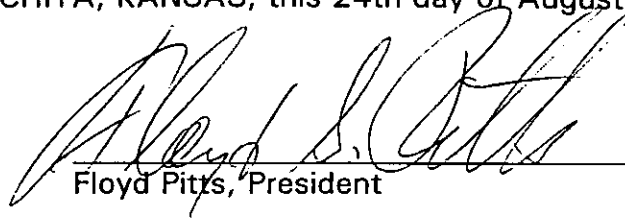
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to allow encroachment of 10 feet into 20-foot front setback AND to allow a roof sign on property zoned "LI" Limited Industrial and legally described as follows:

Part of Lot 2 and Reserve A in Supplemental Plat of Mathewson's Addition to Wichita, Sedgwick County, Kansas, descried as beginning 501 feet North and 30 feet East of the Southwest corner of the Northeast Quarter of Section 21, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East 120 feet; thence North 101 feet; thence West 120 feet; thence South 101 feet to the beginning, exc. The W 10 feet taken by condemnation Case A-20636. Generally located at the southeast corner of First Street and Washington (138 Washington).

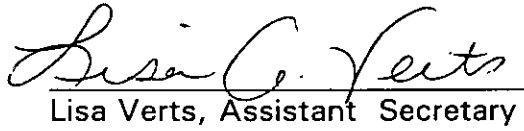
**RECOMMENDATION for VARIANCE #1:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist in the first variance request of this application, then it is the recommendation of the Secretary that the variance to allow a 10-foot encroachment of an entrance vestibule into the 20-foot minimum front setback be GRANTED, subject to the following conditions:

1. The variance shall apply only to the 12-foot vestibule as shown on the site plan submitted with the application for variance.
2. The approval of the variance shall be subject to the Office of Central Inspection approval that the five (5) parking spaces contracted from Duffen Optical are in compliance with City parking.
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 or the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24th day of August, 1999.

  
Floyd Pitts, President

ATTEST:

  
Lisa Verts, Assistant Secretary

BOARD OF ZONING APPEALS  
WICHITA, KANSAS

AGENDA ITEM NO. 3  
August 24, 1999

**SECRETARY'S REPORT**

CASE NUMBER: BZA 21-99

OWNER/APPLICANT: Wildhorse Real Estate, c/o Robert L. Patton

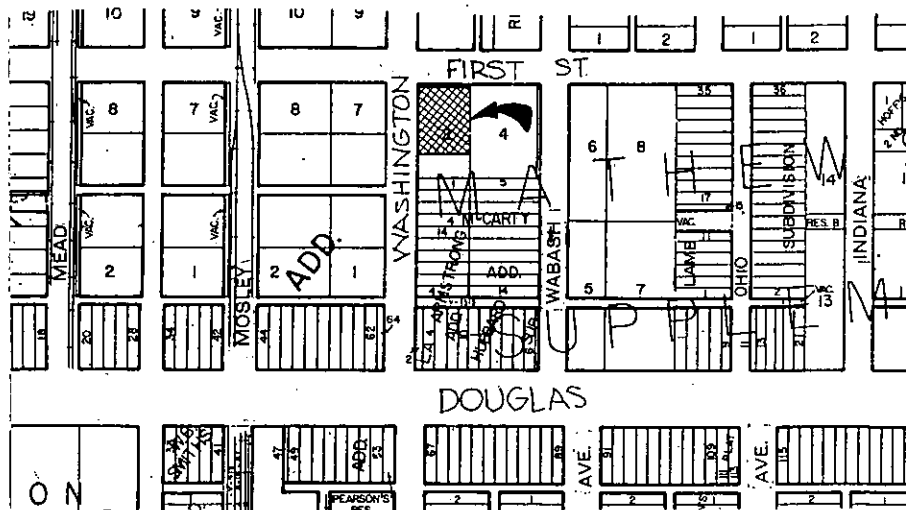
AGENT: Terry L. McLeod

REQUEST: Variance to allow encroachment of 10 feet into 20-foot front setback AND to allow a roof sign

CURRENT ZONING: "LI" Limited Industrial

SITE SIZE: 0.38 Acres

LOCATION: Southeast corner of First Street and Washington (138 Washington)



**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 proposes to place a diner-style restaurant on the southeast corner of First Street and Washington. This diner is a modular unit that will be built off-site and moved to the site in question as a single unit and will be designed to resemble a railroad dining car. The southeast corner of First Street and Washington borders the eastern boundary of the Old Town Overlay District. There are multiple buildings currently on the site, but they have been in a state of disrepair for some time and will be removed prior to the proposed development.

The applicants submitted a site plan showing a 2,492 square foot building that will seat 121 customers. The site plan provides for 35 parking spaces, two of which will be handicap accessible. The Unified Zoning Code requires that restaurants provide one (1) parking space for every three (3) occupants. Forty (40) parking spaces are required for this site. The applicant has stated that an agreement has been made with Duffens Optical for five (5) additional parking spaces in their parking lot, located directly to the east and adjacent to this site. The spaces contracted for can only be counted if they are not required for use by Duffens Optical to meet their parking requirements. Prior to issuance of a building permit, this parking arrangement will be verified for compliance.

The applicant is requesting TWO (2) different variances with regards to this project:

1. The Unified Zoning Code requires a minimum 20-foot front setback in the "LI" Limited Industrial District. The applicant is requesting a variance to allow a 10-foot encroachment into the minimum 20-foot front setback for an entrance vestibule that is 12 feet wide to be located at the front door of the diner (on the Washington Street side). This vestibule will adjoin the sidewalk and patio at the front of the building and will provide a waiting area for customers and protection from the elements. This request is for a 50% reduction in the front setback and requires a variance by the Board of Zoning Appeals.
2. The applicant also wishes to acquire a variance for the placement of a roof sign to be located on top of the aforementioned vestibule. The City of Wichita sign code prohibits roof signs except by variance by the Board of Zoning Appeals.

**ADJACENT ZONING AND LAND USE:**

|       |                                                                         |
|-------|-------------------------------------------------------------------------|
| NORTH | "LI" - Limited Industrial, Color Craft Corp.                            |
| SOUTH | "LI" - Limited Industrial, Outdoor Vehicle Storage Lot                  |
| EAST  | "LI" - Limited Industrial, Duffens Optical Parking Lot                  |
| WEST  | "LI" - Limited Industrial, Old Town Overlay District, Mort's Restaurant |

**VARIANCE #1**

The following five conditions apply only to the first part of this variance request – to allow a 10-foot encroachment into the 20-foot minimum front setback.

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as it is a small lot (0.38 acres) and the building to be placed on the lot is a modular structure. The applicant has secured additional off-site parking with the property owner to the east. If the variance to reduce the 20-foot front setback is not allowed, placement of the modular structure will eliminate required parking spaces and require additional off-site parking. The applicant could leave the vestibule off; however, the vestibule will add comfort to patrons of the diner. The 20-foot front setback requirement is somewhat unique to historical uses in this area, in that most of the other uses in the area have setbacks less than 20 feet, some even have zero setback along Washington.

**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 protrusion of the vestibule will not project into the sight lines for vehicular traffic on Washington to the intersection of First Street. The use to the south is an outdoor vehicle storage lot with no building that requires visibility.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has already contracted with the property owner to the east for additional parking spaces. Placing the vestibule in conformance with the 20-foot front setback requirement would require an additional off-site parking space contract because of the small size of the lot. Customer comfort would also be lost, possibly causing a loss of patronage.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the width of the encroaching vestibule is only 12 feet, rather than the entire building frontage. It will further the public interest to revitalize this corner along Washington and First as it is adjacent to the Old Town Overlay District and a corridor into downtown.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the encroachment will only extend for 12 feet along and 10 feet into the Washington Street setback and the vestibule provides protection from the elements to the public who would be dining at this restaurant.

**VARIANCE #2**

The following five conditions apply only to the 2<sup>nd</sup> part of this variance request – to allow a roof sign.

**UNIQUENESS:** It is the opinion of staff that this property is not unique with regard to the ability to display signage on this particular site.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will adversely affect the rights of adjacent property owners, inasmuch the proximity of the site to the Old Town Overlay District and the architectural character maintained within that District. This overlay district has stringent requirements on signage that will be undermined by the placement of a roof sign directly across the street. Within the area, and outside of Old Town, there are no roof signs.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations does not constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has presented no other reason except for design that the roof sign is necessary. Other options exist for ground or pole signs, as well as building signs.

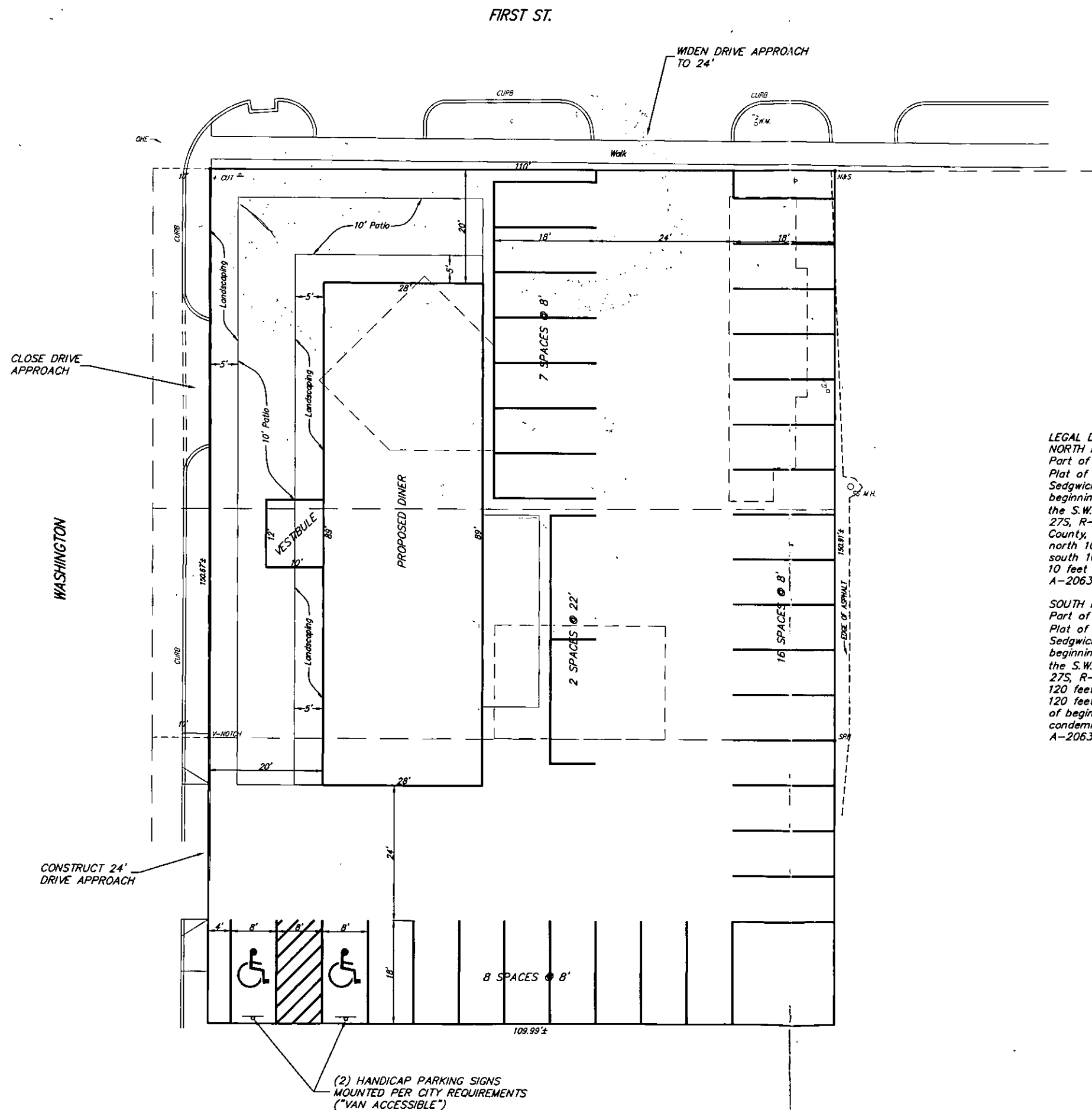
**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as roof signs are not permitted except in the most intense districts. Even though the site is zoned "LI" Limited Industrial, it is located adjacent to the Old Town Overlay District, which has strict signage controls and has been the focus of significant public and private revitalization.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would be opposed to the general spirit and intent of the zoning regulations, inasmuch as the variance to a regulation should be granted only when extenuating circumstances unique to a particular project dictate the need for a change. In this case, other options for ground or pole signs, as well as building signs, may be available.

**RECOMMENDATION for VARIANCE #1:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist in the first variance request of this application, then it is the recommendation of the Secretary that the variance to allow a 10-foot encroachment of an entrance vestibule into the 20-foot minimum front setback be GRANTED, subject to the following conditions:

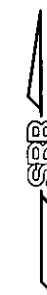
1. The variance shall apply only to the 12-foot vestibule as shown on the site plan submitted with the application for variance.
2. The approval of the variance shall be subject to the Office of Central Inspection approval that the five (5) parking spaces contracted from Duffen Optical are in compliance with City parking
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 or the foregoing conditions.

**RECOMMENDATION for VARIANCE #2:** Should the Board determine that the conditions necessary to the granting of the variance do not exist in the second variance request of this application, then it is the recommendation of the Secretary that the variance to allow a roof sign be DENIED.



**LEGAL DESCRIPTION:**  
**NORTH PARCEL**  
 Part of Lot 2 and Reserve A in Supplemental Plat of Mathewson's Addition to Wichita, Sedgwick County, Kansas, described as beginning 501 feet north and 30 feet east of the S.W. Cor. of the NE 1/4 of Sec. 21, Twp. 27S, R-1-E of the 6th P.M., Sedgwick County, Kansas thence east 120 feet; thence north 101 feet; thence west 120 feet; thence south 101 feet to beginning, except the west 10 feet taken by Condemnation Case A-20636.

**SOUTH PARCEL**  
 Part of Lot 2 and Reserve A in Supplemental Plat of Mathewson's Addition to Wichita, Sedgwick County, Kansas, described as beginning 451 feet north and 30 feet east of the S.W. Cor. of the NE 1/4 of Sec. 21, Twp. 27S, R-1-E of the 6th P.M.; thence east 120 feet; thence north 50 feet; thence west 120 feet; thence south 50 feet to the point of beginning; except the west 10 feet condemned for street right of way in Case A-20636.



1" = 20'

**LEGEND**

- V-NOTCH . . . . . CHISELED V-NOTCH (SET)
- SRB . . . . . 1/2" REBAR W/SRB CAP (SET)
- N&S . . . . . NAIL & SHIMMER (SET)
- + CUT . . . . . CHISELED "+" CUT (SET)

|                                         |       |                                                                     |        |                                                      |                       |
|-----------------------------------------|-------|---------------------------------------------------------------------|--------|------------------------------------------------------|-----------------------|
| <b>SITE PLAN</b>                        |       |                                                                     |        |                                                      |                       |
| <b>SILVER STREAK DINER</b>              |       |                                                                     |        |                                                      |                       |
| <b>WICHITA, KANSAS</b>                  |       |                                                                     |        |                                                      |                       |
| <b>SRB</b>                              |       | 924 NORTH MAIN<br>WICHITA, KANSAS 67203<br>http://www.fuel.com/~srb |        | 316-264-8008<br>FAX 264-4621<br>E-mail: srb@fuel.com |                       |
| <b>SAVOY, RUGGLES &amp; BOHM, P. A.</b> |       |                                                                     |        |                                                      |                       |
| <b>ENGINEERING &amp; SURVEYING</b>      |       |                                                                     |        |                                                      |                       |
| PROJECT NUMBER                          |       |                                                                     |        |                                                      |                       |
| Proj. Number                            |       |                                                                     |        |                                                      |                       |
| DESIGN                                  | DRAWN | UTILITY                                                             | REVIEW | DATE                                                 | REVISED               |
| TCR                                     | JTS   | Utility                                                             |        | July 20, 1999                                        |                       |
|                                         |       |                                                                     |        |                                                      | SHEET<br>1<br>OF<br>1 |