



FILE COPY

Wichita-Sedgwick County Metropolitan Area Planning Department

April 12, 2000

Universal Motor Fuels, Inc.
%Dennis Maloney
P O Box 2920
2824 N. Ohio
Wichita, KS 67201

RE: BZA 2000-00002 – 1) Variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) Variance to increase the maximum size of a sign from 152 square feet to 240 square feet. Generally located at the northwest corner of Kellogg and Greenwich. (11134 E. Kellogg)

Dear Mr. Maloney:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on March 28, 2000, this resolution reflects the official action of the Board to grant your request and sets out the conditions of approval. It is forwarded to you for your information and files.

This is a reminder that the zoning adjustment signs should now be removed from the property. If you have any questions concerning this matter, please call our office.

Sincerely,

Dale Miller
Chief Planner

DM/rs

Cc: George Lay Signs, Inc., %John Lay, 1016 N. Waco, Wichita, KS 67203
Income Producing Management, %d/b/a Wendy's, %Dennis Kirkhart, 2959 N. Rock Road, Ste. 5100, Wichita, KS 67226
J.R. Cox, Office of Central Inspection
Yolanda Anderson (Resolution only)

BZA RESOLUTION NO. 2000-00002

WHEREAS, Universal Motor Fuels, Inc., c/o Dennis Maloney AND Income Producing Management d/b/a Wendy's (Philip Blick, Trustee of Gerald B. Maloney Short-Term Trust, & Lawrence M. Maloney) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Universal 2nd Addition, Wichita, Kansas, TOGETHER with a tract in the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as commencing at the Northwest corner of Lot 1, Universal 2nd Addition, Wichita, Sedgwick County, Kansas; thence East along the North line of said addition, 10 feet to the point of beginning; thence continuing East along said North line 190 feet; thence North, parallel with the East line of the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, 225.13 feet to a point on the center line of a 45 foot wide drainage easement as recorded on Film 325, Page 284; thence West along the center line of said drainage easement, 190 feet; thence South parallel with the East line of said Southeast Quarter, 225.75 feet more or less to the point of beginning. Generally located at the northwest corner of Kellogg and Greenwich (11134 E. Kellogg).

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 March 28, 2000, 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 this intersection is slated for future development of an above grade highway over Greenwich. This would make visibility of a sign associated with this property difficult. The increased height and size will help to alleviate this problem.

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 the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as a combined sign, even of the requested height and size, will help to reduce visual clutter along Kellogg.

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 regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the proposed improvements to Kellogg may obstruct the view of a sign on this location.

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 requested signage will help to reduce potential visual clutter by using one sign instead of two.

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 oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier for customers to locate the business after future improvements to Kellogg.

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 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet on property zoned "LC" Limited Commercial and legally described as follows:

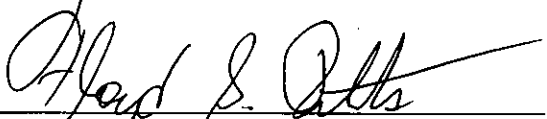
Lot 1, Universal 2nd Addition, Wichita, Kansas, TOGETHER with a tract in the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as commencing at the

Northwest corner of Lot 1, Universal 2nd Addition, Wichita, Sedgwick County, Kansas; thence East along the North line of said addition, 10 feet to the point of beginning; thence continuing East along said North line 190 feet; thence North, parallel with the East line of the Southeast Quarter of Section 21, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, 225.13 feet to a point on the center line of a 45 foot wide drainage easement as recorded on Film 325, Page 284; thence West along the center line of said drainage easement, 190 feet; thence South parallel with the East line of said Southeast Quarter, 225.75 feet more or less to the point of beginning. Generally located at the northwest corner of Kellogg and Greenwich (11134 E. Kellogg).

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that 1) a variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and 2) a variance to increase the maximum size of a pole sign from 152 square feet to 240 square feet be granted, subject to the following conditions:

- 1) The subject property shall be limited to two (2) monument signs on Greenwich.
- 2) The applicant shall obtain all permits necessary for the installation of the requested sign.
- 3) The sign shall be installed within one year or the resolution granting this variance shall become null and void.

ADOPTED AT WICHITA, KANSAS, this 28th DAY of MARCH, 2000.



Floyd Pitts, President

ATTEST:



Dale Miller / BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2000-00002

OWNER/APPLICANT: Universal Motor Fuels, Inc., c/o Dennis Maloney AND Income Producing Management d/b/a Wendy's (Philip Blick, Trustee of Gerald B. Maloney Short-Term Trust, & Lawrence M. Maloney)

AGENT: George Lay Signs, Inc., c/o John Lay

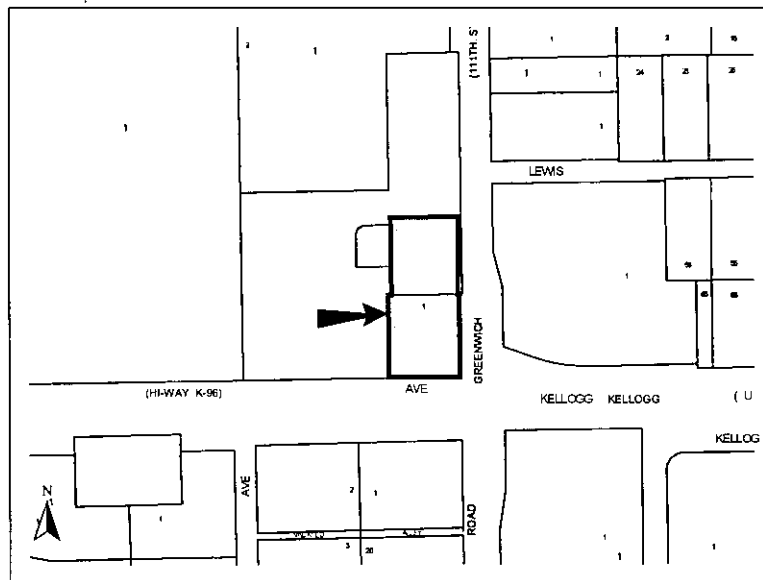
REQUEST:

1. Variance to increase the maximum height of a pole sign from 30 feet to 40 feet; and
2. Variance to increase the maximum size of a sign from 152 square feet to 255 square feet.

CURRENT ZONING: "LC" – Limited Commercial

SITE SIZE: 1.83 Acres

LOCATION: Northwest corner of Kellogg and Greenwich (11134 E. Kellogg)



JURISTITION: 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 northwest corner of Kellogg and Greenwich is currently developed with a Conoco gas station, a car wash and a vacant building. The corner is to be re-developed with a new Wendy's located on the corner with the car wash and gas station re-located northward, along Greenwich. The applicant is requesting two variances – an increase in height (40 feet) and an increase in area (255 square feet) – to permit a pole sign for Wendy's and Conoco which is to be located at the northwest corner of Kellogg and Greenwich, perpendicular to Kellogg.

The property is zoned "LC" Limited Commercial and has 190 linear feet of frontage along Kellogg. Two signs are permitted along Kellogg with a maximum area of 152 square feet. The applicant is willing to give up the second sign permitted along Kellogg which provides 5 feet of additional height to the sign per the sign code. Greenwich permits 336 square feet of signage on 420 linear feet of frontage. The applicant indicates that there will be two other signs on Greenwich which combined may total 200 square feet, leaving 136 square feet of signage left over that could be applied to the pole sign on Kellogg.

In the "LC" District, the Sign Code permits pole signage at the rate of .8 square feet of signage times the frontage, up to a maximum of 300 square feet for any one sign, but in no case shall the total square footage of signage allowed exceed the total allowed by the frontage. If the sign is angled and located near the corner of the intersection, then $\frac{1}{2}$ the area of the sign is counted against both frontages. Sign height is limited to 25 feet with the possibility of increasing the height by five feet for each permitted sign that the applicant gives up, up to a maximum of 35 feet.

With respect to area, the applicant wants the sign to be at a 90-degree angle to Kellogg which restricts the area of the sign to 152 square feet, not the 255 square feet he is requesting. If the applicant angled the sign, then he could use unused Greenwich frontage to achieve the 255 square feet. Thus the applicant needs a 68% variance to permit the increased area of signage. The applicant does not want to angle the sign as an angled sign is not as easily seen as one that is perpendicular to the roadway.

With respect to height, the applicant desires a 40 foot tall sign on the basis that this height is needed when Kellogg is improved to freeway status. Kellogg at Greenwich is to be constructed to a freeway fly-over, similar to the Dugan Road fly-over in west Wichita, within 5 to 10 years. The projected height of the fly-over is 20-25 feet. The "Sign Code" allows 25 feet. The applicant has elected to not build a second permitted sign along Kellogg, which allows the sign at the intersection to be 30 foot sign. The applicant desires a 40-foot tall sign, so he needs a 33% variance to increase the height of the sign.

The surrounding uses are commercial; there are two car sales lots, a manufactured home sales lot, a movie theater and aircraft manufacturer. Existing signage in the area appears to comply with current codes.

ADJACENT ZONING AND LAND USE:

NORTH	"LC", Limited Commercial	- commercial
SOUTH	"GC", General Commercial	- manufactured home sales
EAST	"GC", General Commercial	- car sales lot
WEST	"GC", General Commercial	-movie theater

The five criteria necessary for approval apply to both variances requested.

HEIGHT:

UNIQUENESS: It is the opinion of staff that this property is not unique, inasmuch as this lot is a standard rectangular lot located at the intersection of an at-grade freeway and arterial. There is nothing unique about the size, shape, topography or visibility of this property that currently justifies a height variance. The site has a clear line of sight currently and it is not clear today exactly what effect the Kellogg fly-over might have on this site. In a recent consideration of a request by Wendy's to increase sign height along Kellogg in the Central Business District, where the overpass is already constructed, the BZA rejected the request. An alternate avenue that will be available to both the service station and restaurant use when the Kellogg overpass is built at Greenwich is the "logo" sign system in the highway right-of-way.

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested would adversely affect the rights of adjacent property owners, inasmuch as other owners appear to be living with signage that complies with the current code. Granting of this height variance will lead to premature additional requests at this intersection.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation does not constitute an unnecessary hardship upon the applicant, inasmuch as at this point in time no hardship exists. The site has clear line of sight today. It will be 5 to 10 years before the Kellogg fly-over is to be constructed. Further, depending on the fly-over's design, 40 feet may not be needed or may be inadequate.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as the increased height in signage would be contrary to the purpose of the sign code, which is, in part, to assist motorists to identify and find their destinations with a minimum amount of clutter and distraction in a safe and efficient manner. The code permits an administrative increase in the base height of a sign above that which is permitted by the code. It is not in the public's interest to grant increases in height without an existing hardship or uniqueness to the site. The site has

clear visibility today, and the application can pursue the "logo sign" option after the fly-over is constructed, which will have less visual impact.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would oppose the general spirit and intent of the Sign Code inasmuch as construction of Kellogg is five to ten years out. Circumstances with the applicant or with Kellogg construction could change. As construction becomes more imminent, then it would be more appropriate to file for any needed variances.

RECOMMENDATION: It is staff's opinion that the conditions necessary for the granting of a variance do not exist. Should the Board determine that conditions necessary to the granting of the variance do not exist, then it is the recommendation of the Secretary that the variance to increase the of sign be DENIED.

AREA:

UNIQUENESS: It is the opinion of staff that this property is not unique, inasmuch as this lot is a standard rectangular lot currently located at the intersection of an at-grade freeway and arterial. There is nothing unique about the size, shape, topography or visibility of this property that currently justifies an increase in area variance. Developments that combine service station and restaurant uses on the same zoning lot have been constructed in other locations with signage that meets sign code requirements. The site has a clear line of sight currently and it is not clear today what effect, if any, the Kellogg fly-over might have on this site. The applicant is permitted 155 square feet of signage if the sign is located perpendicular to Kellogg. If the sign were to be angled, then the sign the applicant is requesting would be permitted without a variance.

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested would adversely affect the rights of adjacent property owners, inasmuch as other owners in the vicinity appear to be living with signage that complies with the current code. Granting of this area variance will lead to premature additional requests at this intersection.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation does not constitute an unnecessary hardship upon the applicant, inasmuch as at this point in time no hardship exists. The site has clear line of sight today. It will be 5 to 10 years before the Kellogg fly-over is to be constructed. The fly-over's design is anticipated to be 20-25 feet in height. Also, additional signage area is not necessary since the applicant could angle the sign and install signage as large as he requests without the variance. The hardship is self-imposed.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as the applicant could get the area he desires by complying with existing rules and angle the sign. Granting of additional signage area would be contrary to the purpose of the code, which is, in part, to assist motorists to

identify and find their destinations with a minimum amount of clutter and distraction in a safe and efficient manner. The applicant has enough frontage to get the size of sign he desires, he just needs to angle it to comply with current regulations. It is not in the public's interest to grant increases in area without an existing hardship or uniqueness existing on the site.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would oppose the general spirit and intent of the Sign Code inasmuch as Construction of Kellogg is five to ten years out. The applicant can legally install the size of signage he desires without a variance if he were to angle the sign. Circumstances with the applicant or with Kellogg construction could change. As construction becomes more imminent, then it would be more appropriate to file for any needed variances.

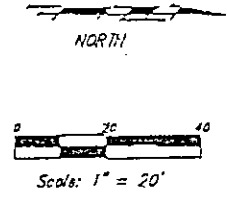
RECOMMENDATION: It is staff's opinion that the conditions necessary for the granting of a variance do not exist. Should the Board determine that conditions necessary to the granting of the variance do not exist, then it is the recommendation of the Secretary that the variance to increase the of sign be DENIED.

KELLOGG AVE. (U.S. HIGHWAY 54)

ZONED "LC"

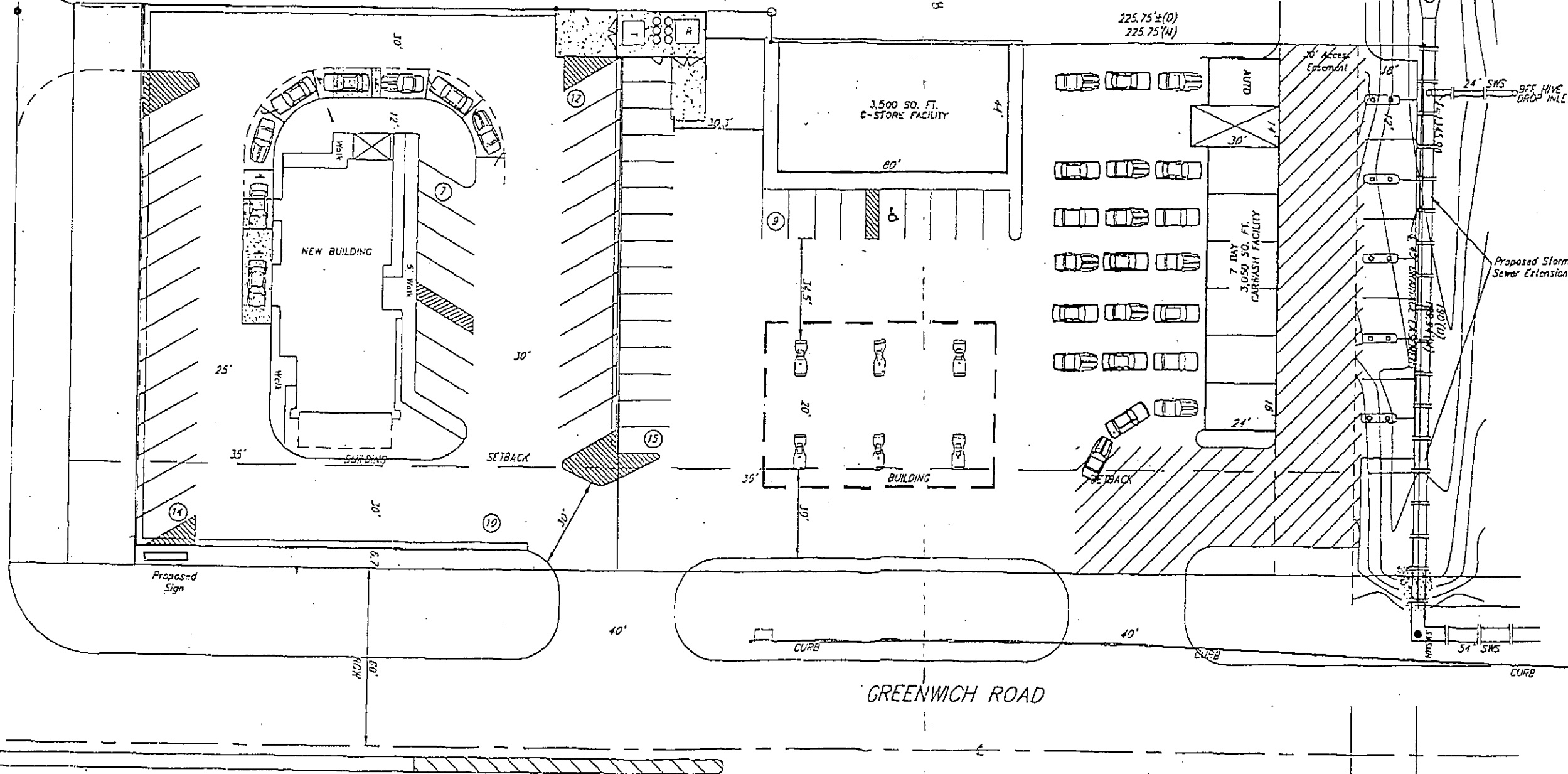
CINEMAS ASSOCIATES
P.O. BOX 182550
WICHITA, KS 67217-8250

ZONED "LC"



CINEMAS ASSOCIATES
P.O. BOX 182550
WICHITA, KS 67217-8250

ZONED "LC"



ACCESS CONTROL EXCEPT 2 OPENINGS

NW CORNER AT KELLOGG AND GREENWICH
SITE PLAN
WICHITA, KANSAS
BAUGHMAN COMPANY P.A.