



Wichita-Sedgwick County Metropolitan Area Planning Department

16 November 2017

David Mollhagen
3405 N Hydraulic
Wichita, KS 67219

RE: BZA2017-00046 – City variance to reduce the front setback for a billboard from 20 to 5 feet on property zoned GC General Commercial generally located South of Kellogg, west of West Street (4424 West Irving)

Dear Mr. Mollhagen,

At its regular meeting on **November 16, 2017**, the Wichita - Sedgwick County Board of Zoning Appeals considered the above captioned request. The action of the BZA was to **APPROVE** the request.

Enclosed is a signed copy of the above referenced BZA Resolution adopted by the Board of Zoning Appeals. This resolution reflects the official actions of the Board and is forwarded for your information and files.

This is a reminder that the zoning notification signs should now be removed from the property. If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

Kyle C. Kobe
Associate Planner

Copies to: MABCD
Kansas Candy and Tobacco Inc. 4430 W 29th Cir. S., Wichita, KS 67215
Jeff Blubaugh, WCC District IV
Rebecca Fields, CSR District IV
Jeff Vansant, City Law

BZA RESOLUTION NO. BZA2017-00046

WHEREAS, David Mollhagen (Agent) on behalf of Kansas Candy and Tobacco Inc.; pursuant to Kansas Statutes Annotated 12-759, requests a Variance to allow the 20-foot required building setback be reduced to 5 feet to allow a billboard to be constructed at 4424 West Irving and legally described as follows:

Legal Description: Lot 3, except the west 23 feet thereof and the abandoned railroad right of way adjacent on the north, Block 1, West 54 Industrial Addition to the City of 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 November 16, 2017, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Kansas Statutes Annotated 12-759; and

WHEREAS, this situation is unique to this property, because the Kansas Department of Transportation acquired part of this property for additional right of way area for Kellogg. During the acquisition, Clear Channel Outdoor negotiated an agreement with the Kansas Department of Transportation and the property owner for the property owner to keep a part of the lot to use for the replacement of the offsite sign. This unique situation was not caused by Clear Channel Outdoor or the property owner and is unique to this property.

WHEREAS, there were several off-site signs on the property for many years that were condemned and removed during the Kansas Department of Transportation's expansion of Kellogg. There is no residential property that is close to this sign. This is a commercial and industrial area with numerous signs and both commercial and industrial uses. The property owner adjacent to this parcel to the north is the Kansas Department of Transportation.

WHEREAS, Clear Channel negotiated an agreement with the Kansas Department of Transportation and the property owner in good faith to re-build the sign on the parcel that remains.

WHEREAS, there were have been off-site signs on this property for decades. This area has been developed as an industrial area and is suited for the continuance of the off-site sign. It would be a detriment to the property owner to not be able to continue with the best use practices for his parcel.

WHEREAS, Approval of this application will not violate the spirit and intent of the sign code as there are several off-site signs along the Kellogg corridor.

WHEREAS, each of the five conditions required by Kansas Statutes Annotated 12-759, are found to be present for a variance to be granted.

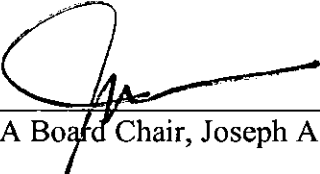
NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Kansas Statutes Annotated 12-759, a Variance to allow the 20-foot required rear yard to be reduced to 0 feet to allow a building addition to be constructed at 3429 South Sabin Court and legally described as follows:

Legal Description: Lot 3, except the west 23 feet thereof and the abandoned railroad right of way adjacent on the north, Block 1, West 54 Industrial Addition to the City of Wichita, Sedgwick County, Kansas.

The variances are hereby GRANTED, subject to the following conditions:

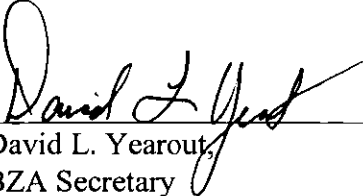
1. The variance granted shall be for only the reduction of front setback from 20 feet to 5 feet for a billboard.
2. The sign shall be as depicted in the drawing as submitted as part of this application, or as approved by the Director of Planning prior to the issuance of a sign permit.
3. The applicant shall obtain all permits necessary for the billboard sign within one year of the issuance of this variance, and develop this sign in accordance with all relevant codes pertaining to signage in the City of Wichita.

ADOPTED AT WICHITA, KANSAS, this 16th Day of November 2017.



BZA Board Chair, Joseph A. Johnson

ATTEST:



David L. Yearout,
BZA Secretary

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Kansas Statutes Annotated 12-759 *et. seq.* The Board may grant the request when all five conditions, as required by the statutes, are found to exist.

BACKGROUND: This application was filed to allow for a reduction in the front setback from 20 feet to 5 feet for a billboard between West Kellogg Street and West Irving Street. The proposed sign would have a sign face of 672 square feet and would stand 42 feet above ground.

The proposed sign dimensions, area, locations, and other details can be found in the attachments.

The applicant explains that in the past there were three separate billboard signs along Kellogg, but due to the expansion of the right of way for the highway, they were forced to be taken down. It was the applicant's understanding that they would have the ability to relocate the billboard to the proposed site. However, it was discovered after the reorganization of the lots following the expansion of right of way for the highway that the lot the billboard is being proposed for is smaller than expected. Further, the lot that has been created is a "through lot" which means that each end is required to follow front setback requirements. As a result, in order for the applicant to replace the lost billboards, the applicant requires the ability to place a new billboard on site closer to the property line than they would have otherwise done.

ADJACENT ZONING AND LAND USE:

NORTH	GC	Hwy 54/Kellogg Drive
SOUTH	LI	warehouses, industrial development
EAST	GC	open space, Hwy 54/Kellogg Drive/ industrial development
WEST	LI	open space, Hwy 54/Kellogg Drive/ industrial development

UNIQUENESS: This situation is unique to this property. KDOT acquired part of this property for additional right of way area for Kellogg. During the acquisition, Clear Channel Outdoor negotiated an agreement with KDOT and the property owner for the property owner to keep a part of the lot to use for the replacement of the offsite sign. This unique situation was not cause by Clear Channel Outdoor or the property owner and is unique to this property.

ADJACENT PROPERTY: There were several off-site signs on the property for many years that were condemned per KDOT's expansion of Kellogg. There is not residential property that is close to this sign. This is a commercial and industrial area with numerous signs and both commercial and industrial uses. The property owner adjacent to this parcel to the north is KDOT.

HARDSHIP: Clear Channel negotiated an agreement with KDOT and the property owner in good faith to re-build the sign on the parcel that remains. With the taking of the lot, the parcel became a through lot. The property owner would have had a completely different position if they knew an off-site sign could not be constructed on the reconfigured parcel.

PUBLIC INTEREST: There were off-site signs in place and had been for decades. This area has been developed as an industrial area and is suited for the continuance of the off-site sign. It would be a detriment to the prosperity of the property owner to not be able to continue with the best use practices for his parcel.

SPIRIT AND INTENT: Approval of this application will not violate the spirit and intent of the sign code as there are several off-site signs along the Kellogg corridor.

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 the variance to allow a five foot setback for the proposed billboard be *GRANTED*, subject to the following conditions:

1. The variance granted shall be for only the reduction of front setback from 20 feet to 5 feet for a billboard.
2. The sign shall be as depicted in the drawing as submitted as part of this application, or as approved by the Director of Planning prior to the issuance of a sign permit.
3. The applicant shall obtain all permits necessary for the billboard sign within one year of the issuance of this variance, and develop this sign in accordance with all relevant codes pertaining to signage in the City of Wichita.

Report Attachments:

1. Applicants' Narrative
2. Sign elevations/details

SURVEYOR'S CERTIFICATE

TO ALL PARTIES INTERESTED IN TITLE TO THE PREMISES SURVEYED
Kathy St. Overlook

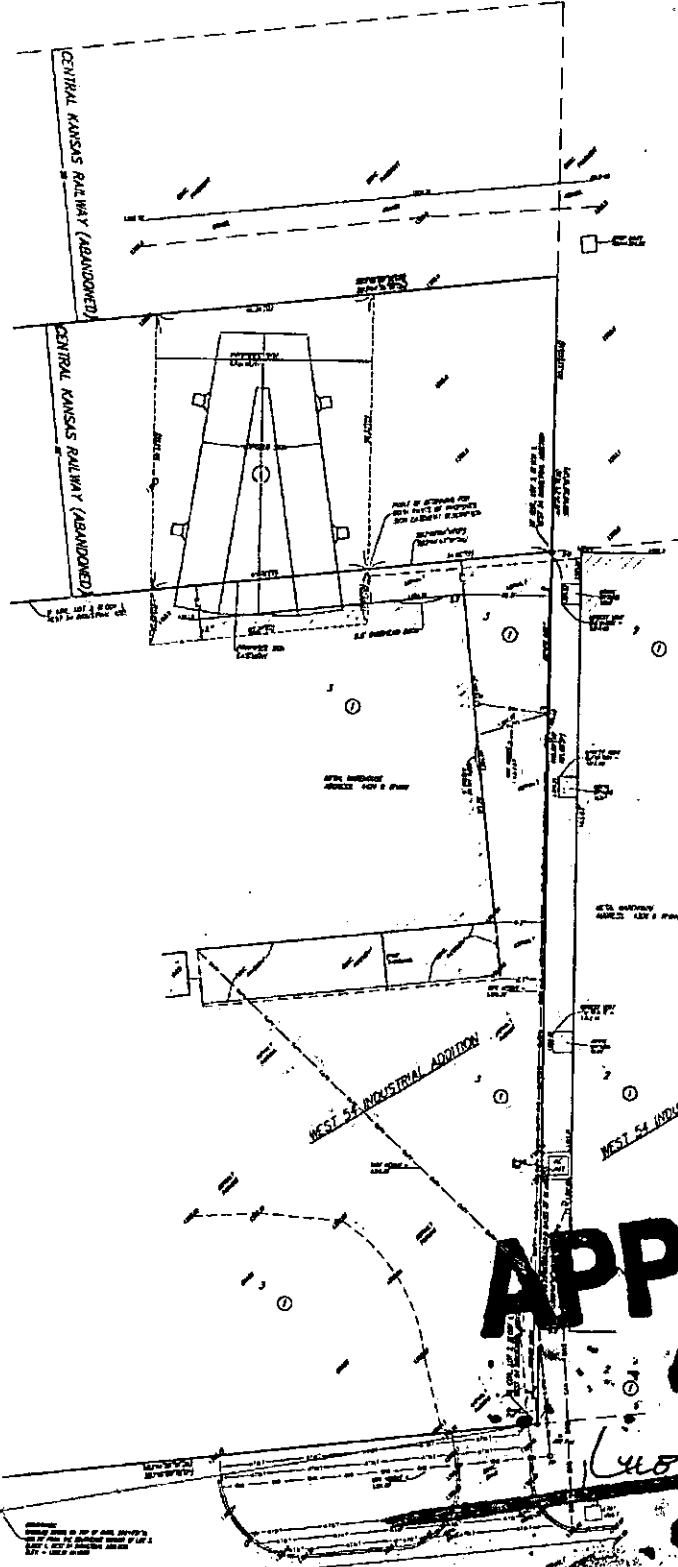
State of Kansas)
County of Sedgewick) SS

August 15, 2017

We, **Bayhman Company, P.A.**, Surveyors in and for said county and state do hereby certify that, under the supervision of the undersigned, we did on this 2nd day of August, 2017, perform a topographic survey of the westerly portion of Lot 1 and the westerly portion of Lot 2, Block 1, West 54 Industrial Addition, Wichita, Sedgewick County, Kansas, together with a portion of the abandoned Central Kansas Railway right-of-way (R/W) north of said Lot 1.

The accompanying sketch is a true and correct exhibit of said topographic survey located in relation to the east line of Lot 1, Block 1, West 54 Industrial Addition, Wichita, Sedgewick County, Kansas based on actual field measurements where the measurements are of the character and occupy the passages as indicated.

Michael G. Curvey #077 Date



PROPOSED SEW EASEMENT LEGAL DESCRIPTION:
That part of Lot 1, Block 1, West 54 Industrial Addition, Wichita, Sedgewick County, Kansas described as follows: Commencing at the northeast corner of said Lot 1, said northeast corner also being a point on the westerly right-of-way line of the abandoned Central Kansas Railway; thence westerly along the north line of said Lot 1, and along the westerly right-of-way line of said abandoned Central Kansas Railway, 34.00 feet to a point of beginning; thence northerly parallel with the east line of said Lot 1, 10.07 feet to a point 10.00 feet normally distant south of the north line of said Lot 1; thence westerly parallel with the north line of said Lot 1, 40.26 feet to a point 40.00 feet normally distant west of the westerly prolongation of the last abandoned course; thence northerly parallel with the east line of said Lot 1, 10.07 feet to a point on the north line of said Lot 1, said point also being a point on the westerly right-of-way line of said abandoned Central Kansas Railway; thence westerly along the north line of said Lot 1, and along the westerly right-of-way line of said abandoned Central Kansas Railway, 40.26 feet to the point of beginning; 100'21.87' with that part of the abandoned Central Kansas Railway right-of-way lying in the Southeast Quarter of Section 26, Township 27 South, Range 1 West of the 6th Principal Meridian, Sedgewick County, Kansas, also described as follows: Commencing at the northeast corner of said Lot 1, said northeast corner also being a point on the westerly right-of-way line of the abandoned Central Kansas Railway; thence westerly along the north line of said Lot 1, and along the westerly right-of-way line of said abandoned Central Kansas Railway, 34.00 feet to a point of beginning; thence northerly parallel with the east line of said Lot 1, 10.07 feet to a point 10.00 feet normally distant south of the east line of said Lot 1; thence westerly parallel with the westerly right-of-way line of said abandoned Central Kansas Railway, 40.26 feet; thence northerly parallel with the westerly prolongation of the east line of said Lot 1, 10.07 feet to the point of beginning.

APPROVED

Leo C. Case

Date: 5 Dec 17

