



Wichita-Sedgwick County Metropolitan Area Planning Department

7 June 2018

Emily Taylor
Hutton Construction
2229 South West Street
Wichita, KS 67213

RE: BZA2017-00015 – City Variance request to reduce the minimum required lot size for Boarding/Breeding/Training Kennels from 5 acres to 1.1 acres on property zoned LI Limited Industrial, generally located approximately 250 feet west of North Ridge Road and 1,200 feet north of West 29th Street North.

Dear Ms. Taylor,

At its regular meeting on **April 19, 2018**, 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 revised 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.

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

Sincerely,

Kyle C. Kobe
Associate Planner

Copies to: MABCD
Drs. Amy and Mark Ekerberg, 3233 North Ridge Road, Wichita, KS 67205
Bryan Frye, WCC District V
Laura Rainwater, CSR District V
Jeff Vansant, City Law

REVISED BZA RESOLUTION NO. BZA2018-00015

WHEREAS, Emily Taylor of Hutton Construction (Agent) on behalf of NRVRC, LLC (Applicant); pursuant to Kansas Statutes Annotated 12-759, requests a Variance to reduce the minimum required lot size for Boarding/Breeding/Training Kennels from 5 acres to 1.1 acres at the not currently addressed site and legally described as follows:

Legal Description: That part of Lot 10, Block A, Ridge Port Commercial Park, Wichita, Sedgwick County, Kansas, described as follows: Commencing at the most Westerly corner of said Lot 10; thence S 39 degrees 27' 17" E along the Southwest line of said Lot 10, 215.00 feet for a point of beginning; thence N 50 degrees 32'43" E 145.00 feet; thence S 39 degrees 27' 17" E 343.35 feet to a point on the East line of said Lot 10; thence S 00 degrees 08'04" W along the East line of said Lot 10, 227.53 feet to the most Southerly corner of said Lot 10; thence N 39 degrees 27' 17" W along the Southwest line of said Lot 10, 518.69 feet to the point of beginning, EXCEPT that part of said Lot 10 described beginning at the most Southerly corner of said Lot 10; thence N 00 degrees 08'04" E along the East line of said Lot 10, 100.75 feet to the intersection with the South line of an access easement (Film 2470 Page 1071); thence N 89 degrees 51'56" W along the Westerly extension of the South line of said access easement 83.32 feet to a point on the Southwest line of said Lot 10, said point being 130.74 feet Northwesterly of the most Southerly corner of said Lot 10; thence S 39 degrees 27' 17" E along the Southwest line of said Lot 10, 130.74 feet to the point of beginning, AND EXCEPT that part of said Lot 10 described as commencing at the most Southerly corner of said Lot 10; thence N 00 degrees 08'04" E along the East line of said Lot 10, 100.75 feet to the intersection with the South line of an access easement (Film 2470 Page 1071) and for a point of beginning; thence N 89 degrees 51'56" W along the Westerly extension of the South line of said access easement 83.32 feet to a point on the Southwest line of said Lot 10, said point being 130.74 feet Northwesterly of the most Southerly corner of said Lot 10; thence N 39 degrees 27' 17" W along the Southwest line of said Lot 10, 51.28 feet; thence N 50 degrees 32'43" E perpendicular to the Southwest line of said Lot 10, 145.00 feet; thence S 39 degrees 27' 17" E parallel with the Southwest line of said Lot 10, 6.68 feet to a point on the East line of said Lot 10; thence S 00 degrees 08'04" W along the East line of said Lot 10, 126.78 feet to the point of beginning.

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 April 19, 2018, 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 *et. seq.*; and

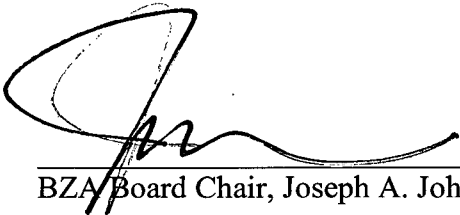
WHEREAS, the proposed type of service is new to the industry and as such the applicable Zoning Code has not yet developed to include a use of this type. The very nature of this use is fundamentally different from the type of use that is accounted for in the code and as such the only way to enable this type of service is via a Variance.

Lot 10, 100.75 feet to the intersection with the South line of an access easement (Film 2470 Page 1071) and for a point of beginning; thence N 89 degrees 51'56" W along the Westerly extension of the South line of said access easement 83.32 feet to a point on the Southwest line of said Lot 10, said point being 130.74 feet Northwesterly of the most Southerly corner of said Lot 10; thence N 39 degrees 27' 17" W along the Southwest line of said Lot 10, 51.28 feet; thence N 50 degrees 32'43" E perpendicular to the Southwest line of said Lot 10, 145.00 feet; thence S 39 degrees 27' 17" E parallel with the Southwest line of said Lot 10, 6.68 feet to a point on the East line of said Lot 10; thence S 00 degrees 08'04" W along the East line of said Lot 10, 126.78 feet to the point of beginning.

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

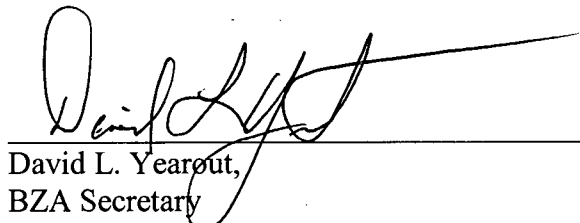
- The required off street parking spaces will be developed based on a parking plan to be submitted by the applicant and approved by the Director of Planning
- The applicant shall submit an updated site plan that provides a staggered row of evergreen trees planted every ten feet along the west and south edges of the outdoor run to serve as a visual screen and sound barrier to the nearby businesses and neighborhood.
- The site shall be constructed in substantial conformance with the approved site plan
- The hours of operation for the outdoor play area are to be restricted to 8 am to 5 pm. Animals in the outdoor play areas shall be supervised at all times. The operation shall comply with the City of Wichita Excessive Noise Ordinance.
- The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
- The resolution authorizing this variance may be declared null and void upon findings by the Zoning Board of Appeals that the applicant has failed to comply with any of the foregoing conditions

ADOPTED AT WICHITA, KANSAS, this 10th Day of May 2018.



BZA Board Chair, Joseph A. Johnson

ATTEST:



David L. Yearout,
BZA Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA2018-00015

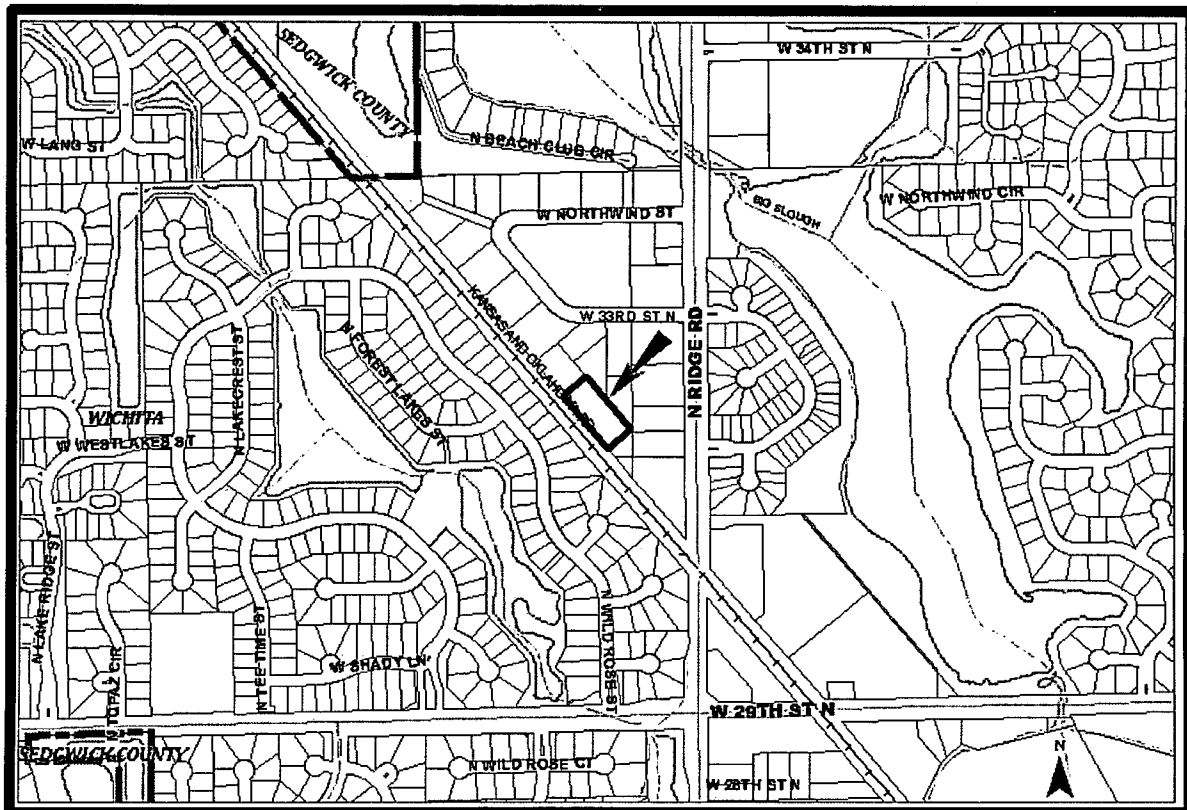
APPLICANT: Emily Taylor with Hutton Construction (agent) Drs. Amy and Mark Ekerberg with NRVRC Inc (applicant)

REQUEST: Variance to reduce the minimum required lot size for Boarding/Breeding/Training Kennels from 5 acres to 1.1 acres

CURRENT ZONING: LI Limited Industrial

SITE SIZE: 1.1 acres

LOCATION: Generally located approximately 250 feet west of North Ridge Road and 1,200 feet north of West 29th Street North



BACKGROUND: This application is to reduce the minimum lot size for a Boarding/Breeding/Training Kennel from the required 5 acres to the 1.1 acres that this site will occupy. The proposed facility will allow for, as the applicant has stated in their application documentation:

- Eight staff at any given time if fully booked, total occupant load for the building will be 15 people, which will equal the amount of parking spaces provided
- Outdoor play for dogs proposed for 8:30am to noon and 1:30pm to 5:45pm, Monday through Friday only
- Up to 40 dogs in playcare, cages/kennels for up to 105 boarded dogs (indoors only, fully caged)
- Cages for up to 10 cats (indoors only, fully caged)

The applicants, board licensed veterinarians, see this business model as a new and innovative way to provide for 'doggy day care' style service. The difference from a traditional service of this type and this proposal is that this facility will feature several large garage style doors on the southwest side of the building that will allow for the indoor dog run to extend outside.

The Unified Zoning Code (UZY) defines Kennel, Boarding/Breeding/Training as:

Means premises housing five or more Adult Dogs, three or more of which are owned by someone other than the property resident, and premises housing over ten Adult Dogs.

The UZY allows Kennel, Boarding/Breeding/Training by right (meaning no conditional use is necessary) in the LI Limited Industrial zoning district. However, the use is subject to the Use Regulations portion of the code as well. Per Art. III Sec. III-D.6.k.:

The minimum lot size for Boarding/Breeding/Training Kennels shall be five acres, unless all animals are harbored indoors with no discernible noise or odor at the property lines.

Outside runs, holding pens or other open-air type enclosures and shelters shall be located behind the Front Setback Line and locates at least 200 feet from any Dwelling Unit other than the Owner's and at least 50 feet from Contiguous property lines.

The owner's property is under the five acre limit; however, the separation requirements are met.

The applicant has submitted a narrative description of what the use will be on site as well as a site plan depicting the overall layout of the site. Further, the applicant has submitted for building permits in the event that this variance case is approved. Both the site plan and some pages from the submission for building permits are provided as attachments to this case.

There have been some concerns from the neighbors on the other side of the railroad line about the noise level of the dogs when they are let outdoors. One such neighbor has provided a letter to staff which is included as an attachment. The applicant addressed this in their application documentation, and staff is adding the requirement that screening trees be added as a condition of approval.

Parking for Kennel, Boarding/Breeding/Training is required to be provided for via a parking plan submitted by the applicant. At this time staff has not received said parking study. Submission of this study and approval by the Director of Planning will be a condition of approval.

Hours of operation for the Indoor/Outdoor portion of the play area for the dogs are listed as being during business hours. Staff feels it is important to more exactly state the hours of operation. Staff recommends hours of operation for the outdoor portion of the dog play area be restricted to 8 am to 5 pm.

ADJACENT ZONING AND LAND USE:

NORTH	LI	Warehouse/Office, Manufacturing
SOUTH	LI	Railroad, Transmitter/Antenna Facility
EAST	LI	Commercial, Vacant/Undeveloped Parcels
WEST	LI	Railroad

CASE HISTORY: This property was platted as part of the Ridge Port Commercial Park Addition on 21 June 2002.

UNIQUENESS: The owners' concept of animal play care is not ordinarily found in the same zone or district as the property in question because it is a new and innovative adaptation of the animal care industry. This type of service is new to the industry as a whole and is specifically new to the Wichita area, with the owners of the property in question being some of the very first to introduce the type of care to the local market.

The applicable Zoning Code has not yet developed to include accurate consideration of this new type of animal care services. Thus, the provision in question should not be misconstrued to prohibit the specific indoor/outdoor animal play care service the owners intend to provide.

The property in question is a uniquely appropriate site for this type of new service for the following reasons:

- Standard "animal care, limited or general" and "kennel, boarding" services described in the applicable Code are expressly allowed
- All directly adjacent properties are also classified as Limited Industrial
- Adjacent properties are primarily inhabited by industrial or manufacturing-type organizations that conduct all of their business indoors.
- There is a 100' railroad right-of-way to serve as a buffer between the boundary of the Limited Industrial zone and the Single Family residential zone to the west.

ADJACENT PROPERTY: The allowance of the proposed indoor/outdoor play care services on a 1.1 acre lot will not infringe on any express or inherent rights of adjacent property owners. Possession of, access to, exclusive control of, free use of, and disposition of adjacent properties will not be affected in any way.

HARDSHIP: The applicants are Wichita entrepreneurs looking to expand their business and offer a new and innovative animal care service to the community. They have been serving for 7 years. Strictly applying *Art. III Sec. III-D.6.k.1* by interpreting the Code's definition of "kennel, boarding" services to include outdoor animal play care would eliminate the possibility that the applicants could provide the indoor/outdoor animal play care services that are in high demand in the Wichita market. A minimum lot size of five acres for this kind of service is unfeasible in an urban setting and unnecessary to uphold the intent of the Code.

PUBLIC INTEREST: Allowing the services that have been interpreted to be in conflict with *Art. III Sec. III-D.6.k.1* on 1.1 acres instead of the prescribed five acres will pose no threat to public health, safety, order, convenience, prosperity, welfare, or the harmonious development of the community.

Adjacent property owners will not experience any disturbance due to noise or odor beyond that which already could exist on the properties.

SPIRIT AND INTENT: As previously addressed, the facility will provide traditional, kennel boarding for both dogs and cats, and all of the traditional boarding services will take place 100% indoors. This portion of the owners' services has been confirmed to be fully compliant with all provisions of the Code and should not be brought into questions as part of this applications for variance.

Art. III Sec. III-D.6.k.1's intent of protecting surrounding properties from noise or odors that would be considered a nuisance by requiring a minimum lot size of five acres will not be diminished by the outdoor play care services that the owners plan to provide. Outdoor animal play care varies greatly from the traditional understanding of outdoor "housing," "harboring," or "boarding" in that animals are supervised at all times, are not individually confined or restrained, and are allowed to behave more naturally than if they were in kennels, cages, or traditional runs. Dogs at play do not bark in the way they would when confined in kennels or runs, and open outdoor turf play areas do not collect urine or feces in the way that kennels or runs do to produce odor. An open outdoor play care setting will produce negligible noise and odor in comparison to the traditional "kennel" or "boarding" setting that the code describes. The Code's intent to safeguard the community will not be infringed upon by the allowance to outdoor animal play care on a lot of 1.1 acres.

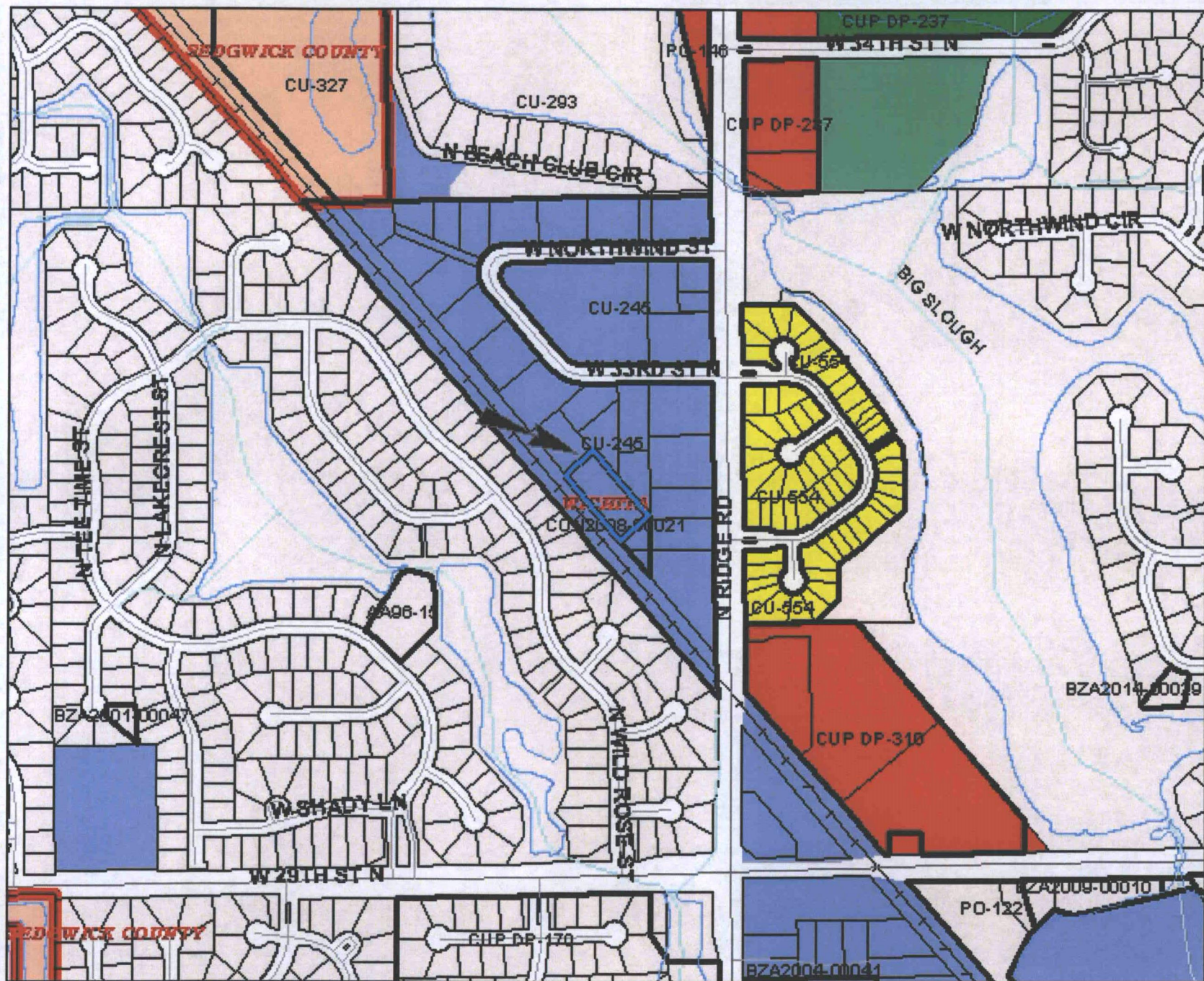
RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the required lot size for a Kennel, Boarding/Breeding/Training on the subject site be reduced to 1.1 acres be **GRANTED**, subject to the following conditions:

- The required off street parking spaces will be developed based on a parking plan to be submitted by the applicant and approved by the Director of Planning
- The applicant shall submit an updated site plan that provides a staggered row of evergreen trees planted every ten feet along the west edge of the outdoor run to serve as a visual screen and sound barrier to the neighborhood to the west.
- The site shall be constructed in substantial conformance with the approved site plan
- The hours of operation for the outdoor play area are to be restricted to 8 am to 5 pm. Animals in the outdoor play areas shall be supervised at all times. The operation shall comply with the City of Wichita Excessive Noise Ordinance.
- The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
- The resolution authorizing this variance may be declared null and void upon findings by the Zoning Board of Appeals that the applicant has failed to comply with any of the foregoing conditions.

Report Attachments:

1. Aerial Map
2. Zoning Map
3. Opposition Letter
4. Applicant's Narrative
5. Supplemental documents submitted by applicant
6. Site Plan





ZONING

- RR
- SF-20
- SF-10
- SF-5
- TF-3
- MF-18
- MF-29
- B
- MH
- NO
- GO
- NR
- LC
- GC
- CBD
- OW
- IP
- LI
- IP-A
- GI
- AFB
- U
- PUD
- AIRPORT
- OLD TOWN

LEGAL DESCRIPTION

TH PT LOT 10 BEG 215 FT SE WLY MOST COR SAID LOT NELY 145 FT SELY 343.35 FT TO PT E LI S 227.53 FT TO MOST SLY COR NW 518.69 FT TO BEG EXC BEG 100.75 FT N MOST SLY COR THEREOF W 83.32 FT NWLY ALG SW LI 51.28 FT NELY 145 FT SELY 6.68 FT TO E LI S 126.78 FT TO BEG & EXC BEG SLY MOST COR N 100.75 FT W 83.32 FT TO SW LI SELY 130.74 FT TO BEG. BLOCK A. RIDGE PORT COMMERCIAL PARK ADDITION.

PARCEL SIZE: 1.12 ACRES

PROJECT AREA SIZE: 0.85 ACRES

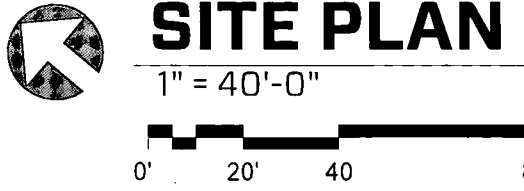
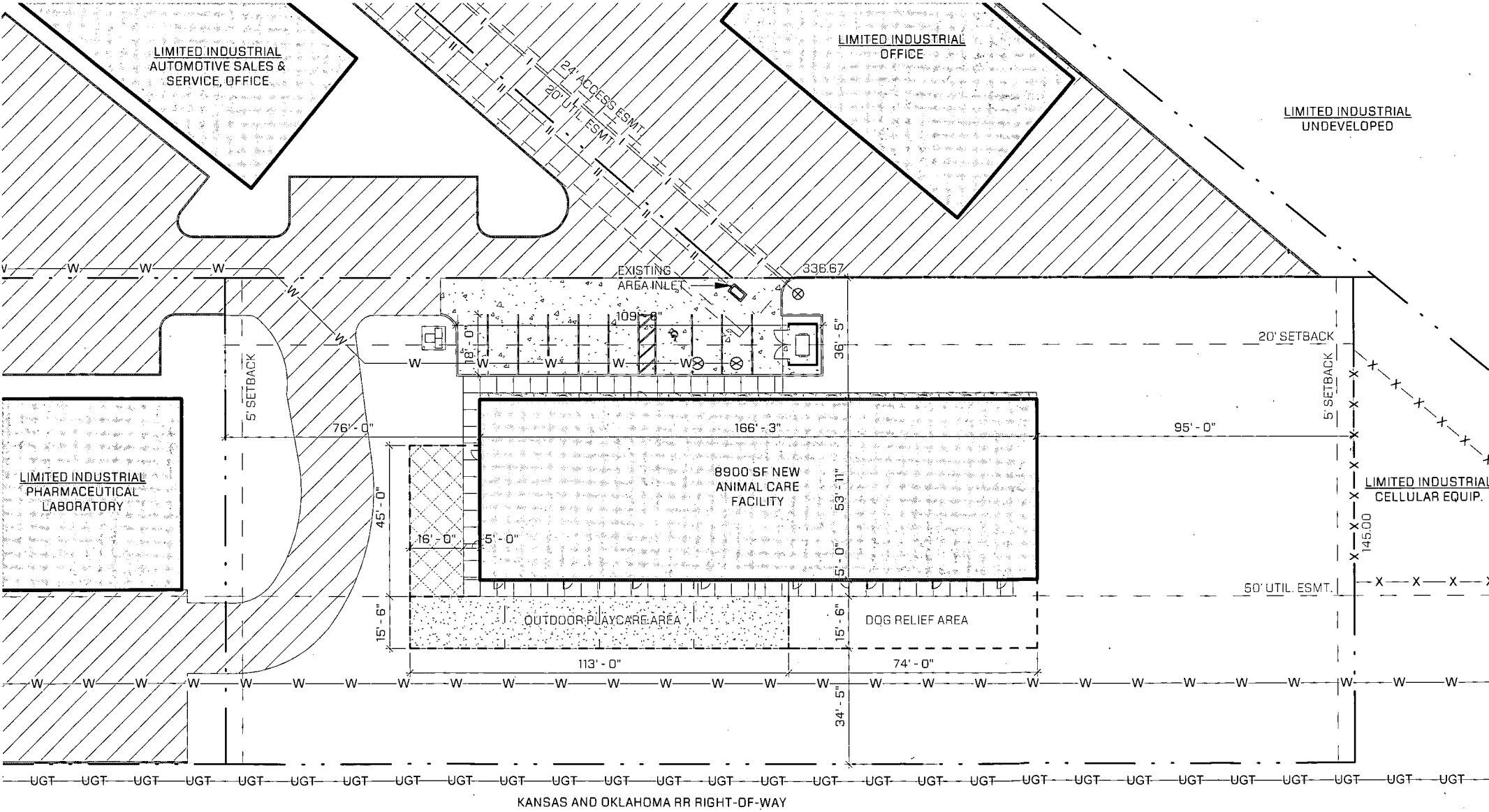
GENERAL NOTES

PARCEL NO.: 30002678
APPLICANT: NRVRC, LLC
DRS. MARK & AMY EKERBERG
AGENT: EMILY TAYLOR
HUTTON CONSTRUCTION

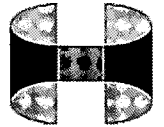
TO ACCOMPANY AN APPLICATION FOR VARIANCE REQUESTING AN ALLOWANCE OF A LOT AREA OF 1.1 ACRES RATHER THAN THE MINIMUM LOT AREA OF 5 ACRES PRESCRIBED IN ART. III SEC. III-D.6.K.1 OF THE APPLICABLE ZONING CODE FOR THE PROPOSED ANIMAL CARE SERVICES.

SITE PLAN LEGEND

- NEW CONCRETE PAVING
- EXISTING ASPHALT PAVING
- EXISTING CURB
- OUTDOOR PET TURF
- NEW CONCRETE/PAVING
- 8' COMPOSITE FENCE ON CURB
- 6' CHAIN LINK DIVIDING FENCE
- EXISTING MANHOLE
- EXISTING WATER VALVE
- EXISTING WATER LINE
- EXISTING UG TELEPHONE LINE
- EXISTING SAN. SEWER LINE
- EXISTING STORM SEWER LINE
- EXISTING FENCE



APPLICATION FOR VARIANCE OF REQUIRED MIN. LOT SIZE



HUTTON
CONSTRUCTION

LEAD. INSPIRE. RESPECT. CONSTRUCT.