



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

June 25, 2004

Brad Snow  
Kansas and Oklahoma Railroad  
315 W. 3<sup>rd</sup>  
Pittsburg, KS 66762

**RE: BZA2004-00033 – Variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet. Generally located south of Kellogg and east of St. Francis. (District I)**

Dear Ladies and Gentlemen:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on June 22, 2004, this resolution reflects the official action of the Board to grant your requests and sets out the conditions of approval. 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,

Scott Knebel  
Senior Planner

SK/rs

Cc: David Bressler, 425 W. New England Ave #500, Winter Park, FL 32789  
Greg Ferris, Ferris Consulting, P O Box 573, Wichita, KS 67201  
Mike Case, Attorney, 150 N. Main Ste 400, Wichita, KS 67202  
Carl Brewer, WCC, District I, Mail Stop 1-13  
Sharon Dickgrafe, Law Department, Mail Stop 1-132  
Herb Shaner, OCI, 1-72  
Pat Longwell, OCI, Mail Stop 1-72  
Kurt Schroeder, OCI, Mail Stop 1-72

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**BZA RESOLUTION NO. 2004-00033**

**WHEREAS**, Kansas and Oklahoma Railroad c/o Brad Snow (Owner); Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant); Ferris Consulting, c/o Greg Ferris; Mike Case (Attorney); pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet on property zoned "LI" Limited Industrial legally described as follows:

A 50 foot wide strip, of land with 25 feet on each side of the following described centerline: Commencing at the Southwest corner of Lot 108, on Mead Avenue, Hodson and Stancer's Addition, Sedgwick County, Kansas; thence West along the North right-of-way line of Gilbert Street for a distance of 235.00 feet to a point of beginning; thence north 1596.00 feet to a point that is 1596.00 feet north and 286.00 feet west of the Southwest corner of said Lot 108, west line extended north; thence West at right angles to previously described line for a distance of 50 feet to a point of termination. Generally located south of Kellogg and east 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 June 22, 2004, 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 was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities could have been identified prior to construction and addressed at that time.

**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 industrial purposes and are located along a state highway where billboards are common. The variances requested for the billboard do not significantly increase the impacts of the billboard on adjacent properties.

**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 the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant relied upon an Office of Central Inspection interpretation that a permit was not required

and constructed the billboard in good faith based on this written interpretation. Removing the billboard would entail significant expense and lost revenue to applicant in order to remedy an error by the Office of Central Inspection.

**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 variances requested do not detrimentally impact uses or projects of public interest.

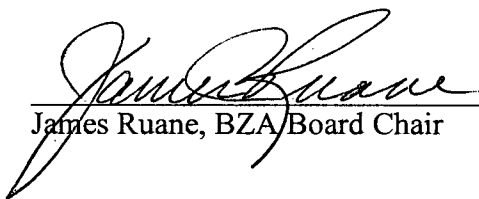
**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign 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, that variances be granted for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet subject to the billboard complying with all other regulations of the Sign Code on property zoned "LI" Limited Industrial legally described as follows:

A 50 foot wide strip of land with 25 feet on each side of the following described centerline: Commencing at the Southwest corner of Lot 108, on Mead Avenue, Hodson and Stancer's Addition, Sedgwick County, Kansas; thence West along the North right-of-way line of Gilbert Street for a distance of 235.00 feet to a point of beginning; thence north 1596.00 feet to a point that is 1596.00 feet north and 286.00 feet west of the Southwest corner of said Lot 108, west line extended north; thence West at right angles to previously described line for a distance of 50 feet to a point of termination. Generally located south of Kellogg and east of St. Francis.

**ADOPTED AT WICHITA, KANSAS, this 22nd DAY of JUNE, 2004.**

  
James Ruane, BZA Board Chair

ATTEST:

  
Scott Knebel, BZA Secretary

**SECRETARY'S REPORT**

CASE NUMBER: BZA2004-00033

OWNER/APPLICANT: Kansas and Oklahoma Railroad c/o Brad Snow (Owner);  
Bressler/Kelso Joint Venture c/o Pat Kelso (Applicant)

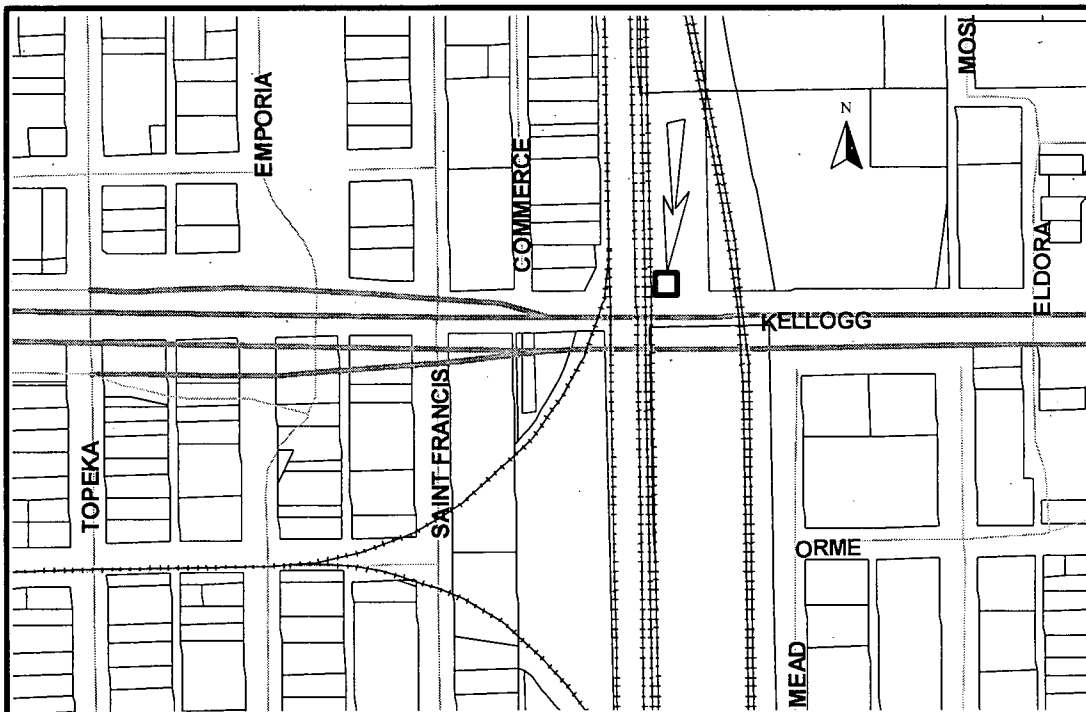
AGENT: Greg Ferris (Agent); Mike Case (Attorney)

REQUEST: Variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet

CURRENT ZONING: "LI" Limited Industrial

SITE SIZE: 0.05 Acres

LOCATION: South of Kellogg and east 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:** On March 26, 2003, the Office Central Inspection issued the attached letter indicating that no sign permit was required to construct a billboard on the subject property, which is a portion of railroad right-of-way that is zoned "LI" Limited Industrial and is located south of Kellogg and east of St. Francis. On June 17, 2003, the applicant sent the attached letter asking for confirmation that no sign permit was required, and on that same date, the Office of Central Inspection issued the attached letter confirming that no sign permit was required for the proposed billboard. The applicant subsequently constructed a billboard on the subject property. On September 5, 2003, the Office of Central inspection issued the attached letter indicating that previous correspondence regarding no sign permit being required was in error.

The billboard that was constructed on the subject property does not conform to the following requirements of the Sign Code:

1. Section 24.04.222.2. of the Sign Code limits the height of a billboard located adjacent to an elevated highway to 14 feet above the top of the railing or barrier along the traffic deck. For the subject property, a billboard would be limited to 51.4 feet in height since the freeway railing is 37.4 feet in height. The billboard on the subject property is 69.8 feet in height, as illustrated on the attached sign elevation drawing; therefore, the applicant is seeking a variance to permit the increased height at which the billboard was constructed.
2. Section 24.04.222.4. of the Sign Code requires billboards to meet all building setback requirements. For the subject property, a setback along Kellogg of 20 feet is required. The billboard is set back 15 feet from Kellogg, as illustrated on the attached site plan; therefore, the applicant is seeking a variance to permit the setback at which the billboard was constructed.
3. Section 24.04.222.1. of the Sign Code limits the number of billboards in the mile between Broadway and Hydraulic to five. As illustrated on the attached map, there were already five billboards within this mile when the applicant's billboard was constructed. Therefore, the applicant is seeking a variance to increase the number of billboards permitted within this mile from five to six.
4. Section 24.04.222.3.c. of the Sign Code requires billboards to be separated by 330 feet; however, as illustrated on the attached map, the billboard on the subject property is separated from the nearest billboard by less than 90 feet. Therefore, the applicant is seeking a variance to reduce the spacing required between billboards from 330 feet to 80 feet.

The applicant submitted the attached letter dated March 22, 2004, that addresses how the request meets the criteria for granting the variances requested. The applicant also submitted the attached letter dated June 11, 2004, indicating that the railroad has leased land for the billboard and does not object to the application for the variances.

**ADJACENT ZONING AND LAND USE:**

NORTH	"LI"	Railroad
SOUTH	"LI"	Railroad
EAST	"LI"	Bus maintenance facility
WEST	"LI"	Various industrial and commercial uses

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the applicant was informed twice by the Office of Central Inspection that a permit for the billboard was not required. Had a permit been required, the non-conformities could have been identified prior to construction and addressed at that time.

**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 industrial purposes and are located along a state highway where billboards are common. The variances requested for the billboard do 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 will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant relied upon an Office of Central Inspection interpretation that a permit was not required and constructed the billboard in good faith based on this written interpretation. Removing the billboard would entail significant expense and lost revenue to applicant in order to remedy an error by the Office of Central Inspection.

**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 variances requested do not detrimentally impact uses or projects of public interest.

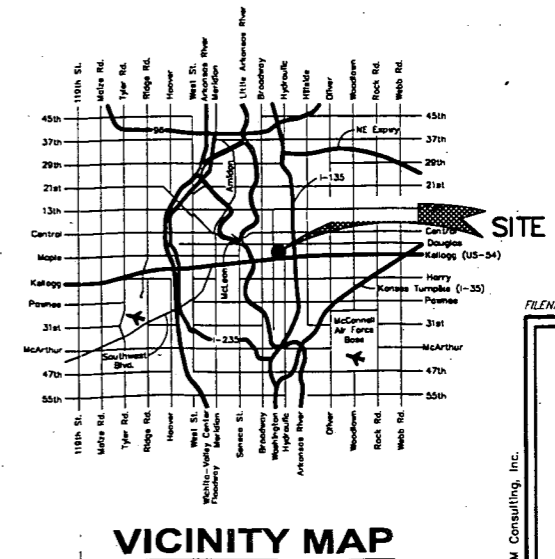
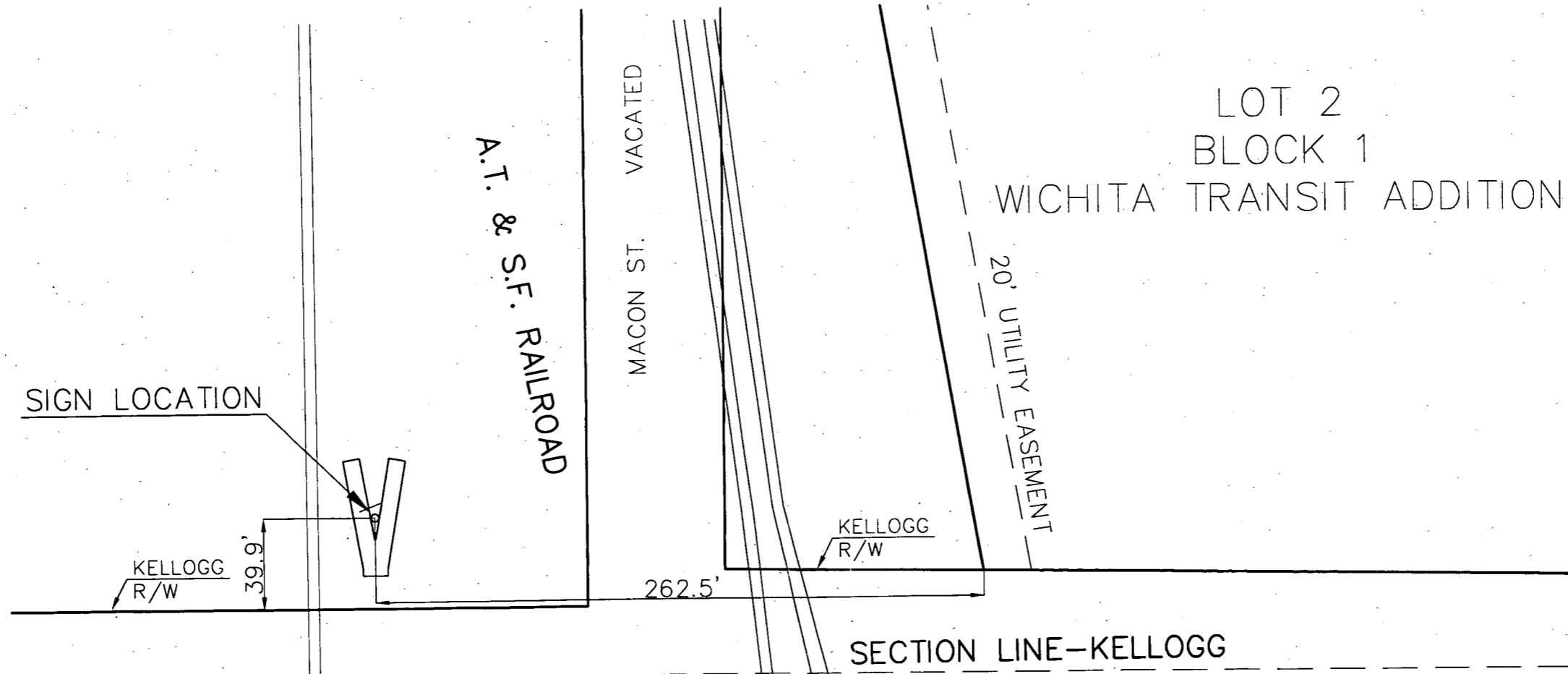
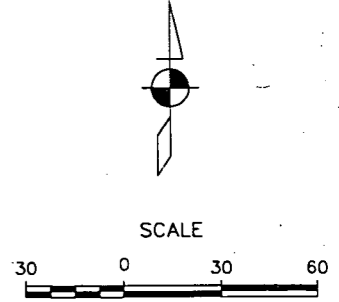
**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

**RECOMMENDATION:** Should the Board determine that the conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variances for a billboard to increase the permitted height from 51.4 feet to 69.8 feet, to reduce the front setback from 20 feet to 15 feet, to increase the number of billboards permitted within the mile from five to six, and to reduce the spacing required between billboards from 330 feet to 80 feet be GRANTED subject to the billboard complying with all other regulations of the Sign Code.


# SITE EXHIBIT

## KELLOGG AND RAILROAD LOCATION

### WICHITA, KANSAS



FILENAME: 03094/kellogg-sign/kellogg-sign.dwg

  
**A&W CONSULTING, Inc.**  
**ENGINEERING SERVICES**  
 142 N. Emporia Wichita, KS 67202  
 316/265-2870 fax 316/265-2839

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E:\projects\03094\kellogg-sign\kellogg-sign.dwg Thu Mar 18 16:38:13 2004 Aaron E. - aearleywine@amconsultinginc.com