



Wichita-Sedgwick County Metropolitan Area Planning Department

May 4, 2023

Hakam and Samah Altohol
2508 N Brandon Cir
Wichita, KS 67226

Gordon Outdoor Advertising
205 S Main, STE 203
Broken Arrow, OK 74012

Greg Ferris Consulting
Attn: Greg Ferris
PO Box 573
Wichita, KS 67201

RE: BZA2023-00013 – Variance request in the City to permit an off-site sign in a setback on property zoned GI General Industrial, generally located on the west side of North Hydraulic Avenue, within one-quarter mile north of East 37th Street North (4035 North Hydraulic).

Dear Applicant,

At its regular meeting on April 13, 2023, the official action of the Board of Zoning Appeals was to **GRANT** the requested variance. The approval of the request is subject to the following conditions.

1. The 20-foot building setback on the rear portion of the zoning lot shall be reduced only for the construction of the off-site billboard sign. All other structures shall adhere to all applicable setbacks.
2. The applicant shall obtain all permits necessary from the Metropolitan Area Building and Construction Department to construct the signage and the signage shall be erected within one year.
3. The sign shall conform to all other requirements of the City of Wichita Sign Code.

Please see the enclosed Resolution for your records.

If you have any questions concerning this matter, please call our office at (316)-268-4421.

Sincerely,

Philip Zevenbergen, AICP
Current Plans, Division Manager

Copies to: MABCD

BZA RESOLUTION NO. BZA2023-00013

WHEREAS, Hakam and Samah Altohol (owners); pursuant to Kansas Statutes Annotated 12-759, request a Variance to an off-site/billboard sign to be within the front setback on property located at 4035 North Hydraulic Avenue; legally described as follows:

The North half of Lot 33, North Wichita Gardens Addition, 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 April 13, 2023, 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 request to permit the sign within the setback is appropriate considering the uniqueness of the site. The west part of the subject lot was purchased by the State (KDOT) for the expansion of the I-235 and I-135 interchange. This moved the west property line to the east. The property is also a through-lot, and the rear property line has a front setback, which is greater than a rear setback. Had these situations not been present, the sign would not need to be constructed in the setback.

WHEREAS, granting the placement of the sign in the setback will not adversely affect the rights of adjacent property owners. The property is along the highway and the majority of the area is zoned industrial. Placing the sign in the setback sets it farther away from the nearby residential lots.

WHEREAS, the strict application of the restriction on sign not being within setbacks constitute an unnecessary hardship on the applicant. Moving the sign closer to the highway improves visibility of the sign. Strict application of the Code would reduce the visibility of the sign.

WHEREAS, granting the variance to permit the sign in the setback is in the public interest and will not adversely affect surrounding properties. The subject site is a through-lot which makes it have the depth of a front setback on the rear property line. The request is to permit the sign to be constructed at a location that normally would be outside the setbacks.

WHEREAS, granting the variance will not be opposed to the general spirit and intent of the Code. The intent of the Code is to prevent structures in what would normally be perceived as a front setback. This occurs in parts of the City where lots are adjacent to two streets, which provides orderly development. The subject site abuts a limited access highway. There is no expectation for a setback of this kind along a limited access highway.

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 permit an off-site/billboard sign to be within the front setback on property located at 4035 North Hydraulic Avenue; legally described as follows:

The North half of Lot 33, North Wichita Gardens Addition, Sedgwick County, Kansas.

The variance is hereby **GRANTED**, subject to the following conditions:

1. The 20-foot building setback on the rear portion of the zoning lot shall be reduced only for the construction of the off-site billboard sign. All other structures shall adhere to all applicable setbacks.

2. The applicant shall obtain all permits necessary from the Metropolitan Area Building and Construction Department to construct the signage and the signage shall be erected within one year.
3. The sign shall conform to all other requirements of the City of Wichita Sign Code.

ADOPTED AT WICHITA, KANSAS, this 13th Day of April 2023


Ann M. Fox, BZA Board Chair

ATTEST:



Scott Wadle,
BZA Secretary



Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
Fresno Bee

The Herald - Rock Hill
Herald Sun - Durham
Idaho Statesman
Island Packet
Kansas City Star
Lexington Herald-Leader
Merced Sun-Star
Miami Herald

el Nuevo Herald - Miami
Modesto Bee
Raleigh News & Observer
The Olympian
Sacramento Bee
Fort Worth Star-Telegram
The State - Columbia
Sun Herald - Biloxi

Sun News - Myrtle Beach
The News Tribune Tacoma
The Telegraph - Macon
San Luis Obispo Tribune
Tri-City Herald
Wichita Eagle

AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
16399	398642	Print Legal Ad-IPL01149060 - IPL0114906		\$231.52	3	92 L

Attention: MANDY HEBERT

CITY OF WICHITA/PLANNING DEPT
271 WEST THIRD ST., 2ND FL. SU 203
WICHITA, KS 67202

LEGAL PUBLICATION

OCA 150004
Published in The Wichita Eagle on March 23, 2023
(One Time Only)
MAPC/BZA April 13, 2023
OFFICIAL HEARING NOTICE

NOTICE IS HEREBY GIVEN that on Thursday, April 13, 2023, no earlier than 1:30 p.m., the WichitaSedgwick County Metropolitan Area Planning Commission/Board Zoning Appeals will consider the following applications. The meeting will be held at the Ronald Reagan Building, 271 West Third Street, 2nd Floor, Wichita, KS 67202. Public participation may also occur through virtual methods (specified at the end of this notice). If you have any questions regarding the meeting or items on this notice, please call the WichitaSedgwick County Metropolitan Area Planning Department at (316) 2684421.

BZA2023-00008: Variance in the City to allow a rooftop sign in the CBD Central Business District on property located on the northwest corner of South Broadway Avenue and East William Street (230 East William).

BZA2023-00013: Variance request in the City to allow an off-site sign in the 20-foot west front setback on property zoned GI General Industrial; generally located west of North Hydraulic Avenue and approximately one-quarter-mile north of East 37th Street North (4035 N. Hydraulic).

CON2023-00005: Conditional Use request in the City to permit expansion of existing bar with live entertainment (defined as Night Club in the City) on property zoned LC Limited Commercial; located on the south side of East 17th Street and within one block east of North Hillside Avenue (3227 East 17th Street North).

DER2023-00006: Wichita-Sedgwick County Unified Zoning Code (UJC) amendment to include Short-Term Rental businesses.

PUD2023-00001: Zone change request in the City from LI Limited Industrial District with PO #162 to PUD Planned Unit Development for mixed-use development; generally located on the northwest corner of East 29th Street North and North Greenwich Road.

PUD2023-00002: Zone change request in the City from B Multi-Family Residential to PUD Planned Unit Development for duplex development with flexible development standards; generally located west of North Wellington Street and approximately 300 feet north of West 11th Street North.

VAC2023-00004: Request in the County to vacate a portion of platted access control located along East 71st Street South, within one block east of South 143rd Street East.

VAC2023-00005: Request in the County to vacate a platted 70-foot contingent street dedication between Lots 6 and 7, Downs Country Estates Addition, on properties zoned SF-20 Single-Family Residential; located within one-quarter mile northwest of South Webb Road and East 47th Street South (8314 and 8207 E. Chertish).

VAC2023-00006: Request in the County to vacate a floodway reserve easement dedicated by separate instrument; generally located one-half-mile south of West 125th Street North and east of North Seneca (10th) Street West (12220 North Seneca).

VAC2023-00007: Request in the City to vacate a platted 30-foot utility easement on property zoned GI General Industrial; generally located north of North Cleveland Avenue and west of North New York Avenue.

ZON2023-00007: Zone change in the City from SF-5 Single-Family Residential District to GO General Office District to allow GO uses including duplexes; generally located east of South Metz Road and north of West Kellogg Drive.

ZON2023-00008: Zone change request in the City from SF-5 Single Family Residential to LC Limited Commercial to build a commercial building with drive-through; located at South Seneca Street and South Walnut Street, within one block South of West 31st Street South (3234 Seneca Street & 3241 South Walnut Street).

ZON2023-00009: Zone change request in the City from SF-5 Single-Family Residential District to TF-3 Two-Family Residential District for duplex development; generally located on the northwest corner of North Fairview Avenue and West 31st Street North (3205 North Fairview).

Complete legal descriptions are available for public inspection at the Metropolitan Area Planning Department, 271 W. Third St., 2nd Floor, Wichita, Kansas 67202. As provided in Section V of the WichitaSedgwick County Unified Zoning Code, the same will then and there be discussed and considered by the said MAPC, and all persons interested in said matters will be heard at this time concerning their views and wishes in the premises, and any protest against any of the provisions of the proposed changes to the zoning regulations will be considered by the MAPC as by law provided.

Options to participate (see below):

- 1) Participate virtually
- 2) Attend in-person at the Ronald Reagan Building
- 3) Submit comments ahead of time

Participate Virtually

Join Zoom Meeting

<https://us06web.zoom.us/j/4089866967?pwd=a0k3bW0ySjBibGJQTFYwOXpVd0R0bXU09>

Meeting ID: 408 986 6967

Passcode: 094136

One tap mobile

+16699006533,4089866967#,,,,094136# US (San Jose)

+17193584580,4089866967#,,,,094136# US

Meeting ID: 408 986 6967

Passcode: 094136

Find your local number: <https://us06web.zoom.us/j/4089866967>

Attend In-Person

You may also participate in the hearing in-person at the Ronald Reagan Building, 271 West Third Street, 2nd Floor, Wichita, Kansas 67202. This in-person option is primarily intended for those without other technology options, and who have not previously submitted recorded audio or video comments. If you have any written or visual materials you wish to present, please contact Planning Department Graphics staff (316-2684464) by 5pm, 3 days prior to the meeting.

Submit Comments Ahead of Time

You can submit comments regarding items on the Planning Commission agenda to the Wichita-Sedgwick County Metropolitan Area Planning Department (Planning Department). Comments must be received by the Planning Department no later than 5pm 3 days prior to the meeting. Please be sure to provide ample time for delivery. The comments can be submitted in the following formats: email; letter; video; and audio message (mp3, etc.). The comment should indicate which item they pertain to and be less than three (3) minutes in duration. The comments should be submitted to Planning Department staff using the contact information below. The comments received ahead of the submission deadline will be shared with the MAPC, prior to or during the meeting.

Email Planning@wichita.gov

Mailing Address Wichita-Sedgwick County Metropolitan Area Planning Department

Attn: Scott Wade

271 W. 3rd Street - Suite 201

Wichita, KS 67202

Phone 316.268.4421

Fax 316.858.7764

WITNESS MY HAND on March 23, 2023

Scott Wade, Secretary

WichitaSedgwick County

Metropolitan Area Planning Commission

IPL0114906

Mar 23 2023

In The STATE OF KANSAS

In and for the County of Sedgwick

1 insertion(s) published on:

03/23/23

STATE OF KANSAS)

SS

County of Sedgwick)

Hayley Martin, of lawful age, being first duly sworn, depose and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle from 03/23/2023 to 03/23/2023.

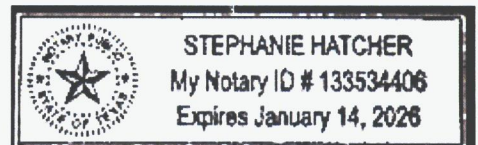
M. Hayley

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

DATED: 03/23/2023

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!

SECRETARY'S REPORT

CASE NUMBER: BZA2022-00013 (City)

APPLICANT: Hakam and Samah Altohol, Gordon Outdoor Advertising (Applicants) / Ferris Consulting (Agent)

REQUEST: Variance to reduce the western setback from 20 feet to zero (0) feet.

CURRENT ZONING: GI General Industrial District

SITE SIZE: 2.41 acres

LOCATION: Generally located on the west side of North Hydraulic, within one-quarter mile north of East 37th Street North (4035 North Hydraulic Avenue).



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions of Section 24.04.250 of the Wichita Sign Code, and as 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: The applicant is requesting a Variance to reduce the western front setback from 20 feet to zero (0) feet for an off-site billboard sign on property zoned GI General Industrial District. The subject property is addressed as 3905 North Hydraulic Avenue, which is generally located on the west side of North Hydraulic Avenue and within one-quarter mile north of East 37th Street North. The applicant leases out a portion of the rear of the property to Gordon Outdoor Advertising for an off-site billboard sign facing I-135. Though GI zoning permits a zero-foot rear setback, the subject property is considered a “through-lot” which requires a front setback along both frontages. Therefore, the setback on the rear of the property is 20 feet.

The Unified Zoning Code defines a “through-lot” as:

In 2022, CON2022-000034 was approved for a special review to permit the offsite billboard sign within 300 feet of residential zoning. Concurrently, BZA2022-00041 was approved to permit an increase in height of said off-site billboard sign to 60 feet to not be obstructed by existing, mature trees. At the time of these two applications, the applicant was not aware of the “through-lot” designation of the subject site requiring a 20-foot setback on the west. Section 24.04.222(5) of the Sign Code does not permit off-site billboard signs to be constructed in any applicable setback.

Sign’s Purpose

The purpose of the sign is to advertise messages, good, and services along the I-135 corridor.

Surrounding Context

Property to the north is zoned SF-5 Single-Family Residential District and is developed with a single-family dwelling and accessory structures on a two-acre lot. The single-family dwelling is developed approximately in the middle of the side east-to-west. Properties to the east and south are zoned GI General Industrial District. Property to the east, across North Hydraulic, is an agricultural field. Properties to the south are developed with single-family dwellings with accessory structures along East 39th Street North. Property to the west is the I-135 Highway right-of-way, which was recently expanded to accommodate improvements to the North Junction (I-135, I-235/K-96, K-254 interchange).

The nearest off-site billboard is approximately 850 feet south of the subject site. In 2021, the site of this sign (3905 North Hydraulic) was approved for a Variance to reduce the western front setback of the through-lot from 20 feet to zero (0) feet.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Large Lot Single Family Residential
SOUTH:	GI	Single Family Residential
EAST:	GI	Agricultural Field
WEST:	None	I-135 Highway

CASE HISTORY: In 1922, the property was platted as part of the North Wichita Gardens Addition. In 2022, CON2022-000034 was approved for a special review to permit the offsite billboard sign within 300 feet of residential zoning. Concurrently, BZA2022-00041 was approved to permit an increase in height of said off-site billboard sign to 60 feet to not be obstructed by existing, mature trees.

THE FIVE CRITERIA FOR GRANTING A VARIANCE:

1. Criteria: The request is unique to this property and was not created by the applicant. The applicant states that the west part of the subject lot was purchased by the State (KDOT) for the expansion of the I-235 and I-135 interchange. This moved the west property line to the east. Had this not occurred, the sign would not be as close to the western property line. The “through-lot” definition is there to protect

property owners that might be adjacent to properties where a lot has frontages on two streets. The need for this projection does not exist along I-135.

Staff analysis:

Staff agrees that the circumstances were not created by the applicant. KDOT's acquisition of right-of-way from the subject property moved the west property line farther east creating this situation much like it did for the property located at 3905 North Hydraulic. The through-lot definition is to ensure reasonable separation between structures if one lot has two street frontages. This protection was not intended for off-site signs along interstates.

2. Criteria: The granting of the Variance will not adversely affect the rights of the adjacent property owners or residents. The applicant states that if the Variance is approved, it will place the sign close to the highway and farther from the abutting property owners. This will have a positive effect on those properties and will not adversely affect them in any way.

Staff analysis:

Staff does not anticipate significant negative impacts to abutting residential properties.

3. Criteria: The strict application of the provisions of the sign code would constitute an unnecessary hardship on the applicant. The applicant states that moving the sign closer to the highway right-of-way is important for visibility of the sign. If the Variance is not granted it will place an unnecessary hardship on the applicant as it would reduce the ability for the sign to be seen.

Staff analysis:

As the applicant stated, strict application of the Sign Code would reduce the visibility of the sign from the highway right-of-way. In 2021, a Variance was approved for a zero-foot western setback for a property 850 feet south to move the sign close to the property line for sign visibility.

4. Criteria: The Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, general welfare, or harmonious development of the community. The applicant states that nothing in this request would have an adverse effect on the public. This request simply moves the setback to a location where it is expected to be under nearly every other circumstance.

Staff analysis:

Staff does not anticipate significant negative impacts to the public. In 2021, a Variance was approved for a zero-foot western setback for a property 850 feet south to move the sign close to the property line for sign visibility.

5. Criteria: The granting of the Variance will not be opposed to the general spirit and intent of the sign code. The applicant states that the intent of the Code is to prevent structures in what would normally be perceived as a front setback. These situations occur in parts of the City where lots are adjacent to tow streets. It provides an orderly development throughout the City. However, where lots are adjacent to limited access highways, there is no need for this setback. There is no expectation for a setback of this type along a limited access highway.

Staff analysis:

Staff agrees reducing the western setback to zero feet aligns with the spirit and intent of the Sign Code.

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 20-foot setback to zero (0) feet for the construction of the sign be GRANTED, subject to the following conditions:

1. The 20-foot building setback on the rear portion of the zoning lot shall be reduced only for the construction of the off-site billboard sign. All other structures shall adhere to all applicable setbacks.
2. The applicant shall obtain all permits necessary from the Metropolitan Area Building and Construction Department to construct the signage and the signage shall be erected within one year.
3. The sign shall conform to all other requirements of the City of Wichita Sign Code.

Report Attachments:

1. Variance Rationale
2. Site Plan
3. Areal Map
4. Zoning Map
5. Land Use Map
6. Site Photos

FERRIS CONSULTING

PO BOX 573 WICHITA, KS 67201
PHONE 316-516-0808 EMAIL ferrisco@aol.com

March 6, 2023

Scott Wadle, Director
Metropolitan Area Planning Department
271 W. 3rd St., 2nd Floor
Wichita, KS 67202

RE: Board of Zoning Appeals Variances to the UZC, Article III, Section III-B, 20. d.
(3), front setback of a through lot.

Dear Scott:

The applicant owns the 4025 N. Hydraulic. The BZA, Planning Commission, and City Council approved an off-site at this location in 2022. However, this lot is a through lot as defined in the UZC in Article II, Section II, 7, i. Because this is a through lot, a front setback is required from Hydraulic and from I-135.

The applicant request that the front setback along I-135 be reduced to zero, which would be the setback if it was not a through lot.

The Variance request meets all of the criteria for the Board of Zoning Appeals to grant a Variance. These are:

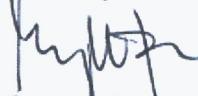
1. **These requests are unique to this property and were not created by the applicant.** The State of Kansas took several feet from property that fronts along I-135. This taking has moved the property line to the east. If this taking had not occurred, then the location of the sign would be closer to I-135 than the proposed location. The "through lot" definition is in the UZC is to protect property owners that might be adjacent to properties where a lot has frontages on two streets. The need for this protection does not exist along I-135.
2. **The granting the Variance will not adversely affect the rights of adjacent property owners or residents.** This variance will push the sign further from the property owners and closer to the highway. This will have a positive effect on those properties and will not adversely affect them in any way.
3. **The strict application of the provisions of the UZC would constitute an unnecessary hardship on the applicant.** Moving the sign closer to the highway right-of-way is important to the visibility of the sign. If the variance is not granted it will place an unnecessary hardship on the applicant as it would reduce the ability of the sign to be seen.
4. **The Variance will not adversely affect the public health, safety, morals, order convenience, prosperity, general welfare, or the harmonious development of the community.** Nothing in this request would have an

adverse effect on the public. This request simply moves the setback to a location where it would be expected to be under nearly every other circumstance.

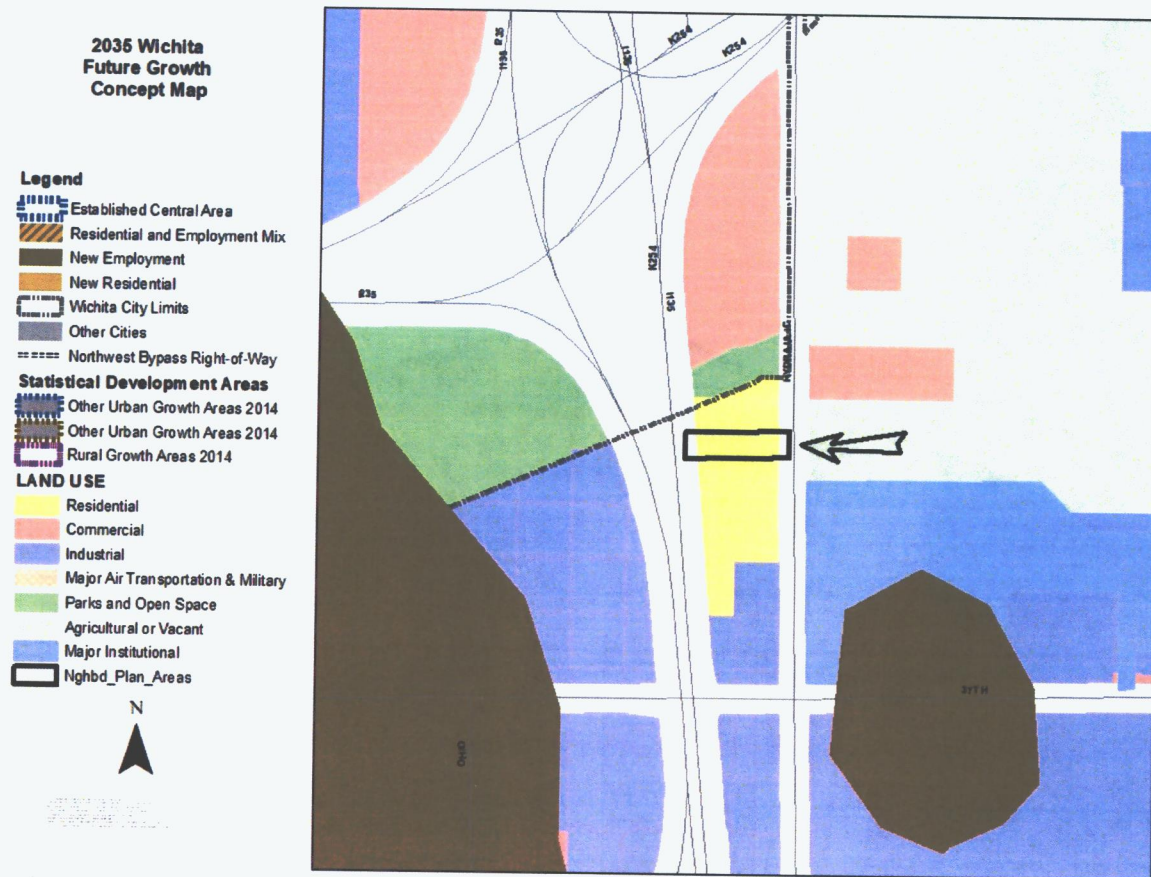
5. **The granting of this Variance will not be opposed to the general spirit and intent of the UZC.** The intent of this provision of the UZC is to prevent structures in what would normally be perceived as a front setback. These situations occur in parts of the City where lots are adjacent to two streets. It provides an orderly development throughout the City. However, where lots are adjacent to limited access highways there is no need for this setback. There is no expectation for a setback of this type along a limited access highway.

The application meets the five criteria for approving a variance before the BZA. Please let me know if you have questions.

Sincerely,



Gregory Ferris



Looking north toward site



Looking south away from site



Looking northeast away from site



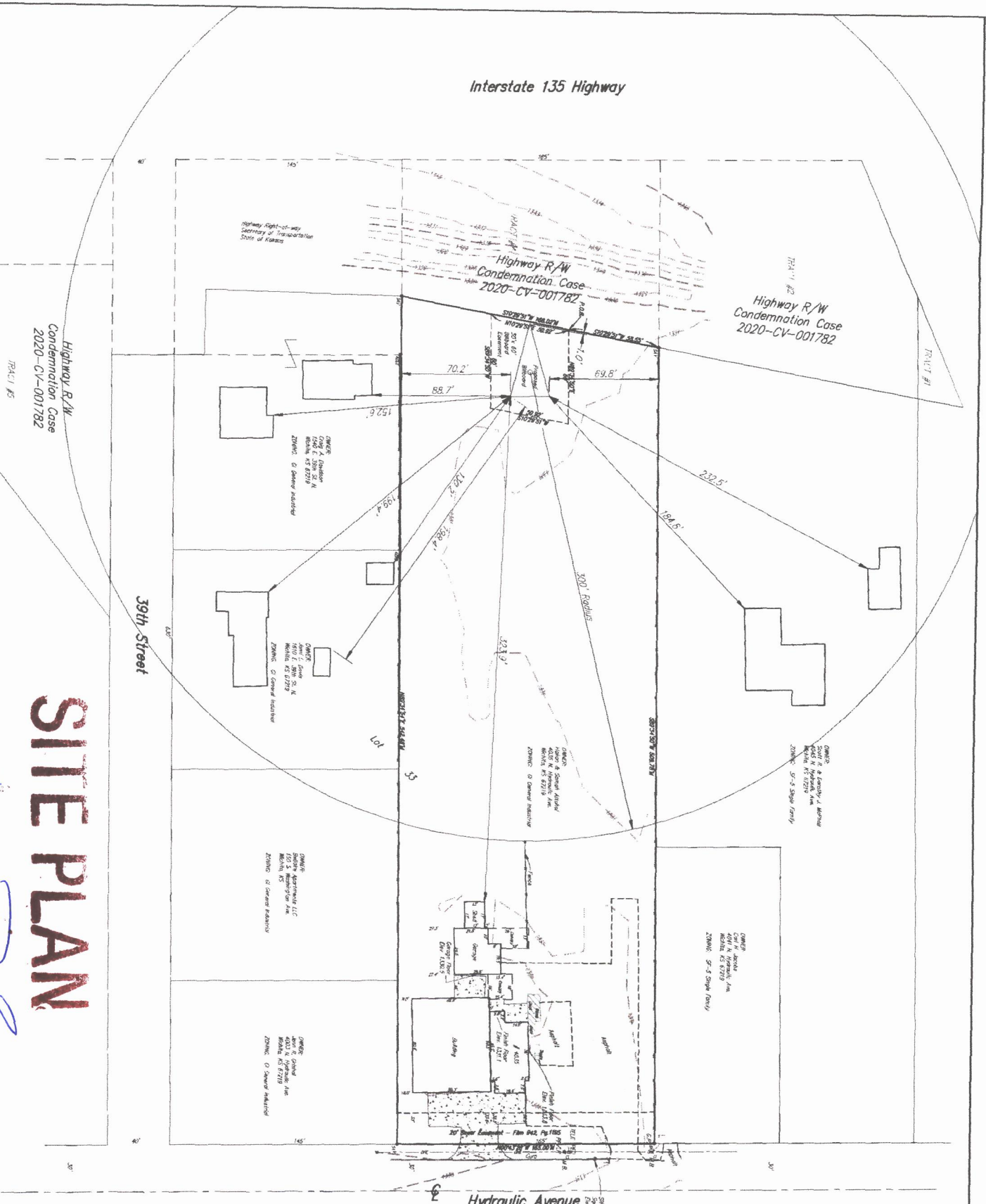
TOPOGRAPHIC SURVEY

4035 N. Hydraulic

Wichita, Kansas

Parent Tract Legal Description:
The North half of Lot 11, Except that part for highway purposes as recorded in Condemnation Case 2020-CV-001782, North Wichita Gardens, Sedgewick County, Kansas.

Billboard Easement Description:
That part of the North half of Lot 11, North Wichita Gardens, Sedgewick County, Kansas described as: Commencing at the Northwest corner of Lot 11, 503.26 feet to the East Right-of-way line Interstate 135 Highway as condemned by Condemnation Case 2020-CV-001782; thence S10°29'51"W, along said Right-of-way line, 28.55 feet to the Point of Beginning; thence N49°34'50"E parallel with the North line of said Lot 11, 62.00 feet; thence S10°29'51"W, 50.92 feet; thence S89°34'50"W, 60.00 feet to said Highway Right-of-way line; thence N10°29'51"E, along said Right-of-way line, 50.92 feet to the Point of Beginning.



SITE PLAN

APPROVED 4/13/23 BY [Signature]
BZ40033-13