

SHAWNEE BOARD OF ADJUSTMENT

DATE: July 21, 2022

Regular Meeting - Minutes

The Shawnee Board of Adjustment met at a regularly scheduled meeting on Thursday, July 21, 2022, at 2:30 PM in the Commission Chambers at City Hall, Shawnee, Oklahoma, Pottawatomie County, pursuant to notice duly posted as prescribed by law.

AGENDA ITEM NO. 1 Call to Order

Chair Gordon called the July 21, 2022 meeting of the Shawnee Board of Adjustment to order at 2:30 PM.

AGENDA ITEM NO. 2: Roll Call

City Planner, Rachel Clyne, called roll

Present: Kelly, Austin, Gordon, Richardson

Absent: Dyer

A quorum was declared present.

AGENDA ITEM NO. 3: Consideration of Approval of the minutes from the regular meeting of the Board of Adjustment on November 18, 2021.

Board member Richardson made a motion to approve the minutes as presented to form, which was seconded by Board member Austin.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Richardson

NAY: None

ABSTAIN: None

AGENDA ITEM NO. 4: Consideration of Approval of the minutes from the special meeting of the Board of Adjustment on November 23, 2021.

Board member Richardson made a motion to approve the minutes as presented to form, which was seconded by Board member Kelly.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Richardson

NAY: None

ABSTAIN: None

AGENDA ITEM NO. 5: Case No. ZBOA01-22 – Public hearing and consideration of a request for a variance of six feet (6') from the 35' front yard setback, allowing a 29' setback for property located at 3 American Way. Applicant: Indaco Metals

Chair Gordon read Agenda Item No. 5 and asked for a staff report. Planner Clyne reviewed the information on the staff report for ZBOA1-22 with the following information. The subject property is located at 3 American Way, which is more generally described as northeast of the intersection of Acme Road and OK

Hwy-177. The subject property is zoned I-2 (Light Industrial District). The variance request is for a reduction of the right-of-way setback by six feet (6'). The applicant for this request is Indaco Metals.

On the subject property is a partially constructed $\pm 35,000$ square feet building on approximately ± 7.41 acres. The applicant contacted staff after discovering a measuring mistake made when the subject property was originally surveyed prior to construction. The surveying company was called back some months later to survey for a fire hydrant easement. It was during the second survey that the six-foot (6') error was identified.

Section 22-367 of the Shawnee Zoning Code (Code) provides dimensional standards for properties in Industrial zoning districts. In the I-2 zoning district, the front yard setback is 35'. The partially completed structure has a 29' front yard setback. The request is for a variance of six feet (6') of front yard setback for a property in the I-2 zoning district.

Clyne reviewed the four (4) requirements of Oklahoma State Statutes when determining Variance requests. In accordance with Oklahoma Statute 11 O.S. 44-107, Section 22-571 of the Shawnee Zoning Code (Code), the Zoning Board of Adjustment (Board) may approve variances only after determining that certain conditions exist.

- 1) The application of the code to the particular piece of property would create an unnecessary hardship;
- 2) Such conditions are peculiar to the particular piece of property involved;
- 3) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the code or the comprehensive plan; and
- 4) The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Note that *financial hardship* to the applicant is not a consideration in determining a variance request.

Relating to the four conditions for granting a variance, staff's comments are:

- 1) Requiring the 35' front yard setback for the partial building on this property creates a hardship.
- 2) American Way is a roadway that does not extend beyond the east end of the subject property. It is a dead-end street; a fence and the Timbers residential subdivision are to the east. This segment of American Way provides access to businesses on the north side of the road and to the subject property.

Setbacks are established to keep uses from interfering with another. A front yard setback is designed to keep structures from being constructed in the right-of-way. Although the building encroaches by 6' (six feet), it is beyond concern that the street would need to be widened so that the six feet would impede future development.

The applicant acted in good faith that the licensed professional surveyor had provided a correct legal document by which a building could be staked correctly for construction. The applicant notified the City of the mistake within one day of discovery.

- 3) Granting the variance would not cause substantial detriment to the public good, nor would it impair the intent and spirit of the Zoning Code and Comprehensive Plan.
- 4) The 6' front yard setback variance would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **ZBOA01-22** a **Variance** of 6' (six feet) of required front yard setback to the property known as 3 American Way in Shawnee, Oklahoma with the following conditions:

- Acknowledgment by the applicant(s) that the Approval of a Variance does not negate or circumvent the other requirements of development as stated in the City Codes, which include the Zoning Code and the adopted Building Codes.
- Acknowledgment by the applicant(s) that additional permits may be required, standard inspections will be conducted, and no occupancy in the building until the City issues a Certificate of Occupancy.

Board member Richardson made a motion to Approve the variance request for Case Number ZBOA01-22, which was seconded by Board member Kelly.
The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Richardson

NAY: None

ABSTAIN: None

AGENDA ITEM NO. 6: Community Development Department Updates

Community Development Director, Rian Harkins, introduced himself to the Board and explained that the Community Development Department was comprised of Planning, which staffed the Board of Adjustment, Planning Commission, and the Shawnee Arts & Culture Commission. He further provided information on the other aspects of Community Development, which include Homelessness Assistance and the grant-funded Love Your Block (LYB) program, which focuses on neighborhood revitalization. The LYB will focus on the southern part of the community—specifically Dunbar Heights. Director Harkins discussed CDBG funds, which will be distributed to owner-occupied households for utilities and rent assistance. He also described the new Unified Development Code, which will overhaul the Zoning Code, Subdivision Regulations, and the Sign Code. The process is underway, and staff anticipates a draft of the consultant's diagnostic report in the next 30 days.

AGENDA ITEM NO. 7: Board Members' Comments

Board member Kelly expressed he was pleased to serve on the Board. Chair Gordon stated that Love Your Block has a dynamic staff, and she is excited to see things happen.

AGENDA ITEM NO. 8: Adjournment

The meeting was adjourned by the power of the Chair at 2:45 PM.



Chair/Vice-Chair

/s/ Rachel Clyne
City Planner