

SHAWNEE BOARD OF ADJUSTMENT

DATE: May 18, 2023

Regular Meeting Minutes

The Board of Adjustment of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in person for a regular meeting on May 18, 2023, at 2:30 p.m., according to notice duly posted as prescribed by law.

Chair Gordon called the meeting to order at 2:30 p.m. Community Development Director, Rian Harkins, called roll and stated a quorum was present.

The following Commissioners were present:

Present: Kelly, Austin, Gordon, Dyer

Absent: Richardson

Item 1: Approval of Minutes – Regular meeting

Consideration of approval of the minutes from the regular meeting of March 16, 2023. Chair Gordon asked for questions or corrections to the minutes.

Board Member Austin made a motion to **Approve** the minutes as presented, which Board Member Kelly seconded.

Motion **passed 4-0-0**.

Aye: Kelly, Austin, Gordon, Dyer

Nay: None

Abstain: None

Item 2: Board of Adjustment (BOA) Overview and Training

Director Harkins advised the training would be moved down the agenda to be heard before Item 11. This would allow the applicants to leave after their public hearings.

Item 3. Case No. BOA02-23 Public hearing and consideration of a request for a variance to the Subdivision Regulations for a five-foot (5') reduction in the required street frontage for the property located at 611 S. Philadelphia Avenue.

Chair Gordon read Agenda Item 3 and asked for a staff report. City Planner, Rachel Clyne, reviewed the information on the staff report for BOA02-23 with the following information. The subject property is located at 611 S. Philadelphia Avenue. The property is zoned R-2 (Medium Density Residential District). The request is a variance to the Zoning Code, **Sec. 22-293. - Dimensional standards.**

The subject property has seventy-five feet (75') of street frontage. The request asks for a variance of five feet (5') from the minimum street width (frontage) at 611 S. Philadelphia Avenue.

In accordance with **Oklahoma Statute 11 O.S. 44-107, Section 22-571 of the Shawnee Zoning Code** (Code), the 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.

Planner Clyne noted 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 were:

- 1) The required eighty feet (80') street width on the subject property creates a hardship for constructing a duplex or a triplex.
- 2) The subject property is located on the east side of South Philadelphia. The lot is large enough to construct a two (2) or three (3) unit residential building but lacks five feet (5') of street frontage. The other lots along that block measure twenty-five feet (25') and fifty feet (50') in street width.
- 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) Reducing the required street width by five feet (5') would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **BOA02-23**, a **Variance** reducing the required street width by five feet (5') at 611 S. Philadelphia Avenue to allow for the construction of a two (2) or three (3) unit residential building, with the following conditions:

- Acknowledgment by the applicant 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 that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA02-23 to reduce the required street width by five feet (5') with the conditions presented by staff.
- Denial of the application for BOA02-23, thus allowing only one (1) single-family residential structure to be constructed on the subject property.
- Deferral of Case No. BOA02-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA02-23 to reduce the required street width by five feet (5') with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant was not present, and no one came forward to speak. The public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Austin made a motion to Approve Case No. BOA02-23 with the conditions presented by staff, which Board Member Kelly seconded.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 4: Case No. BOA03-23 Public hearing and consideration of a request for a variance to the Subdivision Regulations to place an accessory structure (library kiosk) in the front yard of the property located at 2705 N. Harrison Avenue.

The subject property is located at 2705 N. Harrison Avenue, which is the location of a Homeland grocery store. The property is zoned C-5 (General Commercial District). The request is a variance to the Zoning Code, Sec. 22-333. - **Dimensional standards**. All accessory structures in the C-5 zoning district must be located in the rear yard. The rear

yard of the subject property is for the loading and off-loading by various trucks, as well as the required perimeter landscaping. The request asks for a variance to allow an accessory structure (library kiosk) to be located in the property's front yard (parking lot).

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

- 1) The requirement of the placement of accessory structures in the rear yard only creates a hardship
- 2) The subject property is designed like many grocery stores. The rear yard is for the movement of commercial vehicles loading and off-loading goods for the business. Easy and safe access to the proposed library kiosk is not in the rear yard. The two parking spaces along the northern edge of the parking lot would allow easy and safe access to the kiosk.
- 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) Allowing the accessory use (library kiosk) to be located in the subject property's front yard (parking lot) would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **BOA03-23**, a **Variance** allowing the accessory use (library kiosk) to be located in the front yard (parking lot) at 2705 N. Harrison Avenue with the following conditions:

- Acknowledgment by the applicant 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 that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA03-23 allows an accessory use (library kiosk) to be located in the front yard (parking lot) with the conditions presented by staff.
- Denial of the application for BOA03-23, thus preventing the placement of a library kiosk at the subject property.
- Deferral of Case No. BOA03-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA03-23 allows an accessory use (library kiosk) to be located in the front yard (parking lot) with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant, Janice Bailey was present and was available for questions. With no other comments, the public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Dyer made a motion to Approve Case No. BOA03-23 with the conditions presented by staff, which Board Member Austin seconded.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 5: Case No. BOA04-23 Public hearing and consideration of a request for a variance to the Subdivision Regulations for a five-inch (5") reduction in the required side yard setback for the properties located at 3923 and 3925 Maple Grove Avenue.

The subject properties are located at 3923 & 3925 Maple Grove Avenue. The property is zoned R-1 (Single-Family Residential District). The request is a variance to the Zoning Code, Sec. 22-333. - **Dimensional standards**. In R-1 zoning, the side yard setbacks must be a minimum of five feet (5') from the property line to the structure.

During the construction of these two houses, the floorplan was used as the measurement. Once the construction was complete and the bricked was placed on the homes, a building inspector noticed that the space between the two (2)

houses was not the required ten feet (10'). The brick encroached on the side yard setbacks by four inches (4 ") on both sides of each house. The variance request is for a reduction of five inches (5") from each side yard setback of both lots.

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

- 1) The enforcement of a five feet (5') side yard setback on each property creates a hardship
- 2) The subject properties were built on lots that met the minimum size for the zoning district, but the brick façade on the houses was not measured for the side yard setbacks. Each house is approximately eight (8") too wide for the lot. The request is to reduce the side yard setback on each side to four feet and seven inches (4'.7").
- 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) Reducing the sideyard setbacks on both sides of both homes to four feet and seven inches (4'.7") would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **BOA04-23**, a **Variance** by reducing by five inches (5") the side yard setbacks of the properties located at 3923 & 3925 Maple Grove Avenue with the following conditions:

- Acknowledgment by the applicant 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 that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA04-23 by reducing by five inches (5") the side yard setbacks of the subject properties with the conditions presented by staff.
- Denial of the application for BOA04-23, thus preventing the permanent occupancy of either subject property.
- Deferral of Case No. BOA04-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA04-23 by reducing by five inches (5") the side yard setbacks of the subject properties with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant, David Tomilson, was present and available for questions. With no other comments, the public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Austin motioned to Approve Case No. BOA04-23 with the conditions presented by staff, seconded by Board Member Dyer.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 6: BOA05-23 Public hearing and consideration of a request for a variance to allow time to complete the paved approach, driveway, and parking lot at the property located at 531 N. Pennsylvania Avenue.

The subject property is located at 531 N. Pennsylvania Avenue. The property is zoned R-1 (Single-Family Residential District). The request is a variance to the Zoning Code, Sec. 22-476. - **Parking lot construction and maintenance.**, which references the paving requirements for parking and driveway surfaces.

The primary structure on the subject property has served as a religious facility for many years. The last organization ceased operations more than a year ago. The applicant, Richard Ellis, serves as the pastor of this Shawnee, Oklahoma, location of The Church of God of the Firstborn. The variance request is for additional time to repave the approach, driveway, and parking lot. Without the variance, the church cannot obtain a Certificate of Occupancy to assemble for

religious ceremonies and purposes. A temporary Certificate of Occupancy was issued to Pastor Ellis after receiving the application for this variance request.

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

- 1) The repaving of the approach, driveway, and parking lot on the subject property creates a hardship for a newly formed church to operate as a religious facility.
- 2) The subject property currently has a driveway that extends diagonally from N. Pennsylvania Ave to E. Ada Street. Some areas are compacted gravel, while other areas have broken pavement. The existing driveway is sufficient to accommodate the number of parking spaces required for its use.
- 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) Allowing the church time to build its congregation before enforcing the repaving of the approach, driveway, and parking lot would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **BOA05-23**, a **Variance** allowing The Church of God of the Firstborn, located at 531 N. Pennsylvania, a period of time not to exceed five (5) years before enforcing the repaving of the approach, driveway, and parking lot with the following conditions.

- Acknowledgment by the applicant that areas of crumbling pavement should be clearly marked (e.g. orange construction cones) to alert drivers of unsafe parking during any time the facility is operating and open to the public.
- Acknowledgment by the applicant 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 that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA05-23, which allows a maximum of five (5) years before enforcing the repaving of the approach, driveway, and parking lot with the conditions presented by staff.
- Denial of the application for BOA05-23, thus preventing the operation of a religious facility on the subject property.
- Deferral of Case No. BOA05-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA05-23 by establishing a specific date before enforcing the repaving of the approach, driveway, and parking lot with the conditions presented by staff.
- Approval of Case No. BOA05-23, which allows a maximum of five (5) years before enforcing the repaving of the approach, driveway, and parking lot with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant, Pastor Richard Ellis, was present and available for questions. With no other comments, the public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Kelly made a motion to Approve Case No. BOA05-23 with the conditions presented by staff, which was seconded by Board Member Dyer.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 7: Case No. BOA06-23 Public hearing and consideration of a request for a variance to the Zoning Code for a reduction in the required number of parking spaces for the property located at 323 W. 9th Street.

Planner Clyne advised the Board Members that the application for Case No. BOA06-23 had been withdrawn, and no action was necessary.

Item 8: Case No. BOA07-23 Public hearing and consideration of a request for a variance to the Zoning Code for a reduction in the required number of parking spaces for the properties located at 502 – 510 S. Kickapoo Avenue.

The subject properties are located at 502 – 510 S. Kickapoo Avenue, which is currently vacant land. The properties are zoned R-2 (Medium Density Residential District). The request is a variance to the Zoning Code, **Sec. 22-475. - Amount of space required.**, which relates to the number of parking spaces required based on the use. The request asks for a variance to allow a reduced number of parking spaces to serve the residents of a two (2) four-unit group home to be operated by South Central Industries, Inc. in conjunction with Southern Pointe Community, LLC.

Based upon preliminary sketches, the proposed residential group homes will be approximately 2,580 sq. ft. each. The size of a code-compliant parking lot with eight (8) is approximately 2,400 sq. ft. With nearly equal parts of pavement to residential structure, there is concern about excessive stormwater runoff and the lack of greenspace. The subject properties were selected for their proximity to other South Central Industries campuses. The placement of the structures on the homes will be designed to provide maximum separation between the adjacent properties to the rear. Ideally, the structures will "face" each other and create a large but semi-private landscaped area to be enjoyed by all residents of both group homes.

South Central Industries, Inc. (SCI) provides to support individuals with developmental disabilities they also serve. Currently, only ten percent (10%) of the individuals SCI serves have a driver's license or the ability to drive. SCI anticipates the same percentage will occupy the proposed group homes.

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

- 1) The requirement of eight (8) parking spaces for each 4-unit residential group home creates a hardship.
- 2) The subject properties will contain two (2) residential 4-unit buildings designed to support individuals with developmental disabilities who are served by South Central Industries, Inc. (SCI). Currently, only ten percent (10%) of the individuals SCI serves have a driver's license or the ability to drive. SCI anticipates the same percentage will occupy the proposed group homes. This request is for a variance to reduce the required number of parking spaces to four (4) spaces per residential group home.
- 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) Allowing a reduction of parking spaces would be the minimum necessary to alleviate the hardship if granted.

Staff recommends **Approval** by the Board of Adjustment for **BOA07-23**, a **Variance** for a reduction in the required number of parking spaces to four (4) spaces at two (2) new 4-unit group homes with the following conditions:

- Acknowledgment by the applicant 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 that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA07-23 reducing the required number of parking spaces to four (4) spaces per 4-unit group home with the conditions presented by staff.
- Denial of the application for BOA07-23, thus requiring the redesign of the proposed residential group home at the subject property.
- Deferral of Case No. BOA07-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA07-23 reducing the required number of parking spaces to four (4) spaces per 4-unit group home with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant, Tina Hanna, was present and available for questions. With no other comments, the public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Dyer made a motion to Approve Case No. BOA07-23 with the conditions presented by staff, which Board Member Austin seconded.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 9: Case No. BOA08-23 Public hearing and consideration of a request for a variance to the Zoning Code to allow the placement of a storm shelter in the front yard of the property located at 1909 E. Main Street.

Planner Clyne advised the Board Members that the application for Case No. BOA08-23 had been withdrawn, and no action was necessary.

Item 10: Case No. BOA09-23 Public hearing and consideration of a request for a variance to the Zoning Code to allow a reduction in the required street frontage on the property located at 15350 Walker Road.

The subject property is located at 15350 Walker Road. The property is zoned A-1 (Rural Agricultural District). The request is a variance to the Zoning Code, **Sec. 22-262. - Dimensional standards., which references the density and dimensional standards for each zoning district.**

The subject property is approximately 57.87 acres and is undeveloped. Along the frontage road, Walker Road, the property measures approximately 250', which is eighty feet (80') less than required for a buildable parcel. With the existing street frontage, the subject property is essentially an unbuildable parcel.

The applicants' intent for the property is to build homes for themselves and their three (3) children. With nearly fifty-eight (58) acres, there is sufficient space to meet all of the other density and dimensional standards of A-1 zoning. The variance request is to allow a reduction of the required street frontage so the property may be utilized for use allowed in A-1 zoning. Specifically, the applicants request street frontages typical in single-family residential zoning, which is sixty feet (60'). This would further allow the family to split the property three (3) times, creating four (4) lots. The street frontage would be three (3) 60' street frontage and one (1) 70' street frontage.

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

- 1) The application of the code to the subject property creates a hardship as it is an oddly shaped, nonconforming, and unbuildable parcel.
- 2) The subject property currently has a street frontage that is significantly less than that required for building in the zoning district. The applicants did not create the lot's shape or dimensions.
- 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) Allowing the applicants to reduce the required street frontage to three (3) sixty feet (60') street frontage and one (1) seventy feet (70') street frontage would be the minimum necessary to alleviate the hardship if granted.

Staff recommended **Approval** by the Board of Adjustment for **BOA09-23**, a **Variance** to allow a reduction of the required street frontage to three (3) sixty feet (60') street frontage and one (1) seventy feet (70') street frontage on the property located at 15350 Walker Road.

- Acknowledgment by the applicant 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 and specifically Sec. 22-262. - Dimensional standards.
- Acknowledgment by the applicant that additional permits may be required and standard inspections will be conducted.
- Acknowledgment that the four (4) newly created lots must be surveyed to create new deeds, which will then be filed with Pottawatomie County.

Options:

- Approval of Case No. BOA09-23, which allows a reduction of the required street frontage to three (3) sixty feet (60') street frontage and one (1) seventy feet (70') street frontage with the conditions presented by staff.
- Denial of the application for BOA09-23, thus preventing the operation of a religious facility on the subject property.
- Deferral of Case No. BOA09-23 with a request for additional and specific information to a certain date.
- Approval of Case No. BOA09-23, which allows a reduction of the required street frontage to three (3) sixty feet (60') street frontage and one (1) seventy feet (70') street frontage with the conditions presented by staff plus additional conditions.

The public hearing was opened. The applicant, Eddie Howard, was present and available for questions. With no other comments, the public hearing was closed.

Following discussion amongst the BOA and staff, Board Member Austin made a motion to Approve Case No. BOA09-23 with the conditions presented by staff, which Board Member Kelly seconded.

The motion passed 4-0-0.

AYE: Kelly, Austin, Gordon, Dyer

NAY: None

ABSTAIN: None

Item 2: Board of Adjustment (BOA) Overview and Training

Community Development Director Rian Harkins presented a slide show to the Board of Adjustment discussing the fundamentals of the Board's duties and the basis for their authority. Harkins briefly discussed the distinction between a Planning Commission and a Board of Adjustment (BOA). He explained that a Planning Commission is an advisory body that makes recommendations to the governing body (City Commission), and BOA is a quasi-judicial body. Any appeals to a decision made by the BOA were made to the District Court. Harkins provided information on case law and referenced Oklahoma State Statutes.

Item 11: Community Development Department Updates

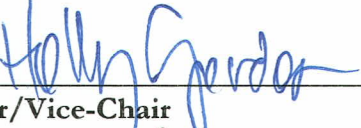
Community Development Director, Rian Harkins, updated the Board on the Unified Development Code stating Director Harkins stated that staff had a working draft of the zoning districts for the UDC project. He explained that the focus was on removing the lot size minimum with a focus on minimum street width to maximize the coverage ratio, which is intended to increase housing opportunities.

Item 12: Board Members' Comments

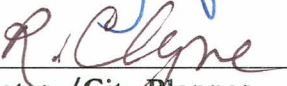
No comments were made.

Item 13 Adjournment

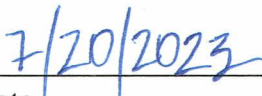
The meeting was adjourned by the power of the Chair at 4:02 PM.



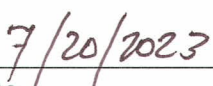
Chair/Vice-Chair



Secretary/City Planner



Date



Date