

AGENDA
BOARD OF ADJUSTMENT
JULY 20, 2023 AT 2:30 PM
COMMISSION CHAMBERS AT CITY HALL
16 WEST 9TH STREET
SHAWNEE, OKLAHOMA

Official action can only be taken on items which appear on the agenda. The public body may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item. When more information is needed to act on an item, the public body may refer the matter to Staff or back to Committee or the recommending body. Under certain circumstances, items are deferred to a future date or stricken from the agenda entirely.

CALL TO ORDER

DECLARATION OF QUORUM

1. Consideration of approval of the Minutes from the May 18, 2023, regular meeting.
2. Case No. **BOA10-23** Public hearing and consideration of a request for a variance to allow a reduction of the rear yard setback of property located at 806 E. Grant Street.
3. Case No. **BOA11-23** Public hearing and consideration of a request for a variance to allow the extension of an eight-foot (8') fence at the property located at 529 N. Kickapoo Avenue.
4. Community Development Department Updates
5. Board Comments
6. Adjournment

Respectfully submitted,

A handwritten signature in blue ink that reads "R. Clyne".

Rachel Clyne, Secretary

The City of Shawnee encourages participation from its citizens in public meetings. If

participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting, and necessary accommodations will be made. (ADA 28 CFR 36)

SHAWNEE BOARD OF ADJUSTMENT

DATE: May 18, 2023

Regular meeting - *DRAFT 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

Date

Secretary/City Planner

Date



Board of Adjustment Meeting – 7.20.2023 – City of Shawnee, Oklahoma

Staff Report | BOA10-23 | Variance to Rear Yard Setback | 806 E. Grant St.

To: Shawnee Board of Adjustment

From: Rachel Clyne, City Planner

Date: July 14, 2023

Subject: Staff Report -- Public hearing and consideration of a request for a variance to allow a reduction of the rear yard setback on the property located at 806 E. Grant Street.
Case No.: **BOA10-23** | Applicant: Charles Wilke

Discussion

The subject property is located at 806 E. Grant Street. The property is zoned C-1 (Neighborhood Commercial District). The request is a variance to the Zoning Code, **Sec. 22-333. - Dimensional standards.**, which references the density and dimensional standards for commercial zoning districts.

According to Section 22-333 of the Shawnee Zoning Code, Accessory structures must be located in the rear yard with a minimum setback of fifteen feet (15') from the property line. The property is owned by the Central Tribes of the Shawnee Area and serves as a daycare and Headstart. The accessory structure is a freezer for frozen food storage. The building was constructed to the rear yard's setback of fifteen feet (15'). To avoid food loss, the Building Inspections Department issued a Temporary Certificate of Occupancy (TCO) to allow the freezer placement with the understanding that a variance request must be made and approved.

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.

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) The application of the code to the subject property creates a hardship as the building was constructed to the rear yard's setback of fifteen feet (15').

- 2) The subject property's building was located to best utilize the sides (north and south) to provide for an enclosed play area and a separate parking area. The increase in children served was not anticipated during the time of construction.
- 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 applicant to locate an outdoor freezer that encroaches the rear yard setback by five feet (5') would be the minimum necessary to alleviate the hardship if granted.

Section 22-572 of the Code indicates that the *burden of truth* is on the applicant seeking a variance to explain what hardship exists and how granting the variance is necessary to relieve the hardship. In granting a variance, the Board may make appropriate conditions or safeguards and may require a bond or other guarantee necessary to enforce compliance with the conditions and safeguards.

Staff completed the required public hearing notifications for this application. All property owners within 300' from the perimeter of the subject property were mailed a public hearing notification letter. A public hearing notice was also published in The County Democrat weekly newspaper.

Recommendation

Staff recommends **Approval** by the Board of Adjustment for **BOA10-23**, a **Variance** to allow a reduction of the rear yard setback by five feet (5') on the property located at 806 E. Grant Street.

- 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. 22-333. - Dimensional standards.
- Acknowledgment by the applicant that additional permits may be required and standard inspections will be conducted.

Options:

- Approval of Case No. BOA10-23, which allows a reduction of the rear yard setback by five feet (5') with the conditions presented by staff.
- Denial of the application for BOA10-23, thus requiring the removal of the on-site freezer.
- Deferral of Case No. BOA10-23 with a request for additional and specific information to a certain date.

COMMUNITY DEVELOPMENT DEPT.
16 W. 9th STREET
SHAWNEE, OK 74801



PHONE: (405) 878-1672

July 20th
2:30 pm

BOARD OF ADJUSTMENT

PROJECT NO. _____ **CASE NO.** BOA10-23

NAME OF PROPERTY OWNER: Central Tribes of the Shawnee Area

ADDRESS: 806 E Grant (1535 N. McKinley Ave HQ)

CITY: Shawnee **STATE:** Oklahoma **ZIP CODE:** 74801

TELEPHONE: (405) 275-4870 **EMAIL:** admin@ctsaheadstart.org

APPLICANT'S NAME: Charles Wilke

APPLICANT'S RELATIONSHIP TO OWNER (S): [CHECK ONE] **SAME** ☐ **AGENT** ☐

APPLICANT'S ADDRESS: 1535 N McKinley

CITY: Shawnee **STATE:** OK **ZIP CODE:** 74801
cell 765-4038

TELEPHONE: (405) 275-4870 **EMAIL:** Charlesw@ctsaheadstart.org

(PLEASE COMPLETE FOR THE PROPERTY THAT THE VARIANCE IS REQUESTED FOR.)

PROPERTY LOCATION (ADDRESS): 806 E Grant

LEGAL DESCRIPTION: Lots 1, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16
Block 49 Beverly Hills Addition 172.5' West and 50' North of
Southeast Corner of Block 4 Yates Addition

(DIMENSIONS OF PROPERTY) **AREA:** 24,795 sq. Ft. **WIDTH:** 171.5'

LENGTH: 145' **FRONTAGE:** _____

CURRENT ZONING: C1 **CURRENT USE:** Headstart, Childcare

VARIANCE REQUESTED: Locate Freezer Rear yard -

COMPLETED APPLICATION AND ALL CORRESPONDING DOCUMENTS
MUST BE RECEIVED 30 DAYS PRIOR TO MEETING TO MAKE THE
AGENDA.

APPLICANT'S SIGNATURE

(OFFICE USE ONLY)

Received this ____ day of, ____ 20____.

FILING FEE: \$90 + SIGN FEE: \$50

RECEIPT NO: _____

BOA DECISION: _____

BOARD OF ADJUSTMENT SECRETARY

- (1) When Facility was built there was no consideration made for the increase in children after Pandemic Along with the need for Additional Food Storage due to Supply -
- (2) Need Close to Kitchen Entrance to prevent unnecessary Handling of Food - Items - Building only sits - 15' from - Rear Property Line And the Fire Lane is only - 6' to the South - This was the Best spot for the freezer -
- (3) - The placement of freezer only increases public good As the Facility feeds A majority Low - Income Families - It does Impair the Code - or ^{Kidson} Comp Plan -
- (4) - We Used the freezer With Smallest Foot Print. And do not anticipate A further Storage Issues - As the Center is Close to Maximum Capacity At this time -

Publish June 16, 2023

NOTICE OF PUBLIC HEARING
Variance Request (BOA10-23)

It is hereby noticed that the City of Shawnee Board of Adjustment will hold a public hearing on July 20, 2023, at 2:30 p.m. in the Commission Chambers at City Hall, 16 W. 9th St, Shawnee, OK. The Board of Adjustment (BOA) will consider a variance request (**BOA10-23**) to allow a reduction of the required rear yard for the property located at 806 E. Grant Street and described as:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15) and Sixteen (16), Block Forty-nine (49), BEVERLY HILLS ADDITION, to the City of Shawnee, Pottawatomie County, Oklahoma, according to the recorded plat thereof; AND A tract of land described as beginning 172.50 feet West and 50 feet North of the Southeast Corner of Block Four (4), YATES ADDITION, to the City of Shawnee, Pottawatomie County, Oklahoma, according to the recorded plat thereof; thence West 171.50 feet; thence North 95.30 feet; thence East 171.50 feet; thence South 95.30 feet to the point of beginning; AND A tract of land described as beginning 25 feet East of the Southwest Corner of Block Four (4), YATES ADDITION, to the City of Shawnee, Pottawatomie County, Oklahoma, according to the recorded plat thereof; thence North 50 feet; thence East 171 feet; thence South 50 feet; thence West 171 feet to the point of beginning.

The public hearing will be held at the above time and date. All residents and parties in interest shall have an opportunity to be heard regarding the request above.





Board of Adjustment Meeting – 7.20.2023 – City of Shawnee, Oklahoma

Staff Report | BOA11-23 | Variance to Residential Fence Height | 529 N. Kickapoo Ave.

To: Shawnee Board of Adjustment

From: Rian Harkins, Community Development Director

Date: July 17, 2023

Subject: Staff Report -- Public hearing and consideration of a request for a variance to allow the continuation and expansion of an eight-foot (8") fence on the residential property located at 529 N. Kickapoo Ave. Case No.: **BOA11-23** | Applicant: Armando Salas

Discussion

The subject property is located at 529 N. Kickapoo Avenue. The property is zoned R-3 (Multifamily Residential District). The request is a variance to the Zoning Code, Sec. 22-395. - Fences and walls., which discusses fences, walls, and hedges in residential, commercial, and industrial zoning districts.

Section 22-395.b.(1) of the Shawnee Zoning Code states, “Residential. Fences, walls and hedges in residential districts may be permitted in any required yard or along the edge of any yard; provided that no fence, wall or hedge located in front of the front building line shall exceed three feet in height, and no other wall or fence shall exceed six feet in height. On corner lots, fencing shall not obstruct established building lines.”

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.

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) The application of the code to the subject property creates a hardship as the existing fence is non-conforming because it is eight feet (8") in height.
- 2) The subject property is similar in size and use to its surrounding neighbors. All other residences have fences six feet (6") or shorter.

- 3) Granting the variance would cause substantial detriment to the public good and impair the intent and spirit of the Zoning Code and Comprehensive Plan to allow a non-conforming use to remain and be expanded, which is in direct conflict with the Zoning Code.
- 4) Allowing a non-conforming eight-foot (8') fence to remain would be the minimum necessary to alleviate the hardship if granted.

Section 22-572 of the Code indicates that the *burden of truth* is on the applicant seeking a variance to explain what hardship exists and how granting the variance is necessary to relieve the hardship. In granting a variance, the Board may make appropriate conditions or safeguards and may require a bond or other guarantee necessary to enforce compliance with the conditions and safeguards.

Staff completed the required public hearing notifications for this application. All property owners within 300' from the perimeter of the subject property were mailed a public hearing notification letter. A public hearing notice was also published in The County Democrat weekly newspaper.

Recommendation

Staff recommends **Denial** by the Board of Adjustment for **BOA11-23**, a **Variance** to allow the continuation and expansion of an eight-foot (8') fence on the residential property located at 529 N. Kickapoo Avenue with the following requirements acknowledged by the applicant.

- Acknowledgment by the applicant that the height of all existing fences shall be altered to a maximum of six feet (6'). The alternatives are to replace all existing fences with a different fence, not to exceed six feet (6') in height, or to remove the fence entirely.
- Acknowledgment by the applicant that the required alteration, replacement, or removal shall begin within (thirty) 30 days of this Board of Adjustment meeting and that the alteration, replacement, or removal of the fence shall be completed within 120 days of this Board of Adjustment meeting.
- Acknowledgment by the applicant that this determination 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 may be conducted.

Options:

- Approval of Case No. BOA11-23 allows the continuation and expansion of an eight-foot (8') fence on the residential property located at 529 N. Kickapoo Ave.
- Denial of the application for BOA11-23, thus requiring the alteration or removal of the eight-foot (8') fence.
- Deferral of Case No. BOA11-23 with a request for additional and specific information to a certain date.
- Denial of the application for BOA11-23, thus requiring the alteration or removal of the eight-foot (8') fence with the requirements acknowledged by the applicant for compliance.

PLANNING DEPARTMENT
222 N. BROADWAY
SHAWNEE, OK 74801



PHONE: (405) 878-1672

ZONING BOARD OF ADJUSTMENT

PROJECT NO. _____ **CASE NO.** _____

NAME OF PROPERTY OWNER: Armando Salas

ADDRESS: 529 N. Kickapoo Ave

CITY: Shawnee STATE: OK ZIP CODE: 74801

TELEPHONE: (405) 999-2935 EMAIL: salasarmando80@gmail.com

APPLICANT'S NAME: Armando Salas

APPLICANT'S RELATIONSHIP TO OWNER (S): [CHECK ONE] **SAME** ☒ **AGENT** ☐

APPLICANT'S ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: () _____ EMAIL: _____

(PLEASE COMPLETE FOR THE **PROPERTY** THAT THE VARIANCE IS REQUESTED FOR.)

PROPERTY LOCATION (ADDRESS): 529 N. Kickapoo Ave

LEGAL DESCRIPTION: _____

(DIMENSIONS OF PROPERTY) AREA: _____ WIDTH: _____

LENGTH: _____ FRONTAGE: _____

CURRENT ZONING: _____ CURRENT USE: _____

VARIANCE REQUESTED: 8' fence addition on side yard

**COMPLETED APPLICATION AND ALL CORRESPONDING DOCUMENTS
MUST BE RECEIVED 30 DAYS PRIOR TO MEETING TO MAKE THE
AGENDA.**

Armando Salas
APPLICANT'S SIGNATURE

(OFFICE USE ONLY)

Filed in the office of the Planning Department, 222 N. Broadway, this ____ day of, ____ 20__.

FILING FEE: \$90 + SIGN FEE: \$50

RECEIPT NO: _____

ZONING BOARD OF ADJUSTMENT SECRETARY

ZBOA DECISION: _____

To: Community Development Department

& Shawnee Zoning Board of Adjustment (ZBOA)

Planning Department: 222 N. Broadway Ave
Shawnee, OK. 74801.

Re: Variance and or Difference Application

Attention: Rachel.

From: Armando Salas Martinez

529 N. Kickapoo Ave

Shawnee, OK. 74801.

To whom it applies in the Office of Community
Development Department & the Shawnee Zoning
Board of Adjustment.

This application to the zoning Board of Adjustment
comes before you for several reasons.

- #1. When i Armando Salas Martinez went to this very
office in the spring of 2020 to inquire as to the
allotted height that Pottawatomie County, the
city & County of Shawnee allowed. On that visit the
first of (3) three visits to insure that I too was
sure before i had someone start digging posts
or any construction pertaining to said fence.

I was told after being asked the address, which i
was told by the receptionist along with a inspector
listening to our conversation that at that time 2021
the height was 8 feet inside the city limit & 12 feet

2 rural.

So with that being said i never questioned the professional individuals with whom i was speaking with.

Now, 2 years later i was in the process of extending my fence along the driveway to the front of my home, i had (3) post holes dug & installed my posts by the following afternoon i found a Orange tag attached to my out door driveway fence. Although i have a door bell with a sign to ring bell for mail postage, etc please ring bell.

I was home but the person who taped the notice on my fence door could have had the courtesy to speak to me. Because as far as i knew, i built nothing wrong.

#2. The original reason i built my fence was obviously privacy, and from day one & the first day i purchased my home 529 N. Kickapoo Ave. There has been a "Serious Drug Activity Problem" that runs or rides bicycles through each side of my property.

I've chased drunks, hookers, Druggies, Homeless people off my property before i had my fence built.

Now i have a next door neighbor to the North that is trashy, rude, dirty, always picking her trash up in my front yard & driveway.

Last year the Sheriff dept was creeping outside my garage window gun drawn looking for some black fugitive the neighbor was harboring. A couple of

③ days after that 2 black guys came running out her back door jumped her fence ran down the alley.

That was before i finished the fence to my home from garage to back of my home. And until i finished securing my back yard fence i felt always threatened of the strangers running a-muck!

She's constantly aiming her camera at my fence door ?? not at all on her rented property. She "BIARES" her car stereo starting at 7am through out the day, but at 11 to 12pm its unacceptable, in the driveway.

She has damaged my fence on her side of my fence (I've said Nothing), quite frankly the home owner has a i can careless,

There are several other neighbors in close proximity that are fed up with these (Section 8) families and drug dealers & crazies 24-7.

These people Do Not Care about Property, muchless People who own and take pride in their properties.

#3. The Alley- my alley fence has been spray painted, the person directly across the alley has traffic in & out all thru the night. One in particular is a 3 times a day visitor, he threatened me last week 6-8-23 after hitting my garage with his truck door for the "i dont know how many times", i went out and asked him (Because it was that hard & loud) what the heck. are you banging on my garage, he said he was pissed off & mumbled something under his breath then before got in his truck he said (You better watch your back).

④ I have the right to protect myself and my property. I was robbed twice before I installed my fence.

Because of the increasing drug activity in the alley, the drug dealers, users now go around the south side of my fence to short cut. And the bulk of the traffic comes & goes to the property (Directly/Exactly) behind my property facing Louisa St.

#4. I was also advised as to the material I should consider before I build. I have a steel post-metal fence which withstood during the May 2023 tornado, which came directly over my home & garage. "No Fence Damage"

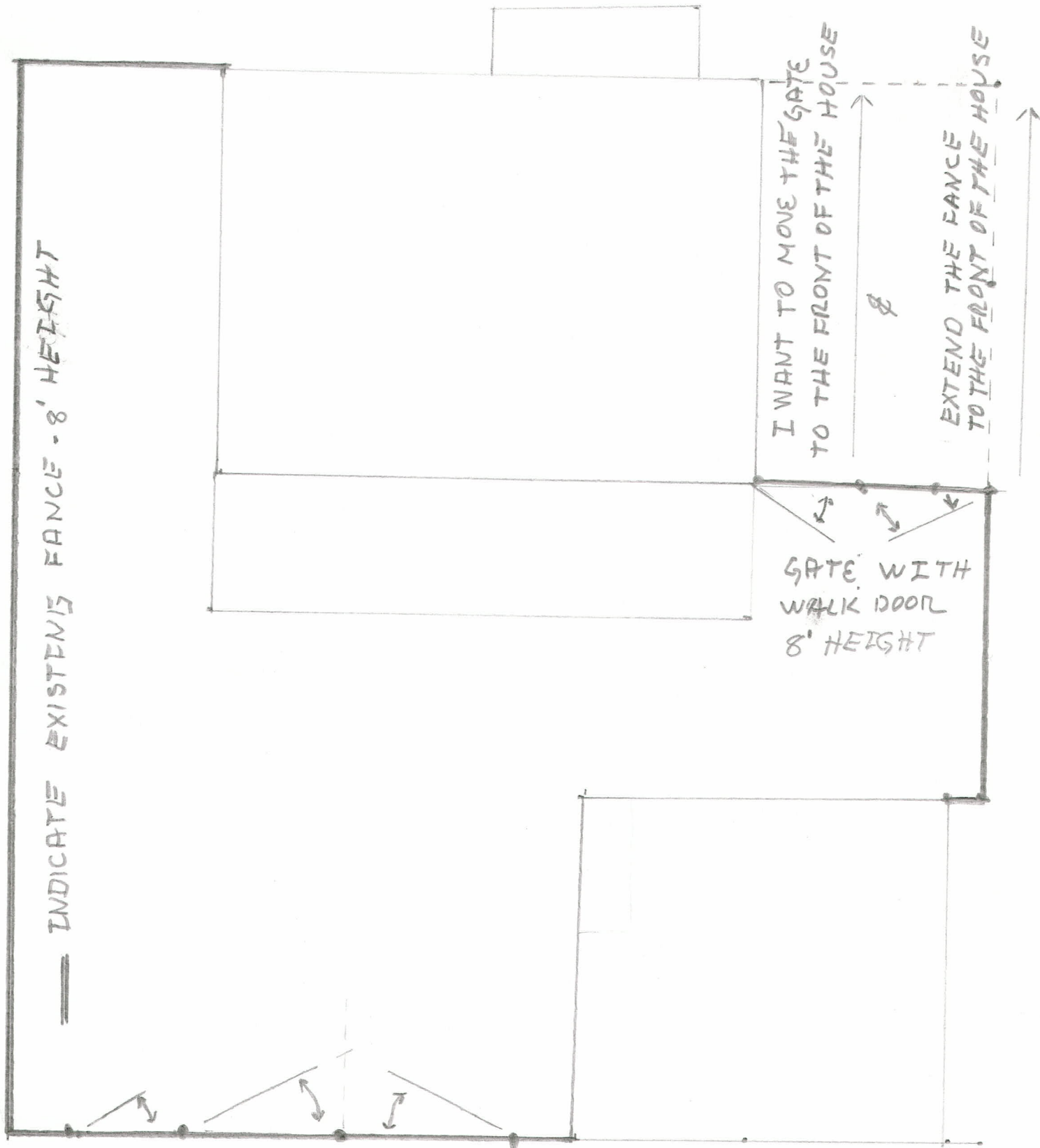
We as home owners deserve to the right to protect ourselves and our properties from Strangers,
In every sense of the word.

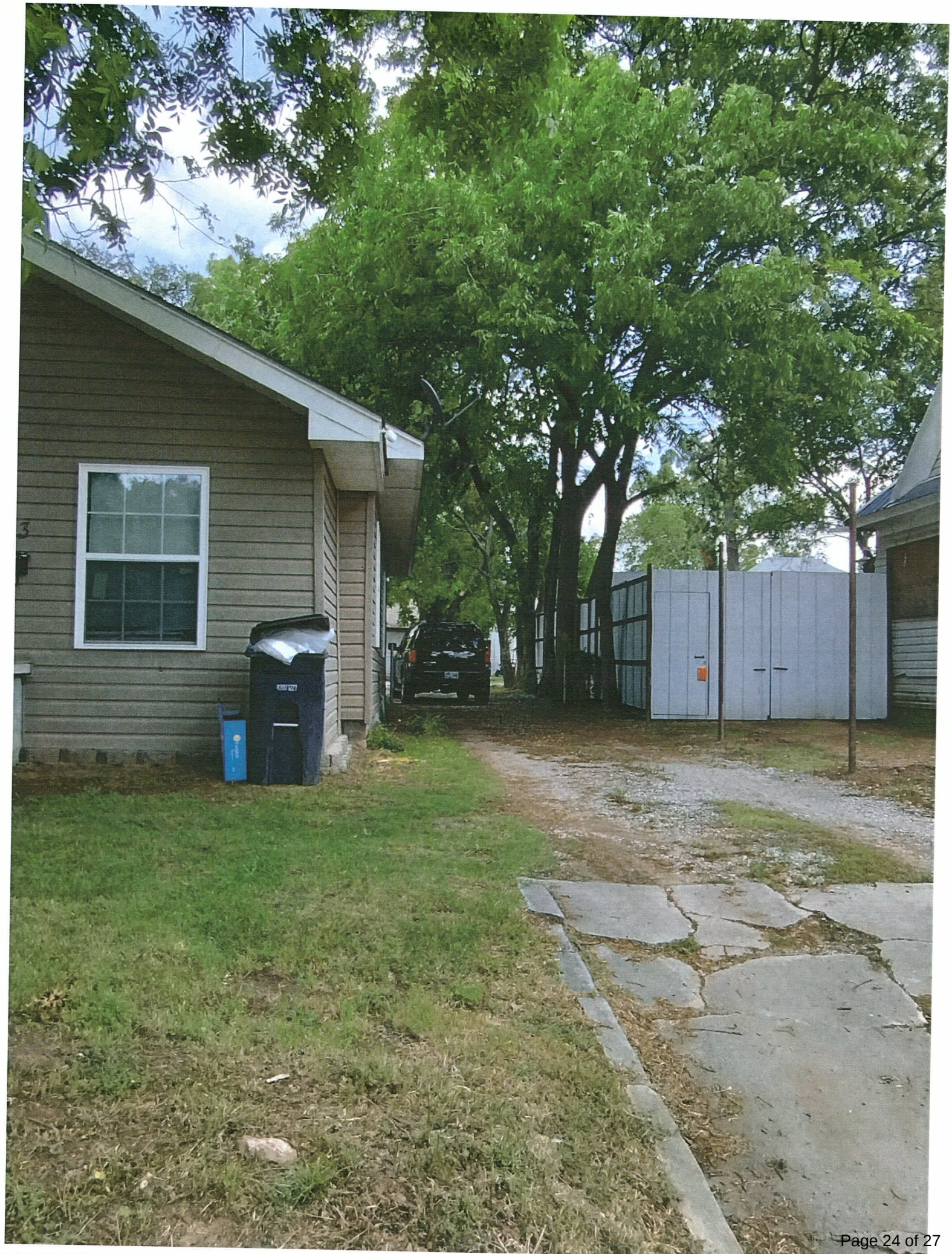
With this being stated and brought to your & my attention, I Implore the: Community Development
Department
& Shawnee Zoning Board of
Adjustment.

Thank you for your time
& Consideration.

Sincerely,

Armand- [Signature] 06-16-23





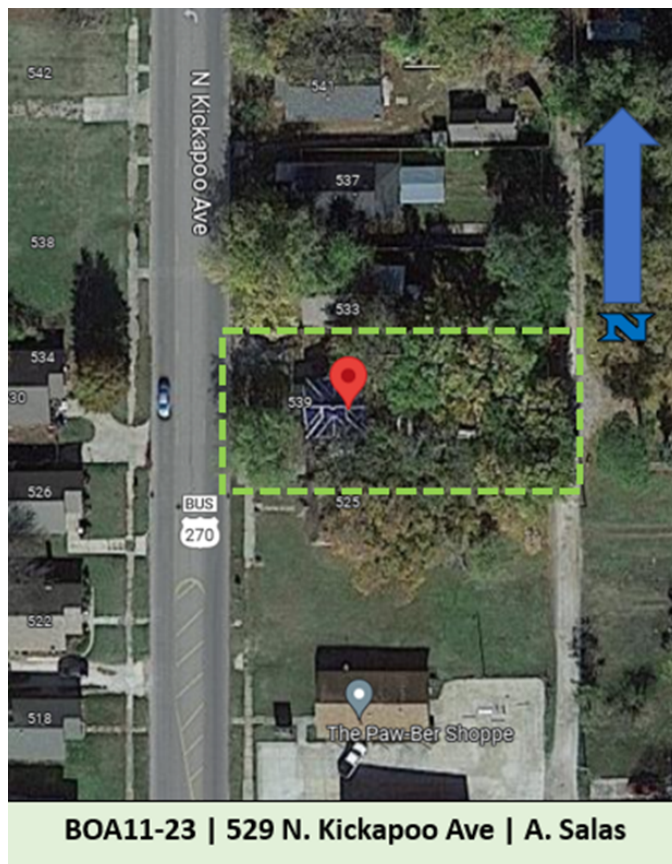
Publish June 16, 2023

NOTICE OF PUBLIC HEARING
Variance Request (BOA11-23)

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Lots Thirty-three (33) and Thirty-four (34), Block One (1), FRUITS ADDITION to Shawnee, LESS 0.01 acres deeded to the City of Shawnee, Pottawatomie County, Oklahoma, according to the recorded plat thereof.

The public hearing will be held at the above time and date. All residents and parties in interest shall have an opportunity to be heard regarding the request above.



7/14/23

To Community Development Department

I am the landlord of the home next door to the applicant, and have invested in multiple properties in Shawnee over the last 10 years. I lived in Shawnee for some time but now reside back in Texas. I do visit a few times a year and have a property manager to ensure the highest living standards and neighborhood appearance on my homes.

I remodeled 533 N. Kickapoo and continue to do any property improvements consistent with your city's code requirements. I receive "yellow" letters from time-to-time and I follow up with the tenant's and my Property Management very promptly. (For example, I received one on 533 on 10/25/22 and immediately called Mrs. Christi Heaps to discuss it and when it would be resolved.) I maintain my properties well and expect my tenants to follow the standards and laws.

Regarding this variance request to your city's standards specifically;

I simply request you hold him (and other construction efforts in the neighborhood) to the same current documented standards of electrical, sanitation, framing/construction and lot (e.g., fence) standards. Nothing more or less.

Thus, I request that:

- a) You deny this request to extend the fence forward to the street and down the driveway with an 8' height; and
- b) I also request that you also enforce the existing city standard on the already constructed fence.

For example, the neighbor on the other side (537 N. Kickapoo) has a recently constructed 6' fence panel in compliance.

I realize every citizen has a "right" to request a variance, but am uncertain why someone who clearly has the construction means to erect such a fence cannot follow guidelines. I do not understand why I have had to live, invest, and continue to operate as a homeowner under a different standard – the published one.

In regards to my tenant's use of a security camera:

Actually she has 3 on the property (attaching a picture of all 3's view from June 13th.) She is a single mom of 3 kids and has them simply for her security. I'm sure you are aware of the neighborhood conditions on the 500 block of Kickapoo & Highland. After repeatedly finding folks late at night walking down her driveway and looking into and by her and kid's windows, my tenant contacted me. I encouraged the cameras, and I invested in a fenced yard for her to get a dog. (note I funded a 4' chain link fence consistent with the neighborhood.) After repeatedly still having folks trespass I purchased a chain link gate to be placed across the driveway.

My tenant has never tried to use the cameras to violate anyone's privacy but rather protect her security.

I wish no frustration towards the board, city or the neighbor, just simply believe allowing this variance is not in the best interest of my property's value nor the neighborhood's prosperity.

Thank you,
Randal Beasley
533 N. Kickapoo

8:13

1h

arlo



Side



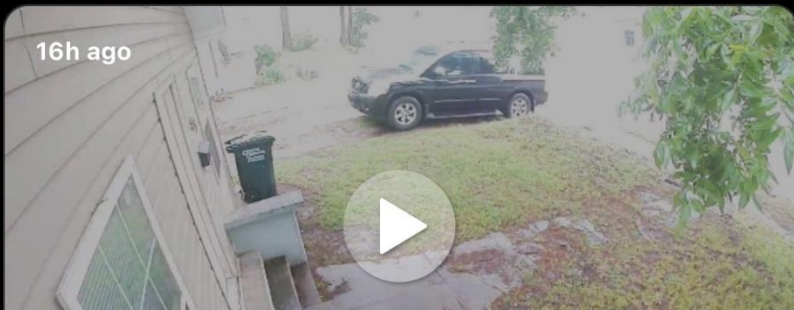
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Back



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Devices

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Mode

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