

# NOTICE OF MEETING BOARD OF ADJUSTMENT

## TYPE OF MEETING

|                 |       |                                    |     |
|-----------------|-------|------------------------------------|-----|
| REGULAR MEETING | ( X ) | RESCHEDULED REGULAR MEETING        | ( ) |
| SPECIAL MEETING | ( )   | CONTINUED OR RECONVENED<br>MEETING | ( ) |

DATE:

TIME:

PLACE OF MEETING:

12/15/2022

2:30 P.M.

Commission Chambers  
City Hall, 9<sup>th</sup> & Broadway  
Shawnee, OK 74802-1448

*To be completed by person filing notice:*

NAME: Rachel Clyne

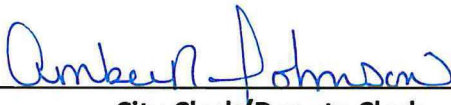
TITLE: City Planner

ADDRESS: 16 W. 9<sup>th</sup> Street  
Shawnee, OK 74801

PHONE: (405) 878-1672

Filed in the office of the municipal clerk at 12:12 a.m./p.m. on 12/9/2022

SIGNED:

  
City Clerk/Deputy Clerk

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## FOR CITY CLERK'S OFFICE USE ONLY

DATE NOTICE RELEASED TO NEWS MEDIA:

12/9/2022

PERSON FILING NOTICE:

/s/ Rachel Clyne

NOTICE VERIFIED BY:

Amber Johnson

# AGENDA

## BOARD OF ADJUSTMENT OF SHAWNEE, OK

Regular Meeting  
**December 15, 2022, at 2:30 P.M.**  
City Hall, 16 W. 9<sup>TH</sup> St. Shawnee, OK

- 1) Call to Order
- 2) Roll Call
- 3) Consideration of approval of the minutes of the regular meeting of the Shawnee Board of Adjustment for July 21, 2022.
- 4) Case No. **ZBOA02-22** Public hearing and consideration of a request for a variance of twenty-five feet (25') from the minimum front yard setback, allowing the construction of a carport at the property located at 1421 N. Philadelphia Avenue.  
*Applicant: Michael Beck*
- 5) Community Development Department Updates
- 6) Board Members' Comments
- 7) Adjournment

# SHAWNEE BOARD OF ADJUSTMENT

DATE: July 21, 2022

## Regular meeting - *DRAFT 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  $\pm 7.41$  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.

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Chair/Vice-Chair

/s/ Rachel Clyne  
City Planner



**Board of Adjustment Meeting – 12.15.2022 – City of Shawnee, Oklahoma**

**Staff Report | ZBOA02-22 | 25' Variance for Carport | 1421 N. Philadelphia Ave.**

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**To:** Shawnee Board of Adjustment

**From:** Rachel Clyne, City Planner

**Date:** 12.2.2022

**Subject: ZBOA02-22** – Staff Report - Public hearing and consideration of a request for a variance of twenty-five feet (25') from the minimum front yard setback, allowing the construction of a carport at the property located at 1421 N. Philadelphia Avenue.

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Background

The subject property is located at 1421 N. Philadelphia Avenue and is zoned R-1 (Single-Family Residential District). The request seeks a variance to obstruct the twenty-five (25') front yard setback to construct a carport. The applicant for this request is Michael Beck.

Discussion

The applicant contacted Community Development staff after discussing the construction of a carport with a Building Inspector. Concern was raised about the location of the water line. Per the applicant, the water line is approximately ten feet (10') west of the proposed carport location. The ±9,000 sq. ft lot is located southeast of E. Independence Street and N. Philadelphia Avenue intersection. The single-family home, built in 1950, initially had an attached garage. That garage was converted into a living space before current ownership.

Section 22-239 of the Shawnee Zoning Code (Code) provides dimensional standards for properties in Residential zoning districts. In the R-1 zoning district, the front yard setback is 25'. Setbacks are meant to remain free of structures. The residence is situated approximately 25' from the front property line, so the variance request is for the placement of a carport in the front yard setback.

This particular segment of N. Philadelphia Avenue becomes a dead end and does not continue to E. Severn Street to the south. There are four (4) houses on each side of the street. On the east side of N. Philadelphia Avenue, two (2) homes currently have carports.

The subject property had a carport when the family purchased the property in the late 1990s. The owner removed that carport within the last two (2) years, intending to replace it with a carport more fitting the owner's needs. The previous carport was not flush with the house and only allowed for a single vehicle.

The property owner is disabled with cardiothoracic issues and physical impediments that affect his balance. The carport's coverage, mainly in inclement weather, specifically rain and ice, would improve this property's safety standards and aid the homeowner's welfare.

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 25' front yard setback remain unobstructed for this property creates a hardship.
- 2) The house had an attached garage and met the 25' front yard setback when constructed. The home had a carport for over twenty-five years, and the applicant has significant physical limitations that necessitate the construction of a carport. A rear yard carport would be difficult, given the property's layout. A rear carport would also require a covered walkway from the backyard around the house to the front door.
- 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 25' carport in the front yard setback 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 Zoning Board of Adjustment for **ZBOA01-22**, a **Variance** allowing a 25' carport to be located in the front yard setback of the property known as 1421 N. Philadelphia Avenue in Shawnee, Oklahoma, 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.



# PUBLIC HEARING

## For more information

Community Development Department  
City Hall | 16 W. 9<sup>th</sup> Street  
Shawnee, OK 74801

**405-878-1672**

## ZONING BOARD OF ADJUSTMENT

**Thursday, December 15, 2022**

City Hall at 16 W. 9<sup>th</sup> Street, Commission Chambers  
**2:30 PM**



1421 N. Philadelphia Ave. | BOA02-22 | Variance Request

## Project Information

**Request:** Request for a Variance to the 25' Front Yard Setback for a carport

**Applicant:** Michael Beck

**Location:** 1421 N. Philadelphia Avenue

**Case #:** ZBOA02-22



## Frequently Asked Questions

### **What is a Variance?**

A variance is permission granted by the Zoning Board of Adjustment (ZBOA) to waive or alter a requirement of the zoning ordinance.

The Zoning Board of Adjustment can adjust the standards of the zoning ordinance where exceptional and extraordinary circumstances apply to a property. This exceptional and extraordinary circumstance is known as a hardship. The ZBOA can vary the strict application of height, area, setback, yard, parking, or density requirements of the zoning ordinance.

### **Why did I receive a letter?**

You own property within 300 feet of the subject property.

### **How do I make comment on the request?**

Try to attend the public hearing if you are able. Staff will also accept written comments for those who cannot attend. Call the Community Development at 405-878-1672 or contact the City Planner at [rachel.clyne@shawneeok.org](mailto:rachel.clyne@shawneeok.org).

### **What if I cannot attend the hearing?**

Staff will accept written comments. You may also have a neighbor or friend attend the hearing to represent your interests at the meeting.

### **How will this request affect me?**

Every property is different.

Contact the Community Development for more information if you have concerns about any impact on you.

## Legal Description:

A tract of land described as Lot Five (5), Blok Two (2), HOLLYWOOD HEIGHTS ADDITION to the City of Shawnee, Pottawatomie County, Oklahoma, according to the recorded plat thereof.

**ZBOA02-22**