

AGENDA
JENKS BOARD OF ADJUSTMENT
THURSDAY, MAY 15, 2025, 6:00 PM
JENKS CITY HALL, 211 NORTH ELM

If you require special accommodations pursuant to the Americans with Disabilities Act, please notify the City Clerk’s Office at (918) 299-5883 or email agendas@jenksok.org.

CALL TO ORDER

OATH OF OFFICE

ROLL CALL

ELECTION OF CHAIR

ELECTION OF VICE CHAIR

BUSINESS

Official action can only be taken on items which appear on the agenda. The Board may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item (except for Item 1).

1. Consideration and appropriate action relating to a request for approval of the Consent Agenda. (All matters listed under “Consent” are considered by the Board to be routine and will be enacted by one motion. Any Member may, however, remove an item from the Consent Agenda by request. A motion to adopt the Consent Agenda is non-debatable.)
 - A. Approve minutes of the regular meeting held on January 16, 2025
2. Consideration and appropriate action relating to items removed from the Consent Agenda
3. Board of Adjustment Training Workshop

OTHER BUSINESS

1. Planning Updates

ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT
6:00 P.M. THURSDAY, JANUARY 16, 2025
JENKS CITY HALL, 211 N ELM ST

The Jenks Board of Adjustment was called to order at 6:00 p.m. on January 16, 2025, by Chair Erik Enyart. A roll call vote was taken as follows:

Present

Sarah Foley
Ricky Patel
Karrie Shust
Chair Erik Enyart

Absent

Spencer Pittman

Business

1. **Election of Board of Adjustment Chair**

Karrie Shust nominated Erik Enyart for Chair. Sarah Foley seconded the nomination. A roll call vote was taken as follows:

Yea: Foley, Patel, Shust, Enyart

Nay: None

Erik Enyart was elected as Chair.

2. **Election of Board of Adjustment Vice Chair**

Sarah Foley nominated Ricky Patel as Vice Chair. Erik Enyart seconded the nomination. A roll call vote was taken as follows:

Yea: Foley, Patel, Shust, Enyart

Nay None

Ricky Patel was elected as Vice Chair.

3. **Minutes from the meeting held on May 12, 2022**

Karrie Shust made a motion to table the motion to approve the minutes. Sarah Foley seconded the motion. A roll call vote of members was taken as follows:

YEA: Foley, Patel, Shust, Enyart

NAY: Foley

Motion carried.

4. JBOA 25-446: Request for a variance from the front build line. General Location: 531 W “H” St.

Planning Director Marcaé Hilton introduced Item 4 and answered questions. Lou Reynolds (Applicant Representative) addressed the Board and answered questions. Karrie Shust stated that she leases from the property owner. Sarah Foley made a motion to approve Item 4. Ricky Patel seconded the motion. A roll call vote was taken as follows:

Yea: Foley, Patel, Shust, Enyart
Nay None

Motion carried.

Other Business:

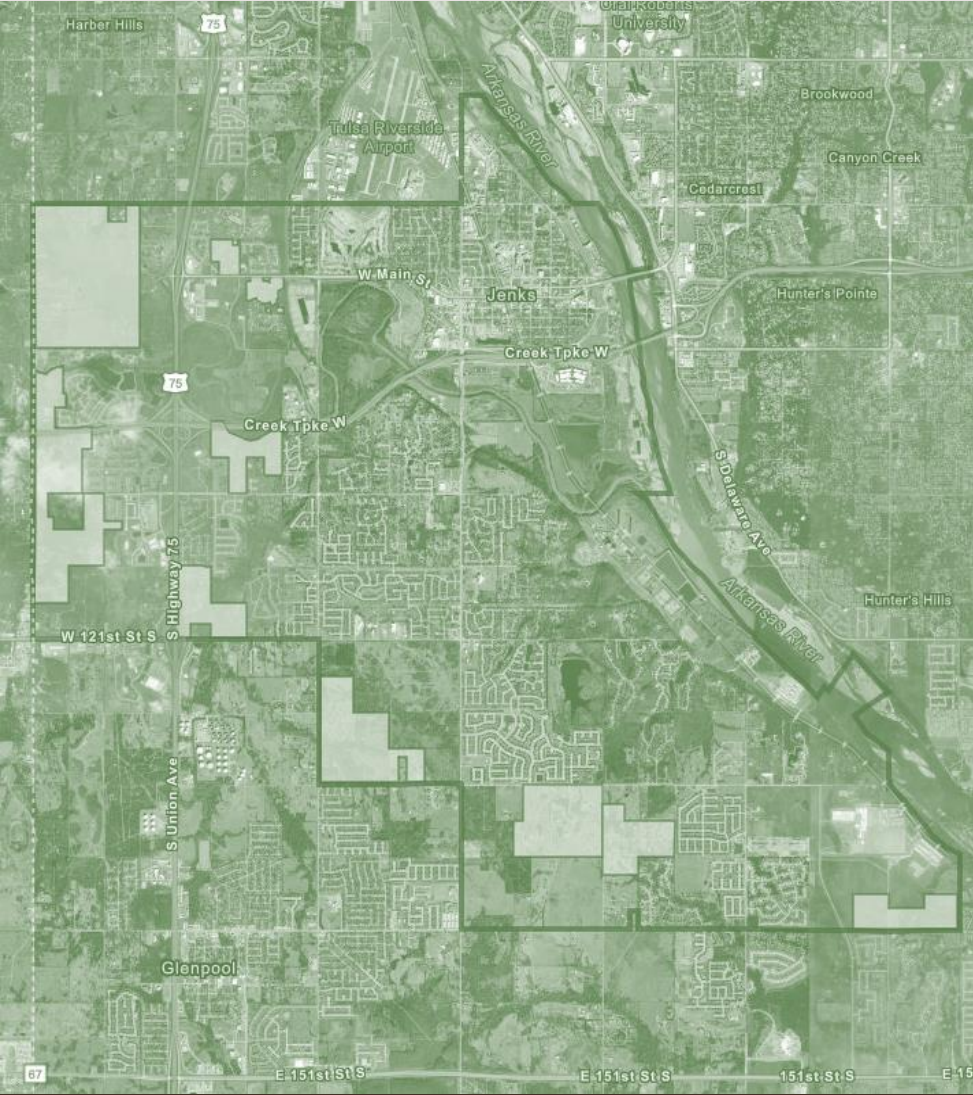
1. Other Business. No other business was discussed.

Adjournment. The Jenks Board of Adjustment adjourned at 6:27 p.m.



BOARD OF ADJUSTMENT

Training | May 15, 2025



Does the City need a Board of Adjustment?

11 O.S. § 44-101

Where a municipality is exercising zoning powers, as conferred by Sections 11-43-101 through 11-43-109 of this title, the governing body of the municipality shall provide by ordinance for the appointment of a Board of Adjustment.

THE BOARD

- Shall consist of five (5) members
- Each to be appointed for a term of three (3) years
- Removable for cause by the governing body, upon written charges and after public hearing
- Vacancies shall be filled for the unexpired term of any member whose term becomes vacant

A QUASI- JUDICIAL ENTITY

Twist v. Kay, 1967 OK 181, 434 P.2d 180

The Board of Adjustment...is an administrative board clothed with quasi judicial powers to determine if a state of facts warrants or demands a variance from or exception to an ordinance in a particular case and the exercise of such function is not legislative in character. No legislative powers are delegated to the Board of Adjustment...

I.e., Your role is to apply laws to specific facts. Your role is not to change the ordinances or establish policies for future application.

A QUASI- JUDICIAL ENTITY

Quasi-judicial proceedings must follow basic standards of due process, including:

- Proper notice of the hearing (established by statute and ordinance)
- Providing everyone with an interest in the proceedings an opportunity to be heard and to hear what others have to say
- Full disclosure to everyone of the facts being considered by the decision-making body (i.e., no ex parte contacts!!!)
- An impartial decision-maker free from bias and conflicts of interest
- Don't pre-state your position on the issue
- Decisions based on the evidence, not on political pressure, fears, stereotypes or vocal opposition

Evidence based on what is presented at hearing, not on ex parte communications or independent research.

Conducting Board of Adjustment Hearings



- Similar to a courtroom
- Evidence Based Fact Finding
- Take Testimony
- Develop a record
- Apply law to established facts/evidence

The distinction between legislative and quasi-judicial decision-making in zoning practice is an important one. In quasi-judicial proceedings the decision-making body must follow stricter procedural requirements. If the requirements are not followed, a court could invalidate the decision if it is challenged.

Decisions cannot be based on stereotypes or fears "which may or may not have a basis in fact" but must be based upon "actual evidence." *In re Volunteers of America, Inc.*, 1988 OK 8, 749 P.2d 549 (citing Colorado case overturning the denial of a permit to group home with approval).

General Guidelines for Quasi- Judicial Board

Listen	Listen carefully and confine your decision to the evidence presented.
State	If you learn something outside of the hearing, you need to state it on the record and give applicant and objectors opportunity to respond.
Judge	Like a judge, you can never pre-judge a case or make a statement about how you will vote in advance of hearing all the evidence produced during the hearing.
Discussion	Further, you should not have ex parte discussions about the merits of the case. Direct anyone who contacts you to staff and state you cannot comment.
Prepare	Like a judge, be prepared.
Respect	Respect the process and be respectful.
Ethics	Observe formalities and maintain order. (See Council Rules and Council Ethics Code).
Conflict of Interest	Don't sit and participate in decision if you have a conflict of interest or an appearance of a conflict.

Open Meetings Act

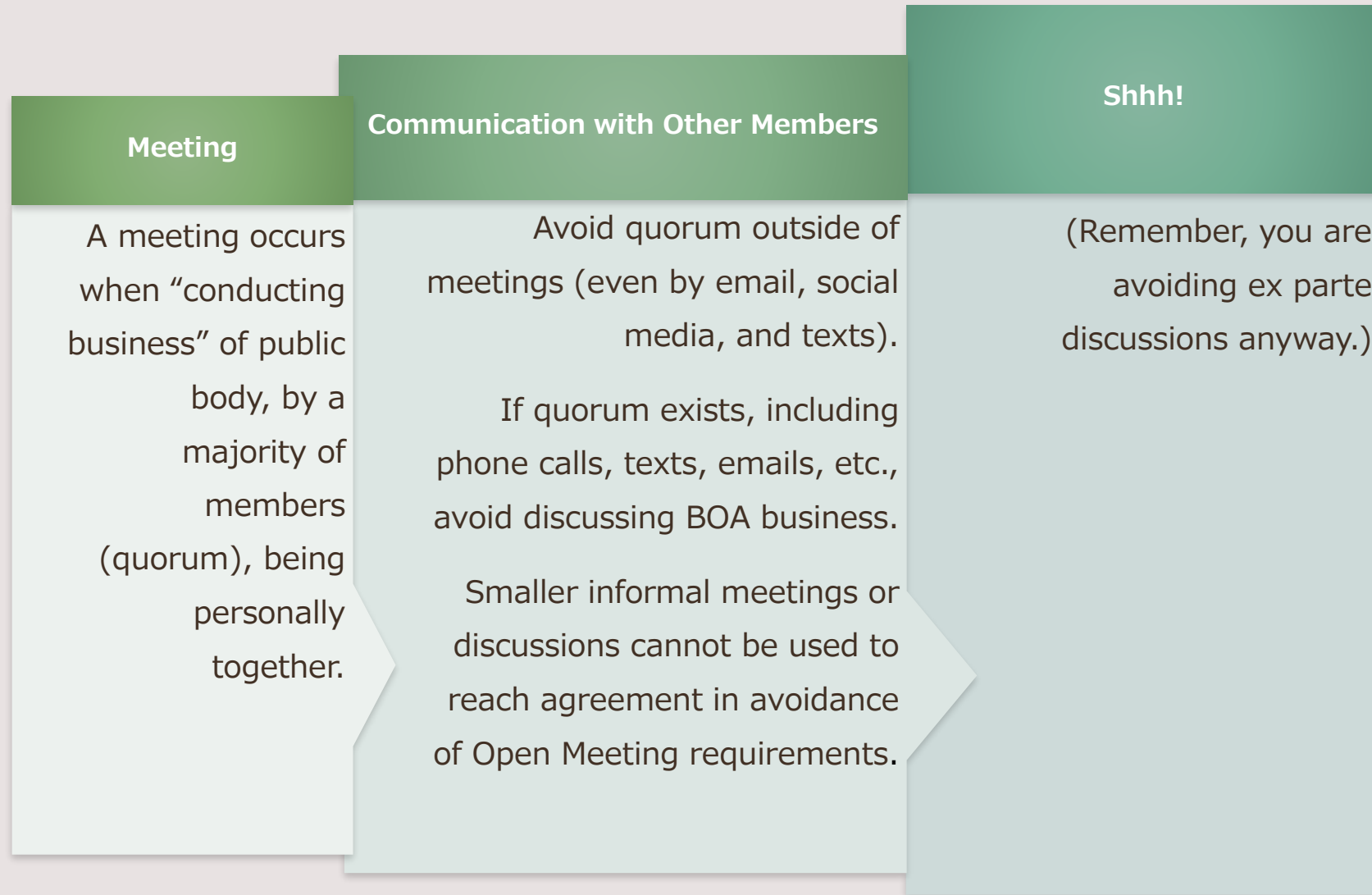


ALL "MEETINGS" SUBJECT TO OPEN MEETINGS ACT

11 O.S. 44-102: "The board of adjustment shall be subject to the open meeting laws of the state and all meetings, deliberations and voting of the board shall be open to the public."

Basic Meeting Rules: ..."shall" be held in public at convenient times and places open to the public, provide advance public notice of time, place, and subject matter.

OPEN MEETINGS ACT, (CONT.)



Open Meetings Act, (cont.)

VOTING

Votes must be publicly cast and recorded

- *Cannot occur by phone or email*
- *Not in executive session*
- *No deciding or taking action at an informal gathering*
- *Do not pre-state your position*
- *BEWARE of text messages and social media*
- *Don't text, tweet or FB live, etc. during meetings*
- *Avoid polling/negotiating*

Open Meetings Act, (cont.)

Notice and Agenda

- “Agendas must be worded in plain language, directly stating the purpose of the meeting, and the language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.” *Andrews v. Ind. School District No. 29* 737 P.2d 929 (Okla. 1987)
- Annual notice of regular meetings for the following year by Dec. 15
- Agenda posted 24 hours in advance
- Special Meetings—notice 48 hours in advance
- *If it isn't clearly on the agenda, it cannot be discussed or decided.*

Open Meetings Act, (cont.)

Executive Sessions (25 O.S. § 307)

- Only allowed where specifically authorized by statute
- Most are not applicable to BOA
- Strict agenda requirements

Civil Implications: “Any action taken in willful violation of this act shall be invalid.” (25 O.S. § 313)

Criminal Penalties: Misdemeanor fine up to \$500 and/or up to one (1) year in county jail (25 O.S. § 314)

Open Records Act,

(51 O.S. § 24A.1 et seq.)

- General Rule: Unless a record falls within a statutory exemption, it “shall be open to any person for inspection...” (51 O.S. § 24A.5)
- Records include emails, text messages, social media and receipts, etc. of members relating to City/Board business.
- Civil and Criminal Liability--Successful plaintiff in civil lawsuit wins attorney fees.
- Request form available online or from administrative staff.

Board Powers-11 O.S. § 44- 104 | Jenks UDO 16-9-4

"Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance."

"Hear and decide special exceptions to the zoning ordinances to allow a use or specifically designated element associated with a use . . ."

"Authorize in specific cases a variance from the terms, standards and criteria that pertain to an allowed use category within a zoning district as authorized by the zoning ordinance when such cases are shown not to be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship . . ."

"Hear and decide oil and/or gas applications or appeals."

**Board
Powers- 11
O.S. § 44-
104, (cont.)**

“Exceptions and/or variances may be allowed by the board of adjustment only after notice and hearing as provided in Section 44-108 of this title. The record of the meeting at which the variance or special exception was granted shall show that each element of a variance or special exception was established at the public hearing on the question, otherwise said variance or special exception shall be voidable on appeal to the district court.”

Purpose of a Variance

A variance is an exception to a part of the zoning ordinance. A variance is not a change in the zoning law; it is a specific waiver of requirements of the zoning ordinance. Some lots may have an unusual shape, natural feature or other characteristic that inhibits the desired use of a particular tract of land. In these instances, the owner may choose to apply for a variance.



4 ELEMENTS FOR A VARIANCE

1. The strict application of the ordinance 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 ordinance or the comprehensive plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Board should specifically find that each of the elements is present to grant the variance.

Purpose of a Variance, (cont.)

11 O.S. §44-107 | UDO16-9-9

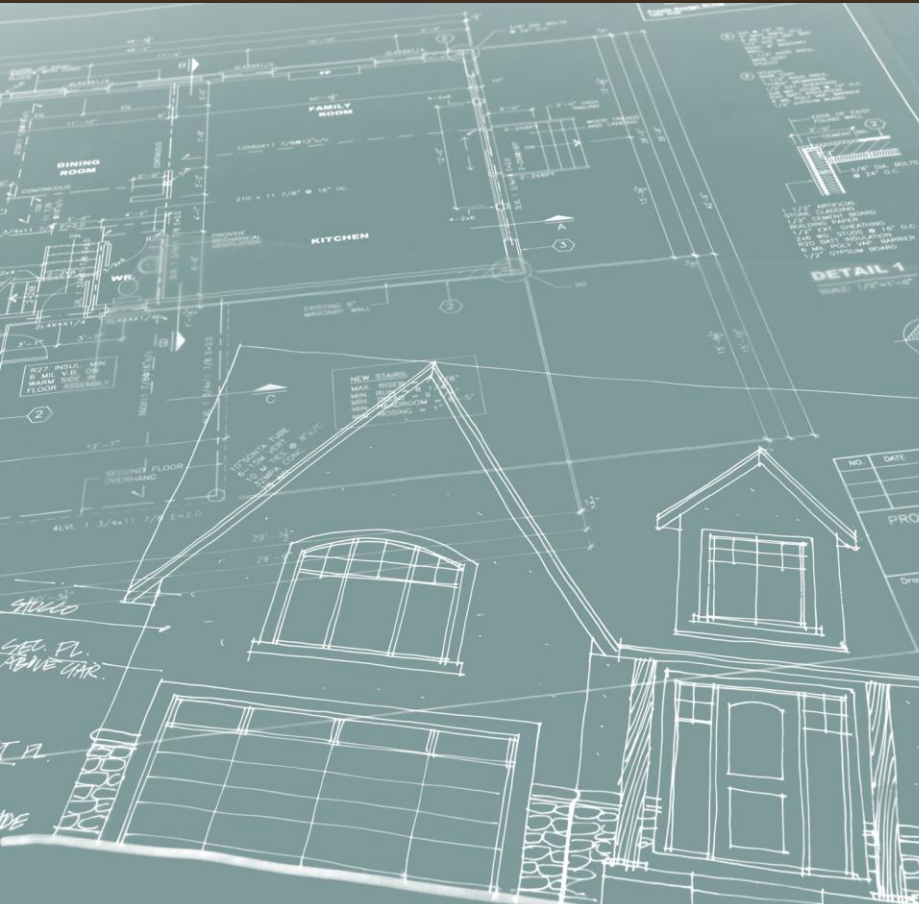
WHAT IS A "HARDSHIP"?

- An unnecessary hardship is found when: [1] there is some degree of interference with an ordinary legal property right from which the hardship would arise; [2] the hardship is peculiar or unique to the applicant's situation [and not applicable, generally, to other property within the same zoning classification]; [3] the degree of severity of the hardship imposed by the ordinance is not essential to carry out the spirit of the ordinance and [4] substantial deprivation [as distinguished from a mere inconvenience] results to the applicant
- Hardship results from the physical surroundings, shape, or topographical conditions of the subject property
- That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner/applicant
- Financial Hardship alone is not sufficient

Purpose of a Variance, (cont.)

11 O.S. §44-107 | UDO16-9-9

PRACTICE CASE



- Applicant owned a 3,000 square foot lot and wished to build a house on that property. Applicant acquired the lot in 1965.
- The zoning law was adopted in 1947 and prevents the building of homes on lots less than 6,000 square feet based on intensity of use purposes.
- Applicant does not base his request for a variance upon exceptional narrowness, shallowness, or shape of this piece of property at the time of the original adoption of this ordinance, or upon exceptional topographical conditions affecting this piece of property but not generally prevalent in the neighborhood. Applicant can comply with every other provision of the zoning code, including setback and spacing requirements from adjoining properties and structures.
- Further, “there was one ‘apartment,’ at least two store buildings, and a number of duplexes, located upon pairs of lots similar to this lot, and at least nine instances in which two structures are located upon such a pair of lots, four instances in which three structures are located upon such a pair of lots, and one instance in which four structures are located upon such a pair of lots.” All appeared to be in existence prior to 1947. – (Presented to show that this lot density would be no greater than other lots in the area).
- Do the facts support granting a variance?
- Is there enough information? If not, which information would you like?

PRACTICE CASE

SUPREME COURT HOLDING-BROWN V. FRASER, 1970 OK 50, 467 P.2D 464,469

The Court determined that there was no hardship particular to the applicant.

“There is nothing in the record to show that any ‘hardship’ imposed upon this applicant as the owner of a 3,000-square-foot ‘lot’ in an “A’ Single Family Dwelling District’ **is any different than that imposed upon any other owner of a 3,000-square-foot ‘lot’ in the same, or any other, “A’ Single Family Dwelling District’** in the city, so that such ‘hardship’ would be peculiar to him in any way.”

Applicant operates a travel trailer and recreational vehicle sale and display business on the north 280 feet of his property [on the other end of the property is his residence]. The properties on either side of him are zoned and used for the same kind of business (beyond 280 feet in depth).

Applicant applied to BOA for a variance from the City's zoning requirements to allow him to use the back portion of his property, zoned for residences only, for additional display and storage of his merchandise. He further requested to be exempted from the screening and paving requirements of the City's ordinances.

If RELIEF were to be granted to Applicant, his commercial property would extend into the residential area to a depth of 308.5 feet or a total of 588.5 feet.

Testimony of expert witness indicated that 300 feet is the maximum desirable depth for strip commercial zoning and through its long-range/comprehensive plans the City desired to discourage this type of zoning.

Neighborhood residents asking the Board to refuse request because it would cause a depreciation in residential property values in the neighborhood.

Applicant claims that an unnecessary hardship exists because the property is landlocked, and because he needs the use of this property to expand his trailer sales business.

The Court "acknowledge[d] that the zoning creates a financial hardship."

**What type of relief could be granted?
Should it be granted?**

PRACTICE CASE

PRACTICE CASE, (CONT.)

SUPREME COURT HOLDING- BANKS V. CITY OF BETHANY, 1975 OK 128, 541 P.2D 178

Held: BOA and lower court properly denied variance

- “Added advantage and monetary benefit are not sufficient grounds standing alone to warrant the granting of a variance. 541 P.2d at 181
- “Petitioner's situation is not unique.” Id. at 181
- Post 1988 Amendments--Use Variances are no longer allowed
- Also, evidence showed that relief if granted would violate intent of comprehensive plan


SPECIAL EXCEPTION JENKS UDO 16-9-6

- ➔ **State Statute:** BOA may “hear and decide special exceptions to the zoning ordinance to allow a use, or a specifically designated element associated with a use, which is not permitted by right in a particular district because of potential adverse effect, but which if controlled in the particular instance as to its relationship to the neighborhood and to the general welfare, may be permitted by the board of adjustment, where specifically authorized by the zoning ordinance. . . [.]”
- ➔ **Special Exception Criteria.** The Board of Adjustment, upon application and after notice and public hearing may grant a Special Exception only upon finding that the application:
 - (1) Will be in harmony with the spirit of the UDO and the governing zoning district.
 - (2) Will not be injurious to the neighborhood or otherwise detrimental to public welfare.
- ➔ **Board should specifically find that each of the criteria is present to grant the special exception.**

Note: Use Specific Standards are not criteria/elements for granting a Special Exception, but compliance with them may be a condition. Staff will assess compliance and applicant may seek a variance for those standards.

Difference between Variance and Special Exception

The difference is that a variance is an "excused violation," and [a special] exception is a conditionally permitted use. . . . A variance may be granted only pursuant to the terms of 11 O.S. § 44-107; an exception will be granted in accordance with conditions set forth in the ordinance itself.



In re Moreland, 1972 OK 87, 497 P.2d, at 1292.

PRACTICE CASE

Applicants applied for a special exception to a zoning ordinance. They wanted to set up a prison pre-release center in an existing building in a XX zone. Prison inmates would be rehabilitated at the Center to be better equipped to re-enter society after their release.

The City's witnesses expressed concerns about the effects of a pre-release center on the crime problem within a couple of blocks of the Center. No factual evidence was presented to support these fears. Several witnesses specifically stated their objections were based on perceptions of a pre-release center.

The proposed site is immediately north of downtown Tulsa, within the inner dispersal loop, between the Burlington Northern right-of-way and I-244 on the north and west. It is surrounded on three sides by commercial high intensity zoning and on one side by the interstate. There is an area north of the expressway, zoned primarily Residential.

Should a special exception be granted here?

Should the BOA rely on the testimony of City's witnesses in the second bullet?

Should the BOA consider the effect of the Center on the residential area north of the expressway?

PRACTICE CASE

SUPREME COURT HOLDING, VOLUNTEERS OF AMERICA, INC., 1988 OK 8, 749 P.2D 549

- The boundaries of a given neighborhood are not determined solely by linear footage. Rather, many factors must be considered, such as geography, terrain, and barriers, both God-made and man-made. The area north of I-244 does not fall within the definition of “neighborhood.” The expressway serves as a man-made barrier or buffer zone between the site and the residential area north of the expressway. Therefore, the only “neighborhood” to be considered is the CH-zoned area south of I-244, in the immediate vicinity of the proposed site.
- Held the district court erred in denying Volunteers' special exception request based on fears “which may or may not have a basis in fact.” Rather, actual evidence must be presented to show that the Center will be “injurious to the neighborhood or otherwise detrimental to the public welfare.”
- A special exception will be found to be arbitrarily denied when the evidence establishes by the basic physical facts that the requested use is compatible with the basic use authorized within the particular zone, and does not endanger the public health, safety or general welfare of the area affected.

A locality is required to reasonably accommodate disabled persons by modifying its zoning policies, practices and procedures and may not intentionally discriminate against disabled persons. *Dadian v. Village of Wilmette*, 269 F.3d 831 (7th Cir. 2001).

28 C.F.R. § 35.130(b)(7) states: A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The United States Department of Justice explains this requirement as follows:

[Localities] are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks.

Examples:

Drug and alcohol rehabilitation programs: The anti-discrimination provision of the ADA prohibits zoning decisions by a locality that discriminate against drug and alcohol rehabilitation programs, the clients of which are “qualified individuals with a disability.”

Mental health facilities: The anti-discrimination provision of the ADA applies to mental health facilities. *Pathways Psychological v. Town of Leonardtown*, 133 F. Supp. 2d 772 (D.Md. 2001).

Variance from regulations to allow reasonable use of home: The anti-discrimination provision of the ADA prohibits zoning decisions by a locality that fail to reasonably accommodate persons with a disability to allow them the same housing opportunities without a disability. E.g. an exception to setback requirements to accommodate a ramp for wheelchair access.