

AGENDA
JENKS BOARD OF ADJUSTMENT
6:00 P.M., THURSDAY, MAY 14, 2020

I. CALL TO ORDER

II. ROLL CALL

1. MEMBERS REMOTELY MEETING

- Chair Shari Keathley - teleconference
- Erik Enyart - videoconference
- Gina Wilson - videoconference
- Larry Hengst - teleconference
- Paul Greek - videoconference

The meeting will be live streamed on the [CITY OF JENKS' YOUTUBE CHANNEL](#). If you have any comments pertinent to the agenda items for the public record, please send them to the City Clerk at bmacy@jenksok.org by noon on the day of the meeting. If you cannot email your comment, you may either call the City Clerk at 918-209-4903 or leave your comment in the utility drop box by the end of business the day before the meeting. Your name and address are required to be included in the public record.

III. REQUEST TO APPROVE MINUTES OF APRIL 16, 2020

Documents:

[2020.04.16 BOA MINUTES.PDF](#)

IV. OLD BUSINESS

1. JBOA 20-429: Request by Kevin Bodenhamer for a Special Exception to allow for 1200 total square feet of accessory buildings in his rear yard. General Location 209 E Duncan St

Documents:

[1. SR.JBOA 20-429 209 E DUNCAN.05.14.20.PDF](#)
[2. MEMO LEGAL OPINION BODENHAMER.PDF](#)
[CASE MAP.PDF](#)
[PLANS.PDF](#)

2. JBOA 20-430: Request by Theresa Dewhurst for a Special Exception to allow for a continuation of a pre-existing nonconformity after a requested zone change. General Location: 122 N 6th St

Documents:

[1. SR.JBOA 20-430.PDF](#)
[2. MEMO JBOA 20-430.PDF](#)
[CASE MAP.PDF](#)

V. OTHER BUSINESS

1. Horizon Jenks - Comprehensive Plan Project Update

VI. ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT
6:00 P.M. THURSDAY, APRIL 16, 2020

The Jenks Board of Adjustment was called to order at 6:00 p.m. on April 16, 2020, by Chair Shari Keathley. A roll call vote was taken as follows:

Present

Erik Enyart – Videoconference
Gina Wilson – Videoconference
Larry Hengst – Physical
Paul Greek – Videoconference
Chair Shari Keathley - Physical

Absent

Request to approve minutes of January 16, 2020. Paul Greek made a motion to approve the minutes with the proposed corrections. Erik Enyart seconded the motion. A roll call vote of members was taken as follows:

YEA: Enyart, Hengst, Greek, Keathley

NAY: None

ABSTAIN: Wilson

Business

1. **JBOA 20-429: Request by Kevin Bodenhamer for a Special Exception to allow for 1200 total square feet of accessory buildings in his rear yard. General Location: 209 E Duncan St**

Planning Director Marcae Hilton presented her staff report and answered questions. Mr. Bodenhamer (209 E Duncan) addressed the Board about the application. City Attorney Teresa Nowlin addressed the issue of carports being classified as accessory buildings. Larry Hengst made a motion to table Item 1 to the next meeting. Gina Wilson seconded the motion. A roll call vote of members was taken as follows:

YEA: Enyart, Wilson, Hengst, Greek, Keathley

NAY: None

Motion Carried. Item tabled to the May 14, 2020, meeting.

2. **JBOA 20-431: Request by Gary Scrivner to build a 1200sqft accessory building in his rear yard. General Location: 11201 S Juniper St**

Planning Director Marcae Hilton presented her staff report and answered questions. Gary Scrivner (11201 S Juniper) addressed the Board about the application. Larry Hengst

made a motion to approve Item 2. Erik Enyart seconded the motion. A roll call vote of members was taken as follows:

YEA: Enyart, Wilson, Hengst, Greek, Keathley

NAY: None

Motion carried.

3. **JBOA 20-430: Request by Theresa Dewhurst for a Special Exception to allow for a continuation of a pre-existing nonconformity after a requested zone change. General Location: 122 N 6th St.**

Planning Director Marcae Hilton presented her staff report and answered questions. Theresa Dewhurst (3300 E University Ave, Guthrie, OK) and Rick Postan (representative) addressed the Board about the application. City Attorney Teresa Nowlin answered question from the Board. Larry Hengst made a motion to approve Item 3. There was no second.

Motion failed due to lack of a second

Erik Enyart made a motion to table Item 3 till the next meeting. Gina Wilson seconded the motion. A roll call vote of members was taken as follows:

YEA: Enyart, Wilson, Hengst, Greek, Keathley

NAY: None

Other Business:

1. Horizon Jenks – Comprehensive Plan Project Update. Planning Director Marcae Hilton gave an update on the Jenks Comprehensive Plan.

Adjournment. The Jenks Board of Adjustment adjourned at 7:50 p.m.

To	Board of Adjustment
Hearing Date	May 14, 2020, Continued from April 16, 2020
Case Number	JBOA 20-429 209 E DUNCAN
Request	Special Exception Accessory building “area” of 1200 total square feet
Location	209 E Duncan
Applicant	Kevin Bodenhamer

Staff Report

Preparer | Marcaé Hilton

Attachments

- ☐ STAFF LEGAL OPINION
- ☐ CASE MAP
- ☐ APPLICANT SITE PLAN/DOCUMENTS

Preparer

Teresa Nowlin, and other staff
INCOG
Kevin Bodenhamer

Background Information

STAFF COMMENTARY | This item was continued from the April 16, 2020 regularly scheduled Board of Adjustment meeting. The Board of Adjustment asked for a legal opinion on what is to be considered when computing accessory structure square footage in a rear yard. The question was asked, “Is a carport included in the building area when figuring total square footage.”

Originally, Mr. Kevin Bodenhamer requested a Special Exception to allow for an accessory “building area” of 1200 total square feet at 209 E Duncan St. Mr. Bodenhamer currently has two (2) buildings plus a carport in his rear yard and wishes to additional square footage. Due to the size of the existing structures, he needs a Special Exception from the Board of Adjustment. The total square footage from all accessory units exceeds 600 sq. ft. and code does not allow him to exceed 1200 sq. ft. total for the accessory structures. He is not building an additional 1200sq. ft. building in his rear yard. Mr. Bodenhamer wishes to build up the 1200 sq.ft. mark.

Sec. 240.f of the Jenks Zoning Code allows for 600 sq. ft. of accessory buildings by right in RS districts, and up to 1200 sq. ft. with a Special Exception from the Board of Adjustment. The requirements for this Special Exception are as follows:

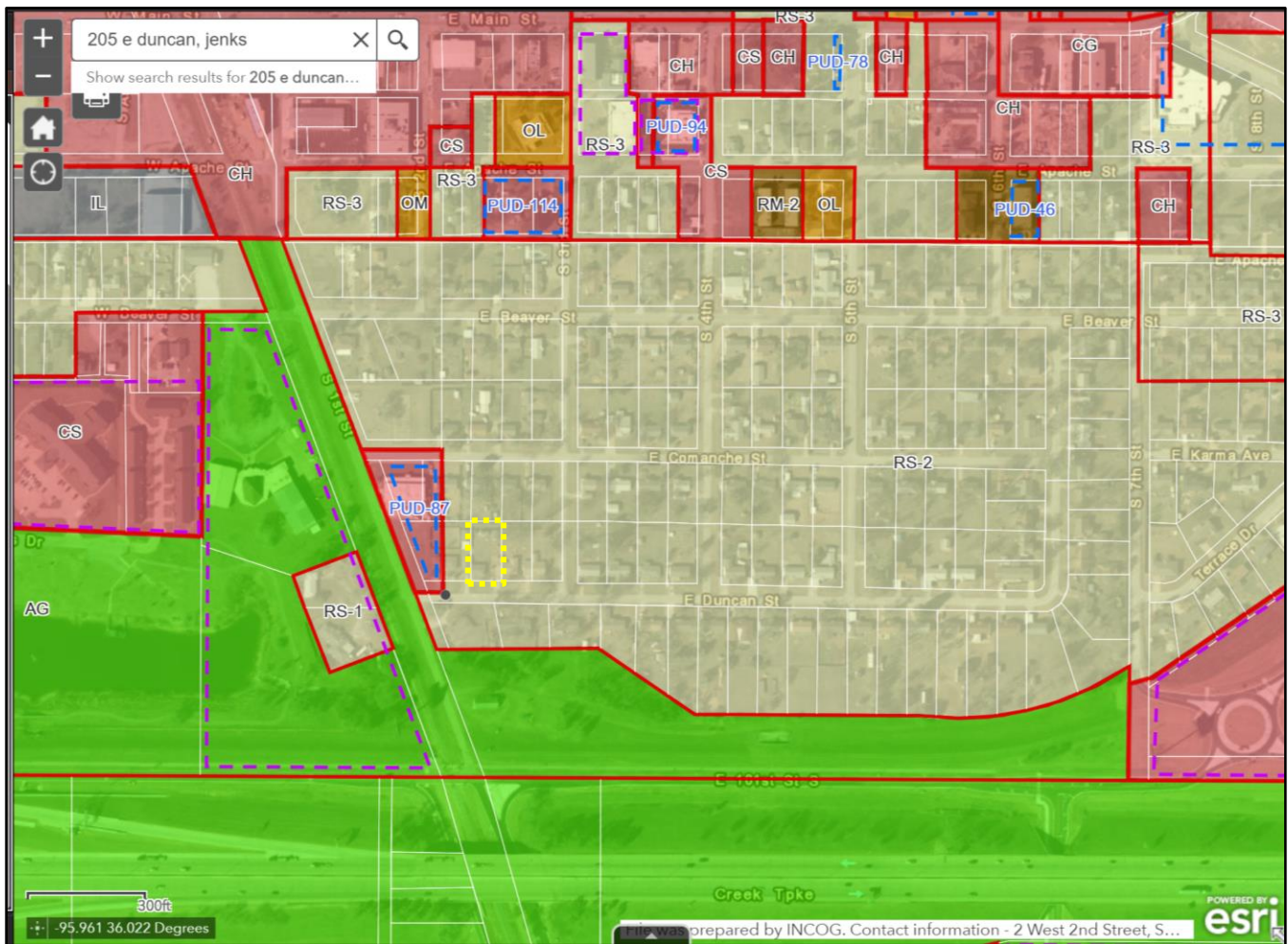
1. The buildings cannot exceed 1200 sq. ft.
2. The buildings cannot exceed 20% of the area of the rear yard.

It has been determined by staff a carport is an accessory structure and shall be included when computing the total square footage of accessory structure area, this completely changes the buildable area of the new project.

Public Comment | Several calls were received; increased drainage was a primary concern from one citizen. Mr. Bodenhamer received several questions from neighbors and contacted the city to request a copy of the labels so he could submit a drawing showing his plans to interested neighbors. Staff created a “Clarification letter” and mailed it out to everyone on the list provided by INCOG.

PLANNING DATA

Intended Use	Shop building
Appearance District	None
Zoning	RS-2 Residential Single-Family
Comprehensive Plan	Intensity Low
General Location	North of E. Duncan and east of the railroad track
Plat	SANCO 4TH ADDN LT 3 BLK 4
Gross Acres	0.26
STR	Section: 19, Township: 18, Range: 13
Floodplain	No 100-year FP
Zoning Surrounding	Residential Single-family



Staff Evaluation & Recommendation

Evaluation

Planning Staff | Criteria for consideration:

1. 420.2. Accessory Use Conditions.
 - a. General Conditions.
 2. A detached accessory building shall not be located in the front or side yard or encroach upon a minimum building setback line, but this limitation shall not apply to carports, provided the minimum required front yard or side yard or setback line is observed.
 3. Within the rear yard, a detached accessory building shall be located at least five feet from any interior lot line.
2. Total area of the rear yard
 - a. 209 E Duncan has a rear yard larger than 6,000 sq. ft.
 - b. This is the minimum required to have the full 1,200 sq. ft. allowance
3. Total size of the structures.
 - a. The combination of accessory structures cannot exceed 1,200 sqft:
 - i. Existing garage: $22' \times 25' = 550 \text{ sqft}$

- ii. Carport: $19' \times 18' = 342 \text{ sqft}$
- iii. Existing storage: $10' \times 20' = 200 \text{ sqft}$
 $1,092 \text{ sqft}$
- iv. New Structure: $1,200 - 1,092 = 108 \text{ sqft}$
- v. Per staff, the legal opinion includes carports as an accessory structure and they are included in the computation for total square footage.
 - 1. At no time can the total accessory space exceed: 1,200 sqft

Engineering Staff

Question | is a drainage study required?

Answer | Chris Robinson, City Engineer:

We only require the earth change permit on ground disturbance over 1 acre or a change from AG/residential to commercial. The earth change permit does require a drainage study.

We are working on a drainage project for this part of town. It is from 1st street to 4th Street, Beaver to Duncan Street. We are looking at redoing the bar ditches and modifying the drainage for this area. We just got the survey for this part of town. No curb and gutters are planned for at this time for the whole Sanco Subdivision area.

Additionally, we are working on getting a drainage/stormwater master plan done. One of its goals would be to address how to handle drainage with redevelopment of the downtown commercial and residential areas.

Staff Comments | Comply with any permitting and inspection processes for City of Jenks

Recommendation | *Grant the Special Exception to allow for Accessory building "area" of 1200 total square feet finding the applicant meets the criteria laid out in the Jenks Zoning Code under Sec. 240.f. and complies with all staff comments.*



CITY OF JENKS

211 NORTH ELM STREET • P.O. BOX 2007

JENKS, OKLAHOMA 74037-2007

PHONE (918) 299-5883 • FAX (918) 299-4489

To: Board of Adjustment

Cc: Chris Shrout, City Manager
Robert Carr, Assistant City Manager
Marcae Hilton, City Planner

From: Teresa Nowlin, City Attorney

Date: May 5, 2020

Re: Legal Opinion; BOA 20-429: Request by Kevin Bodenhamer for a Special Exception to allow for 1200 total square feet of accessory buildings in his rear yard. General Location 209 E Duncan St

At your April 16, 2020 meeting, you request that I provide a legal opinion regarding whether a carport is considered an accessory building with regards to the rear yard 1200sqft accessory building limit stated in Jenks Zoning Code 240.2(f).

Factual summary: Mr. Bodenhamer, the Applicant, is requesting a Special Exception to allow for an accessory "building area" of 1200 total square feet at 209 E Duncan St. Mr. Bodenhamer already has three accessory buildings, including a carport, in his rear yard and wishes to add additional accessory building square footage. The total square footage from the existing accessory buildings already exceeds 600 sq. ft. Mr. Bodenhamer's home is in an RS-2 residential district and his rear yard is at least 6,000 sq. ft.

The City of Jenks Zoning Code section 240.2(f) states as follows:

In the RE and RS Residential Districts, a detached accessory building or buildings may be located in a rear yard provided (1) the building or buildings do not cover more than 20 percent of the area of the rear yard and (2) the total gross floor area for any accessory building or buildings located in the rear yard does not exceed 600 square feet, except that structures with a total gross floor area between 600 square feet and 1,200 square feet may be approved by the Board of Adjustment by Special Exception.

This provision would allow Mr. Bodenhamer upon obtaining a Special Exception to build accessory building(s) up to 1200 sq. ft., so long as the buildings do not cover more than 20% of the area of the rear yard. Since Mr. Bodenhamer's rear yard is at least 6,000 sq. ft, he can seek to build up to the full 1200 sq. ft. of accessory building area (20% of 6000 sq. ft. = 1200 sq. ft.).

The Applicant at the last BOA meeting argued that his carport should not be considered an accessory “building” for calculating how much remaining square footage he has remaining to construct an additional building.

Section 1800 of the Zoning Code defines “building” and “carport” as follows:

Building: A structure which is permanently affixed to the land, and has one or more floors and a roof, and is bounded by either another building with a common party wall, open air, or the lot lines of a lot.

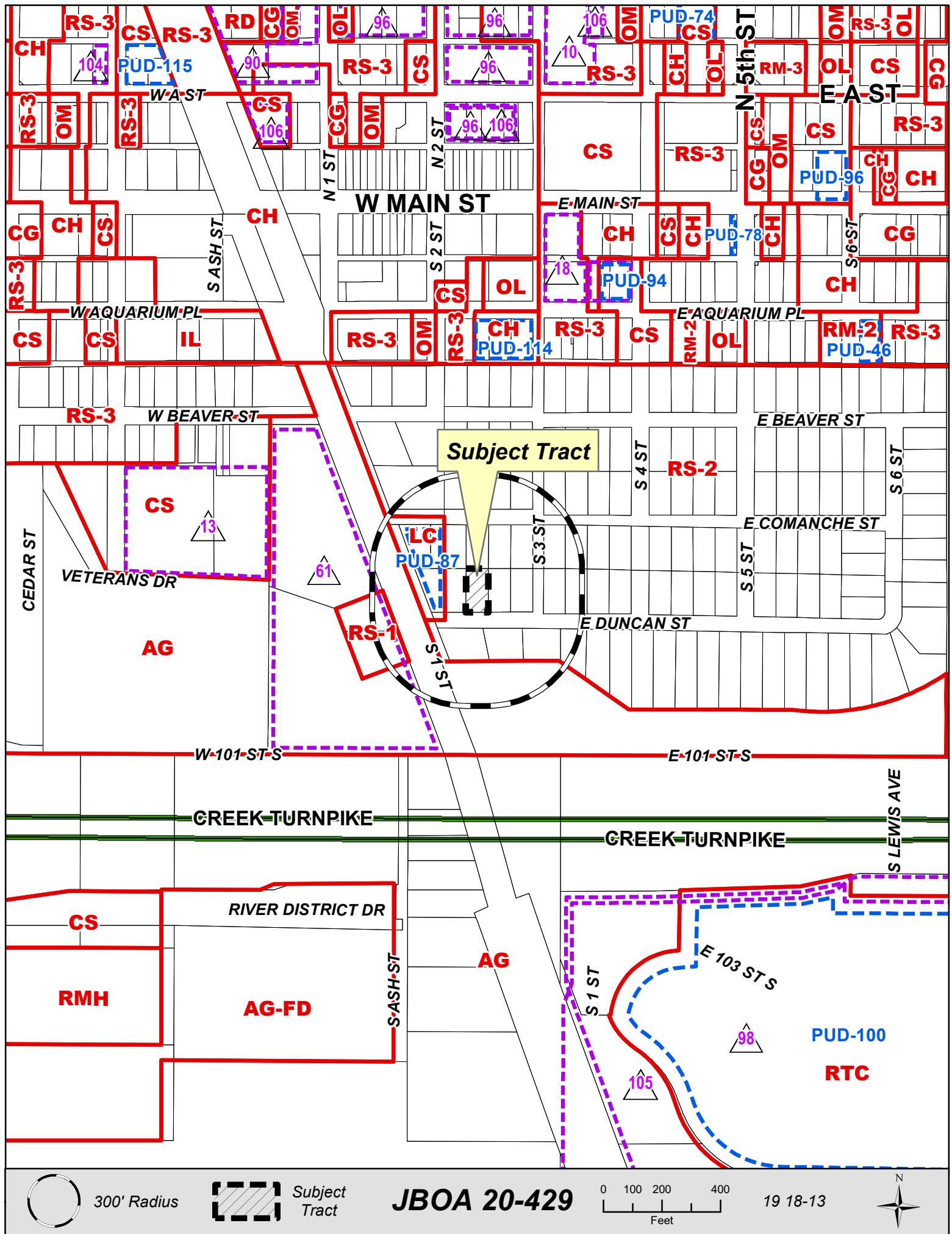
Carport: A permanent roofed structure permanently open on at least two sides, designed for or occupied by private passenger vehicles.

By definition, carports are roofed structures. The Applicant’s carport has a floor¹ and is bounded by open air and a wall. His carport would qualify as a “building” under section 1800 of the Zoning Code and should be counted toward the total square footage of building space for accessory buildings allowed by Special Exception.²

Conclusion: Carports are considered “accessory buildings” by the Jenks Zoning Code, and the Applicant’s carport certainly fits the definition. The Applicant’s carport should be considered in calculating the total square footage of existing accessory buildings to determine how much additional accessory building square footage may be permitted by Special Exception.

¹ The Zoning Code section 240.3 pertaining to residential districts provides: “No vehicle shall be parked except on a hard surfaced area constructed of a dust-free, all-weather material such as asphalt or concrete.” “Floor” is defined by Merriam-Webster as “the surface of a structure on which one travels.”

² Further evidence that carports were intended to be considered “accessory buildings” is provided by section 420.2.a.2 (“Accessory Use Conditions”) which states: “A detached accessory building shall not be located in the front or side yard or encroach upon a minimum building setback line, but this limitation shall not apply to carports, provided the minimum required front yard or side yard or setback line is observed.” Carports would not be explicitly excepted from requirement were they not generally considered to be “accessory buildings.”



209 E. Duncan Street, Jenks, OK



MORTGAGE INSPECTION PLAT



1"=30'

PROJECT NO.: 096280-548

MORTGAGOR: Kevin Bodenhamer & Mary Bodenhamer

CLIENT: Tulsa Abstract & Title Co.
Stewart Title & Guaranty Company
File No.: 227920

LEGEND

B/E BURIED ELECTRIC
SERVICE CABLE ESMT
(APPROX LOCATION)
B/L BUILDING LINE
D/E DRAINAGE EASEMENT
U/E UTILITY EASEMENT
EM ELECTRIC METER

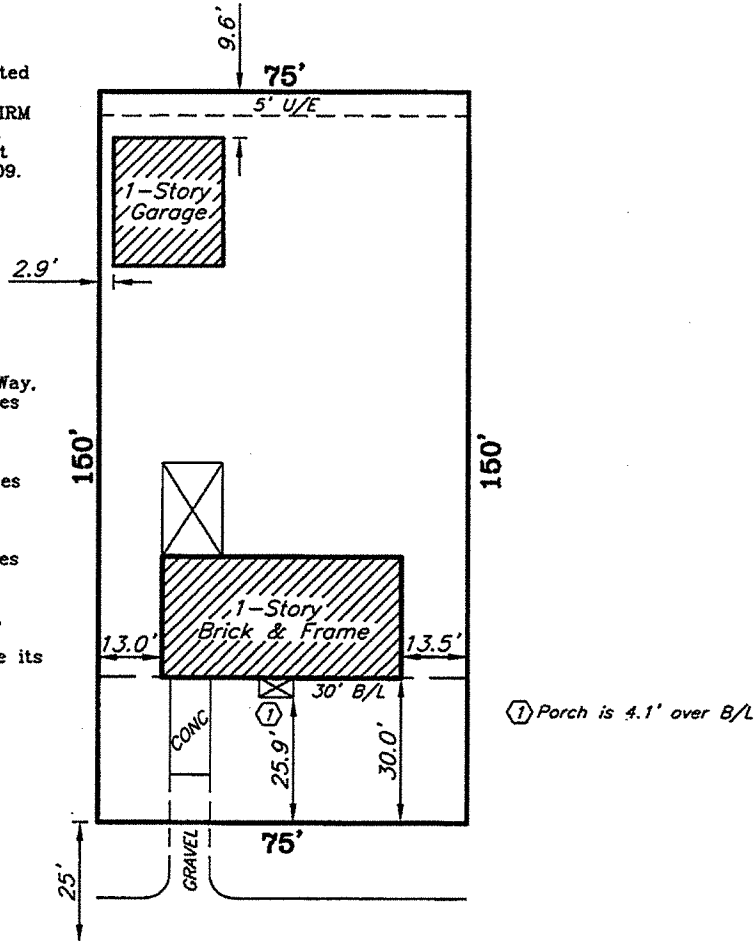
This property is located
in flood zone
"X-SHADED" as per FIRM
Community Panel No.
400209 0364K, as last
revised August 3, 2009.

Easement and Right of Way,
Book 1810, Page 348, does
not affect this property.

Right of Way Agreement,
Book 2353, Page 681, does
not affect this property.

Right of Way Agreement,
Book 2418, Page 471, does
not affect this property.

Right of Way, Book 2851,
Page 52, insufficient
information to determine its
affect on this property.



E. DUNCAN ST. S.

PLAT NO. 2027

LEGAL DESCRIPTION AS PROVIDED:

LOT THREE (3), BLOCK FOUR (4), IN SANCO 4th ADDITION A SUBDIVISION TO THE TOWN OF JENKS, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, AND KNOWN AS 209 EAST DUNCAN STREET SOUTH.

SURVEYOR'S STATEMENT

Harden & Associates, Surveying and Mapping, PC, an Oklahoma corporation, and the undersigned Registered Professional Land Surveyor, under Certificate of Authorization No. CA4656 renewal date: June 30, 2011, do hereby state that in our professional opinion the above Inspection Plat shows the dwelling as located on the premises described, that it is entirely within the described tract boundaries, and there are no encroachments thereon by visible permanent improvements, except as indicated; that the above Inspection Plat shows all Recorded Plat easements and other such easements which have been disclosed by a current Title Opinion or by Commitment for Title Insurance and copies thereof provided to us; that this Inspection Plat was prepared for identification purposes only for the mortgagee and is not a Land or Boundary Line Survey; that no property corners were set, and is not to be used or relied upon for the establishment of fence, building or other improvements; that underground or above ground utilities were not field located and therefore are not shown on this Inspection Plat unless specifically requested by the client; that this Inspection Plat is prepared solely for the client listed hereon as of this date and may not be used for any subsequent loan closing, refinance, or other transaction and that no responsibility or liability is assumed herein or hereby to the present or future landowners or occupant.

WITNESS MY HAND AND SEAL THIS DATE: 9/14/09

REGISTERED PROFESSIONAL LAND SURVEYOR
L.S. 1233

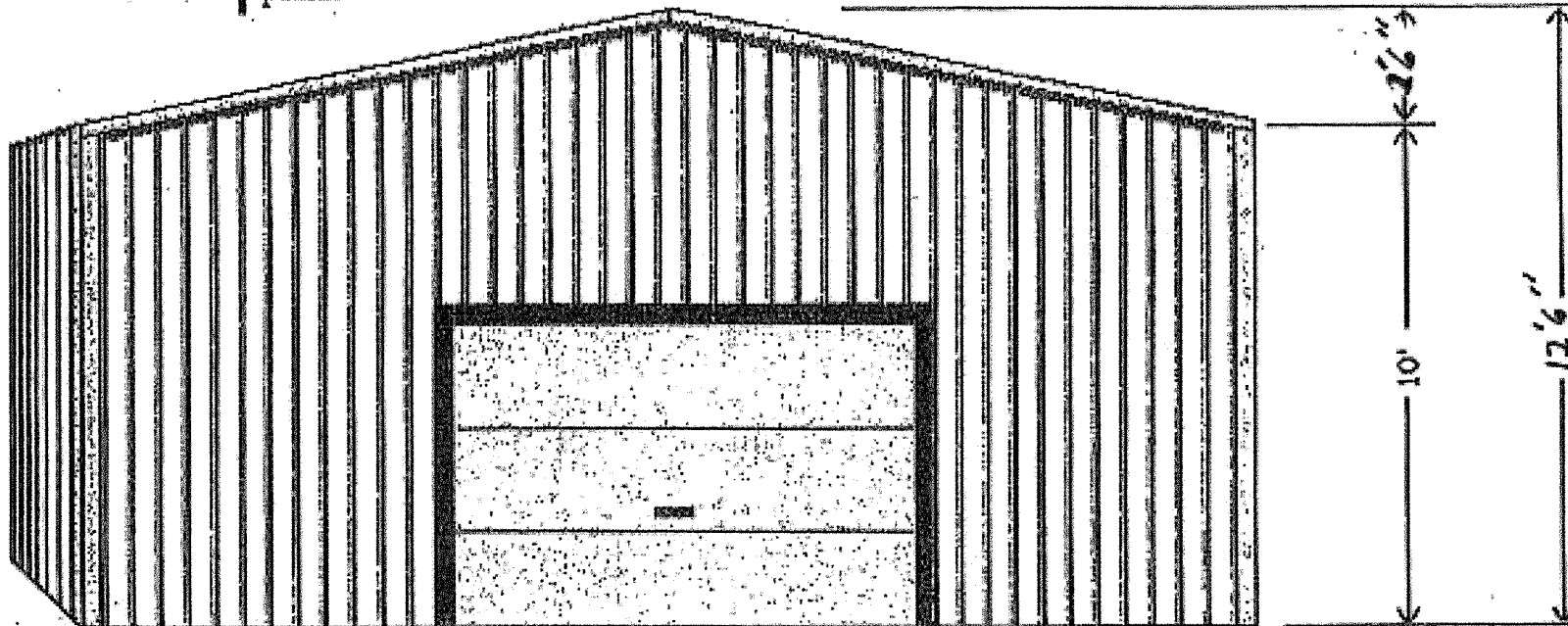
REVISED: _____
UPDATED: _____

2001 South 114th East Avenue
Tulsa, Oklahoma 74128

HARDEN & ASSOCIATES
SURVEYING AND MAPPING, PC

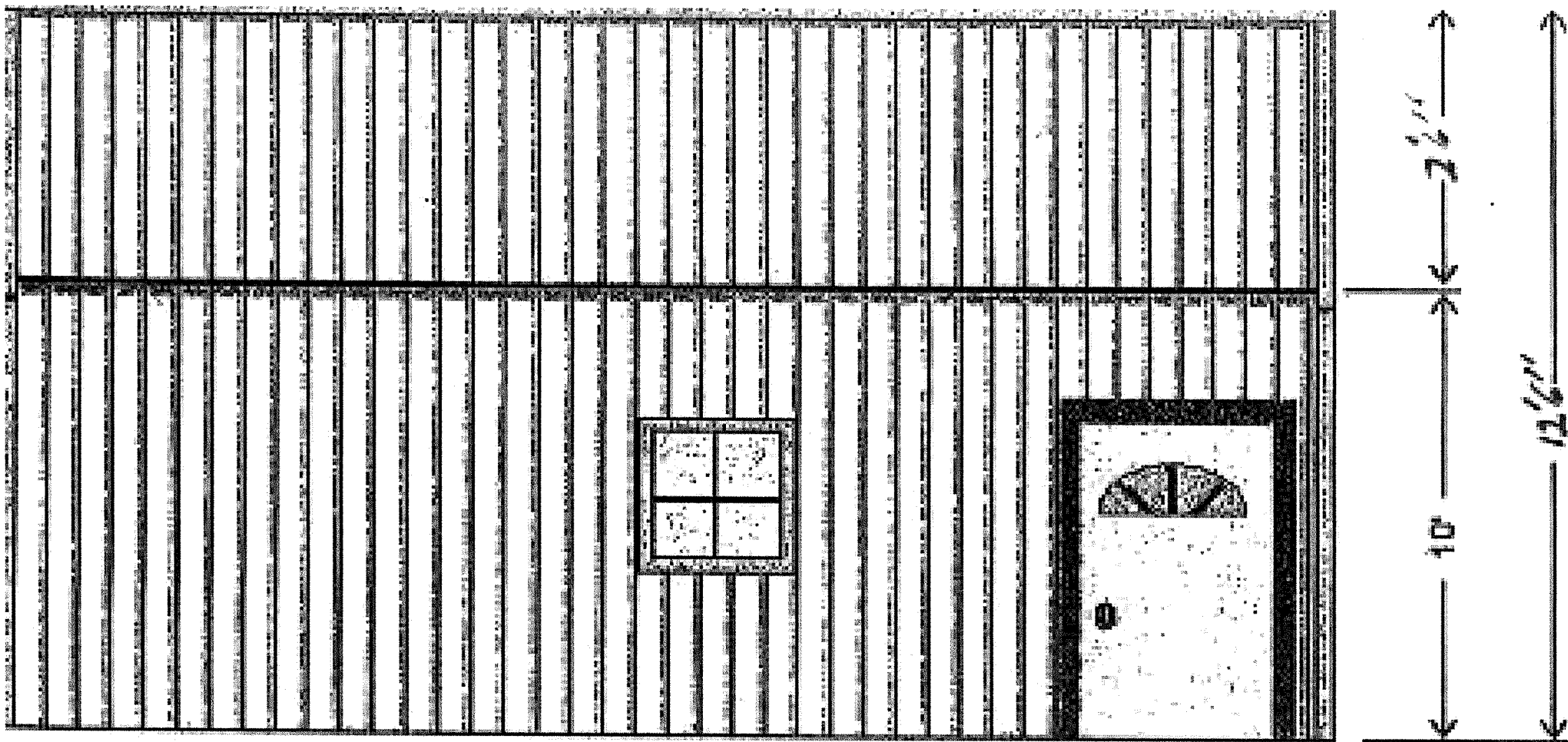
(918) 234-4859 Office
(918) 437-5551 Fax

3. $\frac{12}{\text{pitch}}$



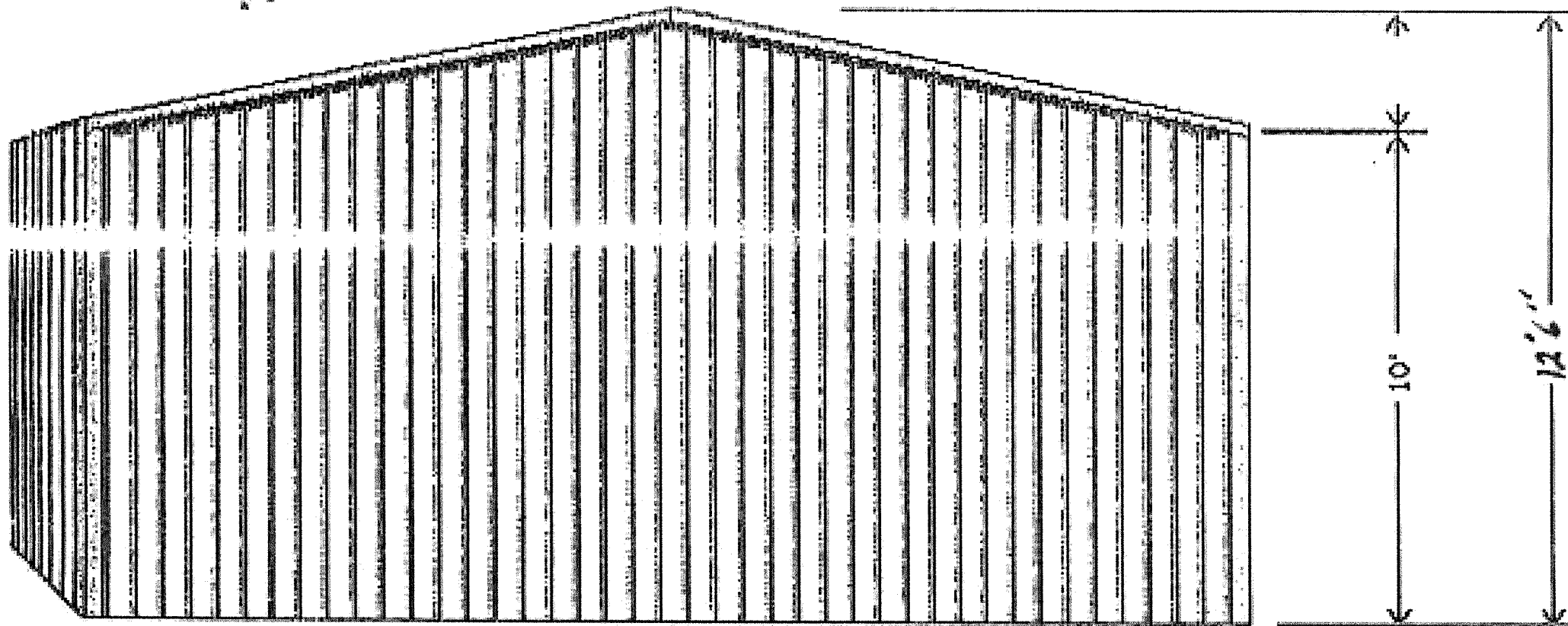
Front Elevation

Page: 1

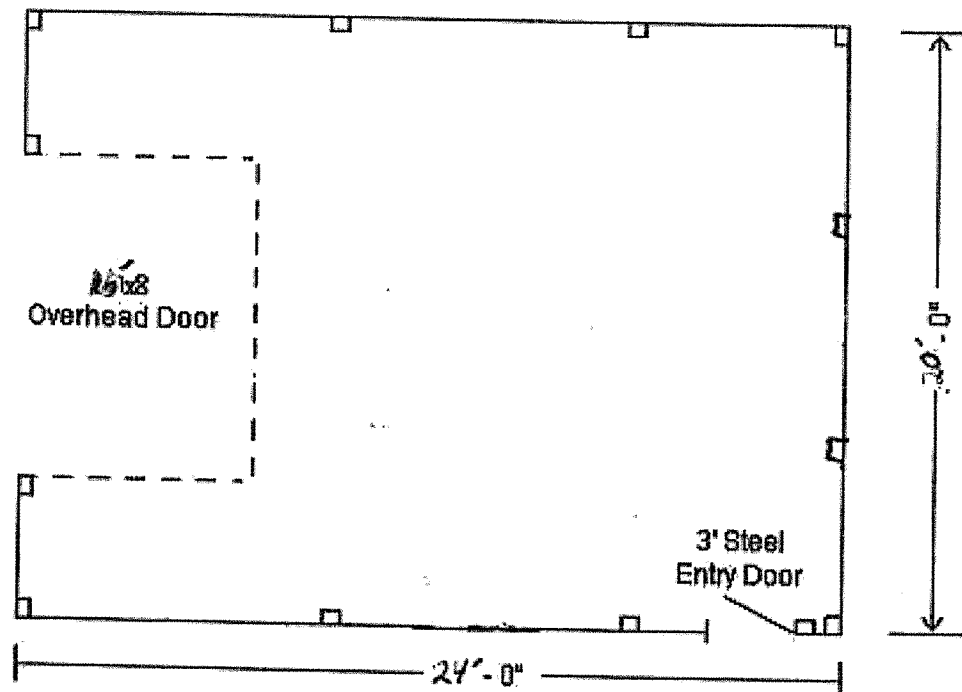


Right Elevation

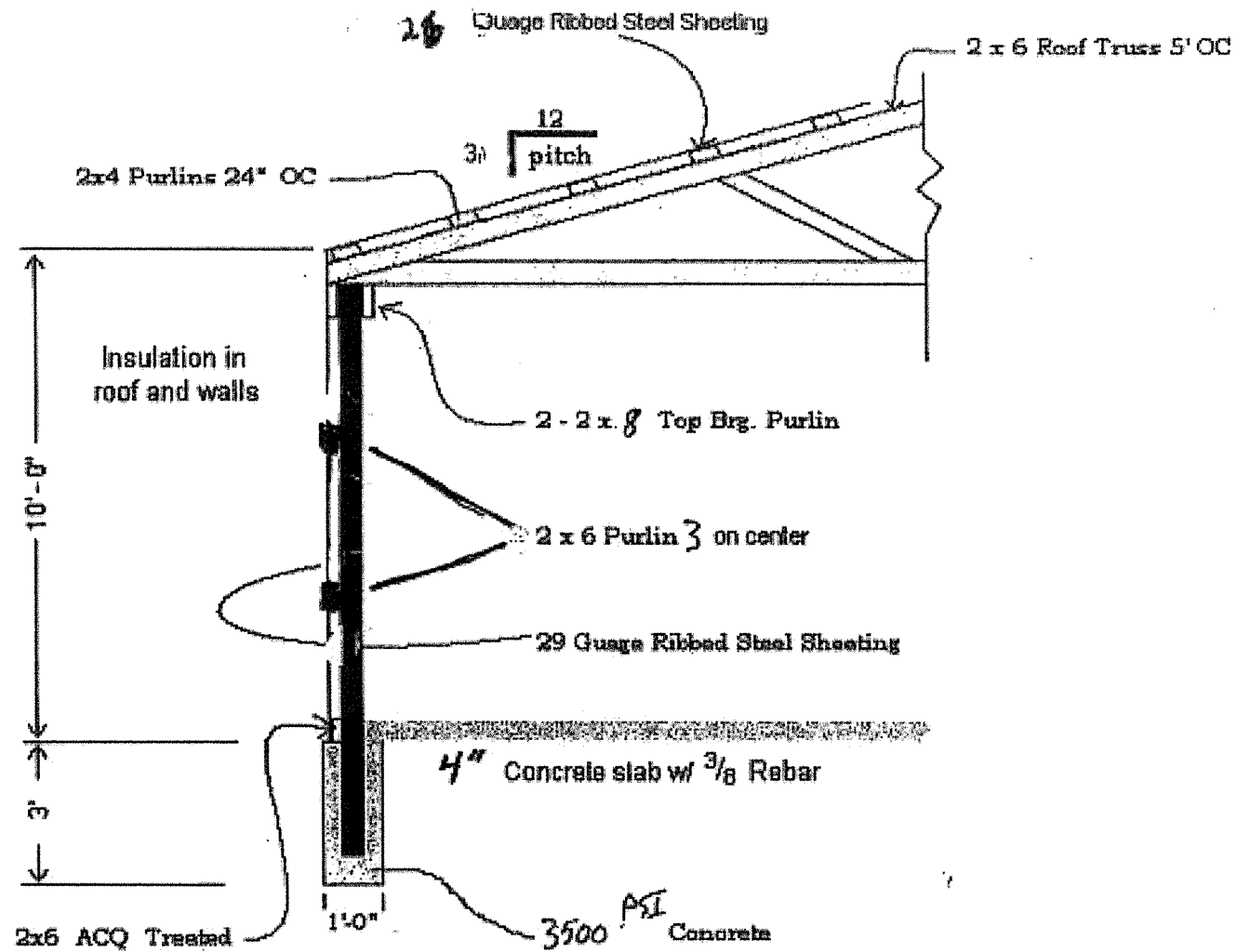
3 $\frac{12}{4}$ pitch



Back Elevation



Aerial View
Framing Plan



Detail Sheet

Page: 6

To	Board of Adjustment
Hearing Date	May 14, 2020, Continued from April 16, 2020
Case Number	JBOA 20-430 Dewhurst
Request	Special Exception To allow for a continuation of a pre-existing nonconformity after a requested zone change
Location	122 North 6th Street
Applicant	Teresa Dewhurst

Staff Report

Preparer | Marcaé Hilton

Attachments

☐ CASE MAP

Preparer

INCOG

Background Information

STAFF COMMENTARY | This item was continued from the April 16, 2020 regularly scheduled BOA meeting. The Board of Adjustment requested a legal opinion to further clarify the zoning code and the timing/adoption of certain zoning text ordinances. Currently, staff recommends the BOA approve the requested special exception to allow the residential use along with the commercial use on a lot that is zoned CS. See “Legal Opinion Memo” for details.

The applicant Teresa Dewhurst went through the rezoning process in January of 2020. The case *JZ 19-648* was heard by Planning Commission on January 09, 2020 and approved by City Council on January 21, 2020 along with Ordinance No. 1504. The action as requested and approved permitted the property (122 North 6th Street) to be rezoned from (RS-3) Residential Single-Family High Density to (CS) Commercial Shopping Center. At the time of rezoning hearing, the applicant planned to sell/lease the property for Uses allowed within a CS district such as office, medical, retail, food service, etc. development. Since approval, the applicant has decided to keep the residential use indefinitely and is seeking a Special Exception.

The property is located south of Main Street in an area of older residences which continue to transition to commercial and office uses, the requested zone change is consistent with the Comprehensive Plan. The property was originally built and functioned as a single-family home with a garage and accessory structure. The accessory structure has operated as a Barber shop for many years. The operation of a commercial use (Barber Shop) on a residential property without a special exception deemed the lot “pre-existing nonconforming”. The change in zoning brought the Use and anticipated Uses into conformance with the new (CS) zoning.

EXCERPT FROM APPROVAL LETTER | Blue highlights per Marcaé’

Your requested Zone Change from RS-3 (Residential Single-Family High-Density District) to CS (Commercial Shopping Center District) was approved by Jenks City Council on 21 January 2020. Before this zone change, the property was operating under a pre-existing nonconformity to allow for two primary structures on one lot and to allow a commercial business on a residential lot. Normally,

as long as the status quo is continued the pre-existing nonconformity is allowed to continue. This changed with the approval of the zoning change.

According to §1200. e of the Jenks Zoning Code, “Upon approval of a rezoning request, the previous use of a property if not permitted within the new zoning district shall be deemed an unlawful use and shall not be considered for rights extended to pre-existing nonconforming uses.” By that reading, once the requested zone change was approved, the commercial property (barber shop) on the lot became the principal structure “use” and the only one conforming to the Zoning Code. It also means that a residential dwelling is no longer a lawful use of the property.

§1220.f, though, states:

When at the effective date of this zoning code or amendment thereto, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than ten percent of the lot area, and such use would not be permitted by the terms of this zoning code or amendment thereto, such use shall be deemed pre-existing nonconforming and may continue subject to the following provisions

f. A pre-existing nonconforming use of a building or of a building and land in combination when located within a residential district shall not be changed unless changed to a use permitted in the district in which located. (i.e. Residential to Commercial Shopping for office and barber) A pre-existing nonconforming use of a building or of a building and land in combination, when located within a district other than a Residential District, may, as a Special Exception, be changed upon approval of the Board of Adjustment after finding that the proposed use will not result in any increase of incompatibility with the present and future use of proximate properties. The change of a use to another use contained within the same use unit shall not constitute a "change of use" within the meaning of this section.

PLANNING DATA

Intended Use	Non-conforming combination of Residential and Commercial Uses
Zoning	CS Commercial Shopping
Uses Allowed	See Chart Sec 610
Comprehensive Plan	High Intensity Area, no specific land uses reserved
General Location	122 North 6th Street South of A St. and north of Main St. and west of N. 6 th St.
Plat	Jenks Original Town, Lots 1,2,3, Block 13
STR	Section: 19, Township: 18, Range: 13
Zoning	Commercial and office
Nonconformance	A nonconforming use is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations (rezoning), is no longer a permitted use.

SUPPLEMENTAL INFORMATION | Lawful Use Zoning Information

Sec. 610. - Principal uses permitted in commercial districts.

The principal uses permitted in the Commercial Districts are designated by use units. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading, and screening requirements and other use conditions in Chapter 10. The use units permitted in Commercial Districts are set forth below in Table 1 and Table 1A.

Table 1. Use Units Permitted in Commercial Districts 1 (Chapter 10)

No.	Chapter 10 Use Units	Districts				
	Name	ROC	RTC	LC	CS	RS
1.	Area wide Uses			X	X	X
2.	Area wide Specific Use	S	S	S	S	S
3.	Public Protection and Utility and Open Air Facilities					E
4.	Public Protection	X	X	X	X	
5.	Community Services and Cultural Facilities	P	P	X	X	E
6.	Single-Family Dwelling and Similar Uses X					X
7.	Duplex Dwelling					E2
8.	Multifamily Dwellings and Similar uses	P			P	
10.	Off-Street Parking Areas	X	X		X	
11.	Offices and Studios	P	P	X	X	
12.	Eating Places Other Than Drive-Ins	X	X		X	
13.	Convenience Goods and Services	X	X	X	X	
14.	Shopping Goods and Services	X	X		X	
15.	Other Trades and Services					
16.	Gasoline Service Stations				X	
17.	Automotive and Allied Activities				E	
18.	Drive-In Restaurants					
19.	Hotel, Motel, and Recreation Facilities	X	X		X	
20.	Commercial Recreation, Intensive	P	P			
21.	Business Signs and Outdoor Advertising	X	X		X	
1 X = Use by Right.						
E = Special Exception-unless use is specifically identified on Specific Use List.						
S = Specific Use - see Use Unit 2 and Chapter 17.						
P = Requires Planned Unit Development Application due to Mixed Use Requirements.						

Sec. 630. - Bulk and area requirements in the commercial districts.

Table 2. Bulk and Area Requirements in the Commercial Districts

	CS
Frontage (min. ft.)— Arterial	150
Frontage (min. ft.)— Not an Arterial	50
Floor Area Ratio (maximum)	0.50
Setback from centerline of abutting street (min. ft.) — Arterial	50
Setback from centerline of abutting street (min. ft.)— Not an Arterial	25
Setback from an abutting R District boundary line (min. ft.)	10 1
Building Height (max. ft.)	35

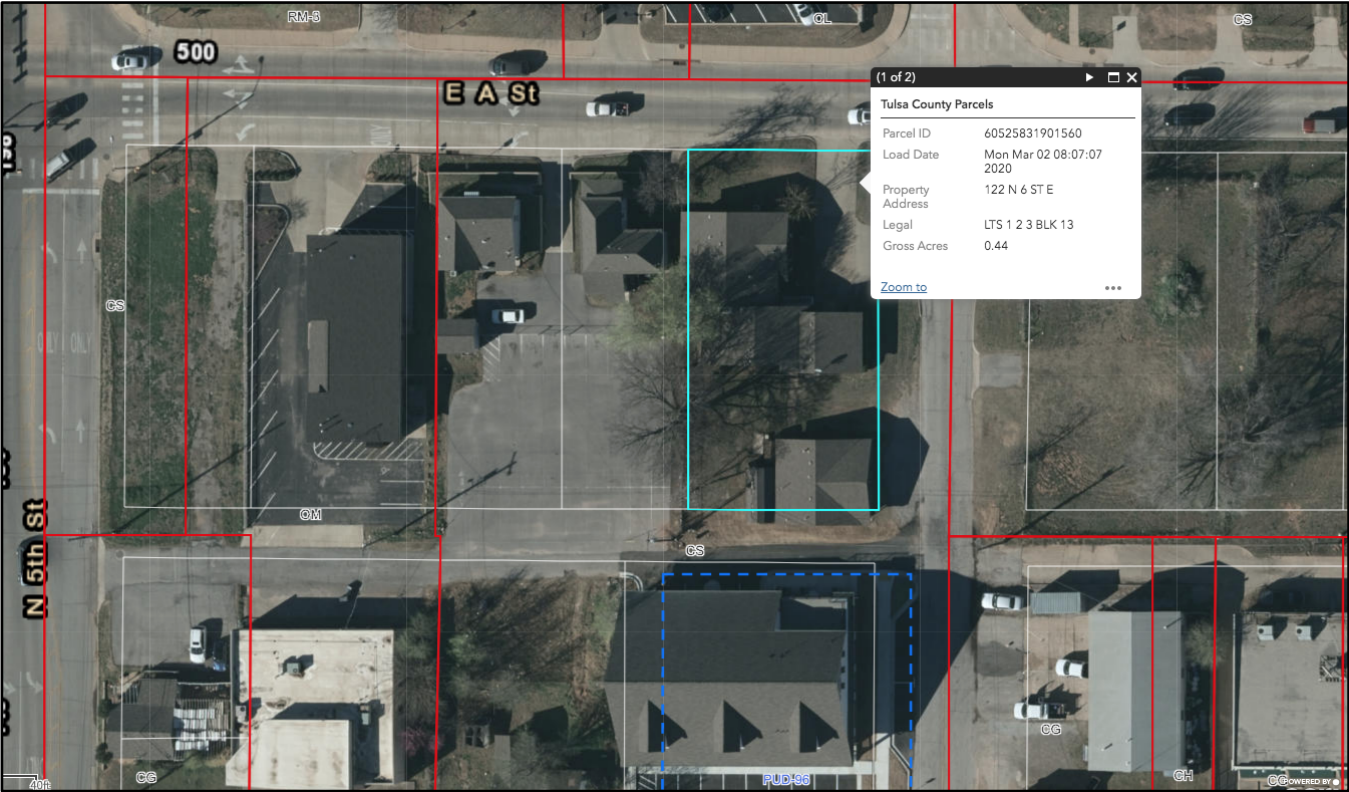


Figure 1: Aerial View of 122 N. 6th



Figure 2: View of House and Barber Shop

Staff Evaluation & Recommendation

Evaluation | Please see BOA action below

1380.3. Board of Adjustment Action.

1. May grant the Special Exception after finding that the Special Exception will be:
 - a. In harmony with the spirit and intent of the code.
 - b. Will not be injurious to the neighborhood.
 - c. Is not otherwise detrimental to the public welfare.
2. The Board in granting a Special Exception shall prescribe:
 - a. Appropriate conditions and safeguards.
 - b. May require such evidence and guarantee or bonds as it may deem necessary to enforce compliance with the conditions attached.

1380.4. Time Limitation on Special Exceptions.

A Special Exception which has not been utilized within two years from the date of the order granting same shall thereafter be void. For the purpose of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

Staff Comments

1. The request is complicated, staff has no specific recommendations, but believes the request meets the spirit and intent of a "Special Exception."
2. The proposed use will not result in any increase of incompatibility with the present and future use of proximate properties

Recommendation | *Grant the Special Exception to allow for the continuation of a pre-existing nonconformity after a requested zone change*



CITY OF JENKS

211 NORTH ELM STREET • P.O. BOX 2007

JENKS, OKLAHOMA 74037-2007

PHONE (918) 299-5883 • FAX (918) 299-4489

To: Board of Adjustment

Cc: Chris Shrout, City Manager
Robert Carr, Assistant City Manager

From: Teresa Nowlin, City Attorney
Marcae Hilton, City Planner
Brandon Macy, City Clerk

Date: May 8, 2020

Re: Staff memo addressing zoning code issues with respect to BOA 20-430: Request by Theresa Dewhurst for a Special Exception to allow for a continuation of a pre-existing nonconformity after a requested zone change. General Location: 122 N 6th St

At your April 16, 2020 meeting, you request that staff research the legislative history for, and possible conflict in terms in, section 1510(b) and sections 1200(e) of the Jenks Zoning Code.¹

Theresa Dewhurst, the Applicant, is requesting a Special Exception to allow for the continuance of a residential use on the property which was rezoned at Applicant's request on January 21, 2020 changing the zoning from RS-3 (Residential Single-Family High Density) District to CS (Commercial Shopping Center) District. The property has **two primary structures** who happen to be different land uses: a

¹ Section 1220 was also called to staff's attention. It is not applicable in the current situation. It provides:

When at the effective date of this zoning code or amendment thereto, there exists a lawful use of a building, or use of a principal building and land, or use of land and accessory structures, such structures covering more than ten percent of the lot area, and such use would not be permitted by the terms of this zoning code or amendment thereto, such use shall be deemed pre-existing nonconforming and may continue subject to the following provisions:

Section 1220 discusses uses existing at the effective date of the "zoning code" or at the time of "amendments thereto." Ms. Dewhurst's request was not for an amendment to the zoning code (a "text amendment") which are initiated by the City not individual applicants. It was a request for rezoning which results in a "zoning map amendment." This section is not applicable to the current case.

residential house and a commercial beauty shop. The dual uses on the property likely would have been considered a pre-existing nonconformity prior to the rezoning because our Zoning Code does not allow for 2 uses in an RS zone without a special exception.

There are two Zoning Code provisions that may be applicable to this situation which may appear to be contradictory upon a cursory reading. Staff is of the opinion, however, that upon careful analysis, these provisions are not contradictory, as explained below. This is primarily due to the unique nature of this property due to the fact that there are the two uses on the property.

Section 1200(e) of the Zoning Code reads as follows:

Upon approval of a rezoning request, the previous use of a property if not permitted within the new zoning district shall be deemed an unlawful use and shall not be considered for rights extended to pre-existing nonconforming uses.

This subsection applies to “rezoning requests” like that of Ms. Dewhurst here to change the zoning of her property from RS-3 to CS. Pursuant to this provision, the residential house on that lot could have been considered in conformance is now deemed an “unlawful use” in the CS zone according to 1200(e). The beauty shop which previously was considered a “pre-existing nonconforming use” is now in conformance with the new zoning district. In addition, our Zoning Code does not allow for a residential use on a commercial lot even a Special Exception.

Sections 1200 was approved with Ordinance No. 1287 on December 06, 2010.

Section 1510(b) of the Zoning Code reads as follows:

Zoning Map Amendments shall become effective from the effective date of the approved Ordinance initiating the amendment. However, the current use of the property may remain in place, subject to the criteria that it was in compliance with the prior zoning and the requirements for that zone as specified within the Jenks Zoning Code and that no development permit or use may be approved or conducted upon the property unless said use and development action brings the property into compliance with the new zoning category that was approved by the amendment and that the property is in compliance with Section 260 of this zoning code

1510(b) was approved with Ordinance No. 1355 on May 5, 2014. Section 1510(b) is not applicable to the current situation because the property at issue and its uses were never in compliance with the prior zoning and the requirements for the RS-3 zone both because of the commercial use on the residential lot and because of the dual uses without a special exception.

The fact that there was previously a “pre-existing nonconformance” supports the inapplicability of section 1510. Section 1800 of the Zoning Code defines “nonconformance” as “[a] lawful condition of a structure or land which does not conform to the regulations of the district in which it is situated. This may include but is not limited to failure to conform use, height, area, coverage or off-street parking

requirements.” A legal pre-existing nonconformity, by definition, is not a structure that complies with the Jenks Zoning Code; it is lawful, but not conforming. Section 1510(b) requires that a piece of property be “in compliance with the prior zoning and the requirements for that zone as specified within the Jenks Zoning Code” to take effect. This property was not in compliance since it had two primary structures that were also differing uses.

Conclusion: Here, section 1200(e) is directly applicable while section 1510 is not. The applicant applied for a zone change, which ended her pre-existing nonconformity once passed. As of now, the only lawful and compliant use of the property is the beauty shop. The Special Exception, if passed, would allow for the house to continue to be used as a residence and for two primary structures on the lot until changes are made to the existing house or its use.

