

AMENDED BOARD OF ADJUSTMENT
CASE REPORT (Amended on 7/27/2020)

STR: 216 Case Number: **BOA-22946**

CZM: 29

CD: 1

HEARING DATE: 07/28/2020 1:00 PM

APPLICANT: Robert Herring

ACTION REQUESTED: Special exception to allow a carport in the street yard and street setback in an RS-3 District with modifications to its allowable dimensions (Section 90.090-C.1); Variance to increase the permitted total aggregate floor area of all detached accessory buildings in an RS-3 District (Section 45.030); Variance of the 30% coverage of rear setback by accessory buildings in the RS-3 District (Section 90.090-C.2, Table 90-2); Variance to allow a fence to be located in the City of Tulsa Right-of-Way (Sec. 90.090-A); Special Exception to increase the maximum driveway width, both within the right-of-way and on the lot. (Section 55.090-F.3); Variance to reduce rear setback requirement for a detached accessory building from 3-feet to 2-feet (Sec. 90-1, Table Note 3)

LOCATION: 2534 N XANTHUS AV E

ZONED: RS-3

PRESENT USE: Residential

TRACT SIZE: 10367.32 SQ FT

LEGAL DESCRIPTION: LT 34 BLK 5, ROBERTS ADDN AMD L1 B1 L1-9 B2 & L1 B5

RELEVANT PREVIOUS ACTIONS: None.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The Tulsa Comprehensive Plan identifies the subject property as part of an "Existing Neighborhood " and an "Area of Stability".

An **Existing Neighborhood** is intended to preserve and enhance Tulsa's existing single-family neighborhoods. Development activities in these areas should be limited to the rehabilitation, improvement or replacement of existing homes, and small-scale infill projects, as permitted through clear and objective setback, height, and other development standards of the zoning code.

The **Areas of Stability** include approximately 75% of the city's total parcels. Existing residential neighborhoods, where change is expected to be minimal, make up a large proportion of the Areas of Stability. The ideal for the Areas of Stability is to identify and maintain the valued character of an area while accommodating the rehabilitation, improvement or replacement of existing homes, and small-scale infill projects. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life. The concept of stability and growth is specifically designed to enhance the unique qualities of older neighborhoods that are looking for new ways to preserve their character and quality of life.

ANALYSIS OF SURROUNDING AREA: The subject tract is located at the SW/c of S. Xanthus and E. Apache Street.

STAFF COMMENTS: The applicant is requesting **Special exception** to allow a carport in the street yard and street setback in an RS-3 District with modifications to its allowable dimensions (Section 90.090-C.1); **Variance** to increase the permitted total aggregate floor area of all detached accessory buildings in an RS-3 District (Section 45.030); **Variance** of the 30% coverage of rear setback by accessory buildings in the RS-3 District (Section 90.090-C.2, Table 90-2); **Variance** to allow a fence to be located in the City of Tulsa Right-of-Way (Sec. 90.090-A); **Special Exception** to increase the maximum driveway width, both within the right-of-way and on the lot. (Section 55.090-F.3); **Variance** to reduce rear setback requirement for a detached accessory building from 3-feet to 2-feet (Sec. 90-1, Table Note 3)

1. **Carports**

Carports are allowed in street setbacks and yards in R zoning districts only if approved in accordance with the special exception procedures of [Section 70.120](#). Any carport that occupies all or a portion of the street setback or street yard area must comply with the following regulations, unless otherwise expressly approved by the board of adjustment as part of the special exception process:

- a. A carport may be a detached accessory building or an integral part of the principal building.
- b. **The area of a carport may not exceed 20 feet in length by 20 feet in width.**

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Chapter 90 | Measurements
Section 90.090 | Setbacks

- c. A detached carport may not exceed 8 feet in height at its perimeter or 18 feet in height at its highest point. A carport erected as an integral part of the principal building may not exceed 8 feet in height within 10 feet of a side lot line or 18 feet at its highest point.
- d. The carport structure must be setback from side lot lines by a minimum distance of 5 feet or the depth of the principal building setback, whichever is a greater distance from the side lot line.
- e. The carport structure may project into the required street setback by a maximum distance of 20 feet. This distance must be measured from the required street setback line or the exterior building wall of the principal building, whichever results in the least obstruction of the street setback.
- f. All sides of a carport that are within the required street setback must be open and unobstructed, except for support columns, which may not obstruct more than 15% of the area of any side.
- g. The entire area under a carport may be used only for storage of operable, licensed motor vehicles (i.e., cars, boats, pickup trucks, vans, sport utility vehicles), which are customarily accessory to the dwelling. No other use of the carport area is allowed.

2. RS-2, RS-3, RS-4, RS-5 and RM Districts

In RS-2, RS-3, RS-4, RS-5 or RM, zoned lots used for detached houses or duplexes, the total aggregate floor area of all detached accessory buildings, including accessory dwelling units, and accessory buildings not erected as an integral part of the principal residential building may not exceed 500 square feet or 40% of the floor area of the principal residential structure, whichever is greater. [1]

[1] For detached accessory buildings, including accessory dwelling units, located within rear setbacks see §90.090-C2.

Table 90-2: Accessory Building, Including Accessory Dwelling Units, Coverage Limits in Rear Setback

Zoning District	Maximum Coverage of Rear Setback
RS-1 and RE Districts	20%
RS-2 District	25%
RS-3, RS-4, RS-5 and RD Districts	30%
RM zoned Lots Used for Detached Houses or Duplexes	30%

Section 90.090 Setbacks

90.090-A Measurement

Required setbacks are measured from the applicable lot line, right-of-way, planned right-of-way or location referred to below. Building setbacks are measured to the nearest exterior building wall. Minimum setbacks that apply to other features (parking areas, fences, storage areas) are measured from the nearest point of the area or feature for which a setback is required. See §90.090-C for information on structures and building features that are allowed to occupy setback and yard areas in R zoning districts. **Unless otherwise expressly stated, no part of any structure may be located within the street right-of-way, nor within the planned right-of-way of streets shown on the major street and highway plan, nor within 25 feet of the centerline of the right-of-way on streets not shown on the major street and highway plan.** If a variance of the prohibition against location of a structure within the right of way or planned right of way is granted by the Board of Adjustment, no part of any structure may be located within the street right-of-way, nor within the planned right-of-way of streets shown on the major street and highway plan, nor within 25 feet of the centerline of the right-of-way on streets not shown on the major street and highway plan, unless a license has been granted by the city, in the case of the right-of-way, or a removal agreement has been entered into, in the case of the planned right-of-way.

Maximum Driveway Width

Lot Frontage	75'+	60' - 74'	46' - 59'	30' - 45'	Less than 30' [2]
Driveway Within Right-of-Way (feet) [1]	27'	26'	22'	20'	12'
Driveway Within Street Setback (feet)	30'	30'	-	-	-

- b. Detached accessory buildings, including accessory dwelling units, in the rear setbacks must be set back at least 3 feet from all interior lot lines. For lot lines abutting street right-of-way, detached accessory buildings, including accessory dwelling units, must comply with the same setback requirements that apply to principal buildings.

The applicant listed the square footage of his primary residence as 1,000 sf which would limit the square footage of detached accessory buildings at 500 sf. Per code the applicant would be limited to a driveway width of 27' inside the right of way and 30' on the lot. The applicant currently has a width of 69' inside the right of way and 67' on the lot. The applicant has listed his fence as being setback 45' from the center of Apache. Per city engineering the right-of-way from the center of Apache South is equal to 65' meaning the fence is encroaching 20' into the right-of-way. Staff has calculated that the applicant would be allowed to cover 534 sf of his rear yard setback, and is currently covering 584.4' sf.

Staff received a call from the applicant on 07/24/20 that City of Tulsa crews were tearing up his curb-cut unto Apache. Staff conducted another site visit and saw a street crew actively removing the curb-cut. Staff spoke with a representative of Streets and Stormwater regarding this property and they do not see a path forward to granting access unto Apache at the length and location described in your original packet through there is a possibility of re-establishing the original curb-cut unto Apache depicted in the view taken April of 2017 in the attached photos. Any permits granted would need to meet their general standards for work down in the right-of-way.

STATEMENT OF HARDSHIP: This would create a great hardship because this has been in place since 2007, this is where I store all of my mowers, trimming, etc. (Lawn Equipment) to move this building would require it to be torn and lawn equipment in the open.

SAMPLE MOTION:

Move to _____ (approve/deny) a **Special Exception** to allow a carport in the required street setback on an RS-3 zoned lot, with a modification to allow the area of the carport to exceed 20'-0" x 20'-0" (Section 90.090-C) and **Special Exception** to increase the maximum driveway width, both within the right-of-way and on the lot. (Section 55.090-F.3)

- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions (including time limitation, if any):

_____:

The Board finds that the requested Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Move to _____ (approve/deny) a **Variance** to increase the permitted total aggregate floor area of all detached accessory buildings in an RS-3 District (Section 45.030); **Variance** of the 30% coverage of rear setback by accessory buildings in the RS-3 District (Section 90.090-C.2, Table 90-2); **Variance** to allow a fence to be located in the City of Tulsa Right-of-Way (Sec. 90.090-A); **Variance** to reduce rear setback requirement for a detached accessory building from 3-feet to 2-feet (Sec. 90-1, Table Note 3)

- Finding the hardship(s) to be _____.
- Per the Conceptual Plan(s) shown on page(s) _____ of the agenda packet.
- Subject to the following conditions _____.

In granting the **Variance** the Board finds that the following facts, favorable to the property owner, have been established:

a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

b. That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;

c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;

d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;

e. That the variance to be granted is the minimum variance that will afford relief;

f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and

g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan.”



Facing West on Apache



Subject Property



Facing South on Xanthus



Western half of Northern Lot line of property Facing South.



Eastern half of Northern Lot line of property Facing South



Curb-cut at property prior to the addition by the home-owner. Photo obtained from Googlemaps taken on April 2017.



Taken 7/27/2020. Crews for the City of Tulsa are in the process of removing the curb-cute and restoring an ADA compliant ramp at the crosswalk.