

**BOA-23105**

19-13 32

8.1



# BOARD OF ADJUSTMENT CASE REPORT

**STR:** 9332

Case Number: **BOA-23105**

**CZM:** 47

**CD:** 9

**HEARING DATE:** 04/13/2021 1:00 PM

**APPLICANT:** Nathalie Cornett

**ACTION REQUESTED:** Variance to permit a fence to be located within the right-of-way of South Columbia Pl. (Sec. 90.090-A) Special Exception to permit a fence that exceeds 4-feet in height in the street setback (Sec. 45.080-A)

**LOCATION:** 2738 E 51 ST S

**ZONED:** OM

**PRESENT USE:** Office

**TRACT SIZE:** 63702.4 SQ FT

**LEGAL DESCRIPTION:** LT 1 BLK 1, ELMCREST PARK RESUB PRT L3&4 BETHEL UNION HGTS

**RELEVANT PREVIOUS ACTIONS:** None.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:** The Tulsa Comprehensive Plan identifies the subject property as part of a "Town Center" and an "Area of Growth".

**Town Centers** are medium-scale, one to five story mixed-use areas intended to serve a larger area of neighborhoods than Neighborhood Centers, with retail, dining, and services and employment. They can include apartments, condominiums, and townhouses with small lot single family homes at the edges. A Town Center also may contain offices that employ nearby residents. Town centers also serve as the main transit hub for surrounding neighborhoods and can include plazas and squares for markets and events. These are pedestrian-oriented centers designed so visitors can park once and walk to number of destinations.

The purpose of **Areas of Growth** is to direct the allocation of resources and channel growth to where it will be beneficial and can best improve access to jobs, housing, and services with fewer and shorter auto trips. Areas of Growth are parts of the city where general agreement exists that development or redevelopment is beneficial. As steps are taken to plan for, and, in some cases, develop or redevelop these areas, ensuring that existing residents will not be displaced is a high priority. A major goal is to increase economic activity in the area to benefit existing residents and businesses, and where necessary, provide the stimulus to redevelop.

**ANALYSIS OF SURROUNDING AREA:** The subject tract is located at the SE/c or E. 51<sup>st</sup> Street S. and S. Columbia Ave.

**STAFF COMMENTS:** The applicant is requesting a Variance to permit a fence to be located within the right-of-way of South Columbia Pl. (Sec. 90.090-A) Special Exception to permit a fence that exceeds 4-feet in height in the street setback (Sec. 45.080-A)



## 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.

## Section 45.080

## Fences and Walls

45.080-A Fences and walls within required building setbacks may not exceed 8 feet in height, except that in required street setbacks fences and walls may not exceed 4 feet in height. However, in R zoned districts, fences up to 8 feet in height are permitted in side street setbacks of detached houses or duplexes located on corner lots and in street setbacks abutting the rear lot line of houses or duplexes located on double frontage lots. The board of adjustment is authorized to modify these fence and wall regulations in accordance with the special exception procedures of ~~Section 70.120~~.

The applicant is requesting permission to keep a roughly 5' fence in the right-of-way along S. Columbia Ave. which was installed without permits. If approved a license agreement will be required from the City of Tulsa which the applicant, staff has made the applicant aware of this requirement.

### SAMPLE MOTION:

#### **Variance:**

Move to \_\_\_\_\_ (approve/deny) a **Variance** to permit a fence to be located within the right-of-way of South Columbia Pl. (Sec. 90.090-A)

- Finding the hardship(s) to be \_\_\_\_\_.
- Per the Conceptual Plan(s) shown on page(s) \_\_\_\_\_ of the agenda packet.
- Subject to the following conditions \_\_\_\_\_.
- **Suggested Condition:** Subject to a License agreement from the City fo Tulsa.

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."*

**Special Exception:**

Move to \_\_\_\_\_ (approve/deny) a **Special Exception** to permit a fence that exceeds 4-feet in height in the street setback (Sec. 45.080-A)

- 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.





***Fence along S. Columbia***



***Facing East on 51<sup>st</sup> Street***



***Facing South on Columbia***



### **Exhibit "A"**

The Applicant requests a Variance of Section 90.090-A of the Tulsa Zoning Code (the "Code") to permit a fence to be located within twenty five feet (25') of the right-of-way of South Columbia Place for property located at 2738 East 51<sup>st</sup> Street (the "Property").

The Property is located at the southeast corner of Columbia Place and East 51<sup>st</sup> Street, south of I-44. The Property is comprised of approximately 1.5 acres and the site of a four-story, 45,000 square foot office building. A parking lot surrounds the building. On the west side of the Property abutting the parking lot is an existing sidewalk which is partially located on the Property and partially located in the right-of-way. A survey showing the location of the sidewalk and the property line is attached hereto.

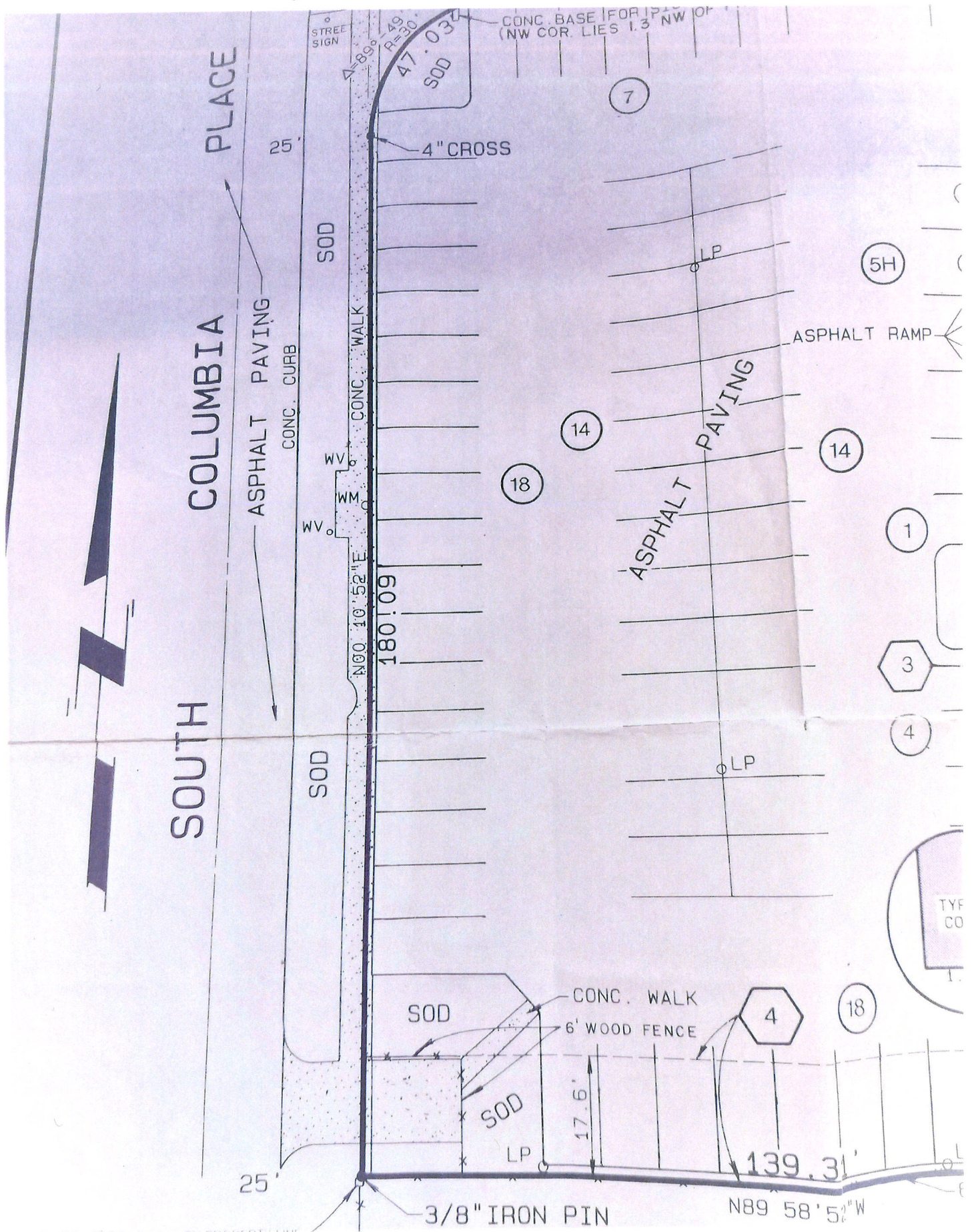
The fence has been installed and the owner subsequently learned from the City of Tulsa's Working in Neighborhoods division that the fence was actually located in the right-of-way and additional relief would be required for it to remain in place. In addition to the requested Variance from the Board, the owner will seek a license agreement from the City of Tulsa.

The sidewalk runs the length of the western Property boundary and terminates at the trash enclosure at the southwest corner of the Property. The sidewalk does not extend into the residential neighborhood along Columbia Place nor does it connect to the sidewalk along E. 51<sup>st</sup> Street. All access, pedestrian and vehicle, to the Property is derived from 51<sup>st</sup> Street (as required by PUD-257). In fact, there are no sidewalks in any of the residential neighborhoods south of the Property, within the half square mile between Lewis Ave, 51<sup>st</sup> Street, and Joe Creek.

The location of the existing sidewalk and its proximity to the parking stalls prevents the installation of a perimeter fence within the Property boundary, which is unique to this Property and results in unnecessary hardship to the Property owner. The wrought iron fence provides additional security to the parking lot, does not impede visibility to traffic along Columbia, does not affect connectivity in the area, and thus does not cause substantial detriment to the public good nor impair the spirit and intent of the Code.



# Survey Exhibit of Western Property Line



2738 East 51st Street

8.8





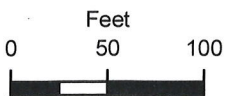




E 51st ST S

S COLUMBIA PL

S DELAWARE PL



Subject  
Tract

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*Note: Graphic overlays may not precisely align with physical features on the ground.*

Aerial Photo Date: February 2018

