MINUTES
BOARD OF ZONING APPEALS
7651 E. Central Park Ave, Bel Aire, KS
July 9, 2026

I. Call to Order Chairman Jordan called the meeting to order at 6:45 p.m.

II. Roll Call

Chairman Phillip Jordan, Vice Chairman Deryk Faber and Board Members Dee Roths and John Sutherland were present in person.

Board Members Brian Mackey and Paul Matzek were absent.

Paula Downs, Secretary and Maria Schrock, City Attorney were present in person.

III. IV. Consent Agenda

A. **Approval of Minutes from Previous Meeting.**

No specific discussion or updates for the meeting minutes.

Motion: Vice-Chairman Faber moved to approve the minutes of June 11, 2026. Board Member Roths seconded the motion. ***Motion carried 4-0.***

V. Announcements: No announcements

Secretary asked the Board to review the Bylaws to see if there are any changes that they would like made.

VI. Board of Zoning Appeals Business

A. **VAR-26-02- Proposed Variance to address side yard setback encroachment with the installation of a proposed parking surface**, generally located at 4761 N. Battin.

Chairman Jordan called Item 6- Board of Zoning Appeals business- Item A. VAR-26-02- Proposed Variance to address side yard setback encroachment with the installation of proposed parking surface generally located at 4761 N. Battin.

Chairman Jordan provided the case information including the general location of the subject property. The chair asked if anyone on the Board intends to disqualify themselves from participating in this case because they or a relative have property in the area of notification or have conflicts of interest. Each board member responded "no". The chair stated that the record will show that all four board members said "no".

Chairman Jordan declared there is a quorum four board members present for the public hearing. The chair stated that the official notice for this hearing was published in the official city newspaper which is the city of Bel Aire's municipal website on June 18, 2026, and notices were mailed to the Applicant and real property owners of record in the area of notification on June 18, 2026. The chair stated that the record will confirm that at least 20 days have elapsed between the publication and mailing dates and today's hearing date unless there is evidence to the contrary from anyone present. The chair declared that proper notification has been given.

Chairman Jordan asked if anyone on the board received any ex parte verbal or written communications prior to this agenda by stating "yes" or "no". All board members responded "no". The chair stated that the record should show that all responses are "no".

Chairman Jordan asked for the city staff report.

Secretary stated that the proposed variance is to address the side yard setback encroachment that would occur with the installation of a proposed parking surface. The application requests the installation of a parking area on the North side of the home for additional vehicle parking and trash can placement. The parking area will encroach into the required 5 foot property set back set out for the parking areas in the code. The property is zoned and developed with a single family dwelling; the character of the neighborhood is low density residential. Properties on all sides of the subject property are all the same zoning district and are developed with single family dwellings. The application language specifically states they want to install a drive or driveway on the property. Secretary stated that the request is not a driveway but a parking area. Typically, a driveway is a way to access a structure- something you have to drive or utilize it to get to something else. A parking area is an extension or a surface that just services a certain use and is not required for accessibility (to get to something). For this request to be a driveway there would need to be a structure, such as a detached garage or a shop that requires a drive to access that structure. The staff report reflects how this case was evaluated. Secretary stated that a driveway is not specifically defined in the city code and in the absence of that definition it's best practice to rely on a dictionary definition, in this instance the Merriam-Webster definition. The

definition is "a short private road from the street to a house garage or parking lot. The expanded language is that a driveway is a private road basically to something. City code does include a definition for a parking area-private, which is in the staff report.

The Secretary stated that the staff report provides the considerations and mandatory findings that must be met for approval of a variance case. An example is that the variance request will not be contrary to public interest. There are five mandatory findings in our code which come from state statute. The staff report includes information from the applicant and the staff analysis for each criteria. The applicant submitted written responses to each finding. The staff concludes that the case does not meet all five criteria required to grant a variance. In addition, the Applicant failed to demonstrate a unique physical condition, unnecessary hardship or that the variance is not opposed to the general spirit and intent of the zoning code with a reason set out for each criteria. Staff recommended denial. Secretary stated that if the case is denied then the denial is deemed final but may be appealed to the District Court in conformance with the statute.

Secretary stated that if the Board determined that all five conditions necessary for granting of the variance can be found to exist then the staff recommended following the conditions set out in the staff report.

Chairman Jordan called upon the Applicant to make his or her presentation on this request and any response to the city staff report. The Chair asked the applicant to state their name and address.

Applicant stated that he submitted his written statement and did not know what else to say. The chair encouraged the applicant to present their case.

Applicant stated that they want a drive on their property and many of their neighbors have a drive. Others in the neighborhood may have installed their drive before a zoning change, he didn't know. Applicant has a lot of gatherings, and the street does tend to be pretty busy. Applicant thought it would be nice to have an extra drive. Applicant stated that the house is set kind of catty corner to the property line so the setbacks changes on the side of our house. The front of the house is so far from the property line and in the back it is different. Applicant can stay 5 feet at one point, but the drive would need to narrow as it goes back. The width of the drive would allow more room for a car, trash cans and allow people to get in and out of their car- provides extra space. Applicant has neighbors that park in the street on a regular basis and people come to their house which means more cars in the street. When there is an event at the Bel Aire Rec the street (Battin) is an access road that's highly used to get to the Bel Aire Rec. Applicant explained that when cars are on both sides of the street plus traffic, it would just be nice to protect cars by their house. Applicant stated that a car across the street was hit by coming out of driveways.

Board asked if the parking area would be big enough for more than one car. Applicant said that because of the fence line only one car would fit. Applicant did share that they have a shop in the backyard that is almost completed. Applicant confirmed that the driveway doesn't extend to the shop. The Applicant stated that the information about the shop was not in the statement.

Board Member Sutherland utilized his phone to use Google Earth to better understand the property. He suggested that a Google Earth picture should be included in future cases because it provides additional information. Google Earth shows an existing sidewalk on the north side of the home, which the Applicant confirmed. The Applicant explained the location of the shop shown on the plan provided in the application is labeled as the 12 x 24 structure. The applicant confirmed that the structure does not attach to the current slab on the property. Applicant clarified that the structure is not a shop "per se" but it is "kind of" functioning as a 3rd car garage. The property does not have room for a third car garage.

Board Member Sutherland asked if the (new) driveway would go to the street, if the large tree would stay and would a car be parked there more than 60% of the time. The Applicant stated that the new structure would not go to the street and that the tree would stay. The Applicant said that the new area would be for vehicles to come and go and nothing consistently parked there like an RV or anything. The Applicant also confirmed that there was no fence between his property and his neighbor where the concrete would be installed.

Applicant confirmed that his trashcans would remain behind the fence and that the new concrete would allow for them to have extra space to pull them in and out when a car was parked there. The trash cans will not be seen from the street or by their neighbor. They just want extra room to pull the trash cans out without having to move a vehicle.

Discussion between the Board and Applicant confirmed that there were other properties on the street that had driveways installed.

Vice Chairman Faber stated they drove by the property twice to be prepared for the meeting. Vice Chairman Faber sent questions to the Secretary, and she confirmed she had received them and was prepared to answer the questions. The questions related to neighbors who had driveways or parking areas on the street and if permits had been pulled. Vice Chairman Faber also stated that if the large tree stays there is not a lot of room for the new structure and the root systems disturbing the concrete. He acknowledged that this has nothing to do with whether we approve or disapprove the case, just a concern.

Applicant was asked what the caliper of the tree was- 24 inches, 18 inches. Applicant confirmed it was very large and he was unsure if the root system would disrupt the concrete.

Board Member Sutherland acknowledged that the city sent notifications out to property owners within 200 feet but asked if staff calls the adjacent property owners to tell them about the case and ask them if they are ok with it. The Secretary said that the city only sends out the formal notifications by certified mail. Board Member asked if calls could be made in the future as part of the city's due diligence. He is concerned that someone may receive the notification but not realize what it is and then come back later with concerns. Secretary confirmed that we are following code related to notification to the 200' surrounding area. Secretary stated that additional notification processes would affect staff, which Board member Sutherland felt was a "cop out". The Secretary stated she was willing to have a conversation offline about the concerns. Board members stated that the city is doing what is required by state statute and that if property owners receiving the notification didn't pay attention and don't like what happened, it's not the city's responsibility.

The Chair asked how many of the Applicant's neighbors have a widened driveway or access around the side of their house. Applicant said there were four.

Chairman Jordan invited the public to make comments by asking them to step up to the podium, give their name and address, and limit comments to five minutes. No public were in attendance.

Chairman Jordan asked if city staff had received any written communications regarding this case. The Secretary said "no".

Chairman Jordan asked the Applicants if they had any final comments and they responded "no".

Board Member Sutherland asked how the project would affect drainage on and between the Applicant's property and the property to the North. The Applicant wasn't sure but did state there is a "kind of bit of a swale" between the two properties and he didn't believe that the concrete would affect the property in any way.

Chairman Jordan closed the public portion of the hearing there and stated that there would be no further public comments unless the Board wished to ask questions to clarify information. The Board of Zoning Appeals began their deliberation.

Chairman Jordan asked the Secretary to read from her staff report, the Applicant's response and the staff analysis for each variance criteria. Vice Chairman Faber also asked the Secretary to respond to the email questions he submitted.

Secretary read the first criteria in full related to the variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the Applicant.

Secretary clarified that in the code a driveway encroach into a set back to the property line because it's an accessibility portal to something in the back (of the property). But in the code, if you do a parking area it has to be five foot from the property line. Per code a side yard setback for this property is 10'. The plat was done in 1955. Setbacks are the distance between the side of the structure to the property line. If the concrete doesn't fall within the 5 feet no case is needed. If the concrete encroaches it requires the variance.

Chairman Jordan asked the Applicant about distance from his home to the property line at the northwest and northeast corners. The chair stated that it appeared the northwest area was narrower. It was discussed that the northeast corner may allow for 11' of concrete and the northwest corner may allow for 8' of concrete. Applicant said the per the GIS measurement tool that is true.

Vice Chairman Faber clarified that if the case is denied that the Applicant wouldn't be able to build the parking area. However, if the Applicant chose to make this a driveway back to his shop no case would be needed. The Secretary confirmed that was correct. The chair confirmed that if it was a driveway to the shop it could encroach to the property line and no case would be needed.

Board Member Sutherland had concerns about the definition and that the Applicant calls it a drive and the staff calls it a proposed parking space. He asked why the change (in terms)? It was discussed that the area would not access anything on the property and the Applicant stated that he didn't know there was a difference. There was discussion among the board about the definition difference and if the Applicant could withdraw their application and connect the concrete to the shed in the back.

Secretary clarified that currently the Board has a case before them that provides four motion options and the Board would need to conclude the case. If the case is approved, the Applicant will install the parking area. If the case is denied the Applicant may choose to install a driveway to their shed. The case is for approval to install the parking area.

Board Member Sutherland did question why the definition in the staff report was used and he was confused why the city decided to change it (from the Applicant's language of drive to the staff report calling it a parking area).

Secretary read the second criteria in full related to the granting of the variance will not adversely affect the rights of adjacent property or owners or residents.

Secretary read criteria number three in full related to the strict application of the provisions of these regulations would constitute unnecessary hardship upon the property owner represented in the application.

Board Member Roths stated that based on the discussion about traffic and parking for the Rec Center and what happened to the car across the street, she felt the parking area would help alleviate some of that problem and they need the parking area. The Chair agreed with those comments and stated that he did think the street was a thoroughfare to the Bel Aire Rec and that he had experienced that a lot. The Chair believed that getting more cars off the street helps the public safety and welfare.

Secretary read criteria number four in full related to the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Board Member Sutherland asked how staff came to their conclusion regarding stormwater runoff. The Secretary responded that staff didn't feel that there was going to enough of an issue or impact that it would be harmful. The Applicant confirmed that the concrete was going to be roughly 11 x 24 or about 450 square feet. The Chair stated that the concrete could be poured with a swale, which the Secretary confirmed would be evaluated during the permit process. The Chair stated that he agreed with the staff analysis that this criteria had been met.

Secretary read criteria number five in full related to the granting of the variance will not be opposed to the general spirit and intent of these regulations.

Board Member Sutherland asked the Applicants when they found out the request was a parking structure vs. a driveway. Applicants said they learned that "tonight".

Chairman Jordan viewed this (the driveway vs. parking area) as sort of a technicality and felt it is immaterial whether this is a driveway or parking slab- he viewed it as the same thing. The Chair understands that definitions mean things and that it is a paved parking area. The Chair asked about the definitions and the Secretary confirmed that the definitions were included in the staff report. Board Member Sutherland asked if the definitions were in the code with the Chair confirming the definitions being included in the staff report.

Secretary shared that Board Member Faber reached out and asked two questions. The first question related to the application referring to nearby driveways at properties on the Applicant's street and if those surfaces followed code when they applied for a permit. The Secretary confirmed that there are homes on that (street) that have driveways that leads to a detached garage structure and did not require a case. They have permits that were approved, some of them have been installed for quite some time and meet the criteria for a driveway allowed to encroach to the property line. One property has an extended parking area, that looks to be about a little over five foot from the property line. We wouldn't require a case for that. Secretary stated that there is one property on the street that does not appear to meet the requirements and would be a violation. Vice Chairman Faber also

asked if the parking area could be on the north side of the lot and the Secretary confirmed that the application confirmed that's where the concrete would be located.

Board Member Sutherland asked if the definition of driveway was contained in the zoning regulations. Vice Chairman Faber referenced the staff report that says the definition is not in the code and that's why the Merriam Webster definition is included. The Secretary did confirm that the zoning regulations provide a definition for parking area-private. Board Member Sutherland stated that's a real problem in our code. The Secretary reminded the Board that there are a lot of considerations that need to be done (updated), which is why the zoning codes are being updated.

Board Member Sutherland stated that if there is a problem in our code, which he believes there is, he didn't feel like the Board could deny (the case) because driveway has not been defined. Vice Chairman Faber stated that if it's not defined in our code then we utilized the dictionary. Board Member Sutherland asked if our code says we will use the dictionary. Vice Chairman Faber acknowledged that it's (the code) not going to define every definition of the English language in it. Secretary stated that utilizing the dictionary is best practice for planning and zoning.

Secretary explained that the request followed the parking area-private definition in our code. The code does say you can build a driveway to the property line without a case, but you can't do that with parking areas. Staff had to define it as a parking area and that's how the case was analyzed.

City Attorney stated that legally this does occur where not every term is defined in a municipality's code. Kansas courts, Kansas law, have said out loud that the primary rule of construction of interpretation is you can of course look at the plain meaning and language of the word but also to consult dictionaries to determine what that term would be. Planning Commission, Board of Zoning Appeals, they looked in dictionaries as they are recognized by Kansas courts as reliable and highly persuasive sources or definition.

Board Member Sutherland asked if the current fence would allow a car access to their backyard if they installed a driveway and the Applicant confirmed "yes". The Applicant further stated that the reason they referred to it as a driveway was because it would be connected to his driveway. The Applicant stated that was his plain understanding of that.

Chairman Jordan believed that parking for a period of time on this parking area was no different from their primary driveway and that they would both function the same way.

Board Member Roths stated that she wanted to make a motion.

The Secretary asked the Chairman if he could read (from the checklist), the language about the findings of fact and then ask for the motion. Secretary stated that the four motion options were listed on the agenda to articulate a motion.

Chairman Jordan stated that the Board will now deliberate the request to determine whether the evidence presented supports the conclusions of the required findings of fact. The board will now consider the criteria provided for evaluation.

The Secretary clarified that the motion options are contained in the staff report and if the Board was to approve the case then the staff report lists three conditions related to general conformance related to permitting.

City Attorney reminded the Board that for a Board of Zoning Appeals in the State of Kansas, to authorize a variance then it must be found that all five statutory conditions have been met when you make this motion. If you second, if you vote in favor or against- in order to have the authority by statute you must find that all of the five specific statute conditions have been satisfied. So, if someone makes a motion in favor, you will need to say that.

Board Member Sutherland asked staff why they do not agree that this criteria has been met? Secretary referenced the staff report and stated that it was clear what criteria was and was not met and why.

Board Member Sutherland reviewed criteria one and said that the property does have physical anomalies unique to this property- it's not straight property. Secretary stated that confirmed the anomaly is not the lot it's where the house was positioned and she acknowledged that it was really hard to do an exact measurement on GIS. So that (where the house was exactly position vs. the property line) would require a physical measurement. The staff report says there's no physical anomalies unique to this property. Board Member Sutherland stated that when the house was built they didn't have GPS and where the house was placed may have gotten off. Board Member Sutherland didn't think it was the right thing to do to deny something based on a pre-approved construction.

City Attorney reminded the Board and any decision made by the Board of Zoning Appeals must be based upon the evidence that has been provided to you tonight and not on speculation.

Board Member Sutherland asked the City Attorney if she was telling them that they have to take for granted what staff says, right?

City Attorney said "no". The Board can take into account the statements made by the Applicant, information provided to you by staff, the observation provided by Vice Chairman Faber he had described what he had observed when he drove past the property, every answer that has been provided to your question. That is all evidence that is being included

in the record and for you to consider to make a decision. Per statute, in order for a Board of Zoning Appeals to approve a variance all five of the requirements must be met. That language is also in our code- we mirror the statute.

Board Member Sutherland asked who determines that they've (the five criteria) have been met? Vice Chairman Faber stated that's what you're saying when you vote "yay" or "nay". The Chairman stated that the Board can vote and say why the criteria was or why it wasn't.

Board Member Sutherland confirmed that all five have been met. City Attorney stated that he would need to go on the record and explain what he is relying on (for that conclusion).

Board Member Roths stated she agreed that all five criteria have been met with the consideration of everything that we have discussed and that we've heard from the Applicant.

City Attorney suggested that for each criteria the Board provide their rationale. This can be done when the motion is made. That information will be used if the case is approved to create the resolution.

Vice Chairman Faber stated that he does not feel that all five (criteria), especially reading through and hearing both sides. Vice Chairman Faber felt that since the law says that we need to make sure that all five are met and reading them all thoroughly multiple times, there's no way I can vote they all five have been met. Vice Chairman Faber said he would be voting to deny, especially since we have the definition before us. Vice Chairman Faber said the Board is setting a precedent for future things and allow (someone) try 15 different ways to get what their desired outcome is. We have an obligation to follow the things that are right before us and the definition is there and that's what's before us so it's very clear that all five are not met.

City Attorney confirmed that there are seven members on the Board of Zoning Appeals. In order to meet, you must have a quorum of four and you do. A majority vote would require all four of you to vote in favor to meet the majority. City Attorney stated that she was not trying to influence the vote- she just want to make sure that the Board was aware that you've got seven members and majority of four. In addition, the motion options allow the Board to table the item to another date, but you don't have to. City Attorney stated that to meet the Kansas Open Meeting Act, there would need to be four votes in favor (to approve or deny).

Chairman Jordan stated that the Board doesn't have a seventh member and only has six members. Board Member Roths asked if there is not four votes to approve then it's a no- The Chair confirmed.

Board Member Roths asked for clarification that if the vote is 3-1 to approve (it doesn't have a majority vote) then it becomes a no and it's final unless it goes to District Court. The Secretary confirmed. Vice Chairman Faber stated the Applicant could install a driveway and then it doesn't require a case. Board Member Sutherland stated that it (the application) says it's a driveway and the city changed that. Vice Chairman Faber stated that this is not pertinent.

Board Member Sutherland asked the City Attorney and Secretary if they communicated about the case before the meeting. Secretary confirmed "of course".

Chairman Jordan confirmed that if they (the Applicant) used "pathway" or "cow path" it doesn't really matter what they (Applicant) wrote they could add a different definition. What matters is what the city has.

Board Member Sutherland provided his response to each criteria. Criteria one- request that's unique to the property and is not created by the Applicant. It has been met due the house, the way it was set in 1973 is out of their control for the property. So that one has been met. Number two- Staff said this one has been met so we don't need to talk about that one. Number three- strict application of the provisions of the zoning code would constitute an unnecessary hardship on the application. Staff does not agree this criteria has been met. Due to the fact that the Rec Center parking and Rec Center traffic increases due to that, I feel that one has been met. Number five- the granting of this variance will not oppose the general spirit and intent of the unified zoning code. There are other paved paths in this neighborhood, whether it's a parking or a driveway. And I feel that one has been met.

Applicant asked that if it's (the concrete) is access for the backyard does that make it a driveway or does the pavement have to go all the way to the structure and how wide does it need to be? Board Member Sutherland stated that it's a personal preference. Secretary stated that a driveway has to go to a structure- it's a drive – way- pathway to a structure that needs access. Secretary further stated that the code allows a driveway to go the width from the structure to the property line and has no minimum.

Board Member Sutherland utilized his phone to bring up on the definition from Legalresources.USLEG . He asked the City Attorney if that is a legal definition? The City Attorney did not know. Board Member Sutherland read the definition "a driveway is a private road that provides access to a home, garage or other off street area for vehicles- this is in a real estate (definition). Board Member Sutherland stated that it (referencing the applicant's request) depends on the definition that we use. Board Member Sutherland said he Googled driveway definition in real estate, and it says the driveway is defined as: a private road that provides access to a home, garage or other off street area for vehicles typically maintained by the property owner and can also refer to a small, paved area in front

of a garage often called an apron. So, if this definition is used then it doesn't have to go to a Merriam-Webster that says garage, but the real estate folks say it doesn't have to be.

City Attorney stated that for the record that is information that is not part of state statute, that is information that is not a part of city code, that information is not part of the staff report. I'd like to move to the record that this is coming from a Google search. I'm not aware of this information that is information that was not provided to the rest of the board. Board Member Sutherland asked if state statute or the city code that say to use Merriam-Webster?

City Attorney stated that Kansas courts in Kansas law have said if there is a term that is not defined, that a Board of Zoning Appeals, a Planning Commission, can look back to the ordinary meaning of a word. They can also consult dictionaries that have been held to be reliable sources. City Attorney stated that she was not aware of the information that Board Member Sutherland was providing but should could look into whether the Board would like to table. The information could then also be provided to the Board so that every member has it to discuss and consider versus going to your (Board Member Sutherland) cell phone and searching for a site that has not been vetted or provided or even (provided) to the Applicant. The Applicant had access to this pamphlet, to this staff report, to all of this information that has been published so has the entire board- unfortunately this information isn't.

Vice Chairman Faber stated that what it says is that we can't produce any new information like you're doing now. Vice Chairman Faber encouraged that they stick to what we're supposed to do.

Chairman Jordan provided his comments on the five criteria. On criteria one the request is made to this property and is not created by the Applicant. This request is kind of unique to this property as is the property to the North of them is not the same property. The South of them is not the same. So, I feel like this request is unique to this property and their wedge shaped side yard and so I feel like that criteria has been met. Criteria two, the granting of the variance will not adversely affect the rights of the adjacent property owners and residents. I agree it will not adversely affect- so does the staff report. Criteria three- the strict application of the provisions of the zoning code will constitute an unnecessary hardship on the Applicant. I would argue it creates an unnecessary inconvenience to the Applicant because they can't get their trash beside the car that's parked there. I think it constitutes an unnecessary inconvenience or hardship whatever you want to say by not being able to get their friends off of the street and protect their cars- I disagree with the staff on that. I believe that you could make an argument, a sound argument, that this would constitute an unnecessary inconvenience or unnecessary hardship on the Applicant. I'm yes on four- the variance will not adversely affect the public health, safety, and morals. That's true it will not adversely affect the public health, safety, morals, or community- it actually helps those things. Staff agrees on criteria four. Criteria five- the granting of the variance will not be

opposed to the general spirit and the intent of the unified zoning code. I understand that staff's analysis which says setbacks are intended to preserve building buffering, drainage and they were good character. Chairman Jordan said that preserved buffering is not applicable, drainage not applicable because it's going to handle just the same as the drainages now. Neighborhood character- clearly the character of the neighborhood there's four other properties that have this going on right now. In fact, this would be more in keeping with the neighborhood I would argue. Chairman Jordan said that he agrees with five.

Chairman Jordan stated that there is three in favor and one dissenter. He stated that the Board could proceed with a motion or the motion could be to table this because he personally felt like the board could get some information on definitions. Motion options are on the agenda.

Applicant asked if they were supposed to receive the staff report. Secretary reminded Applicant that stated they would be able to see it a week before the hearing when posted so on the website so they would have the most current information.

Board Member Sutherland stated that there is not a consensus that all five criteria have been met. Vice Chairman Faber stated that that is not known until there is a motion, second and a vote.

Board Member Sutherland asked what happens if it doesn't pass- can the Applicant reapply? Board Member Roths responded "no". The Secretary stated that a circumstance or something would have to change. Staff could not say what the something would be. City Attorney stated that it was a good question but that it is also hypothetical and there is no accurate answer.

Board Member Sutherland asked that if there is a vote that all four Board members have to agree. His observation was that three Board members agree and not the fourth Board member. What would have to change for you (the Applicant) to come back with another request to get it to where it may not have to come for a zoning- it's just approved. Vice Chairman Faber said a driveway would be the best alternative. Board Member Sutherland stated that it comes down to the definition. Chairman stated that the case could be denied, and the Applicant could decide to do a driveway, and the Board would not see it. The Board could table it.

Board Member Sutherland stated that the Applicant did call it a driveway. Vice Chairman Faber stated that what they (Applicant) call it is different than what it actually is. They (Applicant) could call it a helipad and would still been a parking space.

Applicant asked who defines driveway- do we use the web stuff, or do we use that one (what's provided in the staff report). Board Member Sutherland stated the Merriam Webster.

Board Member Sutherland asked the City Attorney if she could look up what the legal definition of the driveway is. The City Attorney said that if the Board would like to table, which she was not saying they had to, then that evidence could be provided and presented to all parties- all parties would have that notice, all parties would have the opportunity to review it, explain it, rebut it. That Is due process so that nobody is being surprised. If the board would like to consider a different dictionary....

Chairman Jordan asked Board Members Sutherland, Roths and Faber if they would support tabling the case- Board Members Sutherland and Roths said "yes". Vice Chairman Faber said absolutely not because there is a definition that's right in front of you (referencing the Board) and we can't seek a definition to meet your (the Board) criteria which is literally what we're doing.

Chairman Jordan for clarification on criteria for deciding to table it as it relates to the number of Board members votes needed since this is not a final decision on anything.

Board Member Sutherland asked if the "legal" definition came from a hard book or from the internet. The Secretary clarified that it's not a "legal definition" it's from the Merriam Webster dictionary on the website. Board Member Sutherland suggested that "you" (city staff) just has to find a different dictionary because he didn't believe that the Board could just go to one thing (one dictionary) like that. Vice-Chairman Faber stated that the Board could.

Chairman Jordan stated that additional time would be provided for additional definitions once the City Attorney confirms that we can table this with the three to four vote, because that's what I'm going to make a motion to do. City Attorney stated that the Bylaws have nothing specific about tabling. Consequently, without that, with that silence, for a table it would be by a majority of the members present. There are four members present which requires a minimum of three to grant the motion to table.

Board Member Sutherland asked if the Applicant could withdraw and the City Attorney confirmed that there was nothing to prohibit that. Board Member Sutherland questioned what is better- withdrawing before or after tabling to figure out the definition (of driveway). Chairman Jordan thought that staff and the attorney could go back and figure that out and not do it on the fly right now.

Board Member Sutherland stated that if it's not written in any regulation- state, federal, local city, we can't necessarily just pick the definition that we want. There's a ton of definitions out there and especially when you're talking about the third or fourth entry in a definition of garage- I found one that said an area. Because if you don't have a carport and you don't have a garage you could still have a driveway.

City Attorney confirmed that if the board would like that (the definition) to be looked into further that it could be done. That information will then be provided in the staff report that is published so that all parties have been given notice. Board Member Sutherland requested that staff determine what the definition of driveway is in a real estate language for the discussion of this case.

Chairman Jordan moved that case number VAR-26-02 be tabled until August 13, 2026, at 6:30 PM for reasons of clarifying information and additional information.

Board Member Sutherland seconded the motion. (second was not recognized by the Chair- second was made when other conversations were occurring)

City Attorney asked if there was any additional information needed beside the definition.

Chairman Jordan stated the definition, clarity on information of what constitutes the driveway so the Board can make a better decision at the next meeting. Also, at the next meeting it's possible that we have additional members here instead of four- "to also in addition so for those reasons- there are enough reasons for me" (reasons and requests for tabling).

Board Member Sutherland wanted to know why staff does not agree that the criteria has been met. He further wanted staff to fully define why this property is not unique. Board Member Sutherland stated that each home in each lot forms a property and there can be unique features on each and every one of those. Board Member Sutherland also wanted to know why this case does not meet criteria number three since the Applicant said there's been accidents and they've had a car hit due to the on street parking situation caused by the rec center and other neighbors.

Board Member Sutherland said he understands precedence of other people having this almost identical situation. He said that city staff decided to define a driveway in a certain way that would make this not approved and it would have just been a driveway that went through the building permit process. Board Member Sutherland stated we (the City) put an undue burden on the Applicant for them to be able to keep cars off the street when they have guests over that allows them to not get hit.

Chairman Jordan stated what we (the Board) want is to be clear in our motion to table and be clear why we're tabling it. The Chair stated that he motioned to table or suggesting the Board does is because he felt like there's a little mystery around the definition even though I know that you know different people accept the definition others don't. Chairman Jordan also wanted clarity on what happens with when you don't really have a seventh member (Board Member) and how many it takes to actually pass a motion in favor of a zoning appeal. In addition, perhaps staff may or may not think about their report and what they may or may not change based on some other findings.

Board Member Sutherland seconded the motion.

Chairman Jordan stated the motion had been seconded- all those in favor say aye (Ayes: Jordan, Sutherland, Roths) all those opposed same sign- Faber opposed.

Vice Chairman Faber stated they he is opposed and what to state his reasons. The definition was provided ahead of time in which I did read and prepare for this meeting including asking of questions. Vice Chairman Faber felt it's unfair that other board members did not come prepared by reading ahead of time. It's also not fair that because one of the stated reasons is to curb the vote because they'll be more board members in attendance. And I've already stated that I will not be at the next meeting, which I would like to add to the record. And then the fourth point would be in the Applicant's own words regarding criteria 3 that he could not say that he would experience an unnecessary hardship with the strict application of the variance- in his own words goes against what you guys (the Board) are saying. For those four reasons I am not OK with this.

Motion: Chairman Jordan moved that Case No. VAR-26-02 be tabled until August 13, 2026, at 6:30 p.m., for reasons of clarifying information and additional information. Board Member Sutherland seconded the motion. Dissenting vote by Vice Chairman Faber. ***Motion carried 3-1.***

Based on discussion by the Board the clarifying information and additional information requested included: clarify the definition of driveway and what constitutes a driveway; fully define why this property is not unique to meet the variance case requirement; and additional detail on why staff does not agree that the variance case criteria related to "unnecessary hardship" was met.

VII. Approval of the Next Board of Zoning Appeals Meeting Date.

Motion: Chairman Jordan moved to approve the date of the next meeting: August 13, 2026, following the Planning Commission Meeting. Board Member Roths seconded the motion. ***Motion carried 4-0.***

VIII. Current Events

A. **Upcoming Agenda Items:**

a. No known agenda items

Secretary stated that there would be an item on the Board of Zoning Appeals meeting agenda next month because of the tabling of the case.

Board Member Sutherland asked if the City Attorney or Secretary could explain to the Applicant what's going to happen next, so they are fully aware of what's going on. Chairman Jordan stated that could occur after the meeting.

IX. Adjournment

Motion: Chairman Jordan moved to adjourn the meeting. Board Member Sutherland seconded the motion. ***Motion carried 4-0.***

Approved by the Bel Aire Board of Zoning Appeals the 13th day of August 2026.

Phillip Jordan, Chairman

ATTEST:

Paula L. Downs, Secretary