

**BOARD OF ADJUSTMENT MINUTES**

**APRIL 24, 2013**

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Room C of the Norman Municipal Building, 201-A West Gray, at 4:30 p.m., April 24, 2013. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at [www.normanok.gov/content/board-agendas](http://www.normanok.gov/content/board-agendas) at least 24 hours prior to the beginning of the meeting.

Item No. 1, being:

**CALL TO ORDER**

Chairman Andrew Seamans called the meeting to order at 4:30 p.m.

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Item No. 2, being:

**ROLL CALL**

MEMBERS PRESENT

Margaret Farmer  
Hank Ryan  
Tom Sherman  
Andrew Seamans

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Susan Connors, Director, Planning & Community  
Development  
Wayne Stenis, Planner II  
Leah Messner, Assistant City Attorney  
Terry Floyd, Development Coordinator  
Roné Tromble, Recording Secretary

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Item No. 3, being:

**APPROVAL OF MINUTES OF THE MARCH 27, 2013 REGULAR MEETING**

On page 2, second paragraph of Presentation by Staff, the second word "size" should be "sign."

*Tom Sherman moved to approve the minutes of the March 27, 2013 Regular Meeting as corrected. Margaret Farmer seconded the motion.*

There being no further discussion, a vote was taken with the following result:

YEAS

Margaret Farmer, Hank Ryan, Tom Sherman,  
Andrew Seamans

NAYS

None

Chairman Seamans announced that the motion to approve the March 27, 2013 Minutes as corrected passed by a vote of 4-0.

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Item No. 4, being:

**BOA-1213-16 – SURELY CONSTRUCTION, L.L.C. REQUESTS A SPECIAL EXCEPTION TO PERMIT THE EXTENSION OF THE I-1, LIGHT INDUSTRIAL DISTRICT, WHERE THE BOUNDARY LINE OF A DISTRICT DIVIDES A LOT IN SINGLE OWNERSHIP AS SHOWN OF RECORD, FOR PROPERTY LOCATED AT 3000 12<sup>TH</sup> AVENUE N.W.**

**ITEMS SUBMITTED FOR THE RECORD**

1. Staff Report
2. Location Map
3. Applicant's Statement of Justification
4. Cleveland County Assessor Property Profile
5. Aerial Photo

**PRESENTATION BY STAFF**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. There were no filed protests on this application.

Mr. Ryan asked if we have received any documentation that the property owner supports the application. Mr. Heiple indicated he would provide that information.

Mr. Sherman asked if the Special Exception is attached to the property forever, or just to the present owner. Mr. Stenis indicated it is a permanent change.

Mr. Ryan asked whether the Water Quality Protection Zone (WQPZ) stays in place. Mr. Stenis indicated it will not change.

**PRESENTATION BY THE APPLICANT**

Harold Heiple, 218 E. Eufaula, representing the applicant – He distributed copies of the radius map, which shows the subject property, and an aerial photo, showing the Water Quality Protection Zone and boundaries of the two original tracts. Mr. Ryan posed a question that we take for granted, because an application for rezoning can be filed either by the owner or a person who has an option to purchase. Typically in these matters, the sale is contingent on rezoning to a use that the buyer wants to make of it. Mr. Ryan didn't see any evidence in our application that the owner, Virginia Huddleston, had granted permission and wanted to do this. The contract for sale, paragraph 11, Additional Provisions, says that the Buyer has 120 days from the date of the contract to perform due diligence and then the Buyer may withdraw the contract if he's not satisfied and receive his money back in full. It has always been the understanding that he wanted this particular zoning. The Seller said fine, you pay for whatever you've got to ask for. That's why the application is filed in his name. When we first talked to staff about the operation, the Planning Director said you've got to have one property and it's got to be shown on county records from that standpoint. I took a letter to the County Assessor, because the two tracts were actually assessed as separate tracts by the County and taxed that way, and I asked him to combine them. He said he would need to have the owner's permission. We took a picture of the property and at the bottom I wrote "To the County Assessor – Please combine my two tracts into one," and it's signed Virginia Huddleston. You can see it's the same signature that is on the contract. The day we turned that in, the County Assessor combined them into the one tract which we attached to the information that we submitted. It is now one tract on the Assessor's roles with the same legal description that we will put in the deed that we have prepared, and it's the one that's shown in our application.

Let me tell you why Mr. Proctor insisted on this happening. First, a little history. The larger

tract that is presently zoned A-2 was acquired by Don Huddleston in 1983. In 1991 he acquired the triangular parcel. It was under Don Huddleston's common ownership, then Don Huddleston Construction Company, and then finally to Virginia Huddleston, the widow, and she has the deeds to the two properties and is ready to sell it. It has been used for industrial purposes since Mr. Huddleston put the building on it that we're going to show you that is still here and is not going to be expanded in any way. John doesn't want to expand the building at all and he believes he can lease it to people who will take it in its current configuration with the well and the septic tank in place – because City utilities are hundreds of feet away. Platting this is actually prohibitively expensive, since with the plat you would also have to defer the road widening money as well as either pay to bring the sewer and water hundreds of feet up to the boundary of this property or put up the cost of doing that. He recognizes that here is a piece of ground that was used for years in an industrial capacity, can still be used in an industrial capacity, but he didn't want to lease it to somebody for an industrial purpose and a month later have somebody walk in and say, wait a minute, that fellow is operating in what is actually zoned A-2 agricultural and he's not permitted to do that. Because of the specific provision that you have in the law that allows you to do this, this actually fits that provision like a glove. We're asking that the I-1 zoning be extended to the balance of the property so that it is one piece of property zoned I-1 and they will absolutely conform and agree to the conditions that are expressed in the staff report about no storage east of the Water Quality Protection Zone. Furnishing a copy of deed was the other condition. We'd certainly do that when it goes to record. Before I go on, are there any questions up to this point in time about anything that I've said?

Mr. Ryan – Is there a height restriction on buildings? We've got a recommendation it won't be visible from 12<sup>th</sup> Avenue. If somebody comes through and clear cuts 12<sup>th</sup> Avenue, and suddenly we can see the thing. What is the height restriction out there?

Mr. Heiple – The height restriction would be whatever is set forth in I-1. The critical factor is he cannot expand this building in any way – out or up – without getting a building permit and he has to plat, and if he has to plat that means he's got to make provision for the deferred road construction and the utilities and the whole deal falls apart. It's absolutely not viable. What this property will do is to be utilized in the same configuration it was used by Huddleston for years, until such time that the utilities get close enough to it that somebody may well want to plat it and change it. But he can't expand the outside at all. Ken Danner was very clear about that. By the way, the Development Coordinator and Public Works are supportive, as is the Planning staff. He has no intention of doing anything with the building, other than what's out there right now. We'll show you some pictures shortly of the building, both inside and out. He believes he can pay Mrs. Huddleston this amount of money if this is zoned I-1, leave it just exactly as is, and find people who will pay rent that will suffice to make him a return on his investment. The City is not exposed to him being able to come in after midnight and do something that nobody expects him to do or wants him to do. It's going to stay exactly like it is and the tree lines that you see there will stay. The creek is not going to be moved. Certainly the Water Quality Protection Zone can't be moved. That not only takes an act of God, it takes an act of FEMA which is sometimes even tougher. The property profile indicated industrial use for all of these years.

I want to pass out the pictures. The first one is from 12<sup>th</sup> looking in toward the building. You can realize, if you look at the radius map, the bottom line is 1,500 feet long and the north line of this tract is 1,800 feet, so we're talking about at least 900 feet from 12<sup>th</sup> Avenue to the front of the building. You're talking about two full city blocks to the front of the building from 12<sup>th</sup>

Avenue. The first picture is looking west from 12<sup>th</sup> back toward the building. The second picture is taken from the gate halfway in from 12<sup>th</sup> looking west where you can get a better view of the building. There is an inside view of the building, and so is the fourth. The fifth, which shows a lift, and you can see that the inside of the building is certainly industrial. This is out the back door. So let me pass those around for everyone's consumption.

Mr. Sherman – If it ever rains that hard again, I assume we have water running through there?  
Mr. Proctor – There's a tinhorn in there about 8 feet tall. Mr. Heiple – That creek drains a pretty good area.

Ms. Farmer – But you can change the interior – put in a floor? Mr. Sherman – As long as it's not structural.

Mr. Heiple – This is the front of the building showing that it certainly wasn't agricultural; it was industrial. This is a picture of the Don Huddleston Construction Company sign that's been on the front of the door for at least 20 years.

Mr. Sherman – To follow up on Hank's question, I think which really amounts to, if we approve the exception and Murphy's Law happens and it doesn't get sold, she's not concerned about the zoning being changed from agricultural to industrial? Mr. Heiple – Actually, she's delighted. She didn't have to pay for it, and she now has a viable sale.

Mr. Ryan – My concern was we see these on residential things, but it may come from somebody with a contract and the property owner says yes. When we do that, it's almost always granting additional rights. In this instance, it normally would be viewed as something that's better, but it might not be in certain instances, and we would be changing her rights. Mr. Heiple – Mrs. Huddleston has always considered that to be industrial property and she has a hard time tracking the distinction between I-1 and A-2. The reason I put in there that I had represented her husband years ago was the fact that, if this sale does fall through she would have a viable piece of property. Anybody else, if they've got any sense about them, will do exactly what Proctor says and that is I won't buy it unless the whole thing is zoned I-1, because I don't want to have a tenant breaking my kneecaps for saying he can put his business in there when the City is now about to move me out. She would get legally what she thinks she's already got. I think the title is in the Virginia Huddleston Trust – if that happens, I will prepare a deed for her from the Virginia Huddleston Trust to Virginia Huddleston that combines it into one piece of property and it's a matter of record there. One way or the other, you will have your deed of record. But I don't really have any doubt that this deal is going to go through and there will be a deed to Mr. Proctor's LLC. In this case, Mrs. Huddleston is not a developer. She's not a wealthy woman. She's elderly. She's not going to spend any money on it, but she expects that this industrial piece ought to bring a pretty good price. Fortunately, she found somebody that was willing to do what he has done to bring it forward and, fortunately, we've got this one provision in the City code that allows us to do this because, if this had to go through Planning Commission and City Council, the deal wouldn't happen. So there's an opportunity here and, as the staff has pointed out, it's in an industrial area. It's not going to adversely impact anybody. It will allow at least a productive use of the ground out there and allow somebody to have an investment that he hopes works out and allow the seller to realize some money in her lifetime for what she thinks has always been her industrial property. I think there are good moral and ethical grounds for it, as well as legal.

**DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT**

Mr. Ryan expressed concern about the phrase "and will not be visible from 12<sup>th</sup> Avenue NW". It's zoned as it's zoned. That restriction can be altered by the stuff in between. Ms. Farmer noted a tornado could go through and alter the landscape. Mr. Ryan added he is comfortable without having that restriction.

Mr. Heiple – The zoning permits outside storage. Susan Connors said outside storage is permitted anywhere on I-1, but it would look bad if you had a whole bunch of outside storage stuck right up against 12<sup>th</sup> Avenue, and I agreed with her, and because of the Water Quality Protection Zone, said we won't do anything except on the far side of that. Now, what might be a better situation is to make some reference to the shielding of the trees, because I think we thought that the trees that were along the creek were really going to prevent the view of outside storage on the far side of the Water Quality Protection Zone. I think, in fairness, with the commitment we made to the Planning Director, we ought to say something about it.

Ms. Connors – I think the first phrase is the most important, that the outside storage remains west of the Water Quality Protection Zone. Mr. Heiple – I wanted to be consistent with what I told you we would do, so if you're comfortable with that, absolutely. Just put the period after west of the WQPZ.

*Hank Ryan moved to grant the Special Exception to extend the I-1, Light Industrial District, zoning to the entire parcel, with the staff's recommendation to include two conditions: (1) Outdoor storage shall be maintained only west of the WQPZ; and (2) A single deed for the entire property shall be filed at the County Courthouse and a copy given to the City of Norman within 6 months of the effective date of the special exception. Tom Sherman seconded the motion.*

There being no further discussion, a vote was taken with the following result:

YEAS	Hank Ryan, Tom Sherman, Margaret Farmer, Andrew Seamans
NAYS	None

Chairman Seamans announced that the motion to grant the Special Exception with conditions passed by a vote of 4-0. He noted the 10-day appeal period before the decision is final.

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Item No. 5, being:

**MISCELLANEOUS DISCUSSION**

Ms. Tromble noted the update to the Zoning Ordinance which was distributed.

Chairman Seamans noted that the Board still needs new members.

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Item No. 6, being:

**ADJOURNMENT**

There being no further business, Chairman Seamans adjourned the meeting at 4:59 p.m.

PASSED and ADOPTED this 24<sup>th</sup> day of July, 2013.

Henry C. Ryan, Secretary  
Board of Adjustment