

BOARD OF ADJUSTMENT MINUTES

MARCH 25, 2015

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Room D of the Norman Municipal Building A, 201-A West Gray, at 4:30 p.m., March 25, 2015. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at 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

Hank Ryan
Curtis McCarty
Kristen Dikeman
Andrew Seamans

MEMBERS ABSENT

Brant Alexander

A quorum was present.

STAFF PRESENT

Susan Connors, Director, Planning & Community
Development
Wayne Stenis, Planner II
Leah Messner, Asst. City Attorney
Roné Tromble, Recording Secretary

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Item No. 3, being:

APPROVAL OF MINUTES OF THE FEBRUARY 25, 2015 REGULAR MEETING

Hank Ryan moved to approve the minutes of the February 25, 2015 Regular Meeting as presented. Kristen Dikeman seconded the motion.

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

YEAS

Hank Ryan, Curtis McCarty, Kristen Dikeman,
Andrew Seamans

NAYS

None

ABSENT

Brant Alexander

Ms. Tromble announced that the motion to approve the February 25, 2015 Minutes as presented passed by a vote of 4-0.

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Item No. 4, being:

BOA-1415-19 – JEAN EDWARDS REQUESTS A VARIANCE TO THE REQUIRED 25' FRONT YARD SETBACK TO ALLOW AN EXISTING GARAGE TO REMAIN ON PROPERTY LOCATED AT 504 ROSEDALE.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Application and Statement of Justification
3. Photos
4. Aerial Photo
5. Support Map and Support Letters

PRESENTATION BY STAFF:

Ms. Messner – I printed out my email and it was a little longer than I realized it was looking at it on hard copy, so it's a lot to summarize. Variances are typically a process for relaxing the terms of the zoning ordinance and, therefore, particular topographical problems, and they're not related to the existing structure or conditions generally in the neighborhood or personal problems of the owner and that's kind of what the general status of the law is on when a variance should or should not be granted. Oklahoma courts have not looked specifically at imposing a time type condition on a variance. They have looked at some cases that I provided you about carports, specifically. They've taken a pretty strict approach to variances. Variances in Oklahoma courts have been upheld when they are for topographical features, size and shape of the lot, not so much when they are for personal issues or concerns of the owner. However, there are courts outside of Oklahoma – most of the cases were from New York and New Jersey -- they have looked at imposing time limit conditions. One of them that I thought was interesting was a lady who wanted to convert the interior of her garage into a small apartment for her disabled son, and they allowed that basically for so long as the property owner needed it, and when the son passed away she came in and asked for additional time to keep the property that way because she had invested so much in it that she really wanted to keep the house the way it was, and they allowed it for an additional year. Then they allowed it for an additional three years upon a review process; she had to come in and re-request every three years to keep that condition in place. The court in New York upheld that and said that that was a valid time-limited condition on a variance. However, that is a little bit opposite of what I've seen with the Oklahoma courts, because that is a time condition that was originally very specific to the needs of that property owner and her son. I would caution you about putting a condition that you had originally asked about conditioning it on the sale of the property. I would caution pretty strongly against that type of condition. However, if you wanted to look at a variance with a time limit condition and an opportunity to come in and have the owner reapply every few years and review it to see if conditions have changed or if there's any other factors that have come up that you want to consider, that might be more supportable. In addition, in light of all the letters from the neighbors in support of this, it's probably pretty unlikely to have a legal challenge if you were to opt for that type of condition, but if a legal challenge did occur I'm not completely convinced that that condition would be upheld. It's a general summary. Do you have any questions for me?

Mr. Ryan – On the New York case, it wasn't conditioned on the son's death; it was a term of years.

Ms. Messner – Initially it was conditioned on the son's – it was an unusual case. It initially was conditioned on until a change in circumstances and then when he passed away she went back

in and reapplied and they gave her an additional year and when that expired she came back and reapplied and they gave her three years with a review every three years. So it kind of changed over the course. But what the court reviewed in that case was the extension for three years with the opportunity to reapply every three years and they upheld that specific time-limited condition.

Mr. Ryan – Our only Oklahoma case law is *Brown v. Fraser*, regardless of whether it would be the applicant appealing or the Board appealing to District Court, the burden would be on the applicant?

Ms. Messner – Yes. There is a presumption in favor of the correctness in the ruling of the Board of Adjustment.

Mr. Ryan – I'm a little concerned with what is set out there. The Oklahoma Court standards seem sort of like our variance standards, but maybe a little more relaxed.

Ms. Messner – Right. I think what the Oklahoma Supreme Court said, and I think the case is with the *City of Bethany*, that generally a hardship created by the owner of the premises is not a valid basis for a variance or exception to the zoning ordinance. And that was about a carport.

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes.

Mr. Stenis – This is for 504 Rosedale. It's a variance. The applicant is Jean Edwards who is present here today. The Board heard this at the last meeting, in February, but postponed it to this meeting so we could verify the property line and answer a few other questions. First of all, staff does have some licensed appraisers on staff and they did go out and survey the property and mark the property line, and I think I provided pictures. They did a little white paint on the joint, and it just so happens that was the joint I was using in the original measurement, so that was very helpful. There was a question about the conditions and Ms. Messner has answered that question. There was a question about how did this come to our attention, and I had thought it was perhaps with a complaint, but it was not. Council had directed staff to do pro-active code enforcement citywide and it was picked up in one of their neighborhood surveys; they noticed the circumstances and brought it forward and notified the property owner. I'll just hit a couple of highlights since we reviewed this last meeting. Jean Edwards is the owner and she is requesting a 16'7" variance to the required 25' front yard setback to keep an existing garage. Field measurement shows it is 8'5" from the front property line. House was built in 1955. The carport existed when she purchased the property. 2009 she contracted to enclose the carport. There are three carports on the street; only one has been enclosed, which is hers. There was no building permit in our files. There are letters of support that were supplied with the application from the neighbors, and those are available to you. There are the four conditions. Special circumstances peculiar to the land or structure. Literal interpretations of the ordinance deprive the applicant rights enjoyed by others. Special conditions or circumstances do not result from actions of the applicant. And granting the variance will not confer special privileges on the applicant denied other lands or structures in the same district. The staff recommendation remains the same; we recommend denial of the request because the circumstances do not meet the four criteria for a variance and approval would set a precedent. I'm glad to answer any questions, and the applicant is also here.

Mr. McCarty – So the City staff went and did a quick survey? So you provided that service. We

don't have an official licensed survey?

Mr. Stenis – We do have a couple of members in the Engineering Division who are licensed surveyors.

Mr. McCarty – But nothing that's an official drawing of the property.

Mr. Stenis – We don't have a drawing of the property. They did go out and find legal reference points.

Mr. McCarty – So in her original letter it stated that it was 14 foot from the property line. It's actually eight and a half, you said?

Mr. Stenis – Yes. Right. Eight feet, five inches.

PRESENTATION BY THE APPLICANT:

Jean Edwards, the applicant – Well, I tried to do everything that was asked of me, and I believe I have. It's been almost 6 years now. So I just pray that you all will approve this variance for me.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Ryan – We can look at doing something that I think would follow along the Oklahoma case that was set out in there and make it expire in five years or ten years. I thought if we were going to grant a variance that the best, from an equitable standpoint, would just be to make it terminate – a non-transferable variance so that whoever the next owner of the property would have to file something in the deed records so that the purchaser would be on notice but they would potentially know that that variance -- they were going to potentially have to tear the carport down or come in and seek another variance. What I'm hearing is that it would be – if we were going to go that route, it would be preferable to do a term of years, instead of measured from a transferable status. Got any thoughts, Curtis?

Mr. McCarty – This is a tough one. I mean, eight and a half feet from the building line is a pretty substantial encroachment. It's not a foot or two feet. I'm concerned about cars stacking up and blocking – I don't even know – I guess there are sidewalks there.

Mr. Stenis – No sidewalks.

Mr. McCarty – No sidewalks, but blocking view and just the structural integrity of the building. The electrical work wasn't inspected. There are a number of other issues besides just the building being enclosed and exceeding the front building line that need to be addressed, in my opinion, even if the timeframe is put on it.

Ms. Dikeman – I agree. It's a tough call.

Ms. Edwards – I'd be willing to do permits and whatever I need to do to bring this thing. Whatever.

Mr. Seamans – A question to staff: are there more of these that are going to come in front of us that are carports that are built in this area, because we could set a precedent that could be really damaging.

Mr. Stenis – You could set a precedent. We have notified – I'm somewhat aware of several carports that had part of the walls enclosed that weren't supposed to be enclosed. They weren't completely enclosed and made into a garage, and they have been notified and complied with the ordinances. But this is the first one that I've seen as a variance request.

Mr. McCarty – The City had a new carport ordinance they were working on or something that was going around?

Ms. Connors – It came and went.

Mr. McCarty – Was it ever approved? Changed?

Ms. Connors – No.

Mr. Stenis – Decided to leave the code as it was.

Mr. McCarty – I'm really having a hard time with it just simply because of how severe it is of the front building line.

Mr. Ryan – There haven't been complaints. When you drive, it does jump out at you.

Ms. Edwards – It doesn't block anybody's views.

Mr. Ryan – I know that. I'm just saying it's very obvious that it is out of line with everything else.

Mr. McCarty – It's just the severity of it. If it was a foot or two, it would be a different story in my eyes. But being that it's eight and a half feet from the building line, you're probably 20 feet from the street. You can't even get two cars in the driveway behind each other without blocking the street or being out in the street at that distance – two small cars might, but regular cars wouldn't. And even if we were to put a timeframe on it, she's going to be back here every year doing that and I just think it's going to set a precedent for other carports potentially down the road that would come before us with the same type of issues.

Mr. Ryan – Maybe this is one where an appeal is the best solution. There's not a good solution. I think she's aware that she will have – if we rule against her, she will be able to appeal to District Court. We're not the last word. But based on the parameters we've got, I find it very difficult to be able to approve it.

Mr. McCarty – I agree.

Curtis McCarty moved to deny the Variance. Hank Ryan seconded the motion.

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

YEAS

Hank Ryan, Curtis McCarty, Kristen Dikeman,

NAYS	Andrew Seamans
ABSENT	None
	Brant Alexander

Ms. Tromble announced that the motion to deny the Variance passed by a vote of 4-0.

Mr. Seamans – I'm sorry for the process that you went through, that it didn't come out the way you wanted. There is still an appeal process. I understand that the person that built the building can no longer be held liable, but that would be a place that you might start. They built a building for you without pulling a permit. You're kind of a victim of what happened through that process. I encourage you to go through the appeal process if you so desire. I hate to see part of your building being taken away. But we have to make a tough decision and we had to make a tough one today.

Ms. Edwards – And it hasn't scooted out any. The carport is still where it was. Just walls put up.

Ms. Connors – As a carport, it met our regulations. A carport can be seven feet from the front property line, but it can't be enclosed.

Mr. Stenis – You do have the ten days to appeal to District Court.

Mr. Seamans – I'm sorry. We made a tough decision and we have to do it in the best interests of the City of Norman.

Ms. Edwards – Thank you for trying. So what do I do now, if I don't appeal it?

Mr. Seamans – Well, if you don't appeal it, the walls have to be at least taken off and go back to a carport. And I don't have a good feel for what would happen in District Court. I don't know.

Ms. Messner – Ma'am, if you're interested in appealing, I would encourage that you contact a private attorney to discuss appeal options. Like the Chair said, you only have ten days to appeal, so it's something that I would move on quickly.

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Item No. 5, being:

BOA-1415-20 – MARK KRITTENBRINK REQUESTS A SPECIAL EXCEPTION FROM SECTION 431.7 AS ALLOWED BY SECTION 441.7 TO ALLOW A NEW DRIVEWAY AND PARKING WITHIN THE FRONT YARD OF PROPERTY LOCATED AT 432 CHAUTAUQUA AVENUE WITHIN THE CORE AREA.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Application and Statement of Justification
4. Site Plan
5. Aerial Photo
6. Protest Map and Letters

PRESENTATION BY STAFF:

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Two written protest letters were received from property owners within the notification area. A phone call was also received, and that person is present at this meeting.

PRESENTATION BY THE APPLICANT:

Mark Krittenbrink, 428 W. Eufaula, the applicant – I do understand this code about a curb cut in the Core Area. I understand what it's there to prevent and I support it. I live in the neighborhood, so having big parking lots in the front of your house are an obstruction. I understand that. That's not what's being proposed here. I apologize for not showing the parking along the back. There is alley access behind this house. We'll be able to have a garage back there. There will be five parking spaces. I am the owner of this property now; it will be subdivided and sold to two individuals. I'm representing the Footes here. The issue is one, not of trying to park cars in front; the issue is Chautauqua. If you've ever driven down Chautauqua during any day, it's just clustered. There are so many cars. You get University people, students park there, and it's always congested. So Joe and Jody Foote will be the owners of this property; Joe just retired as the Dean of the Gaylord School of Journalism. But the thought is – you know, every time you drive away, oh, I forgot my briefcase. Well, if you drive into the garage and walk all that distance, it's an inconvenience. Whereas he could just pull in quickly, grab something, and go. But moreso, also for guest parking – people that come to visit, they would have a place where they could pull off because Chautauqua is always so crowded. So they are aware of the code in the Core Area, as am I, and I do not oppose it; I support it. I just feel this is a somewhat unique situation. It is a new curb cut. The north part of this property, in fact, somebody mentioned it – it has like a 20' wide curb cut. It's gravel; it's nasty. Part of the plan for that owner will be to pave that to make it meet City of Norman specs. But, there again, they have the same condition in the back, but because they have the drive, they're allowed to keep the drive. So, naively, I thought we could take 10' of that driveway and get credit for it and move it 80' down the street. So that is the situation. I'm not going to say that we can't park and we have these issues. That's not the case. It's a matter of convenience for the owner and for visitors that come by. In just the Chautauqua Historic District – and we're talking from Symmes to Brooks on Chautauqua and Lahoma – there are over 30 properties that have curb cuts. The code states that they have to go to the back yard – the drive has to bypass the house and go to the back yard. There are over 30 properties that don't meet that criteria, that dead end in the front of the house. There's no garage. There's two properties across the street the same way; their driveways do not go back to the back. So it's not like this doesn't exist, and some of these are fairly new paving. So they've existed for some time, or probably not new

since this ordinance has been in effect. And I even went by today to take pictures, but I suspect everybody believes me when I say over 30 properties. A couple of those are duplexes, I understand. And I'm calling it a courtyard because we'll use brick pavers; we'll make it as attractive as possible. But that would be the intent. I'd be happy to answer any questions.

Mr. McCarty asked for clarification on the property. Mr. Krittenbrink explained that the existing house is currently on two lots.

Mr. McCarty asked about the requirement for rear access. Ms. Connors explained that they can only have parking in the front if they cannot provide it in the back, or they can have a drive cut if the driveway goes to the back.

Mr. McCarty commented that the site plan doesn't show anything in the back. He asked if there will be a garage. Mr. Krittenbrink said there will be a 24' by 26' garage, set back 20' from the rear property line. This owner will pave the entire 50' so there will be guest parking in the rear. People will be able to come in the alley and walk around.

Mr. McCarty asked if the design could have had front access to the garage. Mr. Krittenbrink said the lot is 50' wide and the house is 40' wide. They want a private back yard. They didn't want a driveway going all the way through. There are a lot of trees on the site. The way we're positioning the house and garage, we're only cutting down one tree. If I were to shrink the house to have room along the property line, I would be cutting out the bulk of the trees.

Mr. McCarty asked how wide the curb cut will be. Mr. Krittenbrink responded that he is asking for 9' or 10'. Mr. Stenis indicated the minimum in the code would be 10'.

Mr. Ryan asked about the driveway on the adjacent property to the south. Mr. Krittenbrink indicated that it does go out to the street and is probably about 8' wide.

Mr. McCarty asked if the existing curb cut will remain where it is when the house is moved. Mr. Krittenbrink said it will.

Mr. Ryan commented that if all the curb cuts in the neighborhood are narrower than the 10' standard, wouldn't it be more in keeping for this new curb cut to be the same width as the other curb cuts on the street. Ms. Connors commented that this Board wouldn't grant a variance to the width of the curb cut because it is part of the design standards administered by Public Works.

Mr. Krittenbrink commented that the driveway to the south is probably about 2' off the property line. His driveway would have to meet the City standards.

Mr. McCarty asked if any new houses have been built in this area with front access that received a special exception from the Board. Ms. Connors said she couldn't think of any in this area in the past six years. Many have driveways that go back to a garage, which is allowed.

Mr. Krittenbrink added that his clients wanted a courtyard in front similar to one they saw in England. The paving system is an interlocking system so it is not quite as aggressive as concrete.

AUDIENCE PARTICIPATION:

Rick Polland, 425 Chautauqua – I live at 425 Chautauqua, which is directly across the street, and also own 435 Chautauqua. Those are the two properties that are directly across the street; 425 is a traditional two-story house for the neighborhood and my driveway definitely goes back to a garage. 435, my duplex, is situated sidewise – the front of the duplex does not face the street. There is no garage, but the driveway goes all the way back to the back end of the house, so it looks more like that, rather than just being a parking space in the front. I do have a little parking space next to that driveway of the duplex because it is a duplex and it was there. I've lived there since 1992, so it's been there as long as I can remember when I bought the house. I didn't file a formal protest because I wanted to see what was going to be presented and find out what was presented by the City. But I don't see how he meets the first criteria that has to be met to have an exception. My real concerns here are that they're putting in a house that goes to 5' from the property line on each side. I think it's going to be really big for that lot. If it could have been oriented so that there was a driveway that went to parking in the rear, I think that would have made more sense. I know that that's a done deal now; it's been through the Historic District and approved. I'm also concerned about drainage. If you look specifically at the statute, that's not an issue. But right now I've got a 100' lot over there with one house on it. We have a severe problem with the storm sewer in between the lots that Mr. Krittenbrink owns and my side of the street. Had a car sitting right in front of his property, kind of in the middle of my two, in 2007 the water got into the console so it was at least 2' deep. Building that much house – and they're going to add on to the house that's being moved – is going to create somewhat of a drainage issue, and I think that's going to be exacerbated by as much concrete as they're proposing to put in front of this house with the courtyard, or whatever term that's being used for it, and the driveway. I'm against it. But I realize that I didn't file a formal protest. Thanks.

Mr. Seamans asked whether the project would meet the standards for impervious surface. Mr. Krittenbrink responded affirmatively.

Mr. Polland asked who he should talk to about the problem of water on the street. Ms. Connors directed him to Scott Sturtz, City Engineer in the Public Works Department.

Mr. McCarty asked if the Historic District Commission has approved this application contingent on the Board of Adjustment. Ms. Connors indicated they have not approved the driveway. Mr. Krittenbrink said everything has been approved except for the driveway. Mr. McCarty asked if the Historic District Commission could still deny the driveway if the Board approved this special exception; Ms. Connors said they could.

Ms. Connors clarified that the reason staff is recommending denial of this request is that they can meet the requirements for parking in the rear. If they could not meet that requirement at all, front parking would be allowed and a special exception would not be necessary.

Mr. Polland commented that he was on the Historic District Commission for a while and there was a house built in the 400 block of College and on Lahoma south of Boyd within the past 4-5 years and both have a driveway that goes back to a garage.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Ryan said his understanding is that, if the Board denies this request, the applicant can make modifications and reapply later. Ms. Connors said she was not aware of any restriction on the

number of applications they can make.

Hank Ryan moved to grant the Special Exception for the curb cut and driveway as set out on the site plan, with a 10' width curb cut. Curtis McCarty seconded the motion.

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

YEAS	Hank Ryan, Curtis McCarty, Kristen Dikeman, Andrew Seamans
NAYS	None
ABSENT	Brant Alexander

Ms. Tromble announced that the motion to grant the Special Exception passed by a vote of 4-0.

Mr. Seamans noted that there is a 10-day appeal period before the decision is final.

* * *

Item No. 6, being:

BOA-1415-21 – JASON LOKEY REQUESTS A VARIANCE OF APPROXIMATELY 25' TO THE 50' REAR YARD SETBACK AND A VARIANCE OF APPROXIMATELY 5' TO THE 25' SIDE YARD (WEST) SETBACK TO ALLOW AN EXISTING SHOP BUILDING TO REMAIN ON PROPERTY CURRENTLY ZONED A-2, RURAL AGRICULTURAL DISTRICT, AND LOCATED AT 2505 168TH AVENUE N.E.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Application and Statement of Justification
3. Planimetric Map
4. Aerial Photo
5. Topographic Map

PRESENTATION BY STAFF:

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. No protests were received.

PRESENTATION BY THE APPLICANT:

Jason Lokey, the applicant – I bought the property in October and wasn't aware that I had to have a building permit. That's about the only place. If I come another 25' off the back fence I'm going to be in the driveway. I've got the well-house set to the east and the property fence on the west side. By the time I do any grading, I've got to get as far west as I can so I don't cover my well up.

Mr. Stenis provided a color topography map for the Board's review.

Mr. McCarty asked if he has obtained a building permit. Mr. Lokey responded that he can't get one until this is approved. He built the building and had OEC set a new pole, transformer, and meter base. They were only going to allow 60 amp service without proving he needed more. That is when he realized he needed a building permit, so he is trying to get everything right now to move forward.

Mr. Seamans asked if the structure is steel or wood. Mr. Lokey indicated it is steel.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Curtis McCarty moved to grant the Variance. Hank Ryan seconded the motion.

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

YEAS	Hank Ryan, Curtis McCarty, Kristen Dikeman, Andrew Seamans
NAYS	None
ABSENT	Brant Alexander

Ms. Tromble announced that the motion to grant the Variance passed by a vote of 4-0.

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Item No. 7, being:

DISCUSSION OF FORMAT AND CONTENT OF STAFF REPORTS

Mr. Ryan asked that staff provide some driving directions to the locations for sites. He has had some over the years that were difficult to find.

Mr. McCarty asked if the scans can be provided in color. He doesn't need printed copies in color, but they would be easier to see on the computer.

Mr. Ryan suggested changing the wording of the staff recommendation to something less harsh than "denial". He suggested using "staff supports" or "staff does not support".

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Item No. 8, being:

MISCELLANEOUS COMMENTS

None

* * *

Item No. 9, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:34 p.m.

PASSED and ADOPTED this 27th day of May, 2015.

Henry C. Ryan Secretary
Board of Adjustment