

BOARD OF ADJUSTMENT MINUTES

JUNE 22, 2016

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., June 22, 2016. 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
Nils Gransberg
Kristen Dikeman
Andrew Seamans

MEMBERS ABSENT

Curtis McCarty

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
Scott Sturtz, City Engineer

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Item No. 3, being:

APPROVAL OF MINUTES OF THE MAY 25, 2016 REGULAR MEETING

Nils Gransberg moved to approve the minutes of the May 25, 2016 Regular Meeting as presented. Hank Ryan seconded the motion.

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

YEAS

Hank Ryan, Nils Gransberg, Kristen Dikeman,
Andrew Seamans

NAYS

None

ABSENT

Curtis McCarty

Ms. Tromble announced that the motion to approve the May 25, 2016 Minutes as presented passed by a vote of 4-0.

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Item No. 4, being:

BOA-1516-22 – SPENCER AND SHANNAN HINCKLEY REQUEST A VARIANCE TO THE 65% MAXIMUM IMPERVIOUS COVERAGE REQUIREMENT FOR PROPERTY LOCATED AT 4504 GREYSTONE LANE.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Impervious Area Calculator
4. 2007 Aerial Photo
5. Application with Attachments

PRESENTATION BY STAFF:

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. One protest was filed which was 3% of the notification area.

Mr. Ryan asked if the current existing coverage is 69.6%. Mr. Stenis agreed.

PRESENTATION BY THE APPLICANT:

Spencer Hinckley, the applicant – In retrospect, I wish that I had known that a permit was required for the concrete, I could have avoided a lot of this because I would have applied for the application and it probably would have been denied based on the percentage of impervious cover that I had at 66%. But I am not from Norman; I'm from Montana and I didn't even know that the 65% number was out there. Otherwise, I would have abided by that by getting a permit. I had three different quotes from concrete companies and none of them said anything about a permit, and then the one I went with said, "Oh, we pour this stuff all the time. We never get permits for sidewalks at the side of a house." So I wish that I had known. I would have been able to stay legal non-conforming. But I didn't know that the number even existed. So I didn't even know I was at 66%, nor had I any reason to do a calculation at the time. It was on my to-do list since 2011 since I bought the house, because it was an eyesore just because of where it is. It was dirt; nothing would grow and so it has been on my to-do list just to finish sidewalk to sidewalk. It's a 4-foot sidewalk on the west side of the house, and because of the shade nothing grows there. My goal was to just finish to connect the back patio with the existing third of the sidewalk that just inexplicably abruptly ended. So I did just that and had them pour the concrete. It was stained and it was done professionally. They poured it all around my utility lines, so for me to take that out would be terrible. I do appreciate your decision. My intentions are for the future to pay more attention to that. I've learned a lot through the process.

Mr. Ryan asked the name of the company that did the work. Mr. Hinckley responded Chino's Concrete.

AUDIENCE PARTICIPATION:

Honorata Pineda, 4508 Greystone Lane – The reason also that we have some kind of complaint is because his sidewalk they built is about six inches and it's significantly higher than my lot. So on top of that when it rains and there's rain and their pouring downspout is on that side, the water goes not to their property but to my side of the property causing flooding in my side and none of the grass grows in my lot's yard. I consulted a structural engineer because I'm scared of what it will do with my house foundation, because I know water seeks its own level. Where will that go anywhere but down deeper? So it's not because of safety issue. It is the structure of the house that could be affected because of the water being drained directly on my side. Since they put

the concrete on their sidewalk that is when the problem started. I don't care about that side of the swimming pool because it's not affecting my side. It's when they dig the sidewalk that's when the water goes to my property and it puddles in my property and it affects my house. I notice on my back patio there's already a crack on the cement. The house is – I bought it new. The house is probably eight years old in Greystone. I know you're familiar with that. I'm scared about what's going to happen to the property value.

Cherry Pineda – The house is affected. If there's structural problems and structural damage, then we're at a loss. Originally what they had there were gravel. There were gravel on that side. I guess that's how their drainage was at the time; I don't know. How the builder that lived in that house addressed that drainage on that side – 'cause they had gravel there. Our lots were even and they had gravel.

Honorata Pineda – But when they poured that sidewalk concrete ...

Cherry Pineda – It all just dumps water on us.

Honorata Pineda – Of course it would go to the lower side. Water would seek its own level. Of course everything goes to my side. Even the structural engineer said it may affect the movement of the house. So I'm very concerned about what's going to happen.

Mr. Hinckley – Does anybody need me to comment on that? I have a full presentation I prepared myself for that. But I assume that that is a civil matter, given the City doesn't meddle with water drainage issues in this situation. But I have a full explanation if anybody would like.

Ms. Dikeman – Is there a reason Chino's chose a six inch height?

Mr. Hinckley – It's just level with the existing sidewalk. If you come out and look at it, it is level with the existing sidewalk and as it transitions to the patio, so it's all the same level; it's on the same grade. My property drains toward Ms. Pineda's property, as it's supposed to. I have the Brookhaven No. 37 Addition final grading plan. Todd McLellan, development engineer and CRS coordinator, helped me with this and provided the final grading plan which shows that Mr. Miller, who is in the blue shirt at the end, he is the neighbor to the east of me. His property drains onto mine – to the back of my property. My property is meant to drain onto my neighbor to the west, which is Ms. Pineda. So it drains just like it's supposed to. Additionally, the sidewalk itself is at the same level of the house and the same level of the sidewalk so that we made it a point not to change any flow of water. The water isn't flowing differently than it used to. We didn't put any new downspouts in. The existing downspouts and water flows down our property exactly right down our fence line. There is no pooling against her house. I have video. I have documentation. I have three different storms when I stood out in the rain and videoed. There is also a note on her letter that the engineer did not actually find any structural damage to the property. It's mainly fears that she has and she submitted the protest and called the City when the concrete was poured, again because of fears. Also, her daughter has a personal issue.

Cherry Pineda – You guys have a personal issue with us.

Ms. Dikeman – I think we can all agree that, at least from my perspective from the picture we have in the protest map, it does look like there's a drain pipe flowing off your sidewalk into the shared space and it ends up on theirs.

Mr. Hinckley – That's right. That's the way the home was built back in 2004.

Cherry Pineda – No, it's not. You were not there.

Mr. Hinckley – Nothing has been changed.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Ryan – He's got 66% that's grandfathered. So we're dealing with the 3.6% that got added. I think we're all a little more sensitized to storm water issues. It doesn't matter whether the applicant was personally involved; he did choose his contractor. He would seem to have an action against his contractor and that would be the area for his complaint. But this 3.6% that has been added, I think, is a problem. I would suggest that maybe to cure that issue we structure something where he doesn't have to necessarily, from our standpoint, remove the sidewalk but he does have to remove 3.6% to get down to the 66% that he had before, and then allow the City to work with him to determine how to do that best to not be invasive on his neighbors.

Hank Ryan moved to deny the Variance for 3.6% that has been added, but allow the City and the applicant to resolve what 3.6% is removed; and that might be the sidewalk, but it might be something else, but in the course of it adjusting things so that we have a suitable drainage situation.

Mr. Ryan – We're not just looking at coverage and drainage direction. There seems to be some question that in certain areas you may have significantly changed the rate of flow. There could be some question – when I read it, I have questions on that.

Mr. Hinckley – Can I ask what leads you to that conclusion?

Mr. Ryan – When you take concrete and now you've pointed the water a certain direction, but it's flowing onto gravel and now it's flowing on the concrete, it will come across the concrete at a faster rate than it will the gravel. I think that's simple physics.

Mr. Hinckley – May I just say, though, that the downspout clearly ends – we're talking about 4' on the side of my house. The downspout, as it comes down, pushes the water out. It went, literally, right over the top of the gravel. The downspout was probably a foot into my gravel, so we're talking about this much where the water is flowing over the top. We're not talking about a yard or a large area. There is no change in the lay of the land. In fact, we didn't even have to move the downspouts. We just put concrete.

Mr. Seamans asked for a second for the motion, or a friendly amendment. Mr. Gransberg asked to continue discussion. The motion died for lack of a second.

Mr. Gransberg asked the direction of the natural flow. Mr. Hinckley said it generally flows east to west.

Mr. Gransberg – The biggest contribution, honestly, is going to be from anything coming off the front – around the front here where it connects in the back. But where your existing downspout is coming, when it rains you're going to only catch half of that on your sidewalk anyhow.

Honestly, I just don't see that as being significant. That's just from what I see, and I see you have quite a bit of area over here that's already paved. So if you're going to have water flow coming off of here. The roof flow is already contained. Your drains are already coming off of here. I honestly don't see this being as significant.

Cherry Pineda – Can I just make a comment? They have four downspouts just on that side. So there's four coming all from the roof just on one side.

Mr. Hinckley – Two actually.

Cherry Pineda – No, there's four. I took pictures of them.

Mr. Hinckley – I can provide pictures, too.

Nils Gransberg moved to grant the Variance as recommended by the staff.

Mr. Ryan – This was already over what the City had decided. We need to look not only at is a request reasonable, but not only what to deal with the applicant but also some bit of responsibility to the general citizens of Norman, too. I think this is just a situation where the person at fault isn't before us.

Mr. Gransberg – I think that's the difficult piece about this one, is that you've got a contractor who didn't apply for the permit. We have a homeowner who I, personally, don't see as being at fault for what they've done, except that they chose the contractor. But the contractor is the one who nominally is, by practice – I'm saying this as a person who is a construction professional that procures permits. I require this of all my contractors – procure permits. They failed to procure their permits. Then we also have a neighbor who sees an issue with what has occurred with their neighbor's construction – and has an issue and a grievance. I think parsing out what's the proper way to sort this out is difficult.

Mr. Ryan – If this were merely that the neighbor had an issue with the way the water was flowing and it seemed to be an issue, but otherwise the construction was in compliance with the code, it would be difficult for me since this construction was added and it's not in compliance and the owner should have a cause of action against the person he contracted with, whereas the neighbor won't have a direct cause of action, that the best remedy to me at this time is to deny the additional coverage – the 3.6 – and then let the owner work to get himself in compliance and, hopefully, that will work for better drainage in the neighborhood. Give him a pretty open slate on that. But if it costs him some money, he'll have a way to get ...

Mr. Gransberg – Normally, I would agree with you, except for in this instance. If it was any other part of this property – if it was on the front of the property or the back of the property, I would agree with you. This is my personal opinion, from what it appears to me, and I'm not a registered professional engineer, but from my experience, this appears to me that I would believe this is probably not as significant an issue.

Mr. Ryan – Isn't one of the remedies to take out impervious back here? That's what I'm saying.

Mr. Gransberg – If there's going to be a reduction, it would need to be some other part. But I don't believe that this sidewalk is contributing.

Mr. Ryan – But he is over the amount.

Mr. Gransberg – He is over the amount. I don't think there's any question about it. But if there's going to be an area that's contributing to any additional runoff, it's not this sidewalk. I don't think there's any question about it.

Mr. Ryan – This is the part that got added that we're not seeing on the map. It's not here. I'd give him the option to take out some other places.

Mr. Seamans asked for a second on the motion to allow the variance as presented.

Ms. Messner, City Attorney's office – I just want to remind you as you're discussing this that we're looking at whether this meets the four criteria for a variance, and we shouldn't be into apportioning liability or concerning ourselves with that part of the issue, because that is, in Norman, a private civil issue between the neighbors.

Mr. Ryan – I would suggest that it does not meet all the criteria, because the need for the variance was created by the applicant when they were contracting with the contractor that didn't know the rules. That was their option.

Mr. Gransberg – That's where I think you're wrong.

Mr. Seamans again asked for a second on the motion to allow the 69.6% impervious. There being none, the motion died for lack of a second.

Hank Ryan moved to deny the Variance. Kristen Dikeman seconded the motion.

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

YEAS	Hank Ryan, Kristen Dikeman, Andrew Seamans
NAYS	Nils Gransberg
ABSENT	Curtis McCarty

Ms. Tromble announced that the motion, to deny the Variance, passed by a vote of 3-1.

Mr. Seamans explained that there is a 10-day appeal period. I understand that it's a tough thing for you to go through. But you hired somebody and they treated you poorly and didn't go through the permitting process. I understand that, and it's a tough thing to do. We've had this here before and it's a tough thing. It's obviously a tough decision for us as a Board. I hope you can get your solution down to an allowable amount.

Mr. Hinckley – I believe I have some information that would have been useful if I would have been allowed to speak.

Mr. Seamans stated the Board's decision is final; there is an appeal process.

* * *

Item No. 5, being:

MISCELLANEOUS COMMENTS

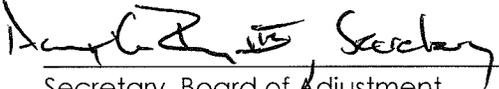
None

Item No. 6, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:03 p.m.

PASSED and ADOPTED this 27th day of July, 2016.


Secretary, Board of Adjustment