

## BOARD OF ADJUSTMENT MINUTES

DECEMBER 12, 2012

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in the Planning Conference Room of the Norman Municipal Building, 201-A West Gray, at 4:30 p.m., December 12, 2012. 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 Tom Sherman called the meeting to order at 4:30 p.m.

\* \* \*

Item No. 2, being:

### ROLL CALL

MEMBERS PRESENT

Andrew Seamans  
Margaret Farmer  
Hank Ryan  
Howard Saxion  
Tom Sherman

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Susan Connors, Director, Planning & Community  
Development  
Wayne Stenis, Planner II  
Roné Tromble, Recording Secretary

\* \* \*

Item No. 3, being:

### APPROVAL OF MINUTES OF THE OCTOBER 24, 2012 REGULAR MEETING.

*Hank Ryan moved to approve the minutes of the October 24, 2012 Regular Meeting as submitted. Howard Saxion seconded the motion.*

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

YEAS

Margaret Farmer, Hank Ryan, Howard  
Saxion, Andrew Seamans, Tom Sherman

NAYS

None

Chairman Sherman announced that the motion to approve the October 24, 2012 Minutes passed by a vote of 5-0.

\* \* \*

Item No. 4, being:

**BOA-1213-06 – HARBOR HOMES, INC. REQUESTS A VARIANCE TO THE ALLOWABLE BUILDING COVERAGE FOR PROPERTY LOCATED AT 1400 LUKE LANE.**

**ITEMS SUBMITTED FOR THE RECORD**

1. Staff Report
2. Location Map
3. Applicant's Statement of Justification
4. Site Plan
5. Floor Plan

**PRESENTATION BY STAFF**

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

Mr. Ryan asked how the 2962 square feet was arrived at. Ben Gray, representing the applicant, explained that you take the veneer footage of the dwelling, the garage, and the two porches to come up with 2962. In other words, the footprint of the house with the porches is what's covered by the roof.

Chairman Sherman commented that coverage and impervious surface are covered by two different codes. Essentially, the addition of the square footage on the patio and the porch is where the excess occurs. If those weren't included in the calculation, they'd be within the coverage area.

**PRESENTATION BY THE APPLICANT**

Ben Gray, representing the applicant -- We've built eleven homes in the neighborhood in the last year or so and the average on those eleven homes is 30.71% coverage. So this is the only one. The highest before this has been 37.11%. Some were as low as 24%. This is a custom house for William and Shawna Trapp. This is the home they selected and the home site.

Mr. Ryan noted that the house is already under construction. Mr. Gray explained that they do have a building permit, but agreed to reduce the coverage if the variance was not approved. Mr. Stenis stated the permit was issued with the written agreement that, if the Board of Adjustment did not approve the coverage, they would change it.

Chairman Sherman commented that the simple solution is simply don't cover all the back patio, because if it doesn't have a roof on it, it doesn't come into the calculation. It's got 130 square feet covering the back patio. You reduce the coverage by 82 feet and you're in compliance. It's not a question of having to do anything with the poured concrete. There are simple ways to fix it without having to do anything to the basic concrete if that was what the Board decided.

Ms. Farmer commented they could do a pergola or something like that.

Mr. Stenis clarified that if it is not attached to the main dwelling, it would be an accessory building.

Mr. Gray added that the patio is important to Mr. and Mrs. Trapp. It does face to the south. I think it's important to take into consideration the percentage. We're one of the primary

builders, if not the primary builder, out there at Cedar Lane. We're talking 1.14%. Most cities don't have an ordinance like this. I know Norman is different, but it does seem very small and I would hope that any other resident could also get a variance of this magnitude. The main thing, I believe, that the city is concerned about is if any neighbors are objecting to a home being larger next to them. It is important to also keep in mind that there are no protests here to this application for a variance. And it's also important to consider that these are not just Harbor Homes – we're talking about William and Shawna Trapp, hard-working, they want a home, they want to live there, they want their covered patio. They don't want to go anywhere else. They chose Norman instead of other areas we have in Oklahoma City and Moore. I would hope that the city would be happy that they chose Norman and try to accommodate something, especially this small.

Mr. Ryan explained that the Board looks at each application on a case-by-case basis. This is what was requested. This is where it needs a variance. What you've built in the past only goes to your reputation as a builder but it doesn't really affect the numbers we have to deal with. If it weren't granted, you'd come right in and put a detached cover over that back patio, is my understanding, and that probably wouldn't look nearly as nice. It would look like it was stuck on. They can obtain the same thing without the variance, but the structure won't be as good and, for anyone that has to look at it, it probably wouldn't look as good.

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

Ms. Farmer commented on the language Wayne always reads: "Before any variance can be granted, four conditions must be met." I know it's small, but it doesn't meet any of those conditions. I need somebody to argue with me more about why we can just overlook those four things. I don't have a closed mind, but when I came on the Commission that was stressed to me and I was told to memorize it. I think this is the first one that we haven't, in some way, found that it wasn't the fault of the owner, or found that it wasn't a special privilege. I do recall a case where someone in the northwest wanted a 3-car garage and there was a park behind them and they were too close to the boundary, I believe. They could have built a separate third garage, and we said that would look dumb. So we're here to partly be flexible.

Chairman Sherman asked if there was any discussion when staff looked at this that would be specific to staff's recommendation? Given that there was not a lot in the basic questions that are asked every time, there wasn't a lot of support for the variance, but staff still recommended to grant it. Was there anything that was talked about specifically that related to that? Mr. Stenis responded that it's so small an amount that it shouldn't negatively affect anyone else.

Chairman Sherman commented one of the reasons that I think we struggle with things like this is that our job is to be fair in granting variances, but it's to be very careful about setting precedents. Any time when you set a precedent then you have a difficult time with turning somebody else down when their request is similar in nature. So we look at that first. While all ordinances in the code are important, I'm much more concerned with impervious surface coverage exceptions than I am necessarily under roof exceptions, because if you take the roofs off both of those patios it's not changing the impervious surface whatsoever. You've still got the concrete for the porch; you've still got the concrete for the patio. All we're doing, in this particular situation, if we don't approve it is creating a dilemma on how you make that covered patio look right and make it properly functional and easily maintained. In my opinion, I'm much more concerned if the request was to exceed the impervious surface than I am necessarily for the coverage area when it's this minor.

Mr. Gray said he thinks it is important that common sense enter into the equation in government or in any kind of rulings. I do believe, also, that it needs to be considered that William and Shawna Trapp – this is what they would like. They will be citizens of Norman. This is the home they want. They will be paying property taxes. I believe it's important to consider also the fact that the intent of the law is to the surrounding neighbors and we had no objections whatsoever from any surrounding neighbors.

Mr. Ryan said he believes the 40% was determined on a common sense basis. We want people to come to Norman. I don't think we need to make special incentives to attract people here. I think they come to Norman because of the quality of the community.

Chairman Sherman commented that the reason a Board of Adjustment exists is we understand that codes and ordinances as written will always have exceptions that have to be taken into consideration, noted and, in our particular case, hopefully we use the right kind of approach to that to make sure they're approved. Nobody is discounting the homeowners. It's just that we have to be careful with our decisions, because when we make a decision, if it is in a position where it sets a precedent, then it makes it difficult for the next one that comes in that wants 5% or 10% exception over whatever the requirement is – it's harder to say no to them. We're trying to make a fair judgment as best possible, and it's much easier to defend when there are very clear reasons as to why you can't comply with what the code says.

Mr. Ryan said he is having the same problem Ms. Farmer has with the parameters for granting a variance.

Mr. Saxion commented that he is more concerned about impervious surface. Stormwater runoff, non-point pollution is the issue that concerns me.

Ms. Farmer asked if it would that be a good time to suggest review of the amount.

Chairman Sherman responded that codes should always be reviewed. None of them are set in stone to the point where they shouldn't be looked at. Some of these are newer than others. Some are older. Some are updated. Some aren't. As things change, as we get more modern construction techniques, and we're getting better at handling runoff and different things, you can look at those and see what is considered best practices, not just here but everywhere. While we may agree that they may need to be looked at, it's not our job to do that. We have to deal with the code as it is set today. I agree that we probably need to look at those from time to time.

*Howard Saxion moved to approve the Variance of 1.14% (82 square foot) as requested by the applicant, allowing 41.14% coverage. Andrew Seamans seconded the motion.*

Mr. Ryan commented that he thinks we want to make sure that not only we understand our role, but the applicants understand our role and when we grant variances they've been highly considered, inspected, and each one stands on its own. While some might say you did this in this other case, each one stands on its own. We might get one later that is for less than this much variance, but its fact situation could be such that we would easily determine that it is not justified. The percentage of variance is one factor, but it is never, in my mind, a determining factor.

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

YEAS  
NAYS

Howard Saxion, Andrew Seamans, Tom Sherman  
Margaret Farmer, Hank Ryan

Chairman Sherman announced that the motion to grant the Variance passed by a vote of 3-2. He informed the applicant of the 10-day appeal period before the Variance is considered final.

\* \* \*

Item No. 5, being:

**BOA-1213-07 – RIEGER, L.L.C. REQUESTS A SPECIAL EXCEPTION TO ALLOW A PORTION OF A BUILDING WHICH IS CLASSIFIED AS A SIGN FOR PROPERTY LOCATED AT 2401 WEST MAIN STREET.**

**ITEMS SUBMITTED FOR THE RECORD**

1. Staff Report and Attachment A
2. Location Map
3. Applicant's Statement of Justification
4. Conceptual Drawing

**PRESENTATION BY STAFF**

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

Mr. Saxion asked if this will be identical to their store in Moore.

**PRESENTATION BY THE APPLICANT**

Sean Rieger, representing the applicant – It is a little different. It is a dryvit sign. If you look at the upper right of the sign here, you can see it really is even with the building line, except for up at the actual cone. The EIFS really is just carried out into the form and it's almost like it is sculpted into the corner. So it's actually constructed as part of the building.

Ms. Farmer asked if it is removable easily. Mr. Rieger said it is not. Staff has been very helpful on this. They have determined that it is a sign, but they have also recommended let's go to the Board and get a special exception for it, so if somebody else comes back with something that's a little different they can say we allowed that but they went and got a special exception is how we allowed it. That's why we're here today.

Mr. Saxion asked whether there will be a pole-mounted sign. Mr. Rieger indicated they haven't determined that yet. There was a pole sign, and we probably will put one up to replace it. The pole is still there but the box is gone. So we'll probably put a box up. But we haven't rented the other spaces yet, so we're waiting to determine how many tenants – a maximum of three tenants could be in the building – it could be two, but a maximum of three.

Mr. Stenis explained that they have two proposed wall signs that are well below the total allowed for the tenant space. There were some dimensions for the cone that were mentioned at one point in our discussion. I think it came to the neighborhood of 20 square feet total, and that's not going to put them over the amount allowed. The sign in Moore actually extends above the roof line.

Chairman Sherman noted the information says Freddy's area 51.15 square feet; signage allowed 149 square feet.

Mr. Stenis explained that the cone could not be considered a wall sign because it extended out beyond 15" from the face of the building. We will count the cone toward the total signage. The provisions of the code say that a business may have a total signage of x square feet – and it may be 300 or 600 square feet, depending on some conditions. Then there are certain limits for types of signs – wall signage is, in this case, 149 square feet. Then there's ground signage that's allowed. You add those types together to get the total for that business. There's wall sign

allowance; there's ground sign allowance; window sign allowance. And this is going to be the building sign allowance.

Chairman Sherman commented that the problem is our code doesn't have an ice cream cone provision, so the special exception is a temporary approval of an ice cream cone.

Mr. Stenis noted that the cone will be on the southwest corner of the building. Mr. Rieger added the cone is toward Chick-fil-A. It will not be on the corner.

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

*Hank Ryan moved to approve the Special Exception to allow the proposed building/sign custard cone. Margaret Farmer seconded the motion.*

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

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

Chairman Sherman announced that the motion to grant the Special Exception passed by a vote of 5-0. He noted the 10-day appeal period before construction can be started.

Item No. 6, being:

**MISCELLANEOUS DISCUSSION**

Mr. Rieger commented that he was recently in a meeting in Tulsa where Mr. Seamans was recognized as the Young Architect of the Year in the State of Oklahoma by the Oklahoma AIA.

\* \* \*

Item No. 7, being:

**ADJOURNMENT**

There being no further business, Chairman Sherman adjourned the meeting at 5:15 p.m.

PASSED and ADOPTED this 27<sup>th</sup> day of February, 2013.

Henry G. Rieger, SECRETARY  
Board of Adjustment