

BOARD OF ADJUSTMENT MINUTES

FEBRUARY 26, 2014

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., February 26, 2014. 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.

* * *

Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Hank Ryan
Todd Marple
Andrew Seamans

MEMBERS ABSENT

Thomas Ballenger
Cynthia Deckard

A quorum was present.

STAFF PRESENT

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

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Item No. 3, being:

APPROVAL OF MINUTES OF THE JANUARY 22, 2014 REGULAR MEETING

Hank Ryan moved to approve the minutes of the January 22, 2014 Regular Meeting as presented. Todd Marple seconded the motion.

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

YEAS

Hank Ryan, Todd Marple, Andrew Seamans

NAYS

None

ABSENT

Thomas Ballenger, Cynthia Deckard

Chairman Seamans announced that the motion to approve the January 22, 2014 Minutes as presented passed by a vote of 3-0.

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Item No. 4, being:

BOA-1314-13 – HUNTINGTON INVESTMENT CORPORATION REQUESTS A SPECIAL EXCEPTION UNDER SECTION 441(7)(D) TO SECTION 431.7(1)(C) TO ALLOW A CURB CUT AND PARKING AREA OFF EAST MAIN STREET FOR PROPERTY LOCATED AT 523 EAST MAIN STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Applicant's Statement of Justification & Attachments
4. Approved Site Plan

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. The applicant has provided signed petitions in support of the request and a Support Map has been prepared.

The question had come up about the process. Originally, the Planning Department advised the applicant that they needed to try to meet the Core Area parking requirements in the rear. They came forth with a site plan that did that. The permit was issued. If they had appealed to the Board of Adjustment at that time, before the building permit was issued, it would have been an appeals process. Since the building permit was issued, staff determined that it was probably best to go for the Special Exception.

PRESENTATION BY THE APPLICANT:

Sean Rieger, 136 Thompson Drive, representing the applicant – I want to hand out a Power Point, if I may. Huntington Investment is actually Mr. Will Mattoon. If you would go with me through this Power Point. First, let me represent a couple of points. We were encouraged to come here, so if there's a question as to process, we were encouraged by email of Mr. O'Leary on December 10. It says I recommend that an application to the Norman Board of Adjustment be submitted. That's why we're here. We were encouraged by staff to come here to appeal the decision that we could not have a curb cut on Main Street.

We're here to request your support and approval to have a curb cut at 523 East Main Street. I'm sure you're familiar with it; I know that these Board members are very good about visiting these properties and seeing what is there and what's around them. What I want to take you through is this Power Point that shows you – so if you will follow with me on page 1 – what we're requesting is to have a curb cut and a parking area for two cars on the front of the property, and the same equal treatment as you see on the rest of the block. If you look beside us, you have the commercial building on the corner that is completely surrounded by pavement, street parking when they back out into the street, public parking actually because it's in the public right-of-way – that parking in front of the commercial next to us. We're simply asking for a curb cut to come onto the front of the property and have a driveway and parking for two cars on the front side. We can do it in several different variations, and we're open to that, but we need the curb cut on Main Street to do it. Staff has taken the position through the central Core Area parking ordinance that we should have no ability to have any curb cut or parking on the front of this property. I want to show you why your position today is so important to give us a variance to look past that. Indeed, that is your role, to look at an ordinance and say, by the black and white reading of the ordinance maybe we shouldn't get it, but in this particular instance we should. This is one of those instances. All we're asking for is equal treatment as you will see up and down Main Street.

If you look at the next page, page 2, this is the City's GIS. We're zoned R-2. You see all of

the yellow is zoning for R-2. So this has always been contemplated to be a duplex property. As you will see, though, our site is one of the narrowest on this city block. You see some of the other ones are wider. Ours is only 50' so we're a narrow site fronting on Main Street, zoned R-2, next to a C-1 property and directly across the street from a CO, Commercial Office property. Across the street from us is the Sarkeys Foundation, which has large parking lots and also has parking right on Main Street out in the right-of-way. So significant parking all around us, all in front of us, on adjacent property and the property across the street. We're simply, again, looking for the same curb cut treatment that every property to the west of us, every property on this block enjoys. If you look at that block, you will see that there's a curb cut on every single lot. Every single lot on this block has a curb cut. In fact, very few of them access back in this alley. So we think it's fairness very much for us to be granted a curb cut. This would be the only lot on this block not given a curb cut if you were to deny this request.

If you look at the next page, on page 3, you see I've highlighted and circled even some brand new driveways. You can see that the concrete right there is fresh poured. That happened just recently, within recent years. They were not denied the continuation of a curb cut. Likely those were gravel driveways that were replaced with pavement. But certainly at that time they could have been told that the ordinance did not allow for a permit to pave those driveways. They were given it. And those driveways are there right in the front of all those properties right next to us. So we're the only ones, right in the middle, that would not be given that. In fact one property, right in the middle there, was given two curb cuts. Those are two driveways for one property on Main Street. They weren't denied. They weren't told to combine their driveway. They weren't told to put one in the back. They were given the permit for two driveway curb cuts on East Main Street on one property.

If you look at page 4, you can see what would happen if you were to deny this application. This is a picture of the property that you're considering today, but this is the property as it had a single family house on it at one time. What you see is a truck and a car parked right in front of it on the grass. It's natural instinct. When I go to a house or somebody's residence and I'm looking to park there, I come to the front of the property. I come to the street address. I come to 523 East Main Street. I don't go to an alley behind. I come to visit that property at the front. That's obviously what these folks did and they parked in the grass. If you were to deny this, I suggest that it is very likely either that continues to happen or, perhaps even more likely, the visitors and the residents park across the street in Sarkeys' parking lot, in the public parking along Main Street, or adjacent next door in the commercial parking that surrounds that store. That's the natural instinct. I think it's highly likely that will happen. Will they go to the alley behind them that's unmarked, has no addresses, that's narrow, that's gravel, has pot holes, that's not lighted? I doubt it. I think they'll park in the front. Let's make it to where they have the right to park in front. Let's make it to where they park on pavement the same as everybody else within the same block. That's what we're asking.

If you look at the next slide, slide 5, that's a picture of the alley behind us. You can see that alley, and I hope you've driven it. It's narrow and has vegetation growing into it. It's for trash. Alleys are for trash. They're for trucks to come and pick up our dumpsters. They're for utilities to come and service our utilities. They're not for patrons to come and be their primary parking area. Can they be an additional parking area? Absolutely. We have no problem with that. We're planning on that. But to be the primary pavement parking area is simply not appropriate.

One of the things I want to point back to – if you'll go back to page 1, if you see this site being narrow, it's zoned for a duplex, it's intended for a duplex, but it's only 50' wide. You have setbacks on each side. So the natural planning of this site is to put one unit in front and one unit in back. It doesn't work very well for 140' deep lot 50' wide to put two units side-by-side in very,

very narrow fashion. It works much better to have one unit up front and one unit in back. So then, if we're going to have one unit up front and one in back, with very narrow side yards, shouldn't we allow the unit up front to have some parking up front so that they're not walking through a narrow side area to the front unit? We should.

Want to go back to page 5, and you look at that alley. I want you to look closely at that alley. Is it really appropriate that that be the primary and only access point for parking and visitation to this site? It's not. Now you heard this ordinance got put in place in 2006. I don't know why it got put in place. I wasn't involved and I'm not sure what the impetus was. But, certainly, we have neighborhoods that work for parking behind them, but they're typically neighborhoods that are planned for that. One that I think you would think about, maybe, is Chardonnay north of The Vineyard up on Porter. There's a neighborhood that was planned with parking all behind the houses. They have large pavement areas. They have garages. They have lighted streets behind the residences. It works. It was planned for that. It was intended for that. This site never was. If you look at page 5 and you look at that alley, that is not an alley that was ever intended to be a primary access point for a duplex. And it shouldn't be to this day.

If you look at page 6, this is what it looks like coming off the western street to this block. If you're driving down the street, somehow a visitor has to figure out that that's where they're supposed to go to find the parking for this property if we were to enforce this rule. It doesn't seem like there is any ability there to put up a sign. There's no real ability there to say this is where our parking is for this property. This is just simply a narrow, gravel, pitted alley.

I want to show you a picture on page 7. This is the front of this block. You've seen the overview. There are the curb cuts. I know of no problems that we've had as far as traffic congestion or backing up or any issues on East Main Street and for decades, for generations we have had parking through curb cuts and driveways on East Main Street from Porter to 12th. It's been there throughout my life. It will always be there. One more parking lot – one more parking space and curb cut is not going to change that into a dangerous situation.

If you look at the next page, page 8, you see all those red dots. All of those red dots are curb cuts. The yellow one is all we're asking. One more curb cut. To be denied the yellow dot, when everyone else has all of those other curb cuts would be entirely unjust. And that's your role. Your role is to look at the application of the ordinance and to see if it's unjust and to see if it is unfair and to see if there should, indeed, be a variance or a special exception.

Let's look at the ordinance that is at play here and really the foundation of why we're in front of you. It's on page 9. This is the front part of it. But it says the Central Core Area – and you will see that is a large area. You see it in blue. It's from Robinson to Imhoff and it's from Berry to 12th. We're within that area. That ordinance basically says any residential property that has an alley behind it can't use the frontage for a curb cut or driveway any more. You have to use the alley. I challenge you to consider that that ordinance ought to have thought about whether the alleys were built for that, whether the alleys were intended for that, whether they were lighted for that, whether there are sidewalks for that, whether there is anything to actually purpose that use. They're not. When you look at this, you can see that it is a large area and so then we ask ourselves, are we asking here for different treatment than other people have been given? That's usually a core point that you have to consider. Are we asking for special consideration that others have not received? I'm going to show you we're not.

If you look at the next pages, on page 10, let's go through just a few of the examples. We could go through many, but I'll try to spare you the time and go through just a few of them. On page 10 you see 315 Acres Street. This is right beside Porter, right behind a commercial property – really very, very similar condition to us. Remember, we are right next to a commercial property that is fully paved around it. This one is right next to a commercial property that is fully paved around it. They have an alley behind them. They have a pretty busy, significant street in

front of them with Acres. Were they forced to put all their parking behind? No. Did they fully use the area behind them for all parking? No. You see the landscape behind there. They actually left a pretty big landscape island. Were they given a curb cut on the front for parking? Absolutely. Are they in the Central Core Area? Yes, they are. But they were given the right to do it.

If we go to the next page, page 11, this is two single family houses side-by-side at 616 and 618 East Apache Street. They have an alley behind them. New house – new construction. Did they put their parking and access from the alley? No. Are they in the Central Core Area? Yes. Were they given the right to put a driveway and a curb cut on the front? Yes, and they did.

Let's look at the next one, page 12. You can see at 617 East Comanche Street before and after. On the upper left is the after – a significantly widened driveway. They have an alley behind them. They're in the Central Core Area. Did they put the parking behind or expand the parking to the rear? No. They were allowed to put it in the front, just as we're asking.

Look at the next one. You can see on page 13 -- 816 East Hughbert Street. You see a large, new construction. You see an alley behind it. Actually, if you look on the lower right, that is an alley that connects to two alleys on either side. They have a right to connect either way. It's a public alley. Did they put access through the back? No. They put all of their parking access and curb cut on the front. We simply ask for equal treatment.

Next one – page 14 – 810 Monnett. A widened curb cut, replaced driveway. They were allowed to do it on the front. They have an alley in the back. Central Core Area. They were not required to use the back.

Last one I will show you – 712 East Lindsey Street. This one is right on a very busy arterial – Lindsey Street. Much, much, much more busy than anything we're suggesting tonight. You can see, on the upper left, that is a large new parking area right next to a residential use. On the lower right, you see what it covered – a large green space. And you see behind it is a large alley – a pretty significant alley behind it. Were they required to put their parking in the back and nothing in front? No. Are they in the Central Core Area? Yes, subject to the same ordinance. We're asking for the same treatment. We're asking for consideration of equal treatment and fairness under the law to be given the right to do what the others around us have done repeatedly. That's all we're asking for.

If you look on the last page, you see the support area. I suggest that rarely do you get to see a map like that. Oftentimes you see them painted in red with protests. Today you see it painted in green, and it's painted in green to the tune of 49.7 percent support, writing to you saying give them this right. Probably it would be much higher, but Sarkeys is a large area within the notice area and, typically, non-profits like that do not want to go onto the record with any statement of any kind, so they did not. To the north side of us is the Norman Public Schools system. Also, you're not going to get the Norman Public School Board to submit a statement of support or rejection. So the vast majority of the rest, though, wrote in to you with support. So we have made our case. We believe that there are special conditions that support this. Narrow lot. A duplex on an R-2 lot that is very deep. A very poor alley condition. A poor alley condition that, in fact, I think Mr. O'Leary wrote to me and said I concur that this is less than ideal – is how he phrased the poor alley condition. The literal interpretation deprives us of rights that others around us all have been given. There are special conditions that don't result from our actions. We don't maintain that alley. We didn't build that alley. And granting us the privilege does not grant us a right that others have not been given. We've met the criteria. We ask for your support.

Mr. Chairman, with your indulgence, I would like Mr. Mattoon to just say a few words on his behalf, and a neighbor, Ms. Coker, to also speak.

Will Mattoon, the applicant – Just a few words. I think the issue is fairness. In every fabric of our society, fairness is an issue. Whether it be social justice. Whether it be in the business world; people want fair fees charged to them and so forth. Whether it's health care for those that are downtrodden; they want health care. To them it's the fairness issue. I submit that's the purpose of this Board is to render fairness in the application of these ordinances. I pay taxes like everybody else. Property taxes. In fact, our taxes will go up considerably because of this construction. I hate to be relegated to a second class citizen and have to go down an alley when everybody else can go to their home from the main entrance on a paved, lighted street. Just think of yourselves having to go home at night and go to your home, drive down an unpaved alley full of chuck holes at times, unlighted, perhaps vegetation growing up to scratch your car, and then inviting guests and telling them how they have to come to your home. We just want fairness. Thank you.

AUDIENCE PARTICIPATION:

Jeanette Coker – I live right down the street. I'm very familiar with all the people that wander around at night. There are just a lot of people that don't have cars that walk. I can't imagine – Well, let me say, first of all, that I'm delighted with what has gone in there. It's a wonderful improvement for the neighborhood, which helps all of us that live in that area. They're two bedrooms, two baths. That's just unheard of. It should attract a renter that would be an asset for our little community. However, when you stop and think about it, if somebody comes and stays and doesn't keep moving in and out, moving in and out, they become a part of the neighborhood. Well, if mama won't come over at night, they're going to move someplace else. I just know that for a fact. I have some rental property. I drove down that alley last night. It is dark. It's narrow. You just feel like who's lurking here? I would just encourage you very strongly to have a place where people can come and visit and park and have access on Main Street. It just doesn't make sense to me, for the good of the neighborhood and us wanting people to move in and stay and we get acquainted. I just encourage you to approve this.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Marple asked whether the examples of curb cuts in the front have been subsequent to the adoption of the ordinance in 2006. Mr. Rieger responded that he doesn't know. He looked through the 2010 GIS aerial photos. The ones he used the concrete appears to be fresh poured, compared to everything else.

Mr. Seamans asked whether we know if the curb cuts were approved, or whether they were done outside of the permitting process. Mr. Rieger did not know the answer. He said he would be shocked if they were done outside the permitting process. One of the examples was Cleveland County Habitat for Humanity and there were a couple of other large projects.

Mr. Ryan commented that, when he drove on Main Street, it appeared that the other curb cuts were not new. There are new driveways, but the curb cuts aren't new. He believes they would have been grandfathered. Mr. Rieger said he agreed that the driveways on their block are probably replaced driveways and not new curb cuts. The other examples he showed are expanded or new curb cuts. Mr. Ryan commented that, absent the information when the curb cut was made, it really doesn't provide him with any justification because he doesn't know that they are new curb cuts. Mr. Rieger responded that the aerial photos that he provided with before and after show that there were no curb cuts there and there was no parking there. The ordinance does not just refer to curb cuts, but also does not allow expanded parking area.

Mr. Ryan indicated he would like to know where in the Core Area new curb cuts have been granted. He asked when the applicant acquired the property. Mr. Mattoon said about two years ago. Mr. Ryan commented that the property should have been acquired and designed with full knowledge of the ordinance. Mr. Mattoon responded that he didn't do any research and just assumed that everybody had access to their front door from the street.

Mr. Stenis said, from looking at the photo, the property at 315 Acres Street is a triplex and needs six parking spaces. The maximum width of a driveway is 30 feet. The width of the lot would have only allowed four parking spaces in the rear. They maximized what they could in the rear. That's why parking in the front was allowed. Mr. Rieger added that this was done after 2006 because the Porter Corridor Study put a hold on permits.

Mr. Ryan asked the height limit for a residential structure in this area. Mr. Stenis indicated it is two stories. Mr. Ryan commented that the layout wouldn't have had to be the front/back orientation; it could have been an up/down layout.

Mr. Ryan commented that the reason for the ordinance was to put a stop to the curb cuts in the front. Mr. Marple said he would rather see parking in front than people parking on the grass.

Mr. Ryan stated that he lives in the Core Area, and has access to his parking through an alley. He has driven down the subject alley and, although it is not as good as he would like it to be, it is drivable and is almost as good as the alley he uses every day. There is ample parking in the back. The argument that everybody else has a curb cut flies in the face of why the ordinance was passed.

Mr. Seamans asked if variances have been granted for any curb cuts in this area. Mr. Stenis said there have not been.

Todd Marple moved to grant the Special Exception as requested. Hank Ryan seconded the motion.

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

YEAS	Hank Ryan, Todd Marple, Andrew Seamans
NAYS	None
ABSENT	Thomas Ballenger, Cynthia Deckard

Chairman Seamans announced that the motion to grant the Special Exception as requested passed by a vote of 3-0.

Chairman Seamans noted that there is a ten-day appeal period before a building permit can be issued.

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Item No. 5, being:

BOA-1314-14 – PATRICK AND SARA KELLAM REQUEST A VARIANCE TO SECTION 421.1(3)(A) TO ALLOW CONSTRUCTION OF A SWIMMING POOL AND RETENTION OF THE EXISTING FENCE, WHICH IS TALLER THAN THE MAXIMUM ALLOWED WITHIN THE PLATTED FRONT YARD (DANFIELD DRIVE) FOR PROPERTY LOCATED AT 1920 DANFIELD DRIVE, WHICH FRONTS ON BROOKHAVEN BOULEVARD.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Applicant's Statement of Justification
4. Plat
5. Aerial Photo
6. Google Earth photo
7. Proposed Site Plan

PRESENTATION BY STAFF:

Ms. Connors 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 the amount of the variance would be less if this were a normal side yard setback, rather than a corner lot. Ms. Connors explained that the front yard setback was established on the plat. We have allowed them to choose which way to orient the house over the years, so the front door doesn't have to be in the front yard. Mr. Stenis added that the house meets the platted setbacks.

PRESENTATION BY THE APPLICANT:

Patrick Kellam, the applicant – We have gone over the staff report and it says what I would want to say better than I could say it. I fully agree with everything. On the side yard that we could actually put a pool in, there are utilities that run under that area and there are two mature trees.

AUDIENCE PARTICIPATION: None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Ryan commented that corner lots are always a problem. Because this is a pool and not a structure, he did not have a problem with it.

Hank Ryan moved to grant the Variances as requested. Todd Marple seconded the motion.

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

YEAS	Hank Ryan, Todd Marple, Andrew Seamans
NAYS	None
ABSENT	Thomas Ballenger, Cynthia Deckard

Chairman Seamans announced that the motion to grant the Variance passed by a vote of 3-0.

Chairman Seamans noted that there is a ten-day appeal period before a building permit can be issued.

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Item No. 6, being:

MISCELLANEOUS DISCUSSION

Ms. Connors reviewed proposed Zoning Code amendments to Section 441 which will impact the Board of Adjustment and will be reviewed by the Planning Commission at their March 13 meeting.

Item No. 7, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:22 p.m.

PASSED and ADOPTED this 26TH day of MARCH 26, 2014.



Board of Adjustment