

## BOARD OF ADJUSTMENT MINUTES

JULY 27, 2016

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Rooms D and C of the Norman Municipal Building A, 201-A West Gray, at 4:30 p.m., July 27, 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](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

Hank Ryan  
Curtis McCarty  
Andrew Seamans

MEMBERS ABSENT

Nils Gransberg  
Kristen Dikeman

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  
David Woods, Oil & Gas Inspector

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Item No. 3, being:

### APPROVAL OF MINUTES OF THE JUNE 22, 2016 REGULAR MEETING

*Hank Ryan moved to approve the minutes of the June 22, 2016 Regular Meeting as presented.  
Curtis McCarty seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion to approve the June 22, 2016 Minutes as presented passed by a vote of 3-0.

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Ms. Connors commented that staff had anticipated four Board members being present. Since there are only three present, she announced to the applicants that it takes an affirmative vote from all three Board members to pass a motion.

Mr. Seamans reviewed the process for each item: staff report, Board questions, applicant's presentation, Board questions, audience comments, Board discussion and deliberation.

Item No. 4, being:

**BOA-1617-1 – ILS5, L.L.C., BY HOSPITALITY MANAGEMENT, L.L.C., REQUESTS A VARIANCE TO THE TWENTY-FIVE (25) FOOT ABOVE GRADE MAXIMUM HEIGHT FOR WALL SIGNS FOR BEST WESTERN PLUS NORMAN LOCATED AT 3100 MEDICAL PARK PLACE.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff supports the variance as requested. No protests were filed for this application.

Mr. Ryan asked if there will be a total of four signs, because it says two signs on each of the two elevations. Mr. Stenis agreed, and added that all four of them will be above the 25'.

**PRESENTATION BY THE APPLICANT:**

Steve Martens, President of Hospitality Management, 435 S. Broadway, Wichita, Kansas – Mr. Stenis has done an excellent job in explaining the situation. If I heard correctly, east and south are the sides; I thought I heard a north, but it is the east and south, just so there wasn't any confusion. In addition to myself here today, Mr. Wayne Winkelbauer with Conco Construction – Conco is our general contractor, and Mr. Bruce Edwards, with Dalmarc Signs – Mr. Edwards is from the Norman area and is our subcontractor on the signage. We felt we were kind of caught in a double whammy in the sense that, by the covenants of the area that we're in, we could not do a pole sign. We are very concerned, as we look at other hotel properties. We shared those with Mr. Stenis; he's referenced the signage that they use. Virtually every one we saw had signage on the building above the 25', essentially on a 4-story building at the same location in height that we were talking about. We have worked to make sure that all of the other components of our sign fit your existing ordinance; so the only issue here is that ability to take it from a 25' maximum height up to 42 feet. So Wayne, Bruce, or myself – if any of you gentlemen have questions, we'd be happy to answer those. I think Wayne really covered the points.

Mr. McCarty asked if the top of the sign would be approximately 42'. Mr. Martens responded that 42' would be the highest point of the sign and then it follows below that.

**AUDIENCE PARTICIPATION:**

None

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

Mr. Ryan suggested that the Board consider making no pole sign a condition. Ms. Connors noted that they are not allowed a pole sign because of the design guidelines of the PUD. Mr. Ryan commented that they could change the design guidelines.

Mr. Martens stated that they have no intention of doing a pole sign, so would not object to the condition.

*Hank Ryan moved to grant the variance of 17' as requested, and add a condition that, as set out in the PUD, there will be no pole sign. Curtis McCarty seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to grant the variance as requested with a condition that there be no pole sign, passed by a vote of 3-0.

Mr. Seamans noted that there is a 10-day appeal period.

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Item No. 5, being:

**BOA-1617-2 – JOHNSON & ASSOCIATES, INC., ON BEHALF OF KENDRA & RUSSELL STREETER, REQUEST A VARIANCE TO THE 7,000 SQUARE FOOT MINIMUM LOT SIZE REQUIREMENT FOR TWO DWELLING UNITS (HOUSE AND GARAGE APARTMENT) ON PROPERTY CURRENTLY ZONED R-2, TWO-FAMILY DWELLING DISTRICT, AND LOCATED AT 808 ELM AVENUE.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff does not support the variance because it does not meet the criteria. Protests were filed for this application.

Mr. Ryan said there has been concern about flooding in the area, but the application does not ask for a variance to the impervious area requirement. He asked the current impervious area percentage. Mr. Stenis did not have that information. Ms. Connors indicated the applicant can address that question.

Mr. McCarty asked if the existing properties that have two dwellings on lots under 7,000 square feet were granted variances. Mr. Stenis said they were not; they were built prior to the code change in 1978. The Zoning Ordinance does say the Board shall under no circumstances "grant any variance by reason of the existence of non-conforming uses in the district".

**PRESENTATION BY THE APPLICANT:**

Tim Johnson, Johnson & Associates – This is Mark Zitzow, at my office, and the owner, Kendra Streeter, is also here with us today. As Wayne did such a good job outlining the history of the property, I'd like to follow up on the history that Wayne discussed, the platting in the '20s, the zoning, the U-2 zoning. It's always been the intent of this area to be of a higher density than single-family detached. Given its location, and I know as Wayne described, you can't use other examples of we want to be like the other guys that don't meet code. That's not really what we're asking for. I wanted you to focus on this initially. This is our subject site. We have churches along Elm Street in yellow, sorority and fraternity houses are in blue, which there's a plethora of in the neighborhood, and then the properties that are being used as two-family properties, and some of them by right, are in green. Our request is not out of line with regard to the densities of uses that are there. Obviously, sorority and fraternity houses with multiple units and multiple cars. Churches obviously having multiple cars on several days during the week. It's a busy area and it's more than just a single-family detached neighborhood. It fronts, on the east, adjacent to a major parking lot for the University. I don't know of very many plats that I've laid out that front a house onto a major parking lot. So it has its issues. Part of what we're presenting here today is the fact that the issues are a non-commodity. The owners were well aware of the house being across the street from the parking lot when they bought it. They bought this house genuinely because they appreciate the architecture of the person that designed the house; they liked the house from that aspect. The garage doesn't really go with the house; it was added many, many years later and it's in a dilapidated condition. The house has been poorly maintained for a number of years, and the intent of the owners is to clean it up and maintain it well and, at some point in time, perhaps retire there when their kids grow up.

So as part of the work that's being done on the house, we're proposing to take down the

detached garage and propose a new garage in the back. The garage would provide for the apartment over the garage, so we're not talking about anything that is beyond the scope from height perspective or meeting the setback criteria. We're adding parking to the back, and I show a little bit better later. Currently with the garage the way it is, anybody that parks in that driveway – the previous landlord had students there and, as they parked in there, you had to back out onto Elm Street. Elm Street is a busy street and I tried it the other day; it's not very safe backing up, especially when there's a car in the church driveway -- you're blind turning the other way. So what we propose in this layout is a turn-around area in the rear that would allow for tenants or people living there to actually back around and pull out straight onto Elm Street, creating a safer ingress and egress to the property.

What we're talking about is 285 square feet; that's 17 by 17. It's not a very big area. It's ten pieces of plywood laid side-by-side. Had they had the additional 285', we wouldn't be here. If we just want to build a garage, we wouldn't have to come. We can build a detached garage without a variance. So we're talking about 285 square feet. As I mentioned was intended under the R-2 zoning that exists to have multiple dwelling units per lot – duplexes, garage apartments – permitted by right if we had 285 additional square feet. I think when the zoning classification was changed from 6,500, which would have permitted us to do this in 1978, to 7,000 square feet, that criteria didn't apply just to this block; it applied citywide. There was an intent to apply that citywide to create a bigger lot for duplex lots. In this particular case, this is a little bit of an oddity from a platting standpoint. As Wayne pointed out, its width and dimensions are slightly different than where you see other parts of town. In 1920, they weren't thinking about the lot size needing to be 7,000 square feet. So special circumstances do not come as a result of the land owners, as mentioned. They bought the house to make improvements to the house, to make it a better place for the neighborhood. They have taken down the ivy in the front, which was an area that the rodents and cockroaches had lived, and the house was just infested. There were areas of the house that they pulled out six inches of carcasses of mice and rodents. It was in deplorable condition. They spent a fortune getting it cleaned up and getting it ready to put it on the market to rent. It is in a great location; it's a walkable area to the campus and to other uses around there.

The granting of this variance will not confer special privileges to the applicant. It's an area zoned R-2, as we discussed. The granting of this variance really doesn't change the fact that it's still R-2 and could allow duplexes if the lots were just slightly bigger. Like I said, that change in ordinance applied citywide; it didn't apply just to this 1920s plat. Then on to the last part of this, as I mentioned, the areas around us are developed and being utilized in a denser fashion. Many of the single-family homes that Wayne identified are being used by multiple tenants. There's a lot of gravel parking going on in that area. There are a lot of back doors that are being used as a second doorway to the houses. Just because they didn't come and get a variance and ask for permission doesn't mean that they're not being used that way. So what we're trying to do is the right thing. We're here to apply for the variance, do it correctly and pull the building permit and do something that's a positive to the area.

We'll talk about the percent coverage that you brought up. One of the advantages of the units, obviously, as I mentioned, was for retired faculty, alumni, aging parents, young professionals and students. As mentioned, the Streeters are interested in possibly living there in the future after their kids are grown up and out of the house. It's an affordable area to live and very close to the campus. I talked about the backing out, so this is the view as there's parking in the church area and they oftentimes park in the drive. The drive is a shared drive. We have about an 8.5' wide driveway on our side. As you pull back toward the back of the garage, you have no other choice but to back out today. If you take out the garage and do what's proposed, they have the ability to turn around and make an exit out. This is the plan. Actually,

there's additional shading that's not shown here, but Wayne pointed out the other day when we met that we needed to show this impervious area, and I agreed, so this would be the backing area so they could pull out. We counted all that in the impervious area calculations and still fall under the 65%. The current lot coverage is 35%. The proposed lot coverage is 51%. We're 14% below the maximum allowable. We're adding a two-car garage; the current garage is a single car garage.

I know there's concern about the flooding. This is what you see in the area. The increase of 1,000 square feet of pervious area is not going to impact this condition. This is a condition that's a result of inadequate storm sewer in the area. I know the City is working on this constantly, trying to improve the situation. Fortunately, most of these houses are built high enough above the street that flooding is not an issue of the home. We would agree to provide detention for the additional 1,000 square feet, if that would make a difference. We've worked in this area before, and it's just a difficult area because there's no outfall. You're forced to use the streets as your outfall. There's no storm sewer.

I mentioned about the home. The garage is not historic. The house is not on the Historic Register, but it's historic in nature, built in the late 20s, specifically designed by a well-known architect, has a certain California style to it – Mission Style. We have a couple pictures of the garage. It's actually difficult to salvage it; it's in really poor shape. We are providing sight-proof screening around the property; it's permitted by code. We're willing to put a provision that there won't be any windows on the west side to look down into the yards next to us. The proposed garage will not be taller than the existing house. Architectural features of the house can be incorporated in the garage, and we would make these a condition of the approval if the Board sees fit. A picture of the house. Picture of the garage next to the house – very close, about five feet away. So this is kind of the condition of the garage; it's weathered, dry-rotted. It has not been maintained very well. And, of course, single car garage. Just want to, for those of you who didn't come by to look, give you an imagery of what we're asking for and what the conditions are of the place. These improvements will make a great deal of difference on the street as you drive by. The garage goes away. The new garage will be in the rear. Cars will not be extending out into the street; they'll be in the back of the house. There are just a lot of positives to allowing this to occur. Just the fact that the Streeters bought the house and are maintaining it is a positive for the neighborhood. With that, I'd be happy to answer any questions.

#### **AUDIENCE PARTICIPATION:**

Ron Hulin, 830 Elm Avenue – My wife and I have been here since 1988. We're now one of the, I think, three owner-occupied houses on Elm in the 800 block. I would like to know how many people do you plan to house in the garage apartment, and how many in the house? How many people do they rent it to? My problem is parking there. Because right now there are, I think, three people living there, but there are usually six cars that are parked all in front of the house, in the driveway, and in St. Anselm's. If you add two more to that, you need about ten parking places. I would like to know how many parking places you have in the back with the driveway unobstructed. If you have to use the driveway for parking and park six cars in the back, how are they going to get in and out of there? We can't seem to get this solved now. I've called Code Enforcement several times about the parking in front of that house, clogging up that entire area, and nothing happens. I have pictures of the cars there. As I came to the meeting tonight there were seven cars there in front of the house and in the driveway and at St. Anselm's, and it's just congested and not workable.

Blaine Nice, 100 N. Broadway, Oklahoma City, representing Charlie Rayl – He has the house just

to the west that backs up to this property. Mr. Stenis has covered this pretty well. I don't want to belabor things and I think somebody else wants to speak. I just don't think the applicants met the four requirements, specifically the literal interpretation of the provisions of the ordinance would deprive the applicant of the rights enjoyed by others in the same district. First of all, as Mr. Stenis pointed out, the applicants – Mr. Streeter is an attorney – a title attorney. I know they did their due diligence. They were aware of this situation. While that's not necessarily reason to deny a variance, I think that they knew going in that they didn't have sufficient square footage to meet the code. One of the things Mr. Johnson brought up was the intent of the ordinance. The intent was this is multi-family. I don't question that, but at the same time, in 1978 the Council changed the requirement from 6,500 square feet to 7,000. Mr. Johnson says, well, that's in effect citywide. Well, we don't have any backup materials from the Council what their intent was, but the bottom line was their intent was to increase the square footage and if this Board granted that variance that would be nullifying the zoning ordinance, and I think there's maybe an authority out there who says that's not the function of the Board of Adjustment – to nullify the intent of the zoning ordinance. I'm afraid that's what will happen here if you grant this variance. There were seven properties under 7,000 square feet. I want to be clear – yes, there's a duplex that's been there. The other garage apartment abuts this property – it's just to the west and the south. But that's a single level. He's indicated that they would not have any windows in the back, but they intend in this lot – I don't know if you've been out there – I mean, this is going to consume this lot. Certainly, while they may be under the legal requirements for the lot, it's going to be a drastic change and it is going to impact – I realize they don't have to do a drainage study, and I don't disagree that this surface is going to somehow be a big impact on that flooding, but it certainly will impact the neighbors to the west and to the south. I went out there this morning and that property – it's sloped to the west and the south. Ms. Phyllis Murray is here and she's going to talk to you, and she's lived there a long time and can talk about this flooding issue. But I do think that when the Council changed the ordinance from 6,500 to 7,000 square feet, it was their intent that you have 7,000 square feet before you have more than one living unit on there. I think that, if the Board grants this variance, that would nullify the intent of the Council. Like I said, they bought this knowing the limitations, certainly. This doesn't deprive them of the uses – they still get to use the house as a single-family residence, and that's what it was when they bought it. I do think that, certainly, they've made some improvements and you surely have seen that house before and it looks a lot better and they've done some things. I just want the applicant to have met the four requirements, and I would ask, on behalf of Mr. Rayl, who lives as close to this as anybody, that you follow the staff's recommendation and deny this variance. Mr. Rayl is here if you have any questions of him. I know I'm here to speak on his behalf, but if there's any specific questions about the property, and I think Phyllis Murray wanted to get up and visit with you.

Phyllis Murray, 801 College Avenue – I'm one of those rare people in Norman who lives in a home that was built in 1920 and our family still owns it and I do live there. The house was built before I was born but in the 30s is when I came to be and I've been in that home off and on all my life and I've watched that neighborhood change a great deal. The water is my issue totally. I know that these people are good people. I know that they have good intentions. The house does look better than it did. I know it has had problems. But the water is a huge issue. The water backs up from Lindsey Street all the way to Parsons which is a complete block. They have to close the streets on Lindsey and Elm and Parsons every time it rains. This week it rained. It wasn't ten minutes after it started that the City was out there and they had closed the street. When I was a child, all those houses in the entire square block had no fences. They had what might call a retention spot. Everybody had a fish pond in their back yard. I could go from our house,

which is 801 up here on the corner all the way down to the grocery store in everybody's back yard and I looked at the fish all the way down there. We don't have those anymore. What we've got is water and it is increasing every time somebody puts in another large bit of concrete or gravel. It doesn't make any difference. Some of the houses have had, through the 77 years that I've been there – they've had either a small addition or maybe a large addition to the houses, and most of those have been really on Elm Street rather than on College Street. We've actually lost some garages on College Street. There really aren't any what I'd call actually a garage apartment. There are some houses there that have added onto their houses. There is one house that has probably even more than a double lot, and they have a little house on that, and that's Mr. Hulin's house who just spoke earlier. He has a little house, but it's not rented. There's no driveway to it. It's over in his side yard and that was one of the presidents of the University's house. So we do have some historic elements in our neighborhood. The house that we're speaking of today is a historic house and it's very beloved and we really want to keep it, just like the Streeters are doing. They're adding nice things to the house and cleaning it up. But I do have a real problem with the water. It's just getting worse and worse. If today you cannot deal with this, if you could just put a moratorium on 'til the City decides what they're going to do with the storm water in that area, it would be really appreciated, because it is truly a problem. I'd be happy to answer any questions from you all. I can tell you all about that neighborhood from a long time ago. But if there are any questions, I'd be happy to answer them. Otherwise, I do appreciate your time and I thank you for your consideration.

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

Mr. Ryan – It's not a request for a change the impervious area; it's a request for a variance for the requirement for a detached garage apartment. To me, the most valid concern is density and the parking issues. I think people need to realize that, as proposed, it won't affect the flooding issue. They can do a garage. If you just did a garage that's detached, what's the maximum height?

Ms. Connors – It can't be higher than the house.

Mr. Ryan – If they did an addition to the house, it could be 30', couldn't it?

Ms. Connors – Yes.

Mr. Ryan – I think the house next door is at that level. Then the next lot down I think goes 8 – fraternity or sorority house at one time – it's for sale – it's vacant.

Mr. McCarty – It's owned by a church.

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

Ms. Tromble announced that the motion, to deny the variance, failed by a vote of 2-1.



Ms. Messner – That motion failed, so you still haven't made a decision. You have to have three votes to deny.

Mr. Johnson – Mr. Chairman, can we request a continuance?

Mr. Seamans – Is that allowable?

Ms. Messner – Absolutely. If the applicant requests it and you all are comfortable with that.

*Hank Ryan moved to postpone this item to the August meeting. Curtis McCarty seconded the motion.*

Mr. Nice – For the record, I'd just like to make an objection to postpone. Discussion has already been had. Postponement should be made at the beginning of the meeting when they were advised you only had three people and had to have a unanimous decision. So I'd just like that to be on the record.

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to postpone this item to the August meeting, passed by a vote of 3-0.

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The meeting recessed briefly to allow people to leave the room.

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Item No. 6, being:

**BOA-1617-3 – AARON PRICE AND SARAH BAILEY-PRICE REQUEST A VARIANCE TO THE DEFINITION OF MOBILE HOME, TYPE 2 IN ORDER TO ALLOW A TEMPORARY METAL-SIDED MOBILE HOME ON PROPERTY CURRENTLY ZONED A-2, RURAL AGRICULTURAL DISTRICT, AND LOCATED AT 4351 72<sup>ND</sup> AVENUE S.E.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff supports the request for a variance for a period not to exceed 5 years or when a certificate of occupancy is issued for a permanent dwelling, whichever comes first. Protests were filed for this application.

Mr. Seamans asked why the siding material is an issue. Mr. Stenis responded that there were limited resources to research that question, but there was a person who said that they believed at the time that change was made to the ordinance that the citizens of the community made it an aesthetic issue.

**PRESENTATION BY THE APPLICANT:**

The applicant was not present.

**AUDIENCE PARTICIPATION:**

Ron Clayton, 4495 72<sup>nd</sup> Avenue S.E. – I live on the south side of Blackfoot Drive. Permit me to distribute these photographs to you. You see what we're putting up with. We've been putting up with stuff like these abandoned mobile homes for years. We're finally having to take a stand on this. Like the duplex that was constructed out of two mobile homes put together in a duplex. I don't think that meets code, but I'm not an expert on that, but it sure was odd. Does that meet code? The duplex over there?

Mr. Stenis – No. We would have required the kitchen to be removed.

Mr. Clayton – Okay. The electrician that did the work said that there are two kitchens. Anyway, we've been real tolerant so far. I'm going to take a stand because I'm 70 and we're not sure how long we're going to be living there. We're going to have to sell that property, if things go on like this, and our mother-in-law's property is also nearby – she's 90-something. She's not going to live forever. We anticipate selling these properties. That's what's coming up. That trailer – it affects the resale value – the property value of both properties. We moved from east Norman where there were no ordinances – no codes. They'd just drag in trailers and they would degenerate – they'd add on porches and makeshift additions and they'd get property values – terrible. That's what's happening where we're living. Codes are not being enforced, it doesn't appear. It's inevitably going to affect our property values for the day that we sell our properties. By the way, that trailer is not – it's not Type 2. Did they tell you the dimensions of that trailer?

Mr. Seamans – No, we do not have those.

Mr. Clayton – It's 16' wide and at least 72' long, which would be 1,152 square feet. That puts it in the category of Type 1, and doesn't that necessitate pouring a concrete footing? A concrete

foundation? Anyway, these ordinances and codes are not being met and they're going to affect our resale value of our property. It says it's for five years – they want to have that home there for at least five years. I'm not sure we're going to be staying there five years and our properties may very well go onto the market before then and our property value is going to go down because of that and because of this other – the photographs, they're nearby. That one trailer that is a debris pile is 200' east of that trailer, and there's another trailer that's abandoned immediately east of our property. It looks like far east Norman. It's getting to look really bad. I think any prospective buyer would tell me that – it looks bad out here. I'll let my wife represent another party that's there – the other property, if you want to call on her now. It's up to you, I guess.

Janet Clayton, 7201 Blackfoot Drive – I'm representing myself and my sister, Betty Cooper. We are joint owners of the adjoining property immediately to the south. In 1999, our family purchased our five-acre tract on Blackfoot Drive. After removing a dilapidated, run-down trailer house, and tearing down a large, unsightly, sheet-metal shed – a real eyesore – we built a lovely ranch style home for our mother. We obeyed every building code that was required by the City. Other construction projects and improvements to that property since then have met every City code. Never once did we try to avoid complying with City codes. I can't help but wonder why on earth a permit was issued that would allow a mobile home that does not meet the zoning ordinance codes in Norman city limits to be moved in. To meet this code, this mobile home, among other criteria, should be placed on a permanent foundation. It was not. It should have wood, stucco, brick, stone, or lapped vinyl siding. It does not; it has dented metal siding. The pitched roof should be of shingle or tile roofing. It is not. Immediately after this mobile home was moved onto the property, we voiced our concern about the situation to the Planning Department. We were told that improvements were going to be made to the mobile home that would meet the codes before occupancy was permitted. By the way, that was the code for a Type 2 mobile home. This is a Type 1 mobile home. Now that the home is already occupied, I assume without a permit being issued, the owners do not want to make those improvements. Instead, they are seeking a five year variance while they construct their home. A five year variance. Really? Even Barry Switzer's daughter constructed a mansion in less time than that. And suppose the owners decide not to build a home. Now what do we have? The very thing that the City of Norman zoning codes are designed to prevent. I won't go into what that does to the value of nearby property, because we all know full well what it does. But I ask you to put yourself in my shoes. How would you feel if your life savings and decades of hard work were invested in property that is an asset to the community – property value that would be protected if the City would enforce its codes, but decides not to? How would you feel? All I'm asking the City of Norman to do is to please improve the community – enforce your codes.

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

Mr. McCarty – It seems like we had maybe an application issue. Is this a Type 2 or a Type 1?

Mr. Stenis – I believe it was permitted as a Type 2.

Mr. McCarty – Is that something that's verified by a title or some type of registration on the mobile home or something? Do we know?

Mr. Stenis – The basic difference between a Type 1 and Type 2 is the width – 14' wide or wider – 950 square feet of occupiable space would be Type 1, which is the larger one. Type 2 is the smaller one. It's less than 14' wide, but has at least 320 square feet of occupiable space. Both

of them have to be manufactured after June 15, 1976 to certain standards, have siding or skirting, foundation, anchoring, utilities, wheels and axels removed, and the same siding materials list applies to both types.

Mr. Seamans – On the application it says Type 2.

Ms. Connors – Yes. In their application it says Type 2.

Mr. McCarty – That's what I was looking at. I heard two people say they think it's a Type 1.

Ms. Connors – I know we have a building permit.

Mr. McCarty – But the applicant is not here, right?

Ms. Connors – That's correct.

Ms. Messner – Can I interrupt for just a minute? I read the Zoning Code after the last vote, and I think it would be more in accordance with our code if we make the motions in the affirmative, rather than in the negative. I think that would be a little bit easier for everybody.

*Hank Ryan moved to grant the variance as requested. Curtis McCarty seconded the motion.*

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

YEAS	None
NAYS	Hank Ryan, Curtis McCarty, Andrew Seamans
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to grant the variance as requested, failed by a vote of 0-3.

\* \* \*

Item No. 7, being:

**BOA-1617-5 – CRC PROPERTIES, L.L.C. REQUESTS A VARIANCE OF 10' TO THE REQUIRED 20' REAR YARD SETBACK FOR A NEW GARAGE WITH A GARAGE APARTMENT ON PROPERTY CURRENTLY ZONED R-3, MULTI-FAMILY DWELLING DISTRICT, AND LOCATED AT 419 WEST SYMMES STREET.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report with Photo
2. Location Map
3. Application with Attachments

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff supports the requested variance of 10' to the required 20' rear yard setback for a garage apartment building. No protests were filed for this application.

Mr. Ryan asked, had they not demolished the previous garage apartment, could they have renovated and expanded it and maintained that previous setback? Mr. Stenis stated they could not have expanded it.

**PRESENTATION BY THE APPLICANT:**

Mike Pierce, 4104 Hidden Lake Circle, Moore – He did a great job explaining. I've tried flipping the plan. Tried everything. We've discussed at length what we could do. One of the problems it caused was I was touching the other house, which brings in a firewall situation. Then I'd have to go in and redo because I was less than 5' no matter how I flipped the plan or moved it. And it's required to have a garage. This was the only alternative, like he said, due to the fact the house was kind of misplaced and this was the only way I could work it in.

**AUDIENCE PARTICIPATION:**

None

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

*Curtis McCarty moved to approve the Variance as requested. Hank Ryan seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to grant the Variance as requested, passed by a vote of 3-0.

Mr. Seamans announced there is a ten-day appeal period before the Board's decision is final.

\* \* \*

Item No. 8, being:

**BOA-1617-4 – SOUTHCREEK PETROLEUM COMPANY, L.L.C. REQUESTS A VARIANCE FROM THE REQUIREMENT TO CARRY AN UMBRELLA INSURANCE POLICY OF NOT LESS THAN TWO MILLION DOLLARS (\$2,000,000.00), OVER AND ABOVE ADDITIONAL INSURANCE REQUIREMENTS.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Oil & Gas Ordinance
3. Location Maps
4. Application with Attachments

**PRESENTATION BY STAFF:**

Ms. Connors reviewed the staff report, a copy of which is filed with the minutes. Staff does not support this request for a variance from the requirement to carry an umbrella insurance policy of not less than two million dollars (\$2,000,000.00), over and above additional insurance requirements. Protests were filed for this application.

Mr. McCarty – Why did Council think they needed to raise it from a million, that had been in place for a long time, to two million?

Ms. Connors – There was quite a bit of discussion of public safety. Most of the changes to the oil and gas ordinance were regarding public safety. Fencing and insuring that if there was any damage to surrounding land, this would cover the clean up.

Ms. Messner – We surveyed other cities in Oklahoma and Texas for what their insurance requirements are because ours had been in place since the 80s, and this umbrella insurance policy requirement is fairly consistent among those other cities that we looked at. Some were more; some were less.

Mr. McCarty – We currently have 36 active wells in Norman. Is that what you said?

Ms. Connors – We have 109 active wells. What I said, and what I've written down, is 30 of the 36 current well operators in Norman have complied with the insurance.

Mr. Woods – There's a difference between operators. A lot of them are drilling contractors. The operators that typically drill wells have these umbrella policies. Then you have what I call the Mom and Pop operations that just have a few wells; they don't drill wells. They only buy wells and little stripper wells, is mainly what we have in the city limits. Southcreek happens to fall into the category of one of the stripper wells.

Mr. McCarty – You said "typical". Does that mean that some have it and some don't?

Mr. Woods – There's been a lot of opposition on this. A lot of the operators have obtained the insurance and are kind of waiting on the outcome of this.

Ms. Connors – The applicant is here.

Mr. McCarty – Is the City just now starting to enforce something that they put into effect a year ago and that's why we have this in front of us?

Ms. Messner – The ordinance went into effect last year and the insurance policies are typically good for a term of one year. So we let the operators continue to operate under their current insurance, and when it came time to renew, so that's why the renewal times are all different. It's operator to operator. At that time when their policy is changed it's time to up your insurance if necessary.

**PRESENTATION BY THE APPLICANT:**

Chelle Massey, President of Southcreek, 22519 MacArthur Avenue, Blanchard – Southcreek has been in business for 24 years. My grandparents started the company in '92. We operate 30 wells. By that standard, we are very small owning only 30 wells, and only 3 of those are located in Norman. They were drilled in '69, '84, and '86. So these wells have all been here for more than 30 years and never in the life of these wells, as far as we know, has any insurance claim ever been made, certainly not in the 24 years we've been operating.

We currently carry insurance in accordance with Oklahoma City ordinance and over and above that which is required by the City of Newcastle, which we also have wells within the City of Newcastle. Unfortunately, unlike other forms of insurance, oil leases cannot be insured separately; you have to insure them the same across the board. What you cover for one has to be replicated for all of them, which caused this umbrella policy to be uneconomical and unreasonable for us, as it forces a change in 27 wells that it's not required for, simply because we operate these three.

Not only would it double our premiums, but it would also require a change in insurance companies from the carrier we've used for 24 years, which is another unreasonable change for us for only 3 wells. My partner, Gus Lovelace, and I are the only employees of the business; that's how small we are. He's in the field; I'm in the office. We don't even carry workers' comp, because we're not required to by the State and, if we did, the premiums for that would be astronomical, since we're the owners.

As far as the fencing requirements go, we are more than happy to comply with the fencing requirements. But the insurance requirements seem to effectively ban us from operating within Norman city limits, which, as was stated, is not allowed by Title 52, which is also known as Senate Bill 809. It states that – and I'm paraphrasing – municipalities may enact reasonable ordinances concerning road use, noise, odors, setbacks, and fencing requirements for oil and gas wellsite locations but may not effectively ban any oil and gas operations. It also goes on to say while other regulations of oil and gas operations are subject to the exclusive jurisdiction of the Corporation Commission. By that statement, it does not provide such jurisdiction of insurance regulations to municipalities. Like I said, we are more than happy to comply with fencing, with signage, with anything. We can't afford to have a two million dollar umbrella because 3 of our 30 wells are in the Norman city limits.

Mr. Seamans – You made a comment about the Corporation Commission – is the City doing something that's illegal on the Corporation Commission side of it?

Ms. Massey – According to the State Statute – Title 52, Section 137.1 – they seem to be. I spoke with my lawyer regarding it, and he interpreted it the same way I did – that, because it specifically states road use, noise, odors, setbacks and fencing requirements, but does not specifically state insurance requirements – insurance requirements are in the jurisdiction of the Corporation Commission only.

Mr. Seamans – How does the City see this?

Ms. Messner – Senate Bill 809 was adopted by the Legislature last session. Our ordinance was approved prior to approval of 809. Interestingly, the Corporation Commission has no requirements on insurance; it doesn't require wells to be insured. So the position of the City at this point on the insurance requirement is that, because insurance is not part of the jurisdiction of the Corporation Commission -- they have not acted to implement insurance requirements -- that we're not violating 809 by having them, because we're not acting contrary to the Corporation Commission. We're acting in an area that they have not regulated. Now, has a court determined one way or the other on that? No, and I anticipate that's coming at some point, but it hasn't happened yet.

Mr. McCarty – When does 809 go into effect?

Ms. Messner – It was effective November first.

Mr. Ryan – I would point out that it looks like there was a transfer of these wells at the end of the year – it went from individual ownership into a limited liability company.

Ms. Massey – Yes. My grandfather – it went from him doing business as Southcreek to me and Gus doing business as a partnership.

Mr. Ryan – It went from individual liability to some type of shield – a limited liability company is supposed to do, but that's exactly what it does – it gives you a little bit of distance and that type of change would seem to indicate that there was a recognition on the operator's part that there may be some increased liability going forward.

Ms. Massey – I wouldn't say there was a recognition of increased liability. My grandparents are, of course, getting older. In fact, my grandfather died in November. They wanted to make sure that their company that they had built up from nothing was taken care of. They actually decided 8 years ago to sell it to kids – grandkids.

Mr. Ryan – Could not these 3 wells in Norman have been transferred into a separate company that only had those 3 wells?

Ms. Massey – For insurance purposes? I guess I don't understand your question.

Mr. Ryan – So that you only had the 3 wells that were in Norman that will have this required, rather than having 30 wells. Rather than having to do this blanket on 30 wells, you've got a separate company that only has those 3 wells.

Ms. Massey – Well, that, theoretically, could work. But then we've got two separate companies, two separate sets of books that I would have to keep – one for just 3 wells and one for 27 others. It would really overload my workload, for sure, to have to keep it separate. Because if we had that in a separate company, we wouldn't be able to do anything together. Taxes would be separate. Revenue checks would be separate. Everything would be separate.

Mr. McCarty – I'm not sure that I understand the umbrella policy. You're trying to protect the surface right owner, right?



Ms. Messner – Protect the City, essentially.

Mr. McCarty – How is the City being protected by an umbrella policy and a mineral right owner that has rights to use the surface, and probably surface damages – but how does the City get involved in something like that?

Ms. Messner – Well, if there's a spill – something like that – anything that required a substantial amount of clean-up and make sure that there's enough insurance to cover.

Mr. McCarty – But doesn't that get into more of a civil thing than the City's requirements?

Ms. Messner – I think we're interested in the health and safety of our citizens. So when you think about oil spills, you think about environmental impacts and protecting our citizens.

Mr. McCarty – I'm just curious. I don't understand umbrella policies. I'm just trying to figure out the real intent of what Council was trying to do. I understand protect a million to two million, but if they really thought about what this is going to cost people and it's not a great time in the oil industry right now. I'm just kind of thinking through if I was in that position.

Ms. Messner – We did contact several different insurance agents to get quotes on premiums and things like that to take to Council, so they did look at all of that when they put this into place. But you're absolutely right – there's a lot of disparity in types of operators in Norman. There's big operators and small operators.

Mr. McCarty – Are other cities around us, or other places in Oklahoma – did they all have similar ordinances?

Ms. Messner – It's been a while since I've looked at it, but I know we did look regionally.

Mr. McCarty – You don't know of any others?

Ms. Massey – If I could, I actually have copies of Oklahoma City's and Newcastle's insurance ordinances. While they both do have insurance requirements, neither one carries an umbrella policy.

Mr. McCarty – Not required?

Ms. Massey – Right.

Mr. McCarty – So this umbrella is on top of whatever other insurance you have.

Mr. Ryan – But do you already have the one million dollar?

Ms. Massey – Yes.

Mr. Ryan – You do have an umbrella – it's just whether it doubles or not?

Ms. Massey – Right. We have one million for pollution and one million for liability.

Mr. McCarty – And that's per occurrence, or total?

Ms. Massey – Per occurrence.

Mr. McCarty – You've got some information about other cities?

Ms. Messner – Wichita had a \$2 million umbrella policy. Susan and I's memo from June 2015 says Oklahoma City, Edmond, Stillwater, Moore and Tulsa do not currently require umbrella policies. I know Stillwater updated their ordinance about the same time we did, and I can't tell you what they updated their insurance to.

Mr. McCarty – This is kind of a big deal.

Ms. Connors – This one and the next one are similar in the umbrella policy, and the third one is regarding fencing.

Mr. Ryan – I think we could go ahead and determine as a Board whether or not we find that the provisions would effectively ban the applicant from accessing subsurface minerals.

Mr. McCarty – So what you're asking is, if they don't comply, what does that do?

Mr. Ryan – If granting the variance, or not granting the variance would ban them from accessing subsurface minerals – if we find that would ban them, then we have to grant the variance. If we find that it wouldn't ban them, then we go to do we want to grant the variance – or grant something else. But the code reads if we find, as a Board, that the provisions would effectively ban the applicant from accessing subsurface minerals, then we have to grant the variance. It says shall; it doesn't say may. I find not granting the variance would not effectively ban the applicant from accessing subsurface minerals.

Mr. McCarty – Council made this decision. Let's just say hypothetically they can keep operating, but if we deny this and they don't get it, do they have to shut down their wells?

Ms. Messner – It would give the Oil and Gas Inspector that option, because they would be out of compliance.

Mr. Seamans – I see in here that there is a dollar amount that you put on here -- \$5830. Is that annual premiums? That doubled it.

Ms. Massey – That is the doubled number which, I'm sure it doesn't sound like much. It's a drop in the bucket to most oil companies. But, as I said, we are small – extremely small, and that would make quite a dent in our funds. Not to mention it would make the wells uneconomical, which, even if you denied the variance and we continue – we couldn't continue operating, whether they were shut down by the City or not, because they are uneconomical – we couldn't afford it. We would have to shut them down ourselves.

Mr. Seamans – Are there any other questions from the Board to the applicant, or from the Board to staff at this time?

Mr. Stenis – May I add to the answer to one of your questions? There's also the ten-day waiting

period. For example, if you denied, someone could appeal the decision to District Court. That's the direction it could go.

Mr. McCarty – Before the umbrella policy, what does the City require as general liability? Just a million?

Mr. Woods – One million dollars.

Mr. McCarty – So Council wanted a million dollar general liability, but two million dollar umbrella?

Mr. Seamans – Is that three million total?

Mr. Woods – There's also a million dollar pollutions and seepage policy required.

Mr. McCarty – That's a lot of insurance.

**AUDIENCE PARTICIPATION:**

Bob Campbell – I'm a registered petroleum engineer. I'm Magnum, your next case. I participated in a lot of these discussions with the City over the years. The real issue to me – I think the ordinance was written more for drilling operations. We've got drilling rigs and they're 24 hours a day, and noise, and people don't want them in their back yards. As far as I know, and I've been here my whole life, in the oil business for 50 years – there's never been one claim in the City of Norman for anything. What I suggested to staff at the time on these old legacy oil wells was that the EPA governs this. They require SPCC plans. I've done 25,000 of them on oil wells around the country. The requirements are basically this: your dikes have to have the volume to hold the volume of the largest tank, 24 hours worth of production, and the largest rainfall that's occurred in the last 25 years. So, in theory, if the pumper leaves the location, the skies open up, punctures the tanks, and it rains – it requires an ark for 24 hours before he comes back – the dikes still hold that volume. There's no liability to owners if they're in compliance with the SPCC plans. Period. We already carry a million dollars of general liability, and another million dollars of seepage – two million dollars. It's unreasonable, and I think it's in violation of State law. It's consistent with the Corporation Commission rules that do require insurance for plugging bonds. It's more insurance than you could ever want. So there's just no reason for this. It was – I won't get into politics – for people around who don't like oil wells. Doing everything they can to get rid of them – just like coal mines. So it's absolutely ridiculous. It will be fought. Bring the City a lawsuit. Now you're telling people they've got to spend \$50,000 in attorneys' fees to go fight this in District Court. In the meantime, if this is implemented, the goal is that wells will be plugged, mineral owners will lose their revenue – it's a lot of revenue. A lot of people rely on this for Medicare – retirees – mineral owners. And you basically have condemned access to the minerals. You've taken away people's income with a law that's not required – it's not necessary – it's burdensome. So I think it ought to be waived, and I think the Council, I guess, is who it's up to – just needs to reconsider. Oklahoma City doesn't require it. Yukon doesn't require it. I operate in all these cities. No one in central Oklahoma requires this umbrella policy. Oklahoma City has hundreds, if not thousands, of wells in the city limits. They've never had a problem; never needed one. You've created a solution to a problem that doesn't exist. That's my support of their application. My circumstance is a little bit different.

Mr. McCarty – Does that include active drilling wells, active pumping wells, active everything? I

mean, it was just carte blanche? There was no differentiation by the Council of what it actually was intended to cover?

Mr. Ryan – Includes injection wells.

Ms. Messner – Yes.

Mr. McCarty – Everything?

Ms. Connors – It's all wells.

Mr. McCarty – There's a pumper that's been out there in the holding tanks that has the same requirement as a new drilling platform that's been put up.

Ms. Messner – They just include this provision – this outlet to you all for what we're looking at.

Mr. McCarty – And so the one before us – and I think I believe this is your active wells that are out there pumping – these are not any new drilling sites or anything, right?

Ms. Connors – No.

Mr. McCarty – And you made sure that all of them meet SPCC – that's your job is to go out and check volume, dikes, all the things that ...

Mr. Woods – I can't physically calculate the dikes. I can look at them and get close. But there is a registered engineer that provides that information to me.

Ms. Connors – David currently inspects these wells a minimum of two times a year and writes a report.

Mr. McCarty – And the SPCCs are every year, right? Are they every year?

Mr. Campbell – No. The EPA rules are that a plan has to be reviewed every five years, but it requires annual inspections by someone other than the pumper. The pumpers have to have training once a year as to the requirements, procedures, spills, and that type of thing. So it's continual, ongoing monitoring by the EPA through the annual inspections. It's part of the Clean Water Act.

Mr. Woods – I'll add that one of the wells that Southcreek has, back a couple years ago, we looked at the dike and the dike had become inadequate, and they rebuilt that dike to meet the now current City requirements, which is way above the requirements of the SPCC.

Gus Lovelace – We had to do it on two of our locations out east of Norman on Highway 9.

Mr. Ryan – I think first we need to determine whether or not we find that it would effectively ban them from accessing subsurface minerals. I think that's step one.

Mr. McCarty – I don't know that I can answer that.

Mr. Campbell – May I offer a comment? In essence, it does, because if the economics cause a well to be plugged, you've banned access to it. That's all there is to it. The minerals cannot be accessible if the well bore is not there. So I don't think there's any doubt about it. I think, again, that wording was more for the drilling operations, because of the ingress/egress rights and surface and all the issues that go there. I think that was the main purpose of that wording. But, in essence, people want wells plugged if they don't own the minerals. If they own the minerals they want them there for a long time. If you plug a well, you no longer have the vertical conduit to access them. It's all economics. A well becomes uneconomical, plug it. It deprives a lot of mineral owners of the revenue and the right to access. So, indirectly, I guess, it's a way to answer the question.

Mr. McCarty – Every company is going to have a different financial outlook, probably, though, on what the costs of the \$2 million policy is going to really cost them versus – it's a supply and demand – how much is that going to really cost you to do, and does that offset your insurance costs? So not everybody, because you have a \$2 million policy, is going to go plug the well.

Mr. Campbell – The big operators might. The bigger they are, the more punitive it is, because you've got to get \$2 million on every well you operate. Small operators that only own 4 or 5 wells – no big deal because their incremental cost is minimal.

Mr. McCarty – So, I guess, back to the applicant that we've been dealing with – the \$2,800 – was that for all your wells, or just the ones in Norman?

Ms. Massey – That was for all. Which, like I said, doesn't sound like an extreme number. But, for us, it really is. It would make those 3 wells ...

Mr. McCarty – Can you not get it just for the 3 wells that you have in Norman?

Ms. Massey – With oil well insurance, what you do for one you have to do for all of them. With your cars, you can have full coverage on one and liability only on the other, but you can't do that with oil wells.

Mr. Ryan – What you're saying is the Norman wells don't produce \$2,800 a year, is what you're saying?

Mr. Lovelace – They don't. They do produce \$2,800 a year. Was that \$2,800 per year?

Ms. Massey – Right. Per year. But that still would make it uneconomical.

Mr. Ryan – Well, uneconomical means you ...

Mr. Lovelace – What he is arguing – that if you make these wells – right now they're economical. But by passing this insurance ordinance makes them uneconomical, which would prevent us from accessing those minerals.

Mr. Ryan – If it's costing you \$2,800 extra, and let's say the 3 Norman wells are causing that cost, they have to bear that. Are you telling me those 3 Norman wells don't currently generate \$2,800 a year in income?

Ms. Massey – They currently generate it, but that \$2,800 isn't 100% ours. We only own a portion of that; the mineral owners own some of it, not to mention it's other costs for maintenance and overhead and things like that. It's not just the insurance that these wells are costing us.

Mr. Ryan – The 3 Norman wells do not generate to your company – your limited liability company – their net income off those 3 wells is less than \$2,800 a year.

Ms. Massey – I would say so, for what our profit from those wells – I would say, yes, would be less than \$2,800.

Mr. Ryan – I'm a little unclear why you can't say these 3 wells – the royalty owners and mineral owners – why you can't allocate that \$2,800 increase to those 3 wells that are creating that expense. It's kind of like if you had to go out and bulldoze something on one wellsite, you wouldn't spread that cost across all of your wells.

Ms. Massey – True. But we're not just buying that insurance for those 3 wells. We're being forced to buy it for all 30 of the wells that we own.

Mr. Ryan – But only because of those 3 wells.

Ms. Massey – But I can't very well charge one well for what another well is consuming. If I had to bulldoze something on one well ...

Mr. Ryan – I didn't say that. I said charge it just to the 3 wells that cause ...

Ms. Massey – But all the wells are covered with that \$2 million umbrella. I cannot charge all 30 wells' insurance costs to only 3.

Mr. McCarty – What he's getting at is that there's only 3 that are creating the problem. You take the \$2,800 and you divide it amongst those three mineral rights and split the cost. That's what he's saying. Just to keep it simple.

Ms. Massey – I understand what he's saying, but you can't do that to keep correct books. Because I'm paying that \$2,800 for all 30 of my wells to have a \$2 million umbrella, not just for those 3, so I can't very well only charge those 3 for that umbrella.

Mr. Lovelace – And that does make it uneconomic.

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

*Hank Ryan moved that the Board finds that a literal interpretation of the new provisions would not effectively ban the applicant from accessing subsurface minerals.*

Ms. Messner – And, therefore, you move to deny the variance?

Mr. Ryan – I just moved that finding.

Ms. Messner – Okay. They're potentially one and the same.

Mr. McCarty – I'm not an attorney, but I wouldn't say we could make that decision. It's going to

be based on the income of the well.

Mr. Ryan – We're supposed to make that finding. That's a finding that we are charged with making.

Mr. McCarty – I'm going to have to see financial data to tell me if that case is true or not.

Mr. Ryan – If we make that finding, then we have to grant the variance. If we don't find that it would do that, then I think we have flexibility on what we do with the application.

*Hank Ryan moved to grant the Variance as requested, to expire on 12/31/2017. Curtis McCarty seconded the motion.*

Mr. Ryan – That will give us some time to see what works through the courts. In other words, they'd still pay their \$1 million, and grant them a variance on the \$1 million increase for less than 18 months.

Ms. Messner – Revisit it at that time also. Revisit the variance at that time.

Mr. Ryan – Yes. The variance only lasts 'til that period and then it comes into effect.

Mr. McCarty – So when did this go into effect?

Ms. Messner – July 15.

Ms. Connors – August 15, 2015, because it was 30 days.

Ms. Messner – Okay. They adopted it in July; it was effective in August.

Mr. McCarty – So what you're saying is put a time limit on the variance to December ...

Mr. Ryan -- ... of 2017.

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Niis Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to grant the Variance as requested, to expire on December 31, 2017, passed by a vote of 3-0.

Mr. McCarty noted that there is a ten-day appeal period.

Ms. Massey – By approving our variance, at least until December 31, 2017, how can we file anything with the courts? You haven't damaged us yet.

Ms. Messner – I think that's a question for your private attorney, not for the Board.

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Item No. 9, being:

**BOA-1617-6 – MAGNUM ENERGY, INC. REQUESTS A VARIANCE FROM THE REQUIREMENT TO CARRY AN UMBRELLA INSURANCE POLICY OF NOT LESS THAN TWO MILLION DOLLARS (\$2,000,000.00), OVER AND ABOVE ADDITIONAL INSURANCE REQUIREMENTS.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments

**PRESENTATION BY STAFF:**

Ms. Connors reviewed the staff report, a copy of which is filed with the minutes. Protests were filed for this application.

**PRESENTATION BY THE APPLICANT:**

Bob Campbell – This is a little different case. This is a well that was drilled back in 1979 when Rock Creek Road was a gravel road in the middle of nowhere. Since that time, that area has developed and houses are crowding in, and apartments. I think there were three protests to it; all of them were property owners, three of which asking why I didn't plug the well so they could use the land to build something on. They don't have any care except for their own greed. I offered to sell it to them and they could plug it, which, of course, they didn't want to pay anything for it. The well has been there for 37 years. This amount that we'd have to pay would cut the revenue on this well in half. This is a \$9,000 expense that's completely unnecessary. None of you in your businesses would say, well, gosh, you built a home in Norman, you've got 10 of them in Oklahoma City so we want to tax you on everything you own – send us the bill. I don't think you'd likely go for that. That's just what's happened here, because I operate almost 100 wells. I've got to abide by this \$2 million policy on all 100 wells. And, yes, to answer your question, I could allocate it and I could do this and that, but it's still \$9,000 I shouldn't have to pay. It comes out of my pocket. It comes out of my kids' pocket and my grandkids – some of the trusts. It's just not right. I don't know what we can do, and I recommended this to Lynn Miller when we were having these talks. If you want to address the issues of these old, existing legacy wells, just put in the ordinance that they have to be in compliance with the SPCC plans, and you get all the coverage in the world you need. Period. You don't need to burden these people with all this income that does no good – doesn't protect anybody. If you've got your dike, it's never going to leave the location. It's just burdensome. If it was your business or anybody else's, you'd be pissed off. It's just unnecessary. So I'm asking for a waiver. I appreciate you all's review of the request, but I'd like to have the waiver approved subject to the SPCC plans being in compliance at all times. It covers everything the insurance is supposed to cover, plus the \$2 million we're already carrying.

Mr. Ryan – Will your insurance go up an additional \$8,800?

Mr. Campbell – No, that's the incremental I've got to pay for this one well.

Mr. Ryan – So it was \$8,800 before.

Mr. Campbell – No, it was like \$16,000 before and now it's \$24,000 or \$25,000. Whatever it is. The insurance is costing \$9,000 to have this one well. I don't know about you, but that's a significant amount of money. So I would ask that you waive it in perpetuity, so long as SPCC and EPA rules



are followed on diking. Because if the dike doesn't break, there's no liability. We're so conscientious that we've got a parking lot 50 feet away; if we're pulling rods, we actually have two people that are wiping the rods with rags to make sure nothing blows anywhere on cars or apartments. I think all your operators in Norman, for the most part, are probably the same way – some exceptions, I'm sure. It's just terribly burdensome. I ask that we waive it, with the condition that we keep our SPCC plans up-to-date and current.

Mr. McCarty – I suppose that's already a requirement – the SPCC plans?

Mr. Woods – It is not a requirement.

Mr. Campbell – Nope. Not mentioned in the codes. We're going to ignore the EPA. We're just going to make people pay insurance.

Mr. Seamans – In Norman?

Ms. Messner – It's a federal requirement; it's just not in our code.

Mr. McCarty – It's required by EPA, but the City doesn't track that?

Mr. Campbell – Nope.

Mr. McCarty – But they track insurance?

Mr. Campbell – Yep.

**AUDIENCE PARTICIPATION:**

None

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

Mr. Ryan – I think we ought to treat this one the same as the other one and see what happens in the state court.

*Hank Ryan moved to grant the Variance for a period that expires on December 31, 2017. Curtis McCarty seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to grant the Variance for a period to expire on December 31, 2017, passed by a vote of 3-0.

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Item No. 10, being:

**BOA-1617-7 – GULF EXPLORATION, L.L.C. REQUESTS A VARIANCE FROM THE REQUIREMENT TO INSTALL FENCING AROUND THE WELL AND TANK BATTERY.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Aerial Photo
3. Location Map
4. Application with Attachments

**PRESENTATION BY STAFF:**

Ms. Connors reviewed the staff report, a copy of which is filed with the minutes. No protests were filed for this application.

Mr. Ryan – Is there any requirement that their access be locked? That they have locked gates or anything?

Ms. Connors – Most wells – yes.

Mr. Woods – This one has a locked gate out at the entrance of the road and "No Trespassing" signs – all the required signage.

Mr. Ryan – Is that a City requirement, that they have a locked gate?

Mr. Woods – City requirement that they have a locked gate.

Ms. Connors – David has keys to every one of those gates.

Ms. Messner – The fencing section is 13-1508(c). Section 2 requires the gate to be kept locked unless the employee or an operator is on the premises.

**PRESENTATION BY THE APPLICANT:**

Pat McGraw, 9701 North Broadway Extension, Oklahoma City – Gulf Exploration is a privately owned, family owned company. We operate approximately 100 wells in six states right now. The reason this was filed was looking at this property, we operate many wells in Oklahoma City, Chickasha, Mustang and different cities that have different requirements. I don't think we're asking for anything that the other wells in this area – the only difference to ours is closer to the centerline of the road. That's the only difference, and that's why we fall under this ordinance. So we're not asking for anything that the other well operators in this section – there's not a house in the southeast quarter – 160 acres. The closest house is across the road, which is outside the City limits. We've never had any issues with this lease. We feel like that the fencing we have now and the locked gate and everything is adequate. Now if there is ever a change of conditions, such as development, we would agree to abide by it, as we do in other municipalities. But I've got two bids on fencing and they're roughly around \$13,500. This well is a marginal well. I didn't even address what we already paid for your requirements about the umbrella policy, which increased the cost of this well. Mineral owners don't share in the costs of the well – just working interest owners and they pay for 100% of the cost of the well. Mineral owners, by way of their lease, they share in a percentage. So if a working interest owner – if a well does not meet the bills – say it's uneconomical for a period of months, they can demand to

be bought out – their interest be bought out or the well be plugged. So we get into that. But I'm just asking for a literal interpretation – this is a unique well. There's nothing around it – basically cows and pasture, and the only thing that has changed because of the ordinance is the public roadway access.

Mr. Ryan – And you are paying the \$2 million umbrella?

Mr. McGraw – Right now, we are, because we operate some wells that are out-of-state but under federal law – BLM has a different umbrella requirement now. But if possible, could we – if you make a ruling about – say these prior two applicants – you granted them a waiver until you decide what you're going to do, I guess, for a year. What about the operators that paid that then?

Mr. McCarty – But you're having to do it out-of-state already, so you're doing it.

Mr. McGraw – We have to, yes.

Mr. McCarty – But you're in the same boat. You can't get \$1 million on one well and not on the other?

Mr. McGraw – That's correct. Because different governmental entities, especially federal, the BLM has different requirements. The State of Wyoming has different requirements. We operate under multiple municipalities and states.

Mr. Seamans – We're here to talk about the fence. So what is the existing fence that you have now?

Mr. McGraw – We just have barbed wire.

Mr. Seamans – Three stringed barbed wire?

Mr. McGraw – Yes. The gate is locked; all our valves are tied up and locked. We do have a fence around the pumping unit.

Mr. McCarty – Just to make sure I'm clear, is this also a new part of that same ordinance – the fencing?

Ms. Connors – Yes.

Mr. McGraw – This well was drilled in '85.

Mr. McCarty – Everything in the Urban Service Area has to meet those regulations, and has for a while?

Ms. Connors – And I didn't say, it's a 6' high chain-link fence with three strands of barbed wire.

Mr. McCarty – At the top?

Ms. Connors – At the top.

Ms. Messner – And they had a year to come into compliance.

Ms. Connors – They have until August 15. On August 15 they have to comply by that date – of this year.

Mr. McCarty – So how many wells do we have outside of the Urban Service Area that this is going to affect?

Ms. Connors – 33. We have 109 active wells; 160 total.

**AUDIENCE PARTICIPATION:**

None

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

Mr. McCarty – What keeps coming back to my mind is this is a safety issue, and I understand they've got existing fence, but I think about that kid in north Oklahoma City a few years ago that lost his arm on a pump. I don't know the circumstances, but that's why this was put into place.

Mr. McGraw – Before that happened, where the kid lost his arm – the fence that he crawled over was an 8' chain-link per city requirements. And it was locked. Firemen had to cut the gate to get him.

Mr. McCarty – So it didn't have the three strands of barbed wire?

Mr. McGraw – Yes, it did.

Mr. McCarty – It did? And he got through it. Wow. Can't write rules for everything.

Mr. McGraw – With a fence, is it guaranteed 100% safety? Nothing does.

*Mr. Ryan moved to grant the Variance as requested to the fencing requirement. Curtis McCarty seconded the motion.*

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

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

Ms. Tromble announced that the motion, to grant the Variance as requested, failed by a vote of 2-1.

Mr. McGraw asked if this can be postponed like the prior application.

Ms. Messner – I called the City Attorney and he said that you certainly can make a motion to reconsider, if you'd like to do that. To do that, one of the two of you that were prevailing on the motion needs to make the motion to reconsider. At that time you can change your motion to a

motion to postpone, if that's what the applicant has asked for and you all are willing to do.

*Hank Ryan moved to reconsider. Curtis McCarty seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to reconsider, passed by a vote of 3-0.

*Curtis McCarty moved to postpone this item to the August meeting. Hank Ryan seconded the motion.*

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

YEAS	Hank Ryan, Curtis McCarty, Andrew Seamans
NAYS	None
ABSENT	Nils Gransberg, Kristen Dikeman

Ms. Tromble announced that the motion, to postpone this item to the August meeting, passed by a vote of 3-0.

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Item No. 11, being:

**MISCELLANEOUS COMMENTS**

Ms. Connors – We tried to make sure there would be four of you here today, and if there weren't going to be four of you here, I was going to probably not have this meeting and try to find a new date for it, because it's become problematic. Mr. Gransberg said he would be here. I'm probably going to have to call the members and indicate to them how important it is that they come to these meetings. And I think I'll talk to the City Manager about proposing a larger board.

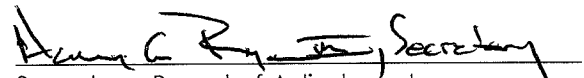
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Item No. 12, being:

**ADJOURNMENT**

There being no further business and no objection, the meeting adjourned at 6:57 p.m.

PASSED and ADOPTED this 24<sup>th</sup> day of August, 2016.

  
Secretary, Board of Adjustment