

**BOARD OF ADJUSTMENT MINUTES**

**MARCH 28, 2018**

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Room D of Building A of the Norman Municipal Complex, 201 West Gray, at 4:30 p.m., on Wednesday, March 28, 2018. 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

Brad Worster  
Curtis McCarty  
Mike Thompson  
James Howard  
Andrew Seamans

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Susan Connors, Director, Planning & Community  
Development  
Wayne Stenis, Planner II  
Roné Tromble, Recording Secretary  
David Woods, Oil & Gas Inspector  
Elisabeth Muckala, Asst. City Attorney

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Item No. 6, being:

**BOA-1718-6 – ARROWHEAD ENERGY, INC. REQUESTS A VARIANCE TO SECTION 13-1509(a)(4) WHICH PROHIBITS ISSUANCE OF AN OIL AND GAS EXPLORATION PERMIT WITHIN ANY AREA DESIGNATED AS A STREAM PLANNING CORRIDOR OR WITHIN 300 FEET FROM THE TOP OF THE BANK, FOR PROPERTY LOCATED NEAR THE NORTHEAST CORNER OF EAST ROCK CREEK ROAD AND CABIN ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Postponement Memo
2. Request for Postponement
3. Location Map

The applicant has requested postponement until the April 25, 2018 meeting.

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

Ms. Connors – Arrowhead Energy has once again requested postponement to the April 25 meeting. Their postponement request indicates that they are continuing to evaluate the need for a variance, which means they're looking at other locations, I believe, to move the drill site. We have no other additional information that you could act on this afternoon.

*Curtis McCarty moved to postpone BOA-1718-6 to the April 25, 2018 meeting. James Howard seconded the motion.*

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

|        |  |
|--------|--|
| YEAS   | Brad Worster, Curtis McCarty, Mike Thompson, James Howard,<br>Andrew Seamans |
| NAYS   | None   |
| ABSENT | None   |

Ms. Tromble announced that the motion, to postpone BOA-1718-6 to the April 25, 2018 Board of Adjustment meeting, passed by a vote of 5-0.

**AUDIENCE PARTICIPATION:**

1. Madison Lovell, 2900 Oaktree Avenue – I had a quick question. We've talked to a few – I almost called you guys City Council members. Why do you continue to allow postponement, because you are voting on it, right?

Mr. Seamans – Correct.

Ms. Lovell – So why not just vote on it now, when Arrowhead is not even sure if they're going to be needing the variance?

Mr. Seamans – Because they've asked for the postponement. We have not asked them to postpone. We've not told them to postpone. They are asking us for a postponement.

Ms. Lovell – So you're accepting the postponement. And this is the fourth postponement.

Mr. Seamans – I'd have to look back at the records at how many times it's been. It's been a few.

Ms. Lovell – So why not just vote no on it now? And I know that might be an individual ...

Mr. Seamans – Out of common courtesy for people applying for something.

Ms. Lovell – Yeah, but it's also common courtesy to show up.

Mr. Seamans – Well, they've requested a postponement. I believe they postponed in writing, correct?

Ms. Connors – Yes.

Mr. Seamans – As a board, we're not saying you can't keep postponing. We're just saying they postponed. We've accepted their postponement.

Ms. Lovell – Okay. So going forward ...

Mr. Seamans – The Board could consider to no longer hear them. Yes, we could. But they haven't done anything besides postpone.

Ms. Lovell – So if they decided to postpone for, say, another four more months – five more months, it would still play out the same way?

Mr. Seamans – I'm sure the Board would get pretty irritated of it and eventually – I understand you guys are irritated because you keep having to come down here and you want to talk about it.

Ms. Lovell – Well, that's why we're so concerned, because there's so many people here. I know it's a waste of our time and it's also a waste of your own time to continue to just approve postponement, postponement, postponement. I was just curious -- you allow the postponements to continue to happen.

Mr. Seamans – Like I said, they've asked for it. We've postponed it.

Ms. Lovell – Thank you for at least allowing us to know the reason for the postponement.

2. Ashleigh McCray, 1004 Townhouse Circle – We had spoken with some of the Board of Adjustment members following the previous meeting, which this is the fourth postponement. They've postponed every meeting since December – December, January, February, March – that's four. And they had promised that they would inquire into Arrowhead Energy's postponement – the reasoning behind why they continue to postpone. We feel like part of it is possibly they are trying to move the project over so that they can avoid coming before you at all, or maybe possibly trying to wear down the public from wanting to know what's going on, because eventually we're going to get tired of coming out. But, really, that's not the case – it's opposite. I think that we learned that you do have the ability to vote on this. I think it is something that should be done, and so we're curious as to whether or not you did follow up on that promise of inquiring into why they continue to postpone this, and if there is good cause to actually do that?

Mr. Worster – Mr. Chairman, if I can answer that one, since I was the one that said I would do

that. I did check with staff and ask if they would check with the applicant to see if they would provide more of an answer, and the applicant replied with their required form that said they wanted a postponement. So they provided what they needed to provide to postpone it and then no additional information. At least that's how I understood it.

Ms. Connors – They have been actively working on – they're trying to find a new location for the drill site. I think that's what they've actively been working on.

Mr. Worster – Just to clarify, we wouldn't necessarily be able to vote no on it – we would just not postpone it, I think.

Ms. Connors – You have not had a public hearing on this item to date.

Mr. Thompson – And if they find a new site, they may not have to come before this Board at all.

Ms. Connors – That's correct.

Ms. McCray – Even if they didn't, you would still be able to deny further postponements, because this is the fourth time.

Mr. Seamans – Well, we typically have never got in this situation as far as I've been on the Board. I've been on the Board, I believe, four or five years now and we have not had this situation. So we could consider it. But at this time, they've asked for the postponement; we've accepted their ...

Ms. McCray – Can there just be like some sort of public record or like in your minutes clarifying or like specifying that citizens of Norman wish for you to deny further postponements?

Mr. Seamans – That will be in the minutes. You just spoke it and these minutes are recorded. Anybody else?

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Item No. 3, being:

**APPROVAL OF MINUTES OF THE FEBRUARY 28, 2018 REGULAR MEETING**

*Mike Thompson moved to approve the minutes of the February 28, 2018 Regular Meeting as presented. Curtis McCarty seconded the motion.*

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

|        |  |
|--------|--|
| YEAS   | Brad Worster, Curtis McCarty, Mike Thompson, James Howard,<br>Andrew Seamans |
| NAYS   | None   |
| ABSENT | None   |

Ms. Tromble announced that the motion to approve the February 28, 2018 Minutes as presented passed by a vote of 5-0.

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Item No. 4, being:

**BOA-1718-10 – JAMES GEDDES REQUESTS A VARIANCE TO EXCEED THE 65% IMPERVIOUS COVERAGE REQUIREMENT BY APPROXIMATELY 556 SQUARE FEET FOR PROPERTY ZONED R-1, SINGLE FAMILY DWELLING DISTRICT, AND LOCATED AT 1810 MARYMOUNT ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Application with Attachments
3. Engineers Report
4. Plat

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff does not support the variance request because it does not meet the criteria to be granted a variance and recommends that a minimum of 556 square feet of impervious lot material be removed. No protests were received.

Mr. Worster – What was the calculated number as far as what you measured it, and how did you get the existing impervious surface number?

Mr. Stenis – The 65% is what was provided to us as we permitted different aspects of the improvements on the lot, and it capped at 65. When we got the complaint, we sent some staff members out. They identified areas that were not on any of the permits, and measured them, and calculated the additional 5%. There were three staff members that went out.

Mr. Howard – Are we including the pavers that are in Item #3 Photos? The pavers that are in between the house and the adjacent property.

Ms. Connors – We are including that. They're pavers, maybe, but there's no separation between them. It's a solid surface.

Mr. Howard – And we're also counting the pavers that are running along the back edge of the fence line.

Ms. Connors – Yes. This diagram shows you which ones we're including.

Mr. Thompson – Do those pavers run up the wall? The fence sits on top of it?

Mr. Stenis – The applicant is not here, yet. They had a video presentation they wanted to show, but they're not here with it. He came in this morning to test it on the computer.

Mr. Howard – Just so that I understand completely the order in which things happened. So we had the house permit that was first: 3-9-15. At the end of the construction of that project – was that completed 12-16-15? So looking at the photographs of the driveway and looking at where the joint lines are, that basically a monolithic pour across the entire driveway and then they did the skirt pour or placement as a monolithic pour also. So that does tell me that, at that time, that was the way the concrete was placed at the end of the construction.

Ms. Connors – We're basing this on the permit – the difference between what we permitted and what is now out there.

Mr. Howard – Understood.

Mr. McCarty – So what you're saying – it was poured during construction. It wasn't added onto. He widened it when he built the house.

Mr. Howard – It was inspected. Right. So then he applies for a permit – and that's a good clarification – that's what I was looking for. He applied for the permit for the cabana 9-15 and then the pool permit shortly after that.

Mr. Stenis – The house was ...

Mr. Howard – So he would not have had record of the expansion of that concrete to provide for a permit, because those permits went in before the final completion.

Ms. Connors – The concrete driveway was part of the original building permit for the house.

Mr. Howard – Right.

Ms. Connors – So not included as part of the pool or cabana.

Mr. Howard – Okay. But in order to calculate the cabana permit and the pool permit, you would have had to have the updated information in terms of any changes to the plans. Correct? So the sequence ...

Ms. Connors – It sounds like we did not get that. And we would have been focusing – yeah. They must not have identified that additional concrete when they brought in the pool and cabana.

Mr. McCarty – The City was provided bad information when those two permits were issued, because the site plan was wrong, because he widened it during construction.

Mr. Howard – Yeah. Just depending on when they poured the last of the concrete.

Mr. McCarty – I think the house was occupied when they put in the pool and the cabana. They were separate permits after.

Mr. Seamans – The applicant is not here.

Mr. Thompson – I had questions for the applicant.

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

*Curtis McCarty moved to table this item to the end of the meeting. Brad Worster seconded the motion.*

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

|        |  |
|--------|--|
| YEAS   | Brad Worster, Curtis McCarty, Mike Thompson, James Howard,<br>Andrew Seamans |
| NAYS   | None   |
| ABSENT | None   |

Ms. Tromble announced that the motion, to table this item to the end of the meeting, passed by a vote of 5-0.

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Item No. 5, being:

**BOA-1718-11 – MUIRFIELD, INC. REQUESTS A MINOR VARIANCE TO THE 20' REAR YARD SETBACK AT THE NORTHWEST CORNER FOR PROPERTY ZONED R-1, SINGLE FAMILY DWELLING DISTRICT, AND LOCATED AT 4226 MOORGATE COURT.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments
4. Letter from Architectural Control Committee

**PRESENTATION BY STAFF:**

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff does not object to granting the variance requested so long as none of the adjacent property owners object and the Architectural Control Committee approves. No written protests were received. We did receive the letter from the Architectural Control Committee.

Mr. Worster – The 20' setback on the rear is a platting requirement?

Ms. Connors – Zoning.

**PRESENTATION BY THE APPLICANT:**

Cindy Daugherty, representing the applicant – He pretty well explained everything. It's just that one corner of the garage that we're encroaching on the 20'. Like he said, the back side of that lot is kind of cut up – kind of cuts the angles off some. We cut the house down some for them already, because I think the side property line – I think there's an easement, if I remember right, on that side, so we kind of scooted things over to stay out of that on that right-hand side as well. So we were just requesting a minor variance so that we could build that.

Mr. McCarty – Do we have any idea how far up on the garage the 20' comes?

Mr. Stenis – I did a measurement, and it basically cuts off a corner. This was 10' so I went up to 20' away from the property line and drew a line and then measured and that's how I came up with 125 square feet estimate of the footprint.

Mr. Thompson – It keeps it within the utility easement?

Ms. Daugherty – No, it will not be. We'll stay out of the utility easement.

Mr. Stenis – No, it's not in the utility easement.

Mr. McCarty – Do you know if the home designer looked at turning the garage to try and not have this encroachment?

Ms. Daugherty – I know we played with it a bunch. I think we tried turning.

Mr. McCarty – Just turning the garage a little to see if you could avoid that, because you've got quite a bit of room to the north if they were to turn it a little bit, just to try and prevent.

Ms. Daugherty – I think the big thing was trying to keep your turn-about and all that trying to get into this garage and trying to keep as much space as we could between the two garages to maneuver vehicles. Right now we're 27' between the two at that corner. If we go closing it in any more ...

Mr. McCarty – Did Brent realize when he drew this that he had that? That he was encroaching the 20' building line in the back? Or do you think he drew it and then said, oh, I didn't know that?

Ms. Daugherty – Now that I honestly couldn't tell you. I know when we got the plot plan and then we started, we brought it over here to Wayne and said, hey, how are we? And that's when – and we didn't know if the 20 – at one time, it was a different house for a different customer and we thought the 20' was just kind of directly behind the street view, and that this was the only 20' setback we had to adhere to. Then we found out, no, it was every – the 20' on every – the back side. So that's when we said let's see if we can't get a variance on that one corner. At first we thought we were okay, because on the back side we're 20' or more.

**AUDIENCE PARTICIPATION:**

None

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

Mr. Worster – I'd just say that I think, from the design standpoint, there looks like other alternatives to be able to still accommodate it. It doesn't look easy. It looks like the whole garage and other portion could all slide that way, but it would kind of take their view out of the lake I think. I'm sure not an architect. But it seems like there's enough lot.

Ms. Daugherty – If we tried to maneuver this around and get closer to the single car garage and try to get accessibility to all the garages with vehicles, the turnabout and stuff like that.

Mr. Seamans – When you enter that single car garage, you have to go back through the motor court and then back in?

Ms. Daugherty – Yeah, it's going to be tight anyway the way it is. So if I start closing it off even more ...

Mr. McCarty – It looks like you could even slide the house forward at least 5", which is going to help you – 4 to 5 inches.

Ms. Daugherty – It's only 5'5" and 5'4" over there on that left side.

Mr. McCarty – If you slid it straight forward toward the building line, you would gain a little bit of room in the back.

Ms. Daugherty – A little bit, but not our 10' or almost 10' that we need. And then, of course, this side over here we're only 5' off on the detached. Or not detached – it's connected with a porte cochere. I think Alan had been playing with it quite a bit, but that was the closest we could get.

*Brad Worster moved to approve the Minor Variance as requested. Mike Thompson seconded the motion.*

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

|        |   |
|--------|---|
| YEAS   | Curtis McCarty, Mike Thompson, James Howard, Andrew Seamans |
| NAYS   | Brad Worster  |
| ABSENT | None  |

Ms. Tromble announced that the motion, to approve the Minor Variance as requested, passed by a vote of 4-1.

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

Ms. Connors – I did want to mention one thing on this item that you just heard. You just heard it as a minor variance, which is different than a regular variance. The criteria are a little different. I don't know why we have the two, and we very rarely use this. But it did fall within the criteria to allow it to be a minor variance. If you noticed that difference, I wanted you to know why. It's in the code if you read the Board of Adjustment section, you'll see the differences in the variance versus a minor variance.

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Item No. 4, being:

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*Curtis McCarty moved to remove this item from the table. James Howard seconded the motion.*

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

|        |  |
|--------|--|
| YEAS   | Brad Worster, Curtis McCarty, Mike Thompson, James Howard,<br>Andrew Seamans |
| NAYS   | None   |
| ABSENT | None   |

Ms. Tromble announced that the motion, to remove this item from the table, passed by a vote of 5-0.

Mr. Seamans noted that staff has already given their report on this item.

**PRESENTATION BY THE APPLICANT:**

James Geddes, the applicant – On this video – I'm by no means a professional and it was windy out, so I apologize for the wind noise. [Viewing of narrated video recorded March 27, 2018 – approximately 6 minutes.]

I want to go through some of the items that they had on the report and clarify a few things. I'm not as prepared as I would have liked to be. A lot of the wording that the City has provided kind of insinuates or reads as though I've poured more concrete on the site since occupancy, and I want to make clear that that is not the case. All the concrete driveway, all the concrete that was poured was poured during construction, was inspected, and all the approvals were given for occupancy after that concrete was poured. I haven't added anything since occupancy other than the pavers on the east side of the house and the flagstone pathway in the landscaped area. At the time, I didn't realize that permits were required for those. I understand the way the pavers are installed do create essentially a similar circumstance as concrete would, but I didn't realize we had to have a permit for that and I didn't realize that the flagstone in the landscaped area would require a permit or be counted in the calculations. I take a little bit of issue with the fact that the concrete was poured and approved and then we come back two years later and said, by the way, you've got to take some of this out. I feel like if that was going to be something that was addressed, it should have been addressed during the inspections prior to the pour.

Mr. Seamans – Well, during the inspection process, did you ever widen that drive? That's what we think happened. That driveway came into the office as, say, 20' drive and now it's a 30' drive, or whatever that number winds up.

Mr. Geddes – It was originally shown – and I don't know the exact numbers – it was shown as 12 or 14 and I think we widened it – I don't remember if it was 4 or 6'. And that's where some of the complication came in, is we widened it out there. It was inspected and poured without taking that widening into account. So those numbers weren't carried forward and put onto the as-builts, so when we did the back yard concrete, that calculation was off by that 210 square feet that we had added and not recognized, although it was inspected. So there is some fault on

my part.

Mr. Seamans – Being inspected and permitted, though – that's a different thing. The inspector is not off those set of plans; he's out there looking to see that is done meets code.

Ms. Connors – So you didn't amend your permit to include that extra concrete, which was your responsibility.

Mr. Geddes – Correct. The pavers on the east side were put in dealing with issues from the neighboring property. I know that doesn't negate the fact that, I guess, a permit or approval should have been gotten – received on those. Hind sight, I don't know what option I would have had, since we were at our maximum anyways. The flagstone path – I thought that's more of a landscape accent than it is paving. The other thing I'd like to kind of put in front of you guys, and this was in some of my letter, but right now the City considers the pool as impervious surface. It's counted in the calculations for the square footage, which I understand – it doesn't absorb water, but, at the same time, any water that the pool catches that actually falls into the pool – and I realize no water drains to it, but anything that falls in the pool is held there and doesn't impact any drainage until we have 6-8" of rain, which doesn't happen very often. I feel like I have more square footage in that pool area than I do in what we're dealing with asking to be removed. To me, I feel like that should offset the square footage of the concrete that they're saying we're over, because it's essentially retention and not – it's actually creating a positive benefit as stormwater. So as far as square footage impacting the stormwater runoff for the City or the City's impacts, the pool offsets that.

Mr. Thompson – What kind of filter do you have on the pool?

Mr. Geddes – It's a fabric filter. Cartridge filter.

Mr. Thompson – Do you have a diverter valve on that?

Mr. Geddes – To bypass the filter?

Mr. Thompson – To bypass – throw out waste water.

Mr. Geddes – Can I pump water out of the filter? Is that what you're asking?

Mr. McCarty – Can you drain your pool without going through your filter to the sanitary sewer?

Mr. Geddes – I don't think so, no. If I'm taking water out, it's coming out of the filter portion.

Mr. Thompson – Okay. There's a simple fix for that by putting a valve between the pump and the filter to divert water away, and you can pump that into a sanitary sewer and drain water out of that pool as it fills up.

Mr. Geddes – When it rains, I usually just let it stay in there, because it's just that much less water I've got to add – you know, from evaporation. Until we get up to that certain height.

Mr. Thompson – That floods.

Mr. Geddes – It's never actually gotten high enough that it has needed that at this point.

Mr. McCarty – It doesn't have a built-in overflow in it?

Mr. Geddes – No. Short of just overflowing onto the yard. It's just never gotten that full before.

Mr. Worster – So anything that comes out of the pool – like a sand filter gets backwashed into the sanitary sewers. So that's just swapping water – at first, I was really thinking, yeah, you have your own detention pond. But then I got to thinking, well, no, it's really just taking it from a storm water solution to a sanitary sewer solution.

Mr. Thompson – It's basically a detention pond up to a point. It will take so much water. Once it's got to its fill point, you can have a basketball court or a tennis court back there – same difference. Water is just going to run off. It doesn't jump out. You know, you don't have waterfalls flooding everywhere. It's just like it's concrete back there, because there's nowhere else for it to go.

Mr. Geddes – It's detention up until we have 6 or 8 inches of rain within a period of time that it can't evaporate that quick.

Mr. McCarty – The interesting thing would be to see where this debate is going to come up about swimming pools and if they really are impervious surface or not in some of the storm water discussion. A swimming pool usually will take 5 or 6 inches of rain before it overflows, and then once it overflows that's a heavy enough rain that I wonder what the natural flow of the land would have been. Because you're holding water on site and then releasing it just like a detention pond. So I don't know what the – I'm not an engineer to run calculations on that. But this debate has come up quite a bit in those discussions.

Mr. Geddes – By the time we've reached 5 or 6 inches of rain in that time period, the ground is saturated and it's not absorbing any water anymore. At that point, everything is running off, no matter where it lands.

Mr. Thompson – And, honestly, at that point, if you have that kind of rain, you're basically – if you're pumping water out, you're pumping out rain water, which to me could go to the street, because it hasn't had time to mix with the rest of the water for any chemicals to be in it. That's just something we've run across that I feel like needs to be addressed at some point. Those rains don't happen very often.

Mr. Geddes – I also did get sort of the video, to me it's pretty obvious looking at it that I'm not sheet draining any water onto the property. I realize there's a complaint; can't keep somebody from turning in a complaint; can't keep somebody from suing you, but it doesn't necessarily mean it's always valid. To me it's very clear that I'm not shedding any water onto the adjacent property. I hired an engineer to come out and verify that. The report is in here. I don't feel that by removing this square footage – the only thing that I could remove and it not really be an issue is the flagstone pavers in the flower bed. I can take that out and, I guess, do something – gravel or something there. But any other concrete I take out – I lose the control of a lot of the drainage that I'm controlling and it's going to create – I feel like it does more damage than good.

Mr. Howard – So just to make sure I understand this. You are over by the number of 210 square feet.

Mr. Geddes – No, the total square footage is 556, but that's three different areas. So 210 was the concrete up front. I don't remember exact amounts, but a couple hundred on the pavers and a couple of hundred on the flagstone.

Mr. Worster – Have you looked at doing – instead of the pavers on the side, maybe just river rock, kind of like you have there between the pool and your backyard planter?

Mr. Geddes – And depending on how this goes, that's an option. Because now that it's under scrutiny, now I'm faced against, well, technically gravel isn't 100% pervious, so I have to figure out what is that percentage, and now I've got to figure out even more square footage of concrete to offset to put in gravel. So for me, if it gets denied and I have to tear it out, it's not just tearing out 556 – now I've got to tear out 556 and figure out what to replace those with and what that percentage and then tear out that much more concrete to offset this.

Mr. McCarty – Flagstone is not considered a pervious surface.

Mr. Geddes – That side of my house is the only access for the lawn mower and stuff coming into the back yard, so I wanted it to be ...

Mr. McCarty – I believe that would be the east side of your house – how deep is that side of your house?

Mr. Geddes – Front to back? It's probably ...

Mr. McCarty – Is it 60'? 65'?

Mr. Geddes – Probably.

Mr. McCarty – And it's 5'?

Mr. Geddes – Yeah. I figured it was 200 and something square feet.

Mr. McCarty – Is it more than 5' wide? It doesn't say.

Mr. Geddes – No. I think it's right at 5'.

Mr. McCarty – If you were to consider maybe removing some of that in the middle – like an open strip for grass to allow some impervious, and then decrease your impervious surface.

Mr. Geddes – And I'm open to trying to – I didn't know how this process – I didn't know if it's yes or no straight across the board, or if it's, you know, we'd like to see some improvement in these areas. I don't know how that process works.

Mr. McCarty – What was his total percentage over? 5%?

Mr. Stenis – 5%.

Mr. Geddes – The down side to trying to do grass or anything besides gravel over there is it's between the house and an 8' fence. There's no sun – I mean, nothing is going to grow. And that's why initially, once I got silted in and it was covered with mud, I knew trying to get grass to grow back there again was not going to happen and I didn't want to keep having to dig mud out, so I figured if it was something solid, I could kind of help clean it out a little bit.

Mr. McCarty – Is that how it's finished now?

Mr. Geddes – It's done now. I don't still have the issue with the mud coming over at this point.

Mr. Howard – In this corner right here, just beyond the cabana, where that flagstone walkway connects to your concrete here – I could not watch the video, because I started getting motion sickness. I want to know if there was any kind of step-off there. Is there a step down?

Mr. Geddes – There's not much of a step up. It's pretty ...

Mr. McCarty – The wall stops about halfway through the back property line. I went and looked over his fence. The retaining wall across the back tapers to zero, basically, on the right side and then it turns into grass.

Mr. Worster – Did you say that maybe you had some ideas that would reduce it some?

Mr. Geddes – There's options. But, again, like I said, it depends on – everything has a little bit different percentage of what they consider impervious. So I could take out some of those pavers and stagger it with gravel and stuff, but it's still not going to be considered 100% pervious.

Mr. Howard – Just to clarify – all gravel is impervious, but when you have pavers with gravel, then you only get to look at the portion that is gravel, correct? As being impervious.

Ms. Connors – Pervious. But gravel packs down to become impervious.

Mr. McCarty – That's how the City looks at it.

Mr. Geddes – Gravel is considered some – I don't know what the percentage is of how it's figured, and it may be different stuff. I don't know what the percentages are, but my understanding is it's not 100%.

Mr. McCarty – And all gravels are different. So river rock is different than chip gravel.

Ms. Connors – We do allow some gravel or pea gravel in landscaped areas and consider it landscaping, but it's not compacted.

Mr. Geddes – In the process, it's been somewhat of a learning experience for me as well. Especially like for the flagstone pavers. My current understanding now that I've kind of been talking to people is to some extent there are times when, like the flagstone, for example, could have been considered a landscape accent and not necessarily paving had I not grouted the joints and put it so tight. So if I had done flagstone stepping stones through there, then that kind of falls in the area – and, I guess, correct me if I'm wrong – but that wouldn't have required a



permit. That's considered a landscape accent. But because I did put them close together and grouted it, now it's considered paving. And same thing with the pavers on the side of the house. If I had done more of a staggered walkway with stones and infilled that with grass or something else, that would have been considered a landscape accent and not required a permit, but because I put them close together, it moves it back into an area that it should have been considered impervious and accounted for.

Ms. Connors – Public Works would have had to agree that it was pavers and permeable pavers and not an impervious surface.

Mr. McCarty – I don't know if this is an appropriate question for staff, but we've allowed small, I would say, percentages of impervious surface for this purpose. What do you all consider a minor variance for this? Is it 2%, 2-1/2%?

Mr. Stenis – In my discussions with the City Engineer, he says he has never given more than 2% credit for impervious.

Mr. McCarty – Over the allowable 65%?

Mr. Stenis – Well, towards the materials – whatever materials.

Mr. McCarty – I guess what I'm getting at, we're at 5% over. What have we allowed on a normal variance in a situation like this? 2%? 3%?

Mr. Stenis – I think 2-3 has been the experience.

Mr. Geddes – We also have a pool that offsets, in my opinion, all, if not most of the things – although it's not necessarily in the books. It's not on the books as being looked at that way. I think that's kind of been an area of discussion back and forth on how that should be looked at and it's kind of a gray area as far as whether the pool should be counted in the calculations or not.

Mr. Worster – Well, it is counted.

Mr. Geddes – Yeah, it currently is counted, but it's been questioned in the past and in discussions whether that's the correct approach or not.

Mr. Worster – I definitely feel for you. I grew up in house that was at the bottom of a hill and got flooded by the neighbors every day. We spent a lot of time doing things like this to make it work and not have muddy spots. I don't think you're flooding your neighbors. I think you did all of this as water control issues.

Mr. Geddes – And I built all this before the house was built. So I did all this knowing that I needed to be able to control this drainage and I tried to do it – I did it the best way I thought I could and I spent a lot of money putting in drainage and doing stuff that I thought was the proper way, and then to come back and feel like I've got to tear a bunch of it out – it's gut-wrenching a little bit.

Mr. Howard – I think that was maybe where things went wrong, is that in reality I don't think you had to control any drainage. The only thing you had to do was provide the proper amount of area for the water to be absorbed into the ground, which is the intent of the ordinance.

Mr. Geddes – Well, I've got to do both. I've got to control – because of the drainage plan for the development, it shows that I have to drain towards the front. So I've got to get the water out to the front somehow, because of the way – because we were doing a pool and other things and needed that flat surface, it put other requirements on me that a normal lot wouldn't have. If I had all grass back there, I think you're correct. I could have just done a slope and it would have been fine. But because we did have a pool and a cabana, I needed those flat areas and it created the need to have a way to control that drainage.

Mr. McCarty – I have a question for staff. So you all went and someone measured some of this just to verify. So there's this about 1' large river rock bed behind the pool deck to the retaining wall that's above this flower bed and along the back yard. Did you all consider all that impervious surface? It looks like it is.

Mr. Geddes – That was considered pervious, I believe. I was out there when they were measuring and we measured just the concrete.

Mr. McCarty – It's all flagged on here like it's impervious. Okay. So that was taken into consideration.

Mr. Stenis – The three staff members who went to the site prepared this. This is their notes.

Mr. Geddes – They measured just the concrete when they were there.

Mr. Stenis – Now, if you'll notice, the last document in your packet for this agenda item is a plat. And if you'll notice, they're lot 2 – 1810 – and if you notice the easement in the rear is a 20' utility easement, but then starting with lot 4 it also becomes a drainage easement. So they take the first three lots – so the drainage is supposed to be in the rear starting with lot 4, then it goes around and on into the lake.

Mr. Geddes – The house directly west of me, they have the ability to drain onto the next property because there's a drainage in the back there on the next lot that actually connects to the storm water drainage and goes down to the pond.

Mr. Stenis – And that was the storm water drainage plan that was approved with the plat, and that's why you'll see that becomes a drainage easement at that point and goes west and north and ends up in the lake.

Mr. Howard – So the intent was to drain from lot 3 down, or from lot 1 and 2 down?

Mr. Stenis – 1, 2 and 3 are supposed to drain toward lot 4 in the rear. And then it's picked up in lot 4 as a separate utility easement with an underground storm sewer.

Mr. Howard – We also have the retaining wall that cuts through that easement – that drainage area – or what would be a drainage area into that drainage easement. It's running along the side property line and runs all the way back.

Mr. Geddes – So on mine I don't think the drainage easement was meant for – well, maybe it was. But the grading plan for my lot showed everything had to be drained toward the front. And then at the next lot, I think, they have the ability to drain some.

Mr. Howard – It is very typical in the design of developments to drain two ways across a property, because you will create situations where you basically create rivers on the sides of houses if you don't. So in looking at that plan, it's very clear that there was a drainage plan that took that into account. I'm just curious about the effect of the retaining wall and other things that have happened here, that don't necessarily pertain directly to this, but just help us understand what this particular lot was up against.

Mr. Geddes – I do think part of the problem with the adjacent lot, and I'm just guessing at what their issues are, but the three lots behind us, which is Hall Park, those three lots do drain that direction and all pretty much dump into the neighbor's back yard.

Mr. Howard – I get everybody's rain water in my back yard.

Mr. Stenis – There's topo lines on the aerial photo just before the plat. Now some of the lots, as they were developed, were graded and I don't know how they were graded. This was before they were developed.

Mr. Howard – When you're looking at any equipment that is – I guess it's in the drip line of the house, does it count as pervious area – like condensers that are on a concrete pad.

Ms. Connors – That's impervious surface.

Mr. Howard – Okay. So we're counting condenser pads also.

Mr. Stenis – When we count building footprint for building coverage, we allow up to 2' of roof overhang, so we just count the outside exterior walls footprint. And then we allow up to 2' of roof overhang. Now, if it's beyond that, like a large covered porch, we'll count part of that area.

Mr. Geddes – That's part of the reason on the west side that we did go ahead and put concrete down that side of the house, was because I knew that, if during big rains, that one inlet got overflowed it's going to come down that side of the house. And if I hadn't put the concrete, I still had to have condenser pads and equipment pads for my pool equipment, which would have left a very narrow strip of just water running down it and it's hard to control that not turning into just a muddy mess. So it would end up just washing mud out into the streets.

Mr. McCarty – When we take a vote on this, however it turns out, would you be willing to – because it's 500 and something square foot. Is there a number that you've looked at that you think you could get it down to to reduce the amount of impervious surface that you're over?

Mr. Geddes – I'm willing to do – short of having to tear everything out, I'm willing to do some. The pavers – the flagstone is one area that – I mean I could tear all that out and re-lay it with more of a walkway and do some granite stuff in borders and make it to where it can actually drain. It won't be 100% pervious, but it would have a higher permeability. Same thing with the

east side. I mean, I could take out some of those pavers and try to make it more of a ...

Mr. McCarty – You could take out the middle two rows.

Mr. Geddes – Middle row or a couple of side rows and that allows some more drainage there. Before this thing came up, I'd already been considering putting in – rather than having the grass, the idea of putting in astroturf, but that's going to be another percentage of impervious. But I could put astroturf down the side of the house.

Mr. McCarty – Did someone tell you astroturf was impervious?

Mr. Geddes – Well, because you put gravel under it. So I don't know what that percentage is. I think it's permeable to a certain extent. I don't know what that percentage is. That's something I'd have to research.

Ms. Connors – So if he takes out the 142 square foot flagstone pavers in the very rear, he's down to 3.9% over. I can't calculate – the other, I guess, most obvious thing is taking out a portion of the concrete drive in the front. I know that's a big deal, but that probably is the other most obvious thing to reduce square footage.

Mr. Geddes – Worst case scenario, if I'm told that I've got to take it out, I assume at that point it's my decision what I take out, and the driveway is not going to be something I take out because it's in the front of the house and I'm going to find something else to take out. But, to answer your question, yes, I'm willing to try to find a happy medium somewhere, if that's what we need to do to try to keep from – to minimize what I've got to tear out, if that's an option. I'm willing to work – I definitely didn't do this trying to sidestep the City.

Mr. Howard – I always feel awkward when we start offering recommendations. Is that something we can do as a ...

Mr. Seamans – We can set the number. We can say it's 2.1567%.

Mr. McCarty – This is large overage and we've not ever supported one like this, at least according to staff. So what could he do to get the number down that we could support is what I'm trying to do. I just hate being the commission that's in here saying no, and then he leaves and he goes, well, I don't have a solution – I've got to rip everything out. That's the way I look at this. How can we do this and it's a win-win?

Mr. Stenis – They've granted 5% and they've denied 5%. It just depended on the situation. And it wasn't too long ago you denied one exactly like this that was requesting 5%.

**AUDIENCE PARTICIPATION:**

None

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

Mr. Howard – My observation is that if you remove the pavers, which is on the east side – and you remove the concrete on the west side all the way back along the west side of the cabana to the edge of the concrete on the northern edge, and you remove the flagstone pavers, you're there. You've removed the 500 and some odd square feet.

Mr. Geddes – Yes, there's a way to get all that taken out. It's going to require cutting and tearing out a bunch of concrete in the back yard and pavers and flagstone. Anything is possible. The problem is, even if that's what is approved, I'm still faced with the issue of, okay, I take out 556 square feet, now what do I put back that's 100% pervious that's going to actually stay there? Because grass isn't going to grow between the cabana. Grass isn't going to grow on the side of the house. Which means I have to take out even more concrete to offset whatever I decide to put in those areas. Which isn't necessarily your problem – that's going to be my problem. It leaves me with a really uphill battle trying to figure out what to do in its place.

Mr. Howard – I apologize. Things do grow in shaded areas. They do. That's why we have fescue under trees and so forth. I'm not trying to – I'm trying to understand how to get this addressed where you're not put in a bad situation, but at the same time we're meeting the intent of the 65%, which is to allow area for the water to be absorbed into the ground and not enter into the storm system. It's that delay that actually helps the system out.

Mr. Geddes – Am I able to, I guess, offer up a solution that we can say that would work. I could put astroturf down the side of the house on the east and take out all the pavers. And I could take up the flagstone and try to put it back in in a way that allows drainage between the pavers. I'd be more than happy to do that. That means I don't have to tear out any concrete, but it still reduces that percentage. I don't know exactly what that number would be.

Mr. Seamans – What would that number be? Would that be 3.2%? 142 square feet and 204. What would that get us down to percentage-wise?

Ms. Connors – That would get you down to 1.6% over.

Mr. Geddes – Except we'll have to account for whatever percentage of those are considered – there's going to be a percentage there.

Ms. Connors – I want to point out that the two solutions that you're talking about – the City Engineer would have to agree that you are creating pervious surface and I just want you to know I don't think that astroturf is going to be considered ...

Mr. Geddes – That's what I'm saying. It's not going to be considered 100% pervious. I think there's a percentage there; I don't know what that number is.

Mr. Howard – I'm not going to argue with the engineer, but I just want to make a statement. We make football fields to drain gallons and gallons and gallons of water. It would be hard to say that that type of turf system is not pervious. The air gaps in the material that its laid on is intended to bring the water into the ground.

Mr. Stenis – I don't know what's underneath the astroturf on those fields. I think there's a drainage system.

Mr. McCarty – Do we have the total area of the site? It's 11,700 square feet.

Mr. Stenis – The lot size that we're using is 11,700 square feet. There's two possible ways to be reduced some amount – whatever amount you guys work out. One would be to remove and one would be to replace some of it with something the engineer would give a percentage

credit for.

Mr. Worster – So if we're 556 over, then 1% is roughly 110 square feet, if my math is right.

Mr. McCarty – If we reduce it by 142 square feet, what's our overage then?

Ms. Connors – 3.9%.

*Brad Worster moved to approve a Variance of up to 4%, for a total of 69% impervious lot coverage. Mike Thompson seconded the motion.*

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

|        |   |
|--------|---|
| YEAS   | Brad Worster, Curtis McCarty, Mike Thompson, Andrew Seamans |
| NAYS   | James Howard  |
| ABSENT | None  |

Ms. Tromble announced that the motion, to approve a Variance of up to 4% for a total impervious lot coverage of 69%, passed by a vote of 4-1.

Mr. Seamans noted the 10-day appeal period before this decision is final.

\* \* \*

Item No. 7, being:

**MISCELLANEOUS COMMENTS**

None

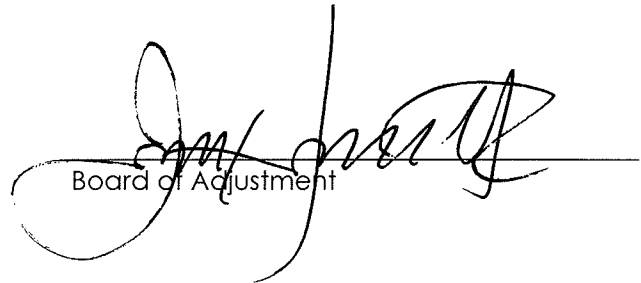
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Item No. 8, being:

**ADJOURNMENT**

There being no further business and no objection, the meeting adjourned at 5:49 p.m.

PASSED and ADOPTED this 25<sup>th</sup> day of April, 2018.

  
Board of Adjustment