

**BOARD OF ADJUSTMENT MINUTES**

**OCTOBER 23, 2019**

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, October 23, 2019. 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) in excess of 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  
Mike Thompson  
James Howard  
Andrew Seamans

MEMBERS ABSENT

Curtis McCarty

A quorum was present.

STAFF PRESENT

Jane Hudson, Principal Planner  
Lora Hoggatt, Planner II  
Roné Tromble, Recording Secretary  
Elisabeth Muckala, Asst. City Attorney  
David Woods, Oil & Gas Inspector

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Item No. 3, being:

**APPROVAL OF MINUTES OF THE SEPTEMBER 25, 2019 REGULAR MEETING**

*James Howard moved to approve the minutes of the September 25, 2019 Regular Meeting as presented. Mike Thompson seconded the motion.*

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

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

Ms. Tromble announced that the motion to approve the September 25, 2019 Board of Adjustment Regular Meeting Minutes as presented passed by a vote of 3-0.

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Item No. 4, being:

**BOA-1920-4 – MICHAEL GASSER OF CROWN CASTLE USA, INC., AS AGENT FOR AT&T MOBILITY, REQUESTS A VARIANCE OF FIFTEEN FEET (15') TO THE TWO HUNDRED FOOT (200') HEIGHT LIMIT IN ORDER TO EXTEND AN EXISTING WIRELESS COMMUNICATION TOWER TO A HEIGHT OF TWO HUNDRED FIFTEEN FEET (215'), AN INCREASE OF 7.5%, FOR PROPERTY LOCATED AT 10790 EAST LINDSEY STREET.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Staff Report
2. Location Map
3. Application with Attachments
4. Protest Letters

**PRESENTATION BY STAFF:**

1. Ms. Hudson reviewed the staff report, a copy of which is filed with the minutes. Staff supports this variance request and recommends approval.

**PRESENTATION BY THE APPLICANT:**

1. Michael Gasser, the applicant – Crown Castle owns the wireless communications facility here, and also representing AT&T to co-locate their equipment on this tower facility. If you refer to the drawings, I'm looking at page C2; the facility is currently at 199' and we would need to extend the top of the tower to 215', which is about a 7 or 8% increase in the tower height. Again, this is to co-locate a new carrier on this tower. AT&T determined that they could not go below the existing what we call rad center or the level of the existing antenna equipment. This would help them connect with two different towers, one which is several miles to the east and another several miles to the west and this will link up to those towers so if you're driving through the area and you have AT&T service, you'll be able to maintain that service throughout. Then if you look at page C1, you'll see that we'll be locating AT&T's equipment within the existing compound, so we're not expanding the facility at that point. Currently, we look to place AT&T 3G and 4G equipment on the tower. They're not currently doing a 5G build-out in this market, but I would imagine that will be on the agenda in the future, where they would just switch out antennas and radios and that sort of thing. It's a really somewhat simple project, in that we have an existing tower and we are just extending the height of that tower a short distance, just to make sure that we can co-locate a second carrier on the tower. Any time we add equipment to a tower we run a structural analysis to make sure that the equipment will be structurally sound. Again, pretty simple project. I'd be happy to answer any questions in regard to that. One last thing is that this was covered – this type of structure that we're extending the top of a tower is considered an eligible facility request, in that we're keeping the tower within a 10% maximum or 20' extension. In the industry and by the FCC they consider it an eligible facility request. Anything over a 20' increase or 10% would be considered a substantial expansion. This is not a substantial expansion.

2. Mr. Seamans – Is that allowed more than once? Or is that allowed just one time?  
Mr. Gasser – That's a good question and it's up to debate. Currently, FCC is

debating whether that is a one-time thing, or if that can be done over and over again.

Mr. Seamans – But it's the only time it has been asked for this tower.

Mr. Gasser – Yes.

3. Ms. Hudson – May I have Legal give you some additional information?

Mr. Seamans – Yes.

Ms. Muckala – As a bit of an appendage to the staff report on this, I know that in your packet, Mr. Gasser's letter did alert you to this federal provision. You might be aware that, when our code was passed, it incorporated federal law. It references it directly, and it was always meant to work in harmony with the federal regulations. This is a federal regulation that was a more recent exception carved out to local authority. Generally, federal authority allows a lot of comity for local regulation. Our zoning ordinance is fine. The height limitations we have set are fine. It's just a matter of there are certain carve-outs. This is a recent one that applies to a very limited set of circumstances, and that is an eligible facility that is an existing tower already in place. So in those cases, something that's not a substantial change, the federal law says that local authorities shall allow it. Substantial is defined within the federal regulations to be, as I think Mr. Gasser alluded to, no more than 10% of the existing height of the tower or, if they're adding an antenna array, at least within 20' of the existing one. So I think he has gone over the facts there, so that you can evaluate whether it's fitting within what is not considered substantial. But considering that our code has always acknowledged following federal law, it is the staff's recommendation, based on the federal law, nonetheless, that this is a supported request.

4. Mr. Howard – I have a question for the applicant. What precludes you from adding that array below the existing array?

Mr. Gasser – The carrier's RF engineers have determined that height is necessary to broadcast where they needed to. It would be helpful to note that, if they were able to put it below where they are, it would be much cheaper for them to do. That's a factor for them; not a factor for this committee.

5. Mr. Thompson – Can I ask how many companies are able to co-locate on one spot?

Mr. Gasser – A lot of things go into the facts in trying to determine that. Generally, the first thing that comes up is what have the RF engineers determined is needed for that carrier. Second major thing is does the tower structurally meet the – is currently structurally able to hold the equipment. Other than that, there's not very much – you do have situations where there's not enough ground space, especially when you get into more urban areas where there hasn't been established enough ground space to expand. Primarily it's what does the RF engineer need and what can the tower hold? You can always bandaid the tower up. You can always do tower replacements. But, again, that gets into situations where ...

Mr. Thompson – That kind of starts the ball all over.

Mr. Gasser – Yeah. And we deal with all of that.

**AUDIENCE PARTICIPATION:**

1. Pam McIntosh, 1550 108<sup>th</sup> Avenue S.E. – My property is just directly south of the subject tract. I had a question. I'm wondering why you can't locate on one of the other two towers that are closer to Highway 9. We actually have three towers around us. And the first one is not around any residences.

Mr. Gasser – The carrier came to us with this location. They did look at all of the towers in the area and none of them are at the height that they are asking for in this case.

Ms. McIntosh – And they would have to add greater than 15% or whatever the height to either one of those other two?

Mr. Gasser – It would depend on the tower itself. And it comes into play with some of the things that I mentioned before. Is that tower at the correct height currently? Can the tower hold the equipment – physically hold it?

Ms. McIntosh – Did they consider those on the other two towers?

Mr. Gasser – I couldn't tell you that.

Ms. McIntosh – Well, that would be one thing I would question, is why can't they consider that on one of the other towers? We have AT&T service and we never have any problem out there; we've had it for years – cell service. I have my router through them. So it's not like they need it in order for AT&T to have service out there.

Mr. Seamans – Well, that's at your location.

Ms. McIntosh – Well, all around there.

Mr. Seamans – They're looking to expand their network. They're not looking to expand the network to you near it. They're looking to expand.

Ms. McIntosh – I submitted a letter to Jane the other day, just because it is very loud during the construction of these things on this property. It is right north of me. I've been out there twenty-seven years. It was erected since I moved out there. We weren't asked or anything before about it being put up there. I guess the guy just rented out the property for it. My main objection is how loud it is. It's certainly visible to me all the time and to my other neighbors in this whole Sunbelt area – that's all Sunbelt. But I'm the one directly south. So those were my main objections, is the noise in doing it, the visibility that it's always out my front door. Why wouldn't it be done on one of the other two towers that aren't near homes? And that was my main objection.

Mr. Seamans – So what would be the construction time you foresee on the project?

Mr. Gasser – The project will consist of bringing all the equipment to the site. They don't need to drill for foundation, because it's an existing tower. Once they get the equipment out there, the workmen will put it together on the ground and then they'll bring a crane out to lift it up. The noise level from that – crane motor.

Ms. McIntosh – It even buzzes sometimes on its own. They do fix it, but it does make noise sometime on its own.

Mr. Gasser – The wireless equipment should – unless there's a generator on site, there shouldn't be ...

Ms. McIntosh – It's something like that.

Mr. Gasser – There could be HVAC units on the ground for the existing equipment.

I didn't look to see if the existing equipment is in a shelter. You do have HVAC units in the shelters because the equipment inside does generate heat. A couple of issues that could come up with why this tower and not another tower is the location of the existing two towers to the east and west. If they're trying to coordinate between the two towers that are there, then they'll have to choose – and the RF engineers choose the best tower that works for their needs. Again, if they have one that is within a short distance that has the height and capacity that works for them, they surely wouldn't put in the expense to extend the height of a tower.

Ms. McIntosh – Most of us that live in that area live in that area for the wildlife and for how rural it is with the woods and stuff. I've been there twenty-seven years. Charlotte has been there closer to thirty. So we've been long-time residents. Some research I've done on 5G indicates that it is harmful to wildlife.

Mr. Seamans – My understanding was they only have 4G.

Ms. McIntosh – But they're planning to go to 5G within a year. There's not much 5G in the United States yet. It's mainly in Europe. I would suggest you guys do some research, too, about the damages it has caused to trees and birds.

2. Pavel Miller, 1115 108<sup>th</sup> Avenue S.E. – I want to say that from the day the letter was mailed – the date on the letter – to the day of the deadline for the letters to respond was about one week. I'll ask a question why such a short time is given? The reason was given that Crown Castle wants to get over with it as soon as. I don't think it's appropriate way to approach serious matters. I consider it a very serious matter.

Mr. Seamans – I understand your concern. Is your concern the timeframe from which you got the letter?

Mr. Miller – No. Why I'm tell you, because we talked to a lot of the residents, and a lot of them are very offended by – because they didn't have the time – they have busy lives and they didn't have time. It seems like the City was supposed to give equal opportunity to both parties. It's not a valid reason because Crown Castle wants to get it as soon as possible. It sounds to me like they were not interested in peoples' letters and not interested in peoples' comments. They were not interested in giving people a choice one way or the other. You know, you're going to have to think about it. It's very clear and very transparent.

Mr. Seamans – Well, the City of Norman has a policy of how Board of Adjustment sends out letters to you.

Mr. Miller – I'm telling you what the answer we received from the question – the person – the people that work here have knowledge that it was a very short time given, and the reason for that because Crown Castle wants to get over with it as soon as.

Mr. Seamans – Well, I appreciate your opinion, Sir. Anything else?

Mr. Miller – No.

Mr. Howard – If I could? Could you relay what the standard procedure is in terms of timing for letters?

Mr. Miller – The reason I'm talking about, because people didn't have enough

time to deliberate and think about it they told us. We have a community – there's a lot to discuss and people are angry about it.

Mr. Howard – We'll address that.

Mr. Seamans – We'll figure out what the timeframe is, and if we violated that, then we will correct.

Ms. Tromble – "Upon receipt of said written application, fee, and list, notice of public hearing before the Board of Adjustment shall be given by publication in a newspaper of general circulation in the City of Norman not less than ten days before the meeting of the board. In addition, notice of public hearing shall be given by mailing written notice by the Chairman of said board to all owners of property within a three hundred foot or larger radius ... Said notice shall contain – blah, blah, blah. Said notice shall be mailed not less than fifteen days before the meeting." It's in the ordinance, Chapter 22, of the City of Norman.

Mr. Miller – It was not 15 days. The letter that we received dated October 8 and we received it essentially a couple days later. And the deadline for the letters was the 18 of this month.

Ms. McIntosh – And it hasn't been 15 days even today.

Mr. Miller – Right. Absolutely. This is not the proper way to approach the business.

Mr. Seamans – So the letter was mailed out on 10/8.

Ms. McIntosh – If you look at the envelope, it said like 10/9 or 10/10, so it was dated the 8<sup>th</sup> – I left the envelope at home.

Ms. Tromble – It was mailed on the 8<sup>th</sup>.

Mr. Miller – The people were not given equal opportunity.

Mr. Seamans – Today is the fifteenth day.

Mr. Miller – I understand where Crown Castle coming from and their goal.

Mr. Seamans – So does the City's statute or the City's law say it needs to be postmarked fifteen days, or mailed?

Ms. Muckala – It says mailed.

Mr. Seamans – Okay. I would see it as a technicality. If I go to the post office at 4:59 and the mail leaves at 4:58, then it goes out the next day. That's the way I would see that.

Ms. Tromble – I always put them in the mail the morning of the day.

Ms. McIntosh – I'll bring you my envelope and you can see when it was mailed.

Mr. Howard – From what I can tell, procedures were followed. I appreciate the clarification on that.

3. Linda Van Dyke, 1115 108<sup>th</sup> Avenue S.E. – My concern is that we are buried in towers right there where that property is. I know Michael already addressed that AT&T, for whatever reason, didn't want to use one of the other towers. But there are people in our community that are complaining that they don't get a good signal for AT&T. It doesn't make any sense to me why the tower is being put in an area where the AT&T signal is good and people have no problem with the cell service there. Why not put it where people need it?

Mr. Seamans – I don't know if there's an actual answer to that. There's so many variables. There's a lot of variables.

Ms. Van Dyke – And there are, but, at the same time, it makes no sense to put it where it's not needed and where it can potentially cause a lot of harm. As Mr. Miller was saying, there were a lot of people – this has been a pretty active discussion on our little community app from the time that I received the letter. People are concerned about the health issues. People are concerned about the noise. People are concerned about property values. The bottom line is people have a job and it's 4:30 in the middle of the week. So it really leaves out the opportunity for people to express how they feel about it. I feel fortunate that I was able to come and that there were some of us here that were able to come. But I spoke with so many people who wanted to come and they couldn't because, either they had no way to take off work today, or they didn't have enough notice to get somebody to cover for them so that they could come today. At the same time, the notice coming as late as it did, it only gave until the 18<sup>th</sup> for the responses of the letters to come in. The City was kind enough to give us two more days to get the letter in, and I appreciate that. But another sad fact of life is few people write letters anymore. It's almost like, you know, putting them in the corner to get somebody to write a letter. You can text, you can call, but get somebody with a pencil and a piece of paper or a computer and a printer – it's almost an act of God to stop life and sit down and compose a letter. Few people read the newspaper anymore either.

Mr. Gasser – Mr. Chairman, if you'd like, I might be able to touch on a couple of things that Linda mentioned. One is that the equipment that's going on this tower, I mentioned, was 3G and 4G. One of the unique things about the 4<sup>th</sup> generation of wireless communications equipment was that it was for broadband communications – so you're talking about mapping and video and being able to maintain those things. A lot of the schools are using 4G communications to work with their students at home and abroad. I'm not trying to sugarcoat that's what we're doing here, but from my perspective, one of the things that I utilize when I'm traveling are mapping GPS and GPS doesn't work very well on third generation. Your phones and your texts will work just fine on 3G equipment. The 4G not only allows for verbal and text communications, but then those larger demanding apps that you utilize and then having the 3G equipment on there will offload from – you know, if there's a lot of people utilizing the mapping software, the 3G equipment will handle the phone calls and the texts, and then the 4G equipment will handle the larger capacity requirements. That's just one example. It would be helpful for everyone to understand.

Ms. Van Dyke – But the problem being, of course, that even with the 3 and the 4G, we don't have a problem in this area. The people that are having problems are in the far fringe of the neighborhood, and those people are actually suffering. These are people that have to go outside at night in the rain to take a phone call.

Mr. Gasser – There are more towers in the area that AT&T is upgrading their equipment on. Crown Castle, I had mentioned, is a tower company – we're an infrastructure company. So we own the towers, we manage rooftops, and then we rent facilities to the carriers. This year, we're seeing every carrier is under construction. We generally will see one or two carriers that are upgrading their networks, but across the board, across the entire company, we have over 40,000 towers, 50,000 small cell nodes,



and they're all building. Even during merger discussions between Sprint and T-Mobile they're both still building.

Mr. Howard – Let me ask you a quick question. In your opinion, if the towers in the area, including yours, were not able to accommodate that equipment, what would AT&T do?

Mr. Gasser – There's a couple of things that they could do, but their first thought would be build a new tower if the three towers that are there could not be extended and hold the equipment. They might come back and see – let's say it was a structural issue – might try and talk us into sharing the cost of building a new structure. You will see – I will let you know that when 5G comes around, 5G requires more towers to maintain that equipment. They have to be closer together. The sign doesn't travel as well because it's handling so much information. 5G is supposed to be the next step to automated vehicles. I'm not sure how far we are from that.

Mr. Howard – If I could ask one more question of staff and Legal? Understanding that the FCC regulates the building of these towers and locations, for the most part, we have some purview in terms of location and spacing, I believe, within the City. What's the practicality of building additional towers in an area like this? Is that something that we would really have much say in? Or are our hands somewhat tied in the situation?

Ms. Muckala – The exception that I've brought to your attention is specific to the modification of an existing tower. Now, I've not had time to go into the purpose behind it, but I would think there are some efficiency nods toward the idea of co-locating as opposed to throwing up new towers every time you have a new request. I have a feeling that's what I'm going to get the purpose is. Our Zoning Ordinance allows them to be constructed up to a certain height, and federal law acknowledges local power to set those types of regulations. So we would have a say over the building of a new one. This is just a very specific exception, I think, passed in order to further a specific purpose.

Ms. Hudson – If I could follow up? In the Zoning Ordinance it says reasonable efforts should be made to co-locate facilities on existing or new towers. If not possible, communication towers shall be located at least 1,000 feet apart.

Mr. Howard – So we would essentially see another tower within 1,000 feet of this, if it were not ...

Linda Van Dyke – Is there not some way to put whatever tower where people need it? I don't understand why this particular tower is of such interest. I mean, yes, it is standing there. But this is not where the signal is a problem.

Pam McIntosh – They want to put it on there so it can carry a signal to one to the east and one to the west and it's already there. So I have a question about what other neighborhoods in Ward 5 have three towers within a mile.

Unidentified – And it is a neighborhood out there. It's not like we're hugely ...

Pam McIntosh – We have a homeowners association where I am. We have Denver 108. There's like 200 people that live there that are all connected that know each other. So what other neighborhood in Ward 5 has 3 cell towers?

Mr. Seamans – Well, unfortunately, we do not have that information.

Ms. McIntosh – I'm just saying that's something for you to think about in the future

when you talk about putting another tower 1,000 feet from our three. I think it's because we're high. We're a high area geographically. And I think that's why all those three towers are there. But there are other areas out in Ward 5 that are also geographically fairly elevated.

Mr. Gasser – The equipment placement isn't generated by demand from wireless devices. That is established and mapped out by the RF engineers. There's four major carriers, but there are a myriad of other smaller carriers. They map that out based on demand from the units. Not always based on the number of people, but it's the demand.

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

Mr. Worster – I might just comment that I know myself and other members of the Board really do listen to neighbor comments. We ask about letters that come in. I'm sure we've all read them all. I understand all of your concerns in all honesty. I sure can't engineer why it needs to be there. I don't have a radio frequency engineering stamp that I can explain the answers of why and where. I imagine it's the best location and most cost-effective. I think the issue is going to come down to a federal guideline that says we're supposed to allow them to do it. At least that's the way I'm interpreting it and reading it. So, as much as I don't want to vote for something that has eight neighbors that wrote letters and showed up and took their time off work, I don't see where ...

Ms. McIntosh – Does City Council still have to approve this?

Mr. Seamans – There is an appeal process were it to get approved.

Mr. Worster – Which is District Court. So this is for minor stuff. If it was a big, major thing, like the tower needed to be rezoned for it, you'd go to Planning Commission and City Council and all that. This is the same thing as if your neighbors wanted a 10' fence instead of an 8' fence.

*Brad Worster moved to approve BOA-1920-4 as presented. James Howard seconded the motion.*

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

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

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

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

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Item No. 5, being:

**BOA-1920-3 – BRIAN AND CORBIN HARRIS REQUEST A VARIANCE OF APPROXIMATELY EIGHTEEN INCHES (18") TO THE TWENTY FOOT (20') REAR YARD SETBACK TO ACCOMMODATE AN ADDITION TO THE HOUSE LOCATED AT 3821 CARRINGTON LANE.**

**ITEMS SUBMITTED FOR THE RECORD:**

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

**PRESENTATION BY STAFF:**

1. Ms. Hoggatt reviewed the staff report, a copy of which is filed with the minutes. Staff supports this variance request and recommends approval.

**PRESENTATION BY THE APPLICANT:**

1. Richard Swanson, the homeowner at 3821 Carrington Lane – My wife and I and our son moved here in June from Virginia. We bought this house on Carrington Lane. It's a really nice house with a nice big back yard, and we wanted to put a sunroom on the rear left of the building. As you see, our fence line on that side is kind of at a funny angle and we're 18 inches short in that space there. The fence is 18 inches over your requirement for space between a back fence. So we're requesting an 18 inch variance to build the sunroom. We did talk to all the neighbors; they have health problems.

**AUDIENCE PARTICIPATION:**

None

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

*Brad Worster moved to approve BOA-1920-3 as presented. Mike Thompson seconded the motion.*

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

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

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

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

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Item No. 6, being:

**BOA-1920-5 – PHELDON OIL PRODUCTION, INC. REQUESTS A VARIANCE FROM THE REQUIREMENT TO INSTALL FENCING AROUND THE GOODIN #34-1 WELL AND TANK BATTERY LOCATED IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 9 NORTH, RANGE 1 EAST, GENERALLY LOCATED ON THE WEST SIDE OF 180<sup>TH</sup> AVENUE S.E. APPROXIMATELY ONE MILE SOUTH OF ALAMEDA STREET.**

**ITEMS SUBMITTED FOR THE RECORD:**

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

**PRESENTATION BY STAFF:**

1. Ms. Hoggatt reviewed the staff report, a copy of which is filed with the minutes. Staff has received no complaints regarding this site and observed no adverse effects of the previous variance, and forwards this request for your consideration.

**PRESENTATION BY THE APPLICANT:**

1. Phyllis Stark, the applicant – We'd like to request this variance. The owner of the land is really upset. He doesn't want anybody bothering his turkeys. He feeds about 200 turkeys on his couple of sections there, and he said, just leave my land alone. I said, well, we've got to go ask for a variance. He said, tell them I don't want anybody bothering. I don't want the fence on there. He said tell them all that's out here is deer and turkeys and armadillos. If you'll look at the end – we're right at the end of 180<sup>th</sup>. If I was on the other side of the road, I wouldn't have to bother you. Anyway, we'd just like to request variance again so we don't have to put that fence up and bother his turkeys.

**AUDIENCE PARTICIPATION:**

None

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

Mr. Worster asked if the request is for another three-year variance, or to be completely exempted. Ms. Stark responded that she would like to never have to come back again. There is nothing out there. There's only two lots – his and ours. He won't let anybody else on there. The turkeys just stand there and look at you; they are so tame. He sure doesn't allow anybody else on there. He just says I don't want to be bothered with it.

Ms. Muckala – From a legal notice standpoint, if the only variance that was requested was time-limited to three years, that's all the notice that was provided, so we can't go beyond that.

Ms. Tromble – It didn't have a time on it.

Mr. Seamans – This could set a precedent for the rest of the oil and gas ones that we're going to see, because they're all going to start coming in. Aren't they?

Ms. Muckala – I would say, from a standpoint of interpreting our ordinance, a unique situation. It is on the very edge of town. We built in exemption language

specifically for existing wells in certain circumstances. This situation does not have any residential owners that could object to this circumstance, and a previous three-year waiver was already allowed that seems to have resulted in no complaints or adverse impacts. So we're comfortable with the request.

Ms. Hudson – What staff referenced was that the Board approved the last variance for a period of three years. We didn't say that the applicant is asking for three years and it wasn't advertised as three years at all.

Ms. Muckala – It sounds like we've had no inconsistent notice out there so I'm fine with you considering that.

Mr. Seamans – So it could be a 10-year, 100-year, 5,000-year. Any of the above.

Ms. Muckala – A perpetual waiver or variance.

Mr. Thompson – Is there a way to do it, say, until property ownership changes hands?

Mr. Seamans – Who is going to follow that?

Ms. Muckala – This is just a caution for the future, development that happens around it if a house is built within the 600 feet. That could be a changing circumstance where there would be a residential owner who would want to come back and protest. So it's something to take into consideration. If the decision for the variance has been made, that is something you can do, but it does take away the circumstance where someone who moves into the area might have had a say where they wouldn't have previously. It would just be granting a variance with no need to come back. You can limit it to a change in ownership; if you did that, like you mentioned, it could be challenging to enforce, but nonetheless the applicant would be bound by it.

Mr. Seamans – We're trying to get you off the books for coming back in three years, and we're trying to do that right.

Ms. Stark – Thank you.

Mr. Woods – If there is a house built within 600 feet of that well bore, there's two options. One, they could go to the people building the house and they could grant them a waiver for the well – the 600 foot distance. They wouldn't have to come back; they would have a waiver so it was good as long as that well lasts or that house stayed in that ownership.

Ms. Stark – I don't think anybody is going to build out there. There's this huge well across – big 5 acres across the road that's messed up with a well.

Mr. Woods – Just to the south right there, you can see the other one on the other side.

Mr. Worster – Could we grant a variance that basically said it's perpetual unless someone moves in within 600 feet and complains, or there's an accident on-site, or some trigger point that there's now a health/safety issue that is in effect? They could come back and make them reapply for the variance if some circumstance there.

Ms. Muckala – Well, all zoning regulations and decisions should be made in a sufficiently clear manner so that we know what the parameters are. So it's a challenge to identify those, but to the extent we can, yes, your decision can be limited, time or otherwise.

Mr. Worster – So if someone did go build a house nearby or apply for a permit and then say what's up with all these oil wells, and then came to the City and said can that be there? I've got 17 grandchildren that come and play around. What would the City then say? Would they go back and look for these minutes and say, well, he doesn't have to have a fence because the Board of Adjustment said he didn't have to? And if they did that, would they have some remedy?

Mr. Woods – No. Actually, it's written in the Oil and Gas ordinance that if a new structure is built within that distance, then they either have to fence it or be granted a waiver from the ...

Mr. Worster – So it's automatically.

Mr. Woods – If somebody builds a house within 600 feet of that well, it's automatically got to be fenced if they can't get a waiver from the people building the house.

*Brad Worster moved to approve BOA-1920-5 as presented. Mike Thompson seconded the motion.*

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

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

Ms. Tromble announced that the motion, to approve the variance as requested, passed by a vote of 4-0.

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

\* \* \*

Item No. 7, being:

**BOA-1920-6 – ALFRED AND PAMELA BRADFORD REQUEST A VARIANCE OF FIVE FEET (5') TO THE TWENTY-FIVE FOOT (25') SIDE YARD SETBACK (EAST) TO ALLOW A STORM SHELTER THAT WAS BUILT TWENTY FEET (20') FROM THE PROPERTY LINE FOR PROPERTY LOCATED AT 11010 ALAMEDA DRIVE.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Request for Postponement

**PRESENTATION BY STAFF:**

Mr. Seamans noted that the applicant has requested postponement to the December 4, 2019 meeting.

**PRESENTATION BY THE APPLICANT:**

None

**AUDIENCE PARTICIPATION:**

None

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

*Mike Thompson moved to postpone BOA-1920-6 to the December 4, 2019 Board of Adjustment meeting. James Howard seconded the motion.*

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

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

Ms. Tromble announced that the motion, to postpone this request to the December 4, 2019 meeting, passed by a vote of 4-0.

\* \* \*

Item No. 8, being:

**MISCELLANEOUS COMMENTS OF THE BOARD OF ADJUSTMENT AND STAFF**

1. Ms. Muckala – Just a heads up, that based on this federal law, you might see some tweaks coming forward to the ordinance that controls the procedures for those types of things in the future, just so it's more clear. The current application was based on the way our ordinance is written, and so that's why the staff report was set up that way. You'll be fully informed when that happens.

Mr. Worster – Is that something that they could just change the ordinance to then mirror the federal guidelines, so they don't have to come? Crown Castle is a big company.

Ms. Muckala – That's one option. It can be addressed administratively in a situation that is evaluated to meet those standards. It could also just be written straight into our code. In order to amend the Zoning Ordinance, that will go before City Council. But when we're doing that, I can definitely reach out for your commentary on that.

Mr. Worster – Just seems easier than having a bunch of them come through.


\* \* \*

Item No. 9, being:

**ADJOURNMENT**

There being no further business and no objection, the meeting adjourned at 5:27 p.m.

PASSED and ADOPTED this 4<sup>th</sup> day of December, 2019.

  
Board of Adjustment