

**MINUTES OF THE  
BOARD OF ADJUSTMENT MEETING  
April 13, 2021  
5:30 P.M.**

The Board of Adjustment of the City of Moore, Oklahoma held a meeting on April 13, 2021 at 5:30 p.m. in the Council Chambers, Moore City Hall, 301 North Broadway, Moore, Oklahoma.

**Agenda Item No. 1, being: ROLL CALL**

After noting a quorum present Chairman Sherrard requested that roll be called. The following members reported present:

Gary Lunow      Shelia Haworth      Janie Milum      Hermes Arevalo      Ralph Sherrard

**Absent:**            None

**Staff:**            Elizabeth Weitman, Director Community Development, Sarah Copeland, Assistant City Planner. Nora Kerbo, Administrative Assistant

**Agenda Item No. 2 being: REPORTS**

- a) Board of Adjustment Members – None
- b) Community Development Department - None

**Agenda Item No. 3 being: MINUTES**

- a) Approval of the **Minutes of the Board of Adjustment Meeting held December 8, 2020.**

Chairman Sherrard requested a motion.

**Motion:**            Shelia Haworth motioned for approval of the **Minutes of the December 8, 2020 Board of Adjustment Meeting**, as written. Gary Lunow seconded the motion. Roll was called.

**Ayes:**              Lunow, Haworth, Milum, Arevalo, Sherrard

**Nays:**

**Abstained:**

**Absent:**            None

**Agenda Item No. 4 being: NEW BUSINESS**

a) Appeal No. BOA 235

PROPOSED REQUEST: VARIANCE TO PART 12, ARTICLE 4-C, SECTION 12-406 OF THE MOORE CITY CODE, BEING MISCELLANEOUS AESTHETIC REQUIREMENTS TO CONSTRUCT A COMMERCIAL BUILDING WITH NO BRICK

VARIANCE TO PART 12, ARTICLE 2-B, SECTION 12-234 OF THE MOORE CITY CODE, BEING AREA AND HEIGHT REGULATIONS TO CONSTRUCT A METAL ACCESSORY BUILDING WITH 15 FOOT SETBACK TO REDIDENTIALLY ZONED PROPERTY

APPLICANT: ALL LAND INCLUDED, LLC/ALI EBRAHIMI

ADDRESS: 809 NW 34<sup>TH</sup> STREET, MOORE, OK 73160

Legal Description: **Lot Eighteen (18), in block one (1) of Golden Acres, to Cleveland County, Oklahoma, according to the recorded plat thereof.**

Property Address: **809 NW 34<sup>TH</sup> Street, Moore, OK 73160**

This subject site is located at 809 NW 34th St and is currently occupied by Burgess Engineering and Testing. This site is located in the Golden Acres Addition, which was developed prior to the current zoning code adoption. As a result there is a mixture of residential and commercial uses in the area, along with legal non-conforming uses to the north and west. The applicant is requesting to construct a new building directly behind the existing primary structure with a metal facade and a 15' side yard setback.

In each Board of Adjustment case, the following questions must be considered.

Section 12-126 of the Land Development Code permits the Board of Adjustment to grant variances upon finding that:

- 1. The application of the ordinance to the particular piece of property would create an unnecessary hardship or result in exceptional practical difficulties.**

The property is zoned C-3 and is adjacent to a residentially zoned property, which requires that 75% of the building be covered with brick, rock, or veneer, and a 25' side setback when adjacent to residential use or zoning. The applicant wishes to construct the new building to match the existing primary structure, which is metal and set back from the western property line by 15'. Additionally, the proposed building would not have street frontage, although the side of the building could be seen from the west-bound NW 34<sup>th</sup> Street traffic.

Enforcing the ordinances on the subject site does not create an unnecessary hardship, however, the strict enforcement of the ordinance would not allow the proposed building to match the existing.

- 2. Such conditions are peculiar to the particular piece of property involved.**

There are no lot shape or peculiar conditions to the subject site. Because the primary structure is a metal building and because the proposed new construction is to be located directly behind the primary structure with no street frontage, the applicant would like to have aesthetic uniformity between the two structures.

**3. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the ordinance or the comprehensive plan.**

The intent of the aesthetic ordinance is to provide more aesthetically pleasing commercial development when metal buildings are constructed. The Golden Acres Addition contains several lots that were constructed prior to this ordinance and metal commercial buildings are prevalent in the Golden Acres neighborhood. Additionally, because the proposed building is located behind the primary structure and will not have street frontage, limiting or eliminating the required brick is not anticipated to be a detriment to the public good.

The intent of the setback ordinance is to provide separation between commercial and residential land uses as an effort to avoid land use conflicts. The Envision Moore 2040 Plan also places emphasis on creating a buffer between such uses. Although the neighboring property to the west is zoned R-1, it is currently being used for a commercial business, therefore, the side yard setback does not offer additional buffers for residential use. Reducing the side yard setback to 15' is not anticipated to be a detriment to the public good.

It should also be noted that the applicant intends to 'clean up' the lot, removing concerns of blight in the neighborhood, further supporting the Envision Moore 2040 Plan. See Exhibit B.

**4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.**

The lot is 1.48 acres in size and the applicant has the option to relocate the proposed building 10' further east to comply with the side setback for C-3 zoning. The applicant is also asking to eliminate the bricking requirements for the proposed new structure. The board will need to determine if eliminating the bricking altogether and reducing the side yard setback is appropriate, or if requiring some other amount of masonry and/or setback is a reasonable and appropriate alternative to meet the intent of the ordinances.

This application seeks two variances for a proposed metal commercial building to be constructed behind a primary structure and setback 15' from the side property line adjacent to residential zoning. Although the respective city codes require bricking and residential setbacks to help ensure the general continuity in the aesthetics and character, and preserve the general welfare of the community,

Several unique characteristics of this request factor heavily into the decision-making process:

- The proposed building is set behind the primary structure, primarily viewed from NW 34<sup>th</sup> Street via west-bound traffic only.

- Because the existing buildings on the lot and some buildings on the surrounding lots are metal, staff believes that if this building were to be built as proposed, it would not cause a lack of uniformity in the area.
- The residential lot to the west is developed with a commercial building, and the proposed building will be constructed with the appropriate fire walls to eliminate fire safety concerns.
- Existing temporary structures and unsightly outdoor storage will be removed from the site as shown in Exhibit B. This works to fulfill the intent of the Envision Moore 2040 Plan.

Because of these circumstances, staff recommends approval of the requested variances contingent upon the following:

1. Fire Marshal approval of the fire wall construction.
2. Removal of discarded core samples and other trash and debris from site as shown in Exhibit B.

Chairman Sherrard asked if there were any questions for Ms. Weitman. Hearing none, Chairman Sherrard asked if the applicant was present.

Mark Long, Smith, Roberts Baldischwiler, 100 NE 5<sup>th</sup> Street, Oklahoma City, OK 73104, introduced himself as representing the applicant and Burgess Engineering and Testing.

Mr. Long explained, the operating business is a geo technical, concrete, and construction material testing company working for numerous cities, as well as, the department of transportation. The operation does generate a lot of concrete and asphalt waste material. For that reason, one phase of the overall business expansion plan being presented tonight, will be a plan for clean-up of the site. The proposed 6000 sf building will facilitate more internal operations and eliminate the need for temporary storage containers to house samples that require long term storage.

Mr. Long went on to say, included, as part of the improvements planned for the site, is the replacement of the parking lot located on the East side of the property. The gravel parking lot will be replaced with asphalt or a chip seal surface.

Chairman Sherrard asked if operations at this location create dust or noise pollution. Mr. Long answered, any noise generated is from drilling rigs that park and come and go from this location. However, all of the material testing that is done there, is performed in a certified laboratory environment

Chairman Sherrard stated, a solid surface parking lot should result in reduced dust in the area. Mr. Long, stated the parking lot would be a definite improvement to the area.

Chairman Sherrard asked if there were any members of the audience who wished to address this item:

The following citizens spoke in opposition to the application:

Aaron Hardridge 812 NW 35<sup>th</sup> Street

Mr. Hardridge stated he is not opposed to the reduced bricking requirement for the proposed building. He stated he is opposed to any expansion by the current owner based on the following concerns that impact his quality of life.

The soil seems to have been treated or contaminated with chemicals. No vegetation will grow.

Mr. Hardridge stated his property abuts the subject site and his home sits about 200 feet from the business operation. He stated he has called City of Moore, EPA and DEQ on many occasions to report strong noxious odors that are irritating to the eyes, coming from the property. Trees will not grow on the North end.

Loss of vegetation due to intrusion of chemicals transferred to his property through stormwater runoff. Several property owners have invested thousands of dollars in trees and shrubs and none have survived.

Mr. Hardridge stated his flooding issues began as soon as the newest building was constructed. Additionally, core samples are stacked and buried all over the north end of the property which has raised their elevation and caused his property to be higher than all of his neighbors. Additionally, the property owner has sloped the property to run away from his property and onto his neighbors. This is a low lying area that lacks any sort of City drainage improvements. The property has a history of flooding any time it rains and the applicant has definitely exacerbated the drainage problems in the area with their previous expansion. Mr. Hardridge went on to say, the proposed sealed surface parking lot will only increase water runoff, adding to the ongoing drainage issues for the area. Mr. Harding stated, the property owner does not take care of what they have now and that is an issue. There is consistently a 6' tall by 6' deep pile of trash on their property at all times.

Rose Morgan, introduced herself as the property owner of multiple neighboring property including 814 NW 35<sup>th</sup> Street, 816 NW 35<sup>th</sup> Street, and 813 NW 34<sup>th</sup> Street, which is the property abutting the subject property along the west property line. Mr. Morgan stated, shortly after Mr. Ebrahimi purchased the property at 809 NW 34<sup>th</sup> Street, multiple loads of rock was placed on the property beginning at the north side of the building and extending to the north end of the property line, changing the elevation of the property. This was the beginning of significant drainage problems for all of the surrounding property owners. Many neighbors have had to make major modifications to the property to keep their buildings from flooding. Ms. Morgan explained even after digging a trench along her property line to try to divert some of the water, the home located at 813 NW 34<sup>th</sup> street still flooded. There was no flood insurance on the property so those expenses became her responsibility.

Golden Acres has no storm sewer, therefore the area has a long history of sub-standard drainage. Ms. Morgan explained the proposed building will add more storm water runoff to the area, thereby increasing the existing drainage problem. Ms. Morgan requested that that the applicant's request to expand, be contingent on the requirement on the owner, as the developer, to provide a drainage study and an approved drainage plan for the entire property. Ms. Morgan stated she would like to echo Mr. Hardridge assessment of the soil. It is completely void of vegetation, not even weeds grow in the soil. It is a serious issue that is not limited to the property in question, as those chemicals have all spread to neighboring properties through storm water runoff. Ms. Morgan stated she would appreciate the City using the request before them, as an opportunity to require the owner to remedy the problem.

Shelia Haworth stated, developers are required to control the water runoff for each site. Ms. Haworth asked Ms. Weitman if further development of this property would be subject to those same requirements. Ms. Weitman answered yes. The Board of Adjustment has the authority to approve with conditions.

Ms. Haworth stated she would be in favor of requiring a drainage report and drainage from the developer to be approved by the City's consulting drainage engineer. In addition, the developer would be responsible for installing the necessary improvements to direct the drainage to NW 34<sup>th</sup> Street. Ms. Haworth stated, approval of the request as it is, would only create a bigger problem than what already exists today.

Chairman Sherrard stated he would be in favor of those requirements. Chairman Sherrard went on to say, he would like to add an additional stipulation to prohibit any additional material, that potentially may impact the drainage, from being added to the site once the drainage plan has been approved.

Mr. Long, stated the applicant is more than happy to provide a drainage study. In fact, that is already included in the scope of work, along with paving the parking lot. Mr. Long stated, of the two lots involved, Mr. Ebrahimi the property to the east has always been problematic. A full topographic survey has already been done. The owner recognizes the terrain issues within both lots and as a result the applicant is more than happy to provide a drainage study per the City code requirement for obtaining a building permit.

Mr. Arevalo stated, in his opinion cleaning up the property and utilizing the proposed building to house future core samples to prevent further dumping on the property, would be a benefit to neighboring property owners.

Shelia Haworth asked Mr. Long if there is a way to know what area of the property is full of buried core samples, since that is an area that will not be able to absorb any type of water. Mr. Long answered Burgess Engineering performs density testing and they will want to have a proper subgrade for any planned improvements.

Chairman Sherrard stated, there are businesses that are more suitable to accept discarded core samples. Silverstar Construction is a good example of a local business that could accept that type of waste.

Chairman Sherrard asked if there were any other members of the audience who wished to address this item. Hearing none, a motion was requested.

**Motion:** Shelia Haworth motioned for approval of **Board of Adjustment Application No. BOA235**, subject to staff recommendations *and* a drainage study of the area and submittal of a drainage plan subject to approval by the City Drainage Engineer. Completion of those items would be required prior to the issuance of any building permit. Additionally, burying of any future core samples on site would be prohibited. Hermes Arevalo seconded the motion. Roll was called.

**Ayes:** Lunow, Haworth, Milum, Arevalo, Sherrard

**Nays:**

**Abstained:**

**Absent:**

**Agenda Item No. 4, being:** CITIZENS TO BE HEARD - None

**Agenda Item No. 5, being:** ADJOURNMENT

Chairman Sherrard requested a motion to adjourn at 6:10 p.m.

**Motion:** Shelia Haworth motioned for adjournment. Gary Lunow seconded the motion. Roll was called.

**Ayes:** Lunow, Haworth, Milum, Arevalo, Sherrard

**Nays:**

**Abstained:**

**Absent:** None

RECORDED & TRANSCRIBED BY: \_\_\_\_\_  
Nora Kerbo, Recording Secretary