

MINUTES
BOARD OF ADJUSTMENT
7:00 P.M., THURSDAY DECEMBER 4, 2014
COUNCIL CHAMBERS, JENKS CITY HALL, 211 NORTH ELM STREET
JENKS, OKLAHOMA 74037

Members Present

Steve Murtha
Larry Hengst
Paul Greek
Shari Keathley

Members Absent

Gina Wilson

Staff Present

Robert Bell

The Jenks Board of Adjustment was called to order at 7:00 p.m. on Thursday, December 4, 2014, at Jenks City Hall by Chairman Shari Keathley, and following a roll call a quorum was declared present.

Chairman Shari Keathley requested a review of the minutes from October 2, 2014, Board of Adjustment meeting and asked if there were any corrections or omissions. Chairman Shari Keathley said she previously gave Robert a change to the minutes. There were no comments or other corrections to the minutes of October 2, 2014. Chairman Shari Keathley declared the minutes approved as written with the one change.

BOARD CASES

1. JBOA-378 (0573) Request by Michael Jewell for an approval of a Variance to the Skyline Estates subdivision plat requiring a radius of a 150 foot Building Line from an oil well on property described as:

Lot 3, Block 1, "Skyline Estates", an addition to the City of Jenks, Tulsa County, Oklahoma.

General Location: 12117 South Skyline Drive.

Robert Bell addressed the Board and stated the subject property is designated Low Intensity by the Jenks Comprehensive Plan and is zoned RS-1. The variance requested is to allow placement of a single family dwelling within a 100 foot radius building line that was established around an oil well located on the subject tract when the property was platted within the Skyline Estates subdivision. The applicant has provided documentation received by the Oil and Gas Conservation Division Bristow District that in 1992 the oil well located on the property was

removed and that the well has been capped with concrete. The building line located on the property was established as a setback to an active oil well. The Jenks City Code does not specify distance required for a dwelling to set away from a capped well. Policy specifies that a foundation shall not be placed over a capped well. The Corporation Commission web page specifies the following: This was a number on their page that was number 28 and is said, "Can I build a structure over an abandoned well?" The answer was, "Yes. However, during the division's construction site plan review process the construction site engineer will require all wells to be tested for leakage and all wells under buildings or restricted access must be vented and abandoned or re-abandoned to present day standards. It is advisable to design your project so that you avoid building over old wells since the cost to abandoning or re-abandoning a well is very high ranging from \$25,000.00 to \$100,000.00 and up." A State Statute was passed in 2003 that required a setback of 125 feet from active oil wells. Since the oil equipment was removed from the subject site, and the well capped, no State regulation affects the placement of the dwelling. Oil wells within the City of Jenks require a Specific Use Permit. The current site being abandoned greater than two years would remove any reference to a pre-existing condition. The subject property is zoned RS-1, which under the criteria for oil and gas wells they are restricted from residential lands. Therefore, any future oil and gas operations cannot be established. Staff recommendation is that the building line be decreased no less than five feet from the capped well. It should be noted that at this distance it will probably not allow for equipment to access the old well site should the need arise. The requested variance does not create any impact on adjacent properties and has no effect on the welfare of the neighborhood. The variance recognizes that the conditions of the property have changed with the removal of the active well and will allow the proposed use of the property in accordance with the Jenks Zoning Code and the zoning of the property. Staff is supportive of the application and notes that an extraordinary condition does exist and recommends a variance JBOA-378 be approved subject to the condition that the building line shall be reduced to a 5-foot radius around the abandoned capped well. Chairman Shari Keathley asked the Jewells to come forward and tell the Board about the application. Mrs. Jewell addressed the Board and stated we purchased the lot and then we were told we could build on it. Then we found a builder, then we had issues, and we just recently found out that we could get a variance. Then we decided we'd sell the property since we couldn't build on it. We had spoken to a number of people before we bought it. We were told it was a very low producing well, it's fine to build on it as long as you don't build livable space over the top of it. It produced only about 81 barrels in its life before it was capped. It's been a real sore spot for us for quite a few years. We listed it with a realtor and she had a couple of builders who were interested in purchasing it to build on, but they were told they couldn't build on it because of the build line. That's why we applied for a variance to see if we could get that to where they can at least build a house on the lot and we can go ahead and sell it. The way it is now it's just wasted space because the little back corner is about all you've got. Robert Bell said the idea of a variance was my idea. I think with that on the plat you end up with a cloud on the title if they ever put a house on there and didn't do something with that. Of course that circle doesn't relate

to anything in the Zoning Code and doesn't relate to anything in our requirements. It relates to a building line that was established on the plat that was done around an oil well when the property was platted. The variance is basically that's no longer there and it's to move that down to appropriate level so the property can be utilized for what's it's zoned to be utilized as. Paul Greek asked what year was the property platted? Robert Bell answered in the 1980s, so it was about 5 to 10 years prior to the use stopping on the property. Larry Hengst asked Mrs. Jewell you don't plan on building on it, you just want to sell it? Mrs. Jewell answered at this point we just want to sell it. When we planned on building on it we had all of the kids at home, but they're moving out. We live in Beckett Ridge and have decided to stay where we're at. It's a really nice piece of land and you could put a really nice house on it. Chairman Shari Keathley asked if there was anyone else present that would care to speak in favor of the proposed variance. No one came forward, and Chairman Shari Keathley then asked if anyone was present that would like to speak in opposition to the proposed variance. No one came forward. Steve Murtha asked does anybody here know how they actually cap those wells? Do they pull the pipe out and plug it with concrete? Chairman Shari Keathley replied yes. There's a plugging record here. They pull what they can and cement at various levels. Someone asked if this will affect the lots on either side of this lot. Robert Bell said I spoke with one of the neighbors who said he had to pull the brick off of the back of his garage to comply, and he asked if he could put the brick back on now. I told him yes. Another person from the audience asked if a patio could be placed over the capped well. Robert Bell said it would be best to have a courtyard. Jenks has a lot of old oil wells that seep out of the ground and we've had that happen in Churchill Park where we had to tear a bunch of streets up. I heard of a case in Owasso recently where an individual has seepage coming up from an old oil well. That was the reason I put the caution in here. Even the 5 feet doesn't give you the room, but it doesn't come up underneath the house. What I'm doing is recommending to the Board that they approve it at 5 feet. In our reports we've highlighted that this could be an issue. Chairman Shari Keathley closed discussion from the floor. Steve Murtha said I went out there today and I couldn't find the well. Mrs. Jewell said it's just dirt. Steve Murtha said so there's nothing to identify where the well is. Mrs. Jewell replied no. Everything is covered. Steve Murtha said the packet we received at home prior to the meeting didn't contain some of the documents that's in this formal packet, one of which was a picture of the lot showing the approximate location of the well. One of the things I wanted to do was locate where the well is. You already have a 35 foot setback from the street. It's going to be hard to build a house on there because you're going to have to set back even further. Robert Bell said the idea was you put a 5 foot circle around the well then you could build a house that comes up on both sides and not touch. I realize this property drops off to be steeper on the back side. You could set back further if you wanted to and design around that, or you could design around this. You could also as a Board put in the variance saying it reduces the 5 feet unless you get Corporation Commission approval to build over the well. What I've read to you is the Corporation Commission would allow it if you follow their construction guidelines and that Item 28. I'm not comfortable going closer or have them build over that hole. Steve Murtha said as you said, the house is almost

going to have to be built in a U shape. Does anybody know the exact location from the road back to the well? Robert Bell said I think the Building Inspector is going to have to require that they stake it. Steve Murtha made a motion to approve JBOA-378 based on the conditions that were presented in the report. Seconded by Paul Greek.

A roll call vote was taken as follows:

Steve Murtha	Yes
Larry Hengst	Yes
Paul Greek	Yes
Shari Keathley	Yes

Motion carried.

2. Request for an interpretation of Section 940.2.A Subsections C. and D. of the Jenks Zoning Code.

Robert Bell addressed the Board and stated there's an attorney that did a title opinion on a PUD and they felt this description and wording was a little ambiguous, so what they wanted to do was bring it before the Board of Adjustment to make sure that it's in findings that it is under what is your authority to interpret the Code. Section 940.2.A, subsections c. and d. Subsection c. reads: "All regulations applicable to setbacks, parking and loading, general provisions and other requirements shall be met in relation to each respective land use in the development based upon the zoning district in which the use is listed as a permitted or specialty permitted use. In all cases, the strictest provisions shall apply." That's saying that you're subject to all bulk and area requirements basically that applies to a specific property or zoning use. Subsection d. reads: "Notwithstanding paragraph (c), deviations with respect to such regulations may be granted as part of the overall approval of the PUD to also include offsite signage and sign requirements, provided there are features or elements designed into the project plan for the purpose of achieving the objectives of this Jenks Zoning Code." Staff's interpretation of that is that notwithstanding paragraph c, in other words we're addressing paragraph c, that deviations with respect to such regulations, and those are the regulations that are identified in item c, to also include sign and signage, that is not included in that paragraph, thus it says also to include so it's including something. What's it including it into? All the provisions that are listed in item c above. Staff's interpretation is that item d allows deviations through the PUD process to the bulk and area requirements or the requirements and regulations applicable to setbacks, parking and loading, general provisions and other requirements to include sign and signage improvements. What is before you tonight to interpret is that subsection d. means that it addresses everything that is listed in subsection c. It is recommended that the Board of Adjustment make the finding that Section 940.2.A., subsections c. and d. together are establishing the authority of the Planning

Commission and the City Council to deviate from the standards related to setbacks, parking and loading, general provisions and other requirements of the bulk and area requirements, and to also include offsite signage and sign requirements of any particular zoning district through the PUD process. The City Attorney is with us tonight. Chairman Shari Keathley requested Steve Oakley speak on the matter. Steve Oakley addressed the Board and stated I think Robert summed it up. Basically there was some concern by the people doing the title work for a PUD as to whether or not this was interpreted the way we have always interpreted it. They just wanted clarification from the Board of Adjustment that yes, this is what it is so they can then relay that in their title opinion to their client that this is the way it's interpreted. We informally interpreted it like this previously, but this will make an official interpretation. Larry Hengst said I thought that's what the deal was on a PUD, that the City Council and Planning could adjust everything as the land permitted. Steve Oakley said all of those items mentioned in Subsection c. as well as offsite signage can be addressed in a PUD with the permission of the Planning Commission and the City Council. Robert Bell said and it's this paragraph that gives that authority. Larry Hengst said that was the whole reason this PUD was set up to begin with. Steve Oakley said my official response to the attorney doing the title work was there's no problem. He just wants to make sure he's totally covered when he writes his opinion for his client. This was the way to do it. Chairman Shari Keathley asked is this who this gentleman represents? Steve Oakley said this is from the attorney's office that is wanting that clarification. Steve Murtha said I don't understand how the Board of Adjustment can direct the Planning Commission and City Council. Robert Bell said it's not. The Section 1310 of the Zoning Code says, "The Board shall have the power to hear appeals from the determinations of the building inspector in enforcing this code, to grant special exceptions, to grant variances, and to make interpretations of the zoning map and text, in accordance with the substantive and procedural standards hereinafter set forth." Your role is if there's a question of the interpretation of the Code, all you're doing is saying that's what it means. Larry Hengst said it's each one of them backing up the other one. Robert Bell said you have the role granted by the Zoning Code to make the interpretation of the zoning text. Steve Murtha said I understand what our duties are, but I don't understand why we need a finding. Why do the City Council and the Planning Commission need a finding from us. Robert Bell said I don't think they do. If you find the wording on that isn't the way we've interpreted the wording, then we'll have to go back and change the Code. Larry Hengst said it's been that way since the 80s. Robert Bell said '83 or '84. Larry Hengst said I live in the first PUD that was built here in town. Robert Bell said what the Code does is give you the authority to interpret the Code itself and its meaning. We're submitting to you that the Code in item d. of that section incorporates all the uses and standards listed in item c. If you agree with that, then that's the finding. Steve Oakley said that's always been our interpretation, and I think out of an abundance of precaution the attorney for the applicant in a PUD just wants it spelled out to be clear that yes that is the interpretation as agreed by the Board. Larry Hengst asked what do you need from us? Robert Bell said that paragraph that I put as far as the recommendation, just say the Board of Adjustment interprets the Code as staff report identifies. Chairman Shari Keathley read the

paragraph: "It is recommended that the Board of Adjustment make a finding that Seciton 940.2.A subsections c. and d. together are establishing the authority of the Planning Commission and City Council to deviate from the standards related to setbacks, parking and loading, general provisions and other requirements and to also include offsite signage and sign requirements of any particular zoning district through the PUD process." In other words, if I'm thinking this out, we're basically saying they have the right to go to change it. Steve Murtha asked are these changes you're referring to here to deviate from standards related to setbacks and so forth? Robert Bell said we do it all the time. Steve Murtha said but we do it in a development. This almost implies it can be done on individual cases, which is what we're supposed to be doing. Robert Bell said this says it can be done in a PUD process. Larry Hengst said they even tell you what trees to leave, what trees to take out, whatever they want to do. Larry Hengst made a motion to find the interpretation as written Section 940.2.A, subsections c. and d. in the Zoning Code and in the Staff report. Paul Greek agreed with the interpretation and seconded the motion.

A roll call vote was taken as follows:

Steve Murtha	Yes
Larry Hengst	Yes
Paul Greek	Yes
Shari Keathley	Yes

Motion carried.

Meeting adjourned at 7:20 p.m.