

DRAINAGE BOARD OF APPEALS
Special MEETING MINUTES July 28, 2020

IN ACCORDNANCE WITH THE OKLAHOMA OPEN MEETING LAW,
THE AGENDA WAS POSTED July 24, 2020 at
723 SOUTH LEWIS
STILLWATER, OKLAHOMA

MEMBERS PRESENT

Ed Miller, Chair
Dale Daniels, Member
Matthew Mitchell, Member
Madeline Fong-Goddard, Member
Daniel Storm, Member

STAFF PRESENT

Zack Henson, Stormwater Programs Manager
Dennis McGrath, Asst. City Attorney
Cindy Gibson, Manager of Administrative Services

MEMBERS ABSENT

GUESTS: Zack Henson, Stormwater Programs Manager
 Ms. JoAnna Jamison Mr. Tim Brooks Mr. Roger Gose

1. CALL MEETING TO ORDER

Chair Miller calls meeting to order at 5:30 pm. Ms. Gibson swears in the following:

Zack Henson, Stormwater Programs Manager Ms. JoAnna Jamison Mr. Tim Brooks
Mr. Roger Gose

2. APPLICATIONS FOR DISCUSSION AND POSSIBLE ACTION:

- a. Ric and JoAnna Jamison, **VARIANCE (VAR20-16)**, requesting review and granting of a variance to Ch. 23, Sections 23-373 and 23-374 of the City Code to allow an accessory structure to encroach in the regulatory floodway for property addressed as 130 S. Park Str. **Henson**

Zack Henson, Stormwater Programs Manager presents staff's report with analysis and findings.

Zack asks if there are any questions.

Chair Miller thanks staff for detailed presentation and expresses concern of staff's notation that granting of this variance could potentially negatively impact the community's NFIP standing and CRS rating; Zack responds that he's had many conversations with FEMA representatives as well as the OWRB and couldn't state with any certainty that the variance would cause a negative impact but in a general sense, variances to floodplain ordinances are not recommended. Zack further comments that, however, if there were a set of circumstances where a variance would be reasonable to permit this would be one of those circumstances in keeping the applicants safety in mind and making sure they feel safe in the residence without causing any situations that may cause danger in the future.

Chair Miller discusses the importance of and reasonable request of wanting a storm shelter in living in Oklahoma; Zack responds that he would agree and the denial of the permit was strictly on the basis of the ordinances currently in place.

Mr. Storm states that he wondered it was possible to install a storm shelter be counted as the existing structure without being counted as a substantial improvement so as not to jeopardize our standing; Chair Miller responds that he thinks it would be at the discretion of City code.

Mr. Storm states that it would be a FEMA determination of “a substantial improvement” and asked what it is defined as; Zack states “a substantial improvement” by FEMA terminology is based solely on the monetary value of the improvement that a substantial improvement is anything that costs fifty percent or more of the value of the structure itself.

Mr. Storm asks if an above ground storm shelter adjacent and connected to the existing structure would not be classified as a substantial improvement and being above ground would reduce the risk of drowning to the occupants in the event of flooding; Zack responds that is accurate as long as it is attached to the structure and the floor is at base flood elevation or higher.

Mr. Daniels asks for clarification that the code prohibits any encroachment of any kind not just new construction; Zack states that is correct.

Mr. Storm asks if the shelter would be considered new construction since it would be added to the existing; Zack defers to Mr. Gross for clarification.

Mr. Gross states that he would have to research the code to give an accurate answer.

Chair Miller discusses the pros and cons of the request and the Board’s responsibilities in regards to this request; Mr. Storm states he agrees and the request has to be evaluated in the prevue that the applicant has to justify this is the most attractive alternative. Mr. Storm comments that it’s within the Board’s prevue to look at what they requested and if there are options that would not violate some of the floodway restrictions; Chair Miller agrees.

Ms. Gibson makes recommendation for the Board to hear from the applicant and their representative as they have heard from staff and had some Board discussion; Chair Miller agrees.

Ms. Gibson asks if there are any further questions for staff.

Ms. Fong-Goddard asks if there have been any previous variances approved for that area; Zack responds that none have been given to his knowledge and he has no records of such.

Chair Miller states there could have been shelters installed in the ground in the slab under the garage roof that there are no records of; Zack responds that the FEMA map currently in place was updated in 2007 and the previous map did not have this area in the floodway/floodplain.

Mr. Storm asks for a summary of the previous discussion as he was having internet issues; Chair Miller summarizes the discussion.

Chair Miller asks if there are any further questions for staff; none respond. Chair Miller asks if there is anyone to speak in favor of this request.

Ms. Joanna Jamison, 130 S Park Dr., Stillwater, OK comes to speak on the following:

- They were unaware of the floodway/floodplain when purchasing the property

- Safety is the primary concern for the resident
- Details how all options were evaluated
- Surrounding properties have basements
- Details flood precautions taken and installed on the property
- Defers to Mr. Gose for any further information and technical questions

Mr. Roger Gose, 113 E 8th Ave, Stillwater, OK comes to speak on the following:

- Representing the applicant
- Compliments staff detail of information in their presentation
- Corrects the terminology in the shelter being proposed to install is a “slant-back” not a traditional in ground storm shelter
- Door to the shelter will be above ground and threshold will be 12 inches above base flood elevation
- Location is 18 inches below the base flood elevation and due to existing retaining wall it will be protected from upstream flow
- The shelter can be built in such a way that it won’t float and the residents would be safe
- Not a substantial improvement for this property
- Tried to reach out to FEMA and OWRB with no return discussions
- Not a significant impact on the floodplain
- Here to answer any questions for the Board

Mr. Storm asks if it is possible to install the shelter adjacent to the existing structure so it would be considered part of the existing structure instead of a separate add on structure in the floodway; Mr. Gose responds that it is planned to be install it 5 feet away as to not negatively impact the grade beam footing.

Mr. Gose asks for clarification if Mr. Storm is intending it to be physically part of the house; Mr. Storm responds that whatever it would take to make it part of the existing structure so it wouldn’t be an issue of adding a structure in the floodway.

Chair Miller states that he believes the question being asked goes beyond the prevue of the Board and would create quite a delay in addition to possible damage to the foundation; Mr. Storm discusses other ways that would make the shelter part of the existing structure.

Mr. Gose states that they could extend the slab around the shelter and up to the existing house if that would be considered an addition by the City instead of a separate structure.

Chair Miller states that Mr. Storm’s point is relevant in the City not having to report a variance if it could be done at a fairly low cost it would be advantageous to both the homeowner and the City; Mr. Gose responds that he thinks they could make a slab addition to the house that would contain the storm shelter work. Mr. Gose asks staff if the City would accept that alternative as an addition rather than an accessory structure.

Zack defers to Lanc for code interpretation; Lanc responds if it is connected to the structure it is defined as an addition.

Chair Miller asks for clarification that the extension of the slab encompassing the shelter would be considered an addition; Lanc confirms that to be accurate.

Mr. Daniels asks to clarify that no matter if it is an addition versus an accessory structure, it is still going to be development that is encroaching on the floodway so that is something to be mindful of.

Mr. McGrath asks for the Board to focus back on the item at hand and either ask any further questions they may have or make a motion.

Chair Miller asks Mr. Storm for clarification that his intent is to negate the necessity of requiring a variance by making the installation an addition versus an accessory structure and that if a variance is still needed the issue remains; Mr. Storm responds affirmatively and the other part to consider is if the variance will affect the FEMA flood insurance eligibility.

Chair Miller asks if the option of connecting the shelter to the existing structure as an addition instead of an accessory negate the need for a variance all together; Mr. Storm states if the question cannot be answered then maybe the item should be tabled until that is determined.

Ms. Gibson advises Chair Miller of the need to open/close the public hearing.

Chair Miller opens the public hearing; asks for anyone wishing to speak on this item.

Mr. Tim Brooks, 1507 Bonanza Ct; Sachse, TX 75048 comes to speak on the following:

- These properties were not considered in the floodway until 2007
- There has been no flood damage recorded since 2007
- Does the City accept responsibility of maintaining the creek at the rear of the properties

Mr. McGrath responds that the stated question is not for the Board of Drainage appeals to answer and he would need to contact City staff at a later time.

Ms. Fong-Goddard asks for clarification if the FEMA map was updated to floodway/floodplain in 2007 or was it established as such at that time; Zack responds that the floodway did not extend as far on to the properties prior to the 2007 update and offers to provide the previous map if needed.

Ms. Fong-Goddard asks if the property can be grandfathered in under the previous map; Chair Miller responds negatively that with the code change the application must meet current code.

Chair Miller asks for any further comment in favor; none respond. Chair Miller asks for anyone wishing to speak against the item; none respond. Chair Miller closes the public hearing.

Ms. Fong-Goddard asks that any motion be very clear and not include a "what-if" situation; Chair Miller agrees.

Mr. Storm states his preference would be to either table the item until a determination on making the shelter an addition could be made or if there was not an alternative a motion be made; Chair Miller states his understanding from staff was if it was made as an addition the variance would not be required.

Mr. Storm states that if an alternative is an option, why would the Board consider approval of the variance; Zack intercedes to state that in making the shelter an addition instead of an accessory structure would negate the need to a variance of that code section but not the need for a variance to the encroachment or development in the floodway and based on the current interpretation of the term development, the application would still be denied and require a variance.

Mr. Storm states that it seems appropriate to table the item until the determination is made if the discussed alternative would eliminate the need for at least one of the two requested variances.

Mr. Daniels asks Mr. Gose if in regards to the encroachment variance request would it be possible for the applicant gain conditional floodway revision approval from FEMA; Mr. Gose responds that they have not processed this type of request through FEMA in the past as it has always gone through the local jurisdiction.

Chair Miller asks for a motion.

Mr. Storm asks to clarify if it's possible to deny the accessory structure request but approve the encroachment request; Chair Miller responds affirmatively.

Mr. Gose states that they could withdraw the variance request for an accessory structure in the floodway if the Board would rule on the second request.

Ms. Fong-Goddard asks staff if the applicant can withdraw part of the application or if both requests would need to be denied and resubmitted with a different design and request; Zack states his recommendation would be for denial of both variances and the applicant resubmit with a new design and request.

Ms. Fong-Goddard moved to deny both variances as requested; Mr. Storm seconded.

Chair Miller asks for any last questions or input from the board; none respond. Chair Miller asks for roll call.

Chair Miller asks if the applicant fully understand the thoughts and feelings of the Board members which are not wishing to punish or cause any un-due delay but the Board is encouraged by the property owner's desire to have a storm shelter on the property.

Mr. McGrath advises the Board that two motions must be made as there are two variance requests before the Board.

Ms. Fong-Goddard moved to deny variance as requested for accessory structure in a floodway; Mr. Storm seconded.

Chair Miller asks for any last questions or input from the board; none respond. Chair Miller asks for roll call.

Roll Call:	Miller	Storm	Daniels	Mitchell	Fong-Goddard
	Yes	Yes	Yes	Yes	Yes

Time: 70 minutes

Ms. Fong-Goddard moved to deny variance as requested for encroachment in a floodway; Mr. Storm seconded.

Chair Miller asks for any last questions or input from the board; none respond. Chair Miller asks for roll call.

Roll Call:	Miller	Storm	Daniels	Mitchell	Fong-Goddard
	Yes	Yes	Yes	Yes	Yes

Time: 1 minute

3. MISCELLANEOUS ITEMS FROM STAFF FOR DISCUSSION AND POSSIBLE ACTION:

- a. Next meeting Tuesday, August 25, 2020.

4. ADJOURN

ADJOURNMENT. This special meeting of the Stillwater Board of Drainage Appeals was called for adjournment by Ms. Fong-Goddard, seconded by Mr. Storm at approximately 6:43 PM on July 28, 2020, with all members present in agreement, the next regularly scheduled meeting will be held August 25, 2020 at 5:30 p.m. in Municipal Building, 723 South Lewis Street.

Prepared by Cindy Gibson, Manager of Administrative Services

Chair