



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 01/21/2026

**REQUESTER:** Glenn Burnett, Sheila Burnett, and Charles Burnett

**PRESENTER:** Elisabeth Muckala, Asst. City Attorney

**ITEM TITLE:** CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF BOA-2526-11: GLENN & SHEILA BURNETT APPEALS THE DENIAL OF FLOODPLAIN PERMIT APPLICATION NO. 735 FOR THE REMOVAL OF STRUCTURES AND THE CONSTRUCTION OF A NEW RESIDENTIAL STRUCTURE LOCATED AT 216 S. LAHOMA AVENUE IN THE IMHOFF CREEK FLOODPLAIN.

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### BACKGROUND:

This application concerns property located at 216 S. Lahoma Avenue in the Imhoff Creek floodplain (“Property”). Records available with the Cleveland County Clerk confirm that this property was owned of record by Glenn, Sheila and Charles Burnett (hereafter “Burnetts” or “Applicants”) effective November 3, 2022. A history of the events leading to this administrative appeal are outlined in detail in the 12/1/25 Floodplain Permit Request No. 735 Staff Report (“FP Report,” attached hereto and incorporated fully by reference). A summary of the background is as follows:

In May of 2023, Applicants were denied a permit for improvements based on City Staff’s discovery that the substantial improvement threshold had already been met or exceeded for the property, which required floodplain compliance for the existing non-conforming structure. In June 2023, Applicants sought and were granted a permit to elevate the structure, but were later advised by their engineer that elevation was not possible due to the deteriorated state of the current structure. Thereafter, Applicants explored options for demolishing and rebuilding the existing non-conforming structure. Historically, review of applications concerning renovations to existing non-conforming structures in the floodway centered on remediating without increasing the degree of non-conformity in dwelling size or intensity of the lot’s use.

Over the course of the following two years, Applicants presented City Staff with multiple proposals that were vetted and responded to by staff, which proposals all included some form or increase in size or intensity of use (additional square footage, additional impervious surface for property storage, additional occupancy capacity of the residential structure). During this period of time, the June 2023 permit expired due to two years of inaction. When Applicants filed their September 2025 request for a new floodplain permit allowing demolition and rebuild, City Staff then became aware that the property had not been used for single-family residential

occupation for longer than the two years set forth in 36-508(a)(3), thus destroying the non-conforming use and requiring full compliance with the Flood Hazard ordinance as a new non-existing structure. Thereafter, Applicants re-submitted a permit request under the new applicable standard.

The applicable standard is set forth in detail in the attached FP Report. However, generally speaking, loss of non-conforming status means that in order to receive a permit, Applicants must establish “no rise” on the lot as if the existing structures were never placed on the lot. Applicants’ request for Floodplain Permit No. 735 was heard by the Floodplain Permit Committee on December 1, 2025 and was denied. A permit denial letter was sent to the Applicants dated December 9, 2025 (included in packet) reiterating applicable standards and referencing reasons for denial. The Applicants submitted this “[a]ppeal of denial of the Floodplain Permit” on December 19, 2025.

The Burnett’s appeal submittals included three alternative requests for relief:

- 1) Reversal of the December 1, 2025 denial of FP Permit Request No. 735; or
- 2) Application of “the non-conforming/substantial-improvement framework”; or
- 3) Direction that “staff . . . process the project through Floodplain review with conditions, rather than deny outright.”

## **DISCUSSION:**

This memorandum provides a discussion of each alternative request, applying and addressing the context of the applicant’s additional assertions outlined in the appeal application submittals.

### **A. Response to “Background and Facts”**

Applicants’ appeal submittals outline “Background and Facts,” including the following: (a) Applicant’s assertion that the existing structures are pre-existing and lawful, and were historically recognized as having non-conforming status; (b) the Property experienced several flood events, prompting correspondence from City Staff advising Applicants of the need for compliance with the Flood Hazard District ordinance respecting any work performed on the structure; (c) Applicants hired an engineer and continuously sought solutions to rebuild; and (d) Applicants propose to remove existing structures and fencing and replace with a residential structure on piers.

Per the attached FP Report, City Staff’s evaluation appears to be in alignment with the facts summarized above. However, Applicants included additional assertions not necessarily supported by the FP Report, namely that: (a) Applicants acted in good faith; (b) Applicants did not “express or demonstrate intent to abandon” the single-family residential use; and (c) Applicant’s proposal is for a new structure compliant with the Flood Hazard District ordinance, and results in equal or reduced obstruction to flood flows and improved floodplain function.

City Staff expressed no opinion regarding whether the Applicants have acted in “good faith.” No express code provision requires a showing of good faith, nor is good faith a consideration or

mitigating factor in how the Flood Hazard District ordinance treats violating structures. Whether Applicants acted in good faith is not relevant to applicable standards; and relates only to the Board of Adjustment's ("BOA's") fact-finder role in evaluating the credibility and reliability of the evidence and information presented by the Applicants during this appeal process.

Next, the FP Report did not address whether subjective "intent to abandon" existed here, for multiple reasons. First, the FP Report did not evaluate the correctness or accurateness of the determination of whether the non-conforming use had expired. That issue simply was not before the FP Permit Committee for decision. Further, that issue is not before the BOA for decision today. The only administrative decision on review is the FP Permit Committee's denial of the requested permit No. 735, per the standards set forth in the Flood Hazard District ordinance. See Attached FP Report. Additionally, City Code does not require subjective intent to abandon for a non-conforming use to be destroyed or lost. Rather, 36-508(a)(3) references only objective "discontinuance for two years." The FP Report established this discontinuance of use.

Finally, the FP Report indicates that City Staff was unable to determine that the Applicant's proposed construction was compliant with the Flood Hazard District ordinance. City Staff noted that Applicant had "credited" the amount of storage attributable to the existing structures against the storage removed from the floodplain by the new proposed structure. However, this approach fails to apply the applicable standard, instead treating the existing violating structures as if they are still legally non-conforming structures. Additionally, City Staff noted a lack of information regarding Applicant's failure to address the removal of the existing violating structures' foundation, a matter which can have an impact upon the floodplain.

### **B. Request for Reversal of the December 1, 2025 Denial**

Applicants' request for reversal does not appear to be supported by the FP Report and the submittals to the FP Permit Committee below. Applicants' request for permit No. 735 applied the incorrect standard and failed to provide necessary information for the FP Permit Committee's consideration. City Staff's observations and recommendations set forth in the FP Report are herein reiterated.

### **C. Request for Application of the "Non-Conforming" Standard**

Applicants have not appealed the determination that the structures' non-conforming status was destroyed per 36-508(a)(3); rather, this appeal concerns only the December 1 permit denial by the FP Permit Committee. Neither the FP Report nor Applicant's appeal submittals establish a legal basis for the BOA to apply a "non-conforming" standard in this appeal proceeding.

### **D. Request for Staff Direction for Application Processing with Conditional Grant**

As written, this request appears to seek a repeated FP Permit process, with instructions to conditionally grant the permit, presumably according to the following alternative recommendation by City Staff set forth in the attached FP Report:

If the Committee approves the application, staff recommends that an Elevation Certificate be required to ensure compliance with the two-foot freeboard requirement of the ordinance. This should include the structure and the electrical and mechanical components.

As the BOA holds the same powers and authority as the FP Permit Committee held on December 1, 2025, this option is equally available to the BOA for consideration.

#### **E. Other Considerations**

In subparts B and D of their attached “justification” for this appeal, Applicants address two additional items not currently before the BOA for determination. First, in subpart (b), Applicants appear to argue that demolition of the structure due to flood damage should not result in destruction of non-conforming use. Here, non-conforming use was deemed lost due to two years’ discontinuance of use, which is addressed by a separate part of 36-508. The issue of demolition’s effect on the non-conforming status of the structure is not at issue in this appeal.

Further, in subpart D, Applicants appear to argue compliance with the City’s variance standard. However, the Applicants have not applied for a variance, nor has a variance request been noticed to surrounding property owners in compliance with Norman’s Municipal Code or state law; therefore, the BOA should not consider the variance standard nor grant a variance in this proceeding.

#### **CONCLUSION:**

Per City Code, the BOA is vested with the same authority to consider and grant (subject to conditions or otherwise), deny, or even direct the FP Permit Committee’s reconsideration of the December 1 Permit Request No. 735. The issue of existing non-conforming status, and thus application of an alternative standard, is not currently before the BOA, and should not be a basis for decision. The FP Report and its recommendations are forwarded for review and decision by the BOA.

[ATTACHMENT]