

3 Senate Bill No. 1324

4 SENATE BILL NO. 1324 - By: CRAIN of the Senate and PETERS of the
5 House.

6 An Act relating to cities and towns; amending 11 O.S. 2001,
7 Section 44-104, which relates to board of adjustment; adding
8 certain power; providing method of enforcement; specifying
9 jurisdiction for certain appeals; providing an effective
10 date; and declaring an emergency.

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 11 O.S. 2001, Section 44-104, is
13 amended to read as follows:

14 Section 44-104. A. The board of adjustment shall have the
15 power to:

16 1. Hear and decide appeals if it is alleged there is error in
17 any order, requirement, decision, or determination made by an
18 administrative official in the enforcement of any zoning ordinance;

19 2. Hear and decide special exceptions to the zoning ordinance
20 to allow a use, or a specifically designated element associated with
21 a use, which is not permitted by right in a particular district
22 because of potential adverse effect, but which if controlled in the
23 particular instance as to its relationship to the neighborhood and
24 to the general welfare, may be permitted by the board of adjustment,
25 where specifically authorized by the zoning ordinance, and in

1 accordance with the substantive and procedural standards of the
2 zoning ordinance;

3 3. Hear and decide proposals for accessory elements associated
4 with an allowed building use, where appropriate general performance
5 and design standards have been established which promote greater
6 economic value and provide a harmonious relationship with adjoining
7 land uses by ordinance or by administrative rule or regulation.
8 Such proposals and performance or design standards may include, but
9 are not limited to, such accessory elements as sound, building
10 material, runoff, lighting, visual screening, landscaping and
11 vehicular considerations;

12 4. Authorize in specific cases a variance from the terms,
13 standards and criteria that pertain to an allowed use category
14 within a zoning district as authorized by the zoning ordinance when
15 such cases are shown not to be contrary to the public interest if,
16 owing to special conditions, a literal enforcement of the provisions
17 of the ordinance will result in unnecessary hardship and so that the
18 spirit of the ordinance shall be observed and substantial justice
19 done; provided, however, the board shall have no power to authorize
20 variances as to use except as provided by paragraph 4 5 of this
21 section; and

22 ~~4.~~ 5. Hear and decide oil and/or gas applications or appeals
23 unless prohibited throughout a municipality by municipal ordinance.

1 The board of adjustment shall be required to make the findings
2 prescribed by Section 44-107 of this title in order to grant a
3 variance as to use with respect to any such application or appeal.

4 Decisions under this section may be enforced by voiding the
5 approval if the standards specified in the approval are not met.

6 Exceptions and/or variances may be allowed by the board of
7 adjustment only after notice and hearing as provided in Section
8 44-108 of this title. The record of the meeting at which the
9 variance or special exception was granted shall show that each
10 element of a variance or special exception was established at the
11 public hearing on the question, otherwise said variance or special
12 exception shall be voidable on appeal to the district court.

13 B. All appeals of final decisions made by the board of
14 adjustment shall be made to the district court only.

15 SECTION 2. This act shall become effective July 1, 2006.

16 SECTION 3. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-14-06 - DO
21 PASS, As Coauthored.