STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2559 By: Peters

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 2001, Section 44-104, which relates to board of adjustment; requiring appeals of certain decisions to district courts; providing an effective date; and declaring an emergency.

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

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

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

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

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

3. Authorize in specific cases a variance from the terms, standards and criteria that pertain to an allowed use category

within a zoning district as authorized by the zoning ordinance when such cases are shown not to be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done; provided, however, the board shall have no power to authorize variances as to use except as provided by paragraph 4 of this section; and

4. Hear and decide oil and/or gas applications or appeals unless prohibited throughout a municipality by municipal ordinance. The board of adjustment shall be required to make the findings prescribed by Section 44-107 of this title in order to grant a variance as to use with respect to any such application or appeal.

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

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

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

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

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