

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
December 05, 2011 6:00 PM**

STAFF PRESENT:

Erik Enyart, AICP, City Planner
Patrick Boulden, Esq., City Attorney

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 6:04 PM.

ROLL CALL

Members Present: Murray King, Jeff Wilson, Darrell Mullins, Dave Hill, and Larry Whiteley.*

Members Absent: None.

MINUTES

1. Approval of Minutes for November 07, 2011

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Dave Hill made a MOTION to APPROVE the Minutes of November 07, 2011 as presented by Staff. Murray King SECONDED the Motion.

Larry Whiteley in at 6:05 PM.

Roll was called:

ROLL CALL:

AYE: Mullins, Wilson, Hill, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

* In at 6:05 PM, following the Roll Call.

Chair Jeff Wilson and Erik Enyart advised Larry Whiteley of the Motion on the Minutes. Mr. Whiteley indicated favor for voting on the Motion.

Erik Enyart called on Larry Whiteley for a vote on the Motion and Mr. Whiteley voted “Yes.”

ROLL CALL (REVISED):

AYE: Mullins, Whiteley, Wilson, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 5:0:0

OLD BUSINESS

Chair Jeff Wilson introduced Old Business. Erik Enyart advised there was no Old Business. No action taken.

NEW BUSINESS

- 2. **BBOA-548 – Ronnie McGlothlin for Bixby Lumber Co., Inc.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 23 food products wholesale business with incidental food processing and packaging for property in the CG General Commercial District.
Property located: Part of the S/2 S/2 SE/4 SE/4 NE/4 Section 23, T17N, R13E; 15600 S. Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, November 28, 2011
RE: Report and Recommendations for:
BBOA-548 – Ronnie McGlothlin for Bixby Lumber Co., Inc.

LOCATION: – 15600 S. Memorial Dr.
– The S/2 S/2 SE/4 SE/4 NE/4 of Section 23, T17N, R13E (less R/W)
LOT SIZE: 95,982 square feet (2.2 acres), more or less
ZONING: CG General Commercial District
SUPPLEMENTAL ZONING: Corridor Appearance District
EXISTING USE: Vacant commercial buildings (previously occupied by Bixby Lumber Co. / Building Solutions, a Use Unit 15 lumber yard and building materials sales business)
REQUEST: Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow Use Unit 23 warehousing and wholesaling, to include a food products wholesale business with incidental food processing and packaging in the CG General Commercial District.
SURROUNDING ZONING AND LAND USE:
North: CS, AG, & CG; The First United Methodist Church of Bixby on approximately 29 acres.
South: CG & CS; The Cottom Veterinary Clinic zoned CG abutting to the south and a two-story dwelling (apparently unoccupied) to the south of that zoned CS.

East: (Across S. Memorial Dr.) RS-3; Residential in Ramsey Terrace and the St. Clement of Rome Catholic Church to the southeast.

West: CS & AG; Vacant land owned by the First United Methodist Church of Bixby. The Bixby Creek channel is to the southwest and is zoned AG.

COMPREHENSIVE PLAN: Corridor + Development Sensitive + Commercial Area.

PREVIOUS/RELATED CASES: (not a complete list)

BZ-96 – Rosalie Reed and Janice Bailey – Request for rezoning from AG to “Commercial” [“CG”] for the subject property (CS zoning approved for all of the S/2 S/2 SE/4 NE/4 of this Section (10 acres) due to a legal description error) – PC Recommended Approval of CS on 10/27/1980 and City Council Approved CS zoning on 10/31/1980 (Ord. # 414).

AC-01-10-03 – Request for approval of signage for the subject property – Approved by Architectural Committee 10/04/2001.

AC-03-10-03 – Request for approval of a ground sign for the subject property (replacing one removed for Memorial Dr. highway widening) – Approved by Architectural Committee 10/20/2003.

Plat Waiver for Bixby Lumber – Request for Waiver of the platting requirement per Zoning Code Section 11-8-13 (formerly Zoning Code Section 260) – Conditionally Approved by City Council 05/11/2009 after accepting a U/E dedication at the same meeting.

AC-09-05-04 – Bixby Lumber – HRAOK, Inc. – Request for Detailed Site Plan approval for subject property, to allow for a replacement storage building – Architectural Committee Conditionally Approved 05/18/2009, subject to BBOA-505 and the submission of the remaining outstanding information items.

BBOA-505 – Ronnie McGlothlin for Bixby Lumber Co., Inc. – Request for Variance from the minimum number of parking spaces per Zoning Code Section 11-9-15.D for subject property – BOA Approved 07/06/2009.

BZ-354 – Ronnie McGlothlin for Bixby Lumber Co., Inc. – Request for rezoning from CS to CG for subject property – PC recommended Approval 11/21/2011 and City Council Approved 11/28/2011.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is relatively flat and appears to slope slightly to the west to Bixby Creek. The property contains two (2) existing commercial buildings.

The subject property has been developed incrementally over time, and now is completely covered with gravel for outside storage areas, with the exception of the buildings and the concrete parking area in the front of the building, and a few narrow strips of grass at the frontward fringes of the property.

General. The subject property is developed with commercial buildings which were previously occupied by Bixby Lumber Co. / Building Solutions, a Use Unit 15 lumber yard and building materials sales business. The Applicant, who owns the subject property and is the owner of that business, relocated operations to another facility in Sapulpa within the past year or two. The buildings are currently vacant, and the Applicant/landowner has expressed interest in leasing the facility for a Use Unit 23 wholesale business with incidental food processing and packaging. More specifically, the application for BBOA-548 states, “Owner will take spices mix them together to create a chili mix, package and then distribute to retail businesses.”

Applicant’s representative JR Donelson has informed Staff that the operation would not do any cooking, there would be no odors, all materials are “sealed” during receiving and shipping, and it will be a clean operation.

Use Unit 23 is not allowed in the current CS zoning district. The lowest intensity zoning district in which it would be allowed is CG, with a Special Exception or by PUD. This application requests such a Special Exception. On November 21, 2011, the Planning Commission recommended approval of CG zoning per BZ-354, and the City Council approved it November 28, 2011.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Corridor + Development Sensitive + Commercial Area.

This application does not request the approval of a specific land use, but rather a land use element. The Comprehensive Plan does not appear to contain any language which would specifically address the presently requested Special Exception.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily CS, CG, and AG.

To the north is the First United Methodist Church of Bixby on approximately 29 acres (only part of which is developed and the balance is vacant). The approximately 7.5 acres of it immediately abutting to the north is zoned CS, and the balance is zoned AG and CG. There are additional CG zoning districts further to the north.

To the south the zoning is a mix of CG, CS, and RM-2. Immediately abutting to the south is approximately 1 acre of CG zoning, containing the Cottom Veterinary Clinic. Further to the south is a two-story dwelling (apparently unoccupied) zoned CS. The land to the southwest is zoned CS and RM-2 and is vacant.

Zoning to the east (across S. Memorial Dr.) is RS-3 for the Ramsey Terrace residential subdivision. To the southeast is the St. Clement of Rome Catholic Church, also zoned RS-3.

The subject property is separated from the nearest residential property by a right-of-way of approximately 140, containing Memorial Dr. / US Hwy 64, which is four (4) lanes with a center turn lane along this section thereof.

Finally, to the west is vacant land owned by the First United Methodist Church of Bixby, zoned CS and AG. The Bixby Creek channel is to the southwest and is zoned AG.

The proposed Use Unit 23 use would be compatible with the CG zoning abutting to the south and the CS zoning to the north, west, and south. Further, the subject property is already developed commercially, and was previously occupied for many years with a Use Unit 15 heavy commercial use, with no evident detriment to the surrounding area. The proposed Use Unit 23 use should be compatible with surrounding commercial, office, and church uses, and future uses anticipated by surrounding zoning patterns.

Staff Recommendation. For the reasons outlined in the analysis above, Staff believes that the requested Special Exception would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff recommends Approval subject to the following Conditions of Approval:

1. Special Exception approval shall expire and be automatically vacated if the presently-anticipated Use Unit 23 food products wholesale business with incidental food processing and packaging use ceases occupancy for a period of 12 months.
2. If the operation fails to respect neighboring properties and the use and enjoyment of neighboring properties by their respective owners, due to excessive traffic, parking, or any other effect, or if it otherwise adversely affects the subject property or neighboring properties, the City of Bixby, at the direction of the City Council, may require the vacation of the Special Exception use, or other such remedies at law as deemed necessary and appropriate.

Erik Enyart noted that the arguments in the report used to justify the Special Exception were the same ones used to recommend the CG zoning, which was ultimately approved by the City Council at its previous meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant's representative JR Donelson of 8410 E. 111th St. S. stated that the business would be bringing spices in bulk, repackaging them in smaller containers, sealing them, and distributing them to food markets. Mr. Donelson stated that the use does not fit CG zoning and needed a Special Exception. Mr. Donelson stated that nothing would take place in regard to the building, parking, or [other exterior elements of the site].

Chair Jeff Wilson referenced recommended Condition of Approval numbered 2 from the Staff Report and asked how many employees there would be, what there would be in terms of traffic and parking.

JR Donelson responded that there would be 40 employees. Ronnie McGlothlin stated that the business said they may expand up to 60 employees, but have 40 now. Mr. McGlothlin stated that

the employees would not all be there at the same time. JR Donelson stated that it would be similar to Ronnie [McGlothlin]’s operation as *Bixby Lumber*.

Chair Jeff Wilson asked if there would be semi[-tractor trailers] and Ronnie McGlothlin stated that they would be used to load and unload materials.

JR Donelson stated that there would “be no more traffic than the [First United] Methodist Church [of Bixby] has.”

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-548. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Mullins, Wilson, Hill, & King
NAY:	None.
ABSTAIN:	Whiteley.
MOTION CARRIED:	4:0:1

Larry Whiteley explained that he Abstained as Ronnie McGlothlin was his brother-in-law.

Chair Jeff Wilson asked Dave Hill to clarify his Motion as it pertains to the recommended Conditions of Approval. Mr. Hill stated that he did not include the recommended Conditions in his Motion to Approve. Dave Hill indicated favor for allowing other similar businesses to be allowed to go in if the present one vacated. The Board members discussed the recommended Conditions of Approval and their intent when making the Motion, Second, and voting on the Motion. After some discussion, the Board members indicated favor for the first recommended Condition of Approval but not the second. Erik Enyart stated that he understood Dave Hill’s Motion did not include any of the recommended Conditions of Approval. Mr. Enyart recommended Dave Hill and Chair Jeff Wilson clarify their Motion and Second and the Board revote.

Dave Hill clarified his original Motion or otherwise made a new MOTION to APPROVE BBOA-548 subject to the first recommended Condition of Approval, that the Special Exception approval shall expire and be automatically vacated if the presently-anticipated Use Unit 23 food products wholesale business with incidental food processing and packaging use ceases occupancy for a period of 12 months. Chair Jeff Wilson clarified his Second or otherwise SECONDED the new Motion. Roll was called:

ROLL CALL:

AYE:	Mullins, Wilson, Hill, & King
NAY:	None.
ABSTAIN:	Whiteley.
MOTION CARRIED:	4:0:1

3. **BBOA-549 – The Crossing of South Tulsa, Inc.** Discussion and possible action to approve a Variance from the 40’ sign separation standard per Zoning Code Section 11-9-21.C.9 and any other Zoning Code regulation preventing the erection of a second ground sign, to be attached to the existing ground sign for property in the CS Commercial Shopping Center District with PUD 37.
Property located: Lot 1, Block 1, *Crosscreek*; 12800 S. Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: *Bixby Board of Adjustment*
From: *Erik Enyart, AICP, City Planner*
Date: *Thursday, December 01, 2011*
RE: *Report and Recommendations for:
 BBOA-549 – The Crossing of South Tulsa, Inc.*

LOCATION: – *12800 S. Memorial Dr.*
 – *Lot 1, Block 1, Crosscreek*
LOT SIZE: *4.4 acres, more or less*
ZONING: *CS Commercial District + PUD 37*
SUPPLEMENTAL ZONING: *Corridor Appearance District*
EXISTING USE: *Trade center and retail strip center multitenant commercial buildings*
REQUEST: *Variance from the 40’ sign separation standard per Zoning Code Section 11-9-21.C.9 and any other Zoning Code regulation preventing the erection of a second ground sign, to be attached to the existing ground sign in the CS Commercial Shopping Center District with PUD 37.*

SURROUNDING ZONING AND LAND USE:

North: *AG & RM-2/PUD 70; The Fry Creek Ditch channel, with agricultural land and the Encore on Memorial multifamily development under construction to the north of that.*
South: *RS-1 & RS-2; Residences and vacant residential lots in Clyde Miller Acreage and unplatted residential areas fronting along E. 129th St. S., and residential in Poe Acreage and Village Ten Addition to the southwest.*
East: *AG; S. Memorial Dr., with agricultural land to the east of that.*
West: *CS/PUD 37; Trade center metal buildings in Crosscreek.*

COMPREHENSIVE PLAN: *Corridor*

PREVIOUS/RELATED CASES: *(Not necessarily a complete list)*

PUD 37 – Crosscreek – Randall Pickard for Remy Co., Inc. – Request for rezoning from AG to CS and PUD 37 for Crosscreek – Recommended for Approval by PC 03/21/2005 and Approved by City Council April 11, 2005 (Ord. # 980 – number assigned to the approved blank ordinance in the year 2007 after discovery of the discrepancy).
Preliminary Plat of Crosscreek – Request for Preliminary Plat approval for Crosscreek – Recommended for Approval by PC 06/20/2005 and Approved by City Council 06/25/2005.
Final Plat of Crosscreek – Request for Final Plat approval for Crosscreek – Recommended for Approval by PC 11/21/2005 and Approved by City Council 11/28/2005.
AC-06-04-01 – Request for Architectural Committee [Site Plan and building plans] approval for Phase 1, consisting of buildings 1 through 5, inclusive, of Crosscreek – Believed to have been approved by AC April 17, 2006 (Minutes not found).
AC-07-06-01 – Request for Architectural Committee approval for a 40-foot-tall ground sign on the Lot 1, Block 1, Crosscreek subject property – AC Approved 06/18/2007.
BBOA-453 – Dennis Larson – Request for Special Exception to allow a Use Unit 17 indoors sales of used automobiles in the CS district with PUD 37 for the land platted as Crosscreek, and specifically, 12804 S. Memorial Dr. Unit # 109 – Approved by BOA 05/07/2007 on the condition that sales be indoors with no storage of automobiles outside of the building.

BBOA-487 – Keith Whitehouse for Cross Creek Office Warehouses, LLC – Request for Special Exception to allow a Use Unit 17 internet-based/indoor used automobile sales in the CS district with PUD 37 for Lot 2, Block 1, Crosscreek, and specifically, 12818 S. Memorial Dr. Unit # 111 – Approved by BOA 08/04/2008.

BBOA-494 – David Owens for Cross Creek Office Warehouses, LLC – Request for Special Exception to allow a Use Unit 17 indoor lawnmower and small engine repair business in the CS district with PUD 37 for Lot 3, Block 1, Crosscreek, and specifically, 12806 S. Memorial Dr. Unit # 115 – Withdrawn by Applicant in October/November 2008.

BBOA-498 – Cross Creek Office Warehouses, LLC and/or Remy Enterprises – Request for Special Exception to allow a Use Unit 19 indoor gymnasium, health club, baseball and basketball practice and training, enclosed commercial recreation establishments not elsewhere classified, and other such related uses within Use Unit 19, in the CS Commercial Shopping Center District with PUD 37 – Approved by BOA 03/02/2009.

PUD 37 – Crosscreek – Minor Amendment # 1 – Request for Minor Amendments to PUD 37 for Crosscreek – PC recommended Denial 05/18/2009 and City Council Approved on appeal 05/26/2009.

BL-377 – JR Donelson, Inc. for Remy Enterprises – Request for Lot-Split approval for Lot 5, Block 1 (including subject property) – PC Conditionally Approved 02/22/2011.

PUD 37 – Crosscreek – Minor Amendment # 2 – Request for Minor Amendments to PUD 37 for Crosscreek – PC Conditionally Approved 05/16/2011.

BSP 2011-02 – “Crosscreek Lot 5, Block 1, Tracts 1 & 2” – JR Donelson, Inc. – Request for PUD Detailed Site Plan approval for Crosscreek Lot 5, Block 1, Tracts 1 & 2 – PC Conditionally Approved 05/16/2011.

BLPAC-7 – JR Donelson, Inc. for Remy Enterprises – Request for Landscape Plan Alternative Compliance plan for Crosscreek Lot 5, Block 1, Tracts 1 & 2 – PC Conditionally Approved 05/16/2011.

BSP 2011-03 – “Crosscreek Lot 5, Block 1, Tracts 3 & 4” – JR Donelson, Inc. – Request for PUD Detailed Site Plan approval for Crosscreek Lot 5, Block 1, Tracts 3 & 4 – PC Conditionally Approved 11/21/2011.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

The Crosscreek development essentially consists of a series of metal trade center / warehouse buildings extending approximately ½ mile along the south side of the Fry Ditch No. 1 channel, oriented lengthwise along the channel (east-west). The exception is the front building (“Building 1”), which is oriented lengthwise along Memorial Dr., and has had appearance upgrades and is primarily used for retail sales. The metal warehouse buildings are consistent with those typical of warehousing and trades and services general business offices (Use Unit 15, etc.). It should be noted that Use Unit 23 Warehousing is not permitted in the CS district or per PUD 37. This has continually caused interpretative and occupancy permitting issues for Crosscreek.

ANALYSIS:

Subject Property Conditions. The subject property is developed with the (2) trade center buildings behind a retail strip center building, the latter which parallels Memorial Dr. It appears to drain to the north to Fry Creek No. 1.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Crosscreek development has an approximately 40’-tall ground sign located just outside the subject property toward the southeast corner of the lot, next to the entrance drive connecting to Memorial Dr. One of the commercial development’s tenants, a church by the name of The Crossing of South Tulsa, Inc., is proposing with the commercial development’s owner to construct a new sign just to the west of the existing ground sign (and just within the property line), on top of an extended brick support base. While sharing the same brick support base, the new sign would be separated from the

existing sign by approximately two (2) feet, per the sign exhibit received October 13, 2011. The issues this presents are (1) the 40' minimum sign separation standard, (2) the proposed expansion of the existing sign support structure, nonconforming due to its evident placement in the public right-of-way, and (3) the proposed expansion of the existing sign support structure, probably nonconforming due to the maximum sign height standard.

PUD 37 essentially requires all signage comply with the Zoning Code standards for the same, and be approved by the Planning Commission for a "detail sign plan" (page 7, Signs, # 1).

Zoning Code Section 11-2-1 provides the following definition for ground sign:

"SIGN, GROUND: A sign which is attached to or is a part of a self-supporting structure, other than a building or portion of a building." (emphasis added)

Based on the profile view / elevation drawing received October 13, 2011, it would appear that the new sign will be separated from the existing sign, while sharing an extended brick support base. Based on the definition of ground sign, it would appear that this is in fact a second sign, and so would not be permitted per the 40' minimum separation standard of Zoning Code Section 11-9-21.C.9.

Zoning Code Section 11-9-21.C.5 requires signs be set back off the right-of-way. Further, the City is prevented from issuing permits for placement of signs on land not owned by the Applicant, as no one has the right to build a structure on land they do not own without easement or license from the actual owner. Per Assessor's parcel and aerial GIS data, it appears that the sign was actually constructed just within the public highway right-of-way for US Hwy 64 / Memorial Dr.

On June 18, 2007, the Architectural Committee approved AC-07-06-02, which proposed the approximately 40'-tall ground sign at the southeast corner of the subject property. The applicable maximum ground sign height (which PUD 37 does not modify) is 25' per Zoning Code Section 11-71-4.B.2.d:

"d. Ground signs shall not exceed twenty five feet (25') in height, measured from the mean curb level of the lot upon which it is erected; except, a sign when located behind the building setback line may exceed twenty five feet (25'), but shall not exceed forty feet (40') in height."

The AC-07-06-02 Staff Report to the Architectural Committee from a former City Planner stated, "The sign for Cross Creek is a monument sign with places for advertisement by tenants. The sign is set back 90 feet from the right of way. There is a big slope down into this area. For that reason it is suggest the sign be 40 feet tall. This is within the ordinance in two ways. First the height of the sign is calculated from curb level. Since this sign is below curb level at least 10 feet it is within the ordinance. Second, a sign can be one additional foot in height for each foot set back. Sign is set back 90 feet. Because of the exit immediately after a bridge for traffic traveling south it is advisable to place the sign so it can be clearly visible."

The sign was not set back 90' as expressed, nor was it constructed where the Applicant represented to the City it would be. Per the site plan included with AC-07-06-02, the sign was proposed to be placed just within the subject property, abutting the east property / right-of-way line (0' setback, more or less). As stated above, it appears that the sign was actually constructed just within the public highway right-of-way for US Hwy 64 / Memorial Dr. Incidentally, parcel and aerial GIS data indicates that the sign may be located approximately 90' from the centerline (not edge of right-of-way) of the US Hwy 64 / Memorial Dr. roadway.

Another issue is maximum sign height. If the previous City Planner was correct in asserting the ground level on which the sign was constructed was "below [mean] curb level at least 10 feet," then a certain amount of additional sign height would be allowable per the Section 11-9-21.D.1 qualifier "measured from the mean curb level of the lot upon which it is erected." Elevation survey data was not found in the AC-07-06-02 case file, nor does the same appear to be otherwise available at this time. Therefore, the total maximum allowable sign height is not known. No additional sign height allowance is available based on the additional setback allowance, due to there being no (or rather, negative) setback. It would appear that the existing sign exceeds the maximum sign height, and so is nonconforming.

Therefore, the Applicant is requesting a Variance from the 40' sign separation standard per Zoning Code Section 11-9-21.C.9 and any other Zoning Code regulation preventing the erection of a second

ground sign, to be attached to the existing ground sign in the CS Commercial Shopping Center District with PUD 37.

The second and final Variance component is intended to be a 'catch-all,' in the event other provisions of the Zoning Code would prevent the erection of a second ground sign, to be attached to the existing ground sign, but were inadvertently overlooked when determining the number of and scope of Variances necessary.

Specifically, it is believed that this second Variance component would need to apply to resolve the issue of permitting expansion of an illegally nonconforming sign. It is considered "illegally nonconforming" as it was constructed in the public highway right-of-way, contrary to the location it was permitted per the 2007 sign permit. As stated above, it appears it may be further nonconforming due to its excessive height. Generally, nonconforming structures are not permitted to be expanded, as doing so will normally extend the life of the nonconformity.

Both Variance requests are inextricably related with a common nexus: The proposal to erect a second ground sign, to be attached to the existing ground sign. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of such signage. Therefore, this report will not divide the separate Variance components into different report sections.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "Our church needs additional signage."

This implies that there would be a hardship if the church was not allowed its own exclusive ground sign. Staff does not dispute that the church can claim that the strict application of the Zoning Code restrictions will result in the prohibition of an exclusive ground sign.

The existing sign is quite large and would appear to have individual placard sign cabinets available for all tenants in Crosscreek to share, as determined by the tenants and landlord. All such placard sign cabinets appear to presently be occupied, so the requirement that the church be satisfied with such a sign, which is smaller and less conspicuous than the one proposed, would also indicate that another business would lose their existing signage.

Finally, at a meeting held October 31, 2011, the Crosscreek developer indicated that the removal of a parking space to create a place for the new sign was not a favored option for economic reasons.

Therefore, Staff believes that the Board may reasonably consider this prohibition an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant claims that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "Topography and available space constraints dictate proposed sign location."

Staff believes that the subject property may be considered to have Peculiar, Extraordinary, and/or Exceptional Conditions or Circumstances by virtue of the following facts, considered together:

- Zoning Code Section 11-10-3.B Table 1 requires a 15' minimum parking lot setback from Memorial Dr., which 15' is also the minimum required landscaped strip width per Zoning Code Section 11-12-3.A.7.
- PUD 37 does not reduce the minimum 15' standard.
- Based on Assessor's parcel and aerial data, it appears that the parking lot has an actual set back from the Memorial Dr. right-of-way of approximately 5 to 7 feet.
- Per AC-06-04-01 ("Crosscreek Phase 1" and not "Super Cuts," which had the same case number but was reviewed in June, 2004), it appears that the Architectural Committee may have approved [a Site Plan and building plans] for Phase 1, consisting of buildings 1 through 5, inclusive, of Crosscreek.* The site plan drawing in the agenda file does not dimension the parking lot setback / landscaped strip width, but it appears to be much less than the 15' minimum required, based on its representation relative to the 17.5' width of the Utility Easement in which it is contained. If this is correct, the City of Bixby may have approved the creation of a nonconformity, which resulted in a strip of land too narrow to contain the proposed new sign. Per the sign exhibit received October 13, 2011, the new sign is proposed to be 12' in width and would be erected perpendicular to Memorial Dr., as is customary.

* It must be noted that the Minutes of this meeting, if it was in fact held, have not been found.

- As stated above, at a meeting held October 31, 2011, the Crosscreek developer indicated that the removal of a parking space to create a place for the new sign was not a favored option for economic reasons.
- The “bump-out” / “island nose” projecting west along the entrance drive at the southeast corner of the lot would otherwise be available for the ground sign to be located, but it is within 40’ of the existing ground sign and is so prohibited by Zoning Code Section 11-9-21.C.9.
- Based on a site inspection, there do not appear to be any other conventional locations in which the 12’-wide, perpendicularly-oriented sign could be built, respecting the 40’ separation standard, unless a parking space was removed.

These conditions, considered together, can be seen to have given rise to the subject property’s unnecessary hardship.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because “our new sign will conform to existing sign and be smaller.”

The Applicant appears to be implying that the proposed new sign will not be aesthetically objectionable.

Staff believes that the primary purpose for minimum sign separation standards is to maintain the aesthetic quality of Bixby’s commercial corridors and ensuring all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

Recognizing the sign exhibit received October 13, 2011, as the proposed new sign would involve extending the existing brick support base, would “conform to [the general appearance of the] existing sign,” and would be “behind” and “in line” with the existing ground sign, Staff believes that any aesthetic concerns should be recognized as minimal.

Finding of Minimum Necessary. Staff would note that the Minimum Necessary to Alleviate the Unnecessary Hardship standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief.

Staff Recommendation. If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code, Staff recommends Approval, subject to:

1. Variance Approval shall be limited to a second ground sign substantially consistent with the sign exhibit received October 13, 2011, with the total display surface area for both signs not to exceed 298.1 square feet as per said exhibit.
2. The Applicant shall secure an easement, license agreement, or other official approval to continue to maintain the existing sign in the public right-of-way for U.S. Hwy 64 / Memorial Dr., if and as required by the property owner, the Oklahoma Department of Transportation (ODOT).
3. The brick support base shall be designed in a manner such that it may be separated, in a discrete and aesthetically acceptable manner, from the existing part supporting the 40’-high sign, in the event the owner, ODOT, ever evicts the 40’ sign from the right-of-way.
4. The Applicant shall present the City with survey evidence that the new proposed sign will be completely contained within the subject property.

Dave Hill asked Erik Enyart what would happen if this was approved and the other tenants in Crosscreek asked for a sign too. Mr. Enyart stated that he could not answer that question.

Crosscreek owner Tim Remy responded that, if the other tenants did [ask for their own sign], he would “just say ‘no.’” Mr. Remy stated that there were two (2) other tenant [placard sign cabinets] below [the Church’s proposed sign cabinet].

Dave Hill stated that most of the tenants in the back [part of the Crosscreek development] did not have their own signs. Tim Remy responded that this was correct and that they do not normally have sign rights [as a part of their lease contracts].

Chair Jeff Wilson asked how it came about that the sign was built in the [right-of-way]. Tim Remy responded that ODOT said it only had to be 75' from the [centerline of the highway], and he had it placed 90' [from the centerline]. Mr. Remy stated "they told me I can put it there. My sign is further back than anyone else" [along this section of Memorial Dr.] at "90 feet from the center of Memorial."

Darrell Mullins asked what was the objective of the sign. Tim Remy responded, "For the church."

Murray King asked Tim Remy why the [church's sign] could not be put in the two (2) [sign cabinets Mr. Remy previously mentioned]. Mr. Remy responded that he was referring to the [sign cabinets] underneath the Church's proposed sign. Erik Enyart referred the Board members to the sign exhibit on page 27 of the agenda packet.

Darrell Mullins clarified with Tim Remy that both Mr. Remy and the Church wanted to have the sign.

Dave Hill and Chair Jeff Wilson expressed concern that the Board may be faced with this issue time and time again [if this Variance was granted].

A question arose as to the attachment of the new sign to the existing sign. Tim Remy stated that the two signs would be separated. Erik Enyart clarified that the two (2) signs would share an extended brick [support] base. Mr. Remy stated that the signs would in fact be separated. Mr. Enyart referred to the sign exhibit on page 27 of the agenda packet and asked Mr. Remy how much separation there would be, and Mr. Remy responded "Ten feet." Mr. Remy stated that the new sign would be placed back in the ["bump-out" / "island nose" projecting west along the entrance drive at the southeast corner of the lot] and would be separated from the existing sign by 10 feet. Mr. Enyart advised the Board that the Applicant had [verbally] amended his application, so now the only Variance to be considered was from the 40' separation standard. Mr. Enyart clarified with the Board members that the application was no longer "complicated" by the original proposal to attach the new sign to the old, nonconforming sign. Chair Jeff Wilson clarified with Mr. Enyart that this meant the Application would require a Variance of 30' [from the 40' sign separation standard].

Chair Jeff Wilson asked Tim Remy if the hardship was the elevation of the road, and Mr. Remy responded "Yes."

City Attorney Patrick Boulden stated that he had advised the Applicant that, if ODOT asks to have the sign removed, the Applicant would have to do so.

Darrell Mullins clarified with Tim Remy and Erik Enyart that the Variance, as it now stood, did not include the old sign. Mr. Enyart clarified that the Variance was only to allow the second sign to have a 30' Variance from the 40' separation standard.

City Attorney Patrick Boulden stated that this was a “classic situation because of topography. I told him I would speak up and support the application if it was submitted. There is not a good location [for the sign] on the property, in my opinion.” Mr. Boulden stated that, because of that topography, this is a classic situation in the uniqueness of this property.

Larry Whiteley made a MOTION to APPROVE BBOA-549 with the Conditions of Approval as recommended by Staff. Darrell Mullins SECONDED the Motion.

Chair Jeff Wilson asked to clarify the Motion. Mr. Wilson noted that Staff’s recommendations were based on the old [site plan indicating attachment of the new sign to the existing sign]. Erik Enyart indicated agreement, reviewed the numbered recommended Conditions of Approval, and stated his amended recommendation, based on the amended application, was for Approval subject to the first numbered Condition of Approval.

[1.Variance Approval shall be limited to a second ground sign substantially consistent with the sign exhibit received October 13, 2011, with the total display surface area for both signs not to exceed 298.1 square feet as per said exhibit.]

Murray King asked Erik Enyart if he did not also still recommend the fourth Condition of Approval. Mr. Enyart responded that this was based on the previous plan to attach the new sign to the old one, and that, anything behind the existing sign would probably be within the property, and so, if it was moved back [west] another 10 feet, it would clearly be within the property. Chair Jeff Wilson and Mr. Enyart clarified with Larry Whiteley and Darrell Mullins that their Motion and Second included the Applicant’s amendment to the Application to maintain 10’ of separation between the signs and included Staff’s amended recommendation. Roll was called:

ROLL CALL:

AYE: Mullins, Whiteley, Wilson, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 5:0:0

4. **BBOA-550 – Mitch & Gail Pilgrim.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,200 square foot garage accessory structure in the east yard for property in the RE Residential Estate District.
Property located: Lot 10, Block 4, *Bixhoma Lake Estates*; 18393 S. 154th E. Ave.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, December 02, 2011
RE: Report and Recommendations for:
BBOA-550 – Mitch & Gail Pilgrim

LOCATION: – 18393 S. 154th E. Ave.

– Lot 10, Block 4, Bixhoma Lake Estates

LOT SIZE: 1.1 acres, more or less

ZONING: RE Residential Estate District

SUPPLEMENTAL ZONING: None

EXISTING USE: Vacant (single family dwelling to be constructed per Building Permit # 18340 dated 11/02/2011)

REQUEST: Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,200 square foot garage accessory structure in the east yard for property in the RE Residential Estate District.

SURROUNDING ZONING AND LAND USE: RE; Single-family residential and vacant lots in Bixhoma Lake Estates.

COMPREHENSIVE PLAN: Vacant, Agricultural, Rural Residences, and Open Land + Residential Area

PREVIOUS/RELATED CASES: (None found)

RELEVANT AREA CASE HISTORY:

BBOA-392 – Jim Kirkpatrick – Request for Variance to allow a 30' X 40' (1,200 square foot) accessory building for property one (1) block to the east at 15607 E. 184th St. S. – BOA Approved 10/07/2002.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is a vacant lot in Bixhoma Lake Estates. The Applicant will be constructing a house on the center of the subject property pursuant to the Building Permit # 18340 dated 11/02/2011. The proposed 30' X 40' (1,200 square foot) accessory building would be located toward the center-right part of the lot, in what the property owner has deemed the rear yard due to the house facing west and having an address on S. 154th E. Ave. (the driveway will connect to 184th St. S., as is allowable).

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant is requesting a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,200 square foot garage accessory structure in the east yard for property in the RE Residential Estate District.

Zoning Code Section 11-8-8.B.5 provides:

“5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.

No accessory building shall exceed the height of the primary dwelling on the lot.

In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth (¹/₄) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)”

The subject property contains approximately 1.1 acres, and so qualifies on the “sliding scale” for an 892.8 square foot accessory building.

The “sliding scale” was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The “sliding scale” was calculated in order to start at 800 square feet and increase regularly for each ¼ acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the first application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “Does not allow adequate storage of vehicles.”

Staff does not dispute the Applicant’s claim that the strict application of the Zoning Code restrictions will result in the prohibition of the proposed 1,200 square foot accessory building. The Board must find, however, that this prohibition amounts to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, “Nothing, similar structures already exist in neighborhood.”

Notwithstanding the Applicant’s response that the application did not meet this test and standard, Staff considered, but could not conceive any viable arguments in satisfaction of this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because “No commercial usage, used for storage of residents personal vehicles out of public and neighborhood.”

The Applicant’s argument is self-explanatory.

The Board may also consider that there appear to be several other detached accessory buildings in Bixhoma Lake Estates which, by a cursory investigation, appear to exceed the current, and former 750 square foot maximum standards for the same. One of these appears to have been sanctioned, under the former 750 square foot maximum standard, in 2002 per BBOA-392. It is located one (1) block to the east at 15607 E. 184th St. S.

Although this fact would appear to support the Applicant’s cause, nonconformities are generally not recognized as adequate for justification of the creation of new nonconformities by Variance.

As it pertains to this Test and Standard, the Board should also consider that the new, more generous maximum floor area standards were quite recently (December 21, 2009) and have not, previously, generated Variance applications proposing to exceed same.

Finding of Minimum Necessary. Staff considered, but could not conceive any viable arguments in satisfaction of this test and standard. If the Board is amenable to this application, it must find that the proposed 307.2 square feet more than the 892.8 square foot maximum, a 34.4% increase, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. The Board may wish to consider the arguments presented in the application, or others that the Applicant and Board may discover during public hearing and consideration of this case at the meeting, to identify with the Applicant how the requested Variance would be in accordance with each of the tests and standards provided in State Statutes and the Bixby Zoning Code.

Recognizing that the arguments presented by the Applicant and herein do not appear to adequately address the Tests and Standards, Staff is dubious that the Tests and Standards can ultimately be found satisfied.

Erik Enyart stated that he had had difficulty assisting the Applicant with arguments that he found adequate for the justification of Variance, but could not rule out the possibility that some could be brought up here, which the Board may find adequate. Mr. Enyart stated that he had informed the Applicant of this difficulty prior to the meeting. Mr. Enyart stated that he needed to point out that this was the first application to test the regulations on accessory buildings, which were recently

relaxed to allow larger buildings, and that the relaxed regulations were so recently adopted, at just less than two (2) years ago. Mr. Enyart explained that the old regulations restricted accessory buildings to 750 square feet, and that, through the process of Planning Commission public hearings, and direction received when the concept was taken back and forth between the City Council and the Planning Commission, was to relax the restrictions and allow larger accessory buildings. Mr. Enyart stated that the result was to increase the absolute minimum size from 750 square feet to 800 square feet, and use a sliding scale based on number of acres owned to allow up to a maximum of 2,400 square feet, which would require a minimum of 3.25 acres.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Mitch Pilgrim stated that he wanted the building for his large bass boat and electric car, and that he would have no commercial activity in the building.

Darrell Mullins asked if the house would have a garage too, and Mitch Pilgrim responded “No.” Mr. Pilgrim indicated that he would park his cars in the proposed accessory building.

Murray King asked what was the largest [accessory building size] allowed. Mitch Pilgrim stated that he was limited to 892 square feet, and that he was asking for an additional [307.2] square feet.

Murray King asked if the building could be allowed if it were attached to the house, such as by a “breezeway.” Another Board member asked if it could be “as big as possible” if it were attached to the house. Erik Enyart responded that it could, and that the Zoning Code requires that, when attached, it become “structurally a part of the principal dwelling,” and that this was most commonly achieved using a *porte cochere* or otherwise a shared roofline.

Larry Whiteley asked how far the building would be set back [from the house]. Mitch Pilgrim stated that it would be 20’ from the house.

Mitch Pilgrim presented a printout of a photograph, and stated that the building he proposed would be similar to the one depicted in the photograph, except that it would have one (1) door instead of two (2).

Mitch Pilgrim stated that there was a new accessory building at the corner of 181st St. S. and 154th E. Ave. that was the same size as the one he was proposing. Mr. Pilgrim stated that there were several other properties in this subdivision that had similarly-sized accessory buildings, but that he understood that [many of them] had two (2) lots, allowing them larger buildings.

Darrell Mullins clarified with Erik Enyart that the property had 1.1 acres.

After further discussion, Erik Enyart advised the Board that, previously in the discussion of this item, Darrell Mullins had asked if the house would also have a garage, and the Applicant responded that it would not. Mr. Enyart clarified with Mitch Pilgrim that he had heard this correctly. Mr. Enyart clarified with Mitch Pilgrim that he would be parking his cars in the proposed accessory building. Mr. Enyart advised the Board that the typical new house has at least a two (2) car garage, and that the typical parking space was approximately 200 square feet. Mr.

Enyart stated that a two (2) car garage would thus require 400 square feet, and the Applicant was requesting a Variance of 307.2 square feet. Mr. Enyart indicated he considered this relevant and unique to this application.

Darrell Mullins clarified with the Applicant that the proposed house would be 1,750 square feet.

There being no further discussion, Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-550 with the Conditions of Approval as recommended by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Hill, & King
NAY: None.
ABSTAIN: Mullins.
MOTION CARRIED: 4:0:1

- BBOA-551 – Currington Mortgage for Park Place Office Suites, LLC.** Discussion and possible action to approve a Variance from the one (1) sign limitation and maximum display surface area standards of Zoning Code Section 11-7C-3.B.4 and any other Zoning Code regulation preventing the erection of a second ground sign at approximately nine (9) feet in height and 75 square feet in display surface area for property in the OL district with PUD 23.

Property located: Lot 1, Block 1, *Sterling House*; 8516 E. 101st St. S.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: *Bixby Board of Adjustment*
From: *Erik Enyart, AICP, City Planner*
Date: *Friday, December 02, 2011*
RE: *Report and Recommendations for:
BBOA-551 – Currington Mortgage for Park Place Office Suites, LLC*

LOCATION: – 8616 E. 101st St. S.
– Lot 1, Block 1, *Sterling House*

LOT SIZE: 3 acres, more or less

ZONING: OL Office Low Intensity District + PUD 23

SUPPLEMENTAL ZONING: None

EXISTING USE: *Park Place Office Suites multitenant office park*

REQUEST: *Variance from the one (1) sign limitation and maximum display surface area standards of Zoning Code Section 11-7C-3.B.4 and any other Zoning Code regulation preventing the erection of a second ground sign at approximately nine (9) feet in height and 75 square feet in display surface area for property in the OL district with PUD 23.*

SURROUNDING ZONING AND LAND USE:

North: *CO/PUD 411C; Single family residential and a large, stormwater retention pond in the Ridge Pointe and Ridge Pointe Villas subdivisions and the Super Target in the South Town Market subdivision to the northwest, all in the City of Tulsa.*

South: *RS-3; Residences in Legacy Park.*

East: *RS-3; Residences in Legacy Park.*

West: OL & CS; The Warren Clinic medical clinic in Landmark Center, and the vacant Tract D of 101 South Memorial Center to the southwest.

COMPREHENSIVE PLAN: Corridor + Residential Area

PREVIOUS/RELATED CASES: (Not necessarily a complete list)

BZ-165 – Pittman-Poe & Associates, Inc. for Allen G. Oliphant – Request to rezone approximately 383 acres from AG to RS-3, RD, RM-2, & CS for a residential and commercial development for parts of the NW/4, NE/4, and SE/4 of this Section (included subject property) – PC recommended Approval of an amended request (including RS-2 instead of RS-3) 05/28/1985 and the City Council Approved the amended request 06/11/1985 (Ord. # 530).

PUD 11 – Edgewood Farm – Pittman-Poe & Associates, Inc. for Allen G. Oliphant – Request to approve PUD 11 for approximately 383 acres for a residential and commercial for parts of the NW/4, NE/4, and SE/4 of this Section (included subject property) – PC recommended Approval 05/28/1985 and the City Council Approved 06/11/1985 (Ord. # 531).

BZ-202 – W. Douglas Jones for Tercero Corporation – Request to rezone 382 acres, more or less, from RS-3, RD, RM-2, & CS to AG (included subject property) – PC recommended Approval 10/19/1992 and City Council Approved 10/26/1992 (Ord. # 673).

PUD 11 Abandonment – W. Douglas Jones for Tercero Corporation – Request to abandon PUD 11 – PC recommended Approval 10/19/1992 and City Council Approved 10/26/1992 (Ord. # 674).

BZ-248 – Tanner Consulting, LLC – Request to rezone subject property from “CS” [AG] to RM-2 for a Sterling House residential care facility (not actually built) – PC recommended Approval 10/19/1998 and City Council Approved 11/23/1998 (Ord. # 785).

PUD 23 – Sterling House Clare Bridge – Tanner Consulting, LLC – Request to approve a PUD for subject property for a Sterling House residential care facility (not actually built) – PC recommended Approval 11/16/1998 and City Council Approved 05/10/1999 (Ord. # 792).

Preliminary Plat of Sterling House – Request for Preliminary Plat approval for Sterling House – Recommended for Approval by PC 11/16/1998.

Final Plat of Sterling House – Request for Final Plat approval for Sterling House – Recommended for Approval by PC 06/21/1999 and Approved by City Council sometime afterward (Plat # 5382 recorded 08/23/1999 and bears a signed, but undated City Council approval certificate).

BZ-271 – L.C. Neel for Alterra Healthcare Corporation – Request to rezone subject property from RM-2 to CS in order to market the property for sale for commercial development – PC recommended Denial 04/16/2001. Applicant Appealed and City Council Denied 04/23/2001.

BZ-284 – Tim Remy for Home Ventures, Inc. – Request to rezone subject property from RM-2 to OL for the Park Place Office Suites multitenant office park – PC recommended Approval 05/20/2002 and City Council Approved 06/10/2002 (Ord. # 851).

AC-03-04-04 – Request for Architectural Committee approval for a 30-foot-tall ground sign for subject property – AC Approved 04/21/2003.

BBOA-420 – Todd Mathis – Request for Special Exception for subject property to allow a Use Unit 5 “day spa,” to include hairstyling and massage services – Withdrawn in 2004.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is developed with the Park Place Office Suites office park, consisting of three (3) multitenant buildings perpendicular to 101st St. S.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Park Place Office Suites development has an existing, approximately 30’-tall ground sign toward the center of its 101st St. S. frontage. Currington Mortgage Company, one of the tenants, is proposing to construct a second sign exclusive to Currington Mortgage Company, to be located at the northwest corner of the lot at 78’ south of the Sectionline (just beyond the 17.5’ Utility Easement per the plat of Sterling House).

For the OL district, Zoning Code Section 11-7C-3.B.4 provides:

“4. Signs:

a. One business sign may be erected on each street frontage of a lot. The sign shall not exceed two-tenths ($\frac{2}{10}$) of a square foot of display surface area per lineal foot of street frontage; provided, however, that in no event shall the sign be restricted to less than thirty two (32) square feet nor be permitted to exceed one hundred fifty (150) square feet of display surface area. Ground signs in the OL and OM districts shall not exceed the height of the building in which the principal use is located, or twenty feet (20'), whichever is lower. No business sign shall be located within fifty feet (50') of any R district if visible from such district. Illumination, if any, shall be by constant light.”
(emphasis added)

At 75 square feet in display surface area, the proposed sign itself would exceed the 63 square foot maximum display surface area standard of the OL district ($\frac{2}{10}$ square foot per 315' of street frontage). Further, the existing sign is much larger (including much taller than is permitted) and likely exceeds this amount by a great measure, but it must be noted that the actual dimensions of the existing sign are not known.

The proposed sign would therefore require a Variance from the one (1) sign limitation and the maximum display surface area standards, and any other Zoning Code restrictions preventing this second ground sign, all of which is requested by BBOA-551.

PUD 23 essentially requires all signage comply with the Zoning Code standards for the same, and be approved for a “Detail Sign Plan” (page 3, Signage). However, it does not appear that PUD 23 carries much effect, if any, since the subject property was since rezoned OL per BZ-284 in 2002, with a repealing clause in approval Ordinance # 851, “[BE IT ORDAINED by the City Council of Bixby, Oklahoma:] That all Ordinances or parts of Ordinances in conflict herewith be, and the same are hereby repealed.” Recognizing that BZ-284 was proposed in order to change the underlying zoning from RM-2 to OL for an office park development, which would otherwise be prohibited by the RM-2 district and the express land use restrictions of the PUD 23 Development Standards (“limited to assisted living facility”), it would appear that PUD 23 does not affect this application.

On April 21, 2003, the Architectural Committee approved AC-03-04-04, which proposed a 30'-tall ground sign on the subject property. The exact dimensions of the existing sign are not known, but, based on a visual inspection, it appears to be about this height. The applicable maximum ground sign height (which PUD 23 does not modify) is 20' per Zoning Code Section 11-7C-3.B.4.

Per the Minutes of the April 21, 2003 Architectural Committee meeting, a former City Planner reported,

“This is an office complex already under construction so only the signage needs to be approved... [T]he complex is being built more than 600 feet off Memorial, so we did not have to approve plans for the office complex itself, only the signage.”

No Variance was approved for the existing ground sign.

The second and final Variance component is intended to be a ‘catch-all,’ in the event other provisions of the Zoning Code would prevent the erection of a second ground sign but were inadvertently overlooked when determining the number of and scope of Variances necessary.

Both Variance requests are inextricably related with a common nexus: The proposal to erect a second ground sign at approximately nine (9) feet in height and 75 square feet in display surface area. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of such signage. Therefore, this report will not divide the separate Variance components into different report sections.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “We are committed to help and serve the Bixby Community. However, in competing for business in this market we face some unique hardships. We provide mortgage financing for families. We are a small company in a “large company” industry.

We compete with big banks like BOK, Arvest etc. These highly visible companies spend large amounts of money on their signage and offices. Their size gives them the ability to stay in the eye of the public.

Unfortunately, we are tucked back in an office complex. We need a physical presence on 101st street; not only so our customers can find our office, but so that we can present an image of stability.

Without signage current customers are harder to keep because they think we are too small to compete with the bigger place. We don't get the opportunity to compete for new customers because they don't know we exist.

We meet with every customer on a 1 to 1 basis. This is unlike many of the businesses in our complex, which are more B2B. Because we are tucked back in a complex where all the office suites are identical we need something that stands out and allows us to direct customers and prospects to our office.

As a small business it is already difficult to stand out amongst our competitors and we believe a sign on 101st street is vital to our continued success in the Bixby Community."

This implies that there would be a hardship if the business was not allowed its own exclusive ground sign. Staff does not dispute that the business can claim that the strict application of the Zoning Code restrictions will result in the prohibition of an exclusive ground sign.

The existing sign is quite large and has 30 individual placard sign cabinets available for all tenants in Park Place Office Suites to share, as determined by the tenants and landlord. Currington Mortgage Company currently has one (1) of the placard signs, and so appears to be arguing that the requirement to be satisfied with such a sign, which is smaller and less conspicuous than the one proposed, would be an unnecessary hardship.

Staff believes that the Board may reasonably consider this prohibition an Unnecessary Hardship. Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant claims that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "The uniqueness of our business compared to other businesses in this district and the type of market that we compete in."

As expounded more fully in the initial quoted argument above, the Applicant is claiming that the business itself is unique and faces special competitive disadvantages within its industry due to its relatively small size. Staff does not believe that this sort of argument squares with the intent of the test and standard, which is oriented to the real property and its physical features in the context of its Zoning district.

Staff does believe that an argument may be made claiming Peculiar, Extraordinary, and/or Exceptional Conditions or Circumstances by virtue of the following facts, considered together:

- The location of the office park development so far removed from Memorial Dr., the primary commercial corridor in the area, at approximately ¼ mile to the east, placing at a relative disadvantage the office park development and those tenants within it which depend more heavily on visibility of signage to adjacent traffic, such as the Applicant.*
- The lack of traffic lights, stop signs, on-street parking, a significant number of street and/or driveway intersections, or other methods of slowing traffic along this section of 101st St. S., which may likely have the effect of reducing dwell time on any individual placard sign in the existing ground sign, perhaps to the extent of making it unreadable at typical or even speed-limit-compliant speeds at 40 MPH.*
- The relatively wide frontage of the subject property at 315', in relation to the 27 tenant spaces within the office complex.*
- The fact that the Applicant has to share the existing ground sign with 29 other individual placard sign cabinets.*

These conditions, considered together, can be seen to have given rise to the subject property's unnecessary hardship.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "This sign is conservative in design and blends with the surrounding area. The monument style of this sign will not compete with the existing tenant sign. It will not feel like there are too many signs in this area."

The Applicant appears to be implying that the proposed new sign will not be aesthetically objectionable.

Staff believes that the primary purpose for minimum sign separation standards is to maintain the aesthetic quality of Bixby's commercial corridors and ensuring all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

Recognizing the sign exhibit received with the application, Staff believes that any aesthetic concerns should be recognized as minimal.

Finding of Minimum Necessary. For the maximum number of signs and "catch all" elements of the Variance, Staff would note that the Minimum Necessary to Alleviate the Unnecessary Hardship standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief.

The Board must still find that the proposed additional display surface area, at 75 square feet, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code, Staff recommends Approval, subject to the Variance Approval being limited to a second ground sign substantially consistent with the submitted sign exhibit, with the total display surface area for the proposed sign not to exceed 75 square feet as per said exhibit.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Bob Dail of *A-Max Sign Company, Inc.* was present and stated that [he and his client were] asking for the Board's help. Mr. Dail stated that [*Park Place Office Suites*] was developed to be more deep than wide, and that it was difficult for businesses like Steve's. Mr. Dail stated that he had learned recently how [the Applicant's] office gives directions, 'go east on 101st Street, at the first driveway past the *Warren Clinic*, turn right.' Mr. Dail stated that there was a need there physically to be identified to the public. Mr. Dail stated that, the other thing that was unique is that [*Currington Mortgage*] is a local firm, a small business in a large business industry, and competes with [*Bank of Oklahoma*] and other big banks. Mr. Dail stated that his client needed to present a very stable image. Mr. Dail stated that Steve competes in this market, and the proposed sign would present a better image. Mr. Dail stated that [*Currington Mortgage*] was not on the same playing field but the sign would say that 'this is a professional business.' Mr. Dail stated that the need was there and that [he and his client] needed the City's help.

Chair Jeff Wilson asked Bob Dail about the existing sign on the property. Mr. Dail confirmed it was there and "sits back a way from the street," and [each tenant] gets a 15" by 30" space.

Chair Jeff Wilson advised the Applicant that he would ask the same question he asked [the previous sign-related Variance Applicant] this evening: How would [the Board] know that there would not be more businesses that will apply for Variance if this is granted?

Bob Dail stated that he would respond by pointing to the uniqueness of this [*Currington Mortgage*] business. Mr. Dail stated that there were a lot of "business-to-business" [tenants] in [*Park Place Office Suites*], and there were not many businesses out there that do what [Steve Currington] does.

Steve Currington stated that [*Currington Mortgage's*] slogan was "We're still here," and that this was because others have "washed out, gone bankrupt." Mr. Currington stated, "I won't say someone else won't say 'I want one too.'" Mr. Currington stated that he wanted the sign "to direct people to where we are." Mr. Currington stated that he lived in Bixby and that his kids go to Bixby Schools. Mr. Currington stated that he was also putting up a sign [on the building wall]. Mr. Currington stated that there were three (3) buildings in [*Park Place Office Suites*]. Mr.

Currington stated, “Mr. [Tim] Remy can say it better than I,” but [*Park Place Office Suites* consists of] “just suites, identical to each other.” Mr. Currington stated that he wanted to show “stability, so the customer will not think I’m just a little building tucked back there.” Mr. Currington stated that he would like to have his own building one of these days, but needed to grow first.

Larry Whiteley asked about the sign’s height. Bob Dail stated that it would be a monument sign, 9’ in height, and would use metal, and not cheap plastic, and would have a message band on the bottom.

One of the Board members asked what a “monument sign” was. Steve Currington stated that it was one that was flush to the ground. Murray King clarified with Mr. Currington that it meant that the sign would not be elevated, such as up on a pole.

Steve Currington stated, “We have a good landlord” who will “let us do something.” Mr. Currington stated, “We just signed a five (5) year lease; we’ll be there for a while.”

Darrell Mullins asked how many businesses were in [*Park Place Office Suites*]. Erik Enyart consulted the Staff Report and responded that there were 27 tenant spaces.

Chair Jeff Wilson asked what would happen to the sign when [*Currington Mortgage*] left [*Park Place Office Suites*]. Steve Currington responded that he would take it with him, as it was designed to be [unbolted] and moved away. Bob Dail indicated agreement.

Darrell Mullins asked why the sign was needed. Chair Jeff Wilson asked how the Board could be assured that others would not also request a sign.

Steve Currington stated that his business was not like others in [*Park Place Office Suites*], like a dentist’s office or chiropractic’s office, where their clients, once they go there, they remember how to get there. Mr. Currington stated that *Edward Jones* was located in [*Park Place Office Suites*] also, and people remember where their money is. Mr. Currington stated that he needed the sign to direct new customers to his business, as his business did not have [many] recurring customers. Mr. Currington stated that he needed to acquire customers. Mr. Currington stated, “I’m no more special than anyone else in there. I just want to put up a sign.”

Chair Jeff Wilson expressed concern that this could set a precedent for the [*Regal Plaza / SpiritBank Event Center* development], encouraging businesses in the back of that development to ask for a Variance to put up more signs.

Steve Currington asked if the Board members have not observed that [101st St. S.] in this area narrows quickly from five (5) lanes to two (2), and in the winter, it gets dark quickly. Mr. Currington stated that the existing “sign sits snug up to the building,” and indicated it was difficult to see his sign within it.

Chair Jeff Wilson stated that the Board must determine how to distinguish the Applicant's [Variance] from all others that may be received. Mr. Wilson clarified with Steve Currington that there were three (3) buildings in [*Park Place Office Suites*], and that it was deep and narrow.

Larry Whiteley and Dave Hill asked for clarification on the sign spacing. Erik Enyart responded by saying the signs met the spacing requirement, then corrected himself by saying that there was no applicable spacing requirement because the Zoning Code did not allow for more than one (1) sign per property. Mr. Enyart stated that the Applicant's request for Variance was to allow a second sign.

Tim Remy stated, "I have to give consent. I do not want another sign on my property. I will not give another consent letter, which is required for them to get a sign." Erik Enyart advised that [Mr. Remy's statement] was the same thing [Mr. Remy] said earlier for another [sign-related Variance application] case.

Larry Whiteley clarified with Tim Remy that the "combined sign" was the one that was already on the property. Bob Dail stated that it was 26' [in height].

Erik Enyart stated that, in addition to the statement Bob Dail had made earlier about the subject property being deep and narrow, [other arguments he had heard in the meeting included] that the buildings were [oriented] perpendicularly to 101st St. S., that there were 27 [tenant spaces] within [*Park Place Office Suites*], that the buildings don't face the street, which would allow for their wall signs to be seen, and that he had made other arguments in the Staff Report to help distinguish this case, which he read as follows:

- The location of the office park development so far removed from Memorial Dr., the primary commercial corridor in the area, at approximately ¼ mile to the east, placing at a relative disadvantage the office park development and those tenants within it which depend more heavily on visibility of signage to adjacent traffic, such as the Applicant.
- The lack of traffic lights, stop signs, on-street parking, a significant number of street and/or driveway intersections, or other methods of slowing traffic along this section of 101st St. S., which may likely have the effect of reducing dwell time on any individual placard sign in the existing ground sign, perhaps to the extent of making it unreadable at typical or even speed-limit-compliant speeds at 40 MPH.
- The relatively [narrow] frontage of the subject property at 315', in relation to the 27 tenant spaces within the office complex.
- The fact that the Applicant has to share the existing ground sign with 29 other individual placard sign cabinets.

Erik Enyart stated that these arguments were relevant to him and helped distinguish this case from any others.

Larry Whiteley stated that [Tim] Remy said there would be no more signs.

There being no further discussion, Chair Jeff Wilson made a MOTION to APPROVE BBOA-551, “based on the peculiar facts and circumstances set forth in the City Planner’s report.” Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Whiteley, Wilson, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 5:0:0

ADJOURNMENT

The meeting was Adjourned by acclamation at 7:10 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary