

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
April 02, 2012 6:00 PM**

**STAFF PRESENT:**

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

**ATTENDING:**

Stuart Nyander, *Sack & Associates, Inc.*  
See attached Sign-in Sheet

**CALL TO ORDER**

Meeting called to order by Chair Jeff Wilson at 6:00 PM.

**ROLL CALL**

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

Members Absent: Murray King.

**MINUTES**

1. Approval of Minutes for March 05, 2012

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of March 05, 2012 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Wilson, Whiteley, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

**OLD BUSINESS**

None.

**NEW BUSINESS**

Larry Whiteley addressed Chair Jeff Wilson and suggested that the agenda items be taken out of order and that BBOA-556 be considered next.

Chair Jeff Wilson asked the Applicants of both BBOA-555 and BBOA-556 if they would mind this change, and noted that the Board members estimated BBOA-556 would take much less time. Neither Applicant expressed objection.

3. **BBOA-556 – Sack & Associates, Inc.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-10-2.H to allow a total of 30 parking spaces, in excess of the 11 space maximum standard for a proposed bank in the CS Commercial Shopping Center District.  
Property located: The S. 216' of Lot 6, Block 1, *Bixby Centennial Plaza*; 11894 S. Memorial Dr.
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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:** *Wednesday, March 21, 2012*  
**RE:** *Report and Recommendations for:  
BBOA-556 – Sack & Associates, Inc.*

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**LOCATION:** – *The 11800 : 11900-block of S. Memorial Dr.*  
– *11894 S. Memorial Dr.*  
– *The S. 216' of Lot 6, Block 1, Bixby Centennial Plaza*

**LOT SIZE:** *1.4 acres, more or less*

**ZONING:** *CS Commercial Shopping Center District*

**EXISTING USE:** *Vacant*

**REQUEST:** *Special Exception per Zoning Code Section 11-10-2.H to allow a total of 30 parking spaces, in excess of the 13 space maximum standard for a proposed bank in the CS Commercial Shopping Center District*

**SURROUNDING ZONING AND LAND USE:**

**North:** *CS, OL, and CG/OL + PUD 54; A vacant lot, the IBC Bank and the Jiffy Lube.*

**South:** *CS; A vacant lot, the Santa Fe Cattle Co. restaurant, and a Bank of Oklahoma bank branch, all in Bixby Centennial Plaza.*

**East:** *(Across Memorial Dr.) CS & CG; The Town and Country Shopping Center, the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.*

**West:** *CS; Vacant lots in Bixby Centennial Plaza and an unplatted 11-acre vacant/agricultural tract zoned CS/OL + PUD 51.*

**COMPREHENSIVE PLAN:** *Corridor + Medium Intensity + Commercial Area*

**PREVIOUS/RELATED CASES:**

**BZ-279 – Charles Norman/Martha Plummer Roberts et al.** – *Request for rezoning from AG to CS, OM, RM-1, and RS-2 for 73 acres, more or less, which became Bixby Centennial Plaza and Fox Hollow and an unplatted 11-acre tract later approved as PUD 51 – PC Recommended Approval as amended for CS, OM, OL, RS-3, and RS-2 on November 19, 2001 and Approved by City Council December 10, 2001 (Ord. # 842). Subject property included in that part approved for CS zoning.*

**Preliminary Plat of Bixby Centennial Plaza** – *Request for Preliminary Plat approval including subject property – PC Approved 07/17/2006 and City Council Approved 07/24/2006.*

**Final Plat of Bixby Centennial Plaza** – *Request for Final Plat approval including subject property – PC Approved 10/16/2006 and City Council Approved 10/23/2006 (plat recorded 04/04/2007).*

BL-350 – Khoury Engineering, Inc. – Request for Lot-Split approval to separate the south 46.08' of Lot 5 of Bixby Centennial Plaza and add to Lot 6 – PC Conditionally Approved January 2008.

BBOA-529 – Khoury Engineering, Inc. – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 automotive repair and sales business use in the CS Commercial Shopping Center District for Lot 6 (included part of subject property) – BOA Approved 12/06/2010.

BL-376 – Khoury Engineering, Inc. for Bixby Investors, LP – Request for Lot-Split approval for Lot 6 (included part of subject property) – PC Conditionally Approved 12/20/2010.

BBOA-535 – Khoury Engineering, Inc. – Request for Variance from (1) the 150' minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a, (2) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3, and (3) any other Zoning Code restriction preventing the erection of two (2) freestanding ground signs at three (3) square feet in display area [each], all for Lot 6 (included part of subject property) – BOA Approved 01/03/2011.

BBOA-536 – Khoury Engineering, Inc. – Request for Variance from the 150' minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a for the North 154.5' of Lot 6, and the South 46.08' of Lot 5, Block 1, Bixby Centennial Plaza (included part of subject property) – BOA Approved 02/07/2011.

AC-11-02-01 – Firestone Complete Auto Care – Khoury Engineering, Inc. – Request for Detailed Site Plan approval for a Use Unit 17 automotive repair and sales business for the S. 165.5' of Lot 6, Block 1, Bixby Centennial Plaza (included part of subject property) – Withdrawn by Applicant prior to Planning Commission meeting 02/22/2011.

BL-381 – Khoury Engineering, Inc. for Bixby Investors, LP – Request for Lot-Split approval for Lot 6 part of subject property – PC Conditionally Approved 11/21/2011.

BBOA-544 – Khoury Engineering, Inc. – Request for Variance (A) from the 150' minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[9].a, (B) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3 to allow three (3) square feet of display surface area per ground sign, and (C) from any other Zoning Code restriction preventing the erection of three (3) freestanding ground signs at three (3) square feet in display area each for Lot 6, and the South 46.08' of Lot 5, Block 1, Bixby Centennial Plaza (included subject property) – BOA Approved 10/03/2011.

**RELEVANT AREA CASE HISTORY:** (not a complete list)

BZ-182 – Eugene Green – Request for rezoning from RS-1 to CG for Lots 1 and 2 of Block 5, North Heights Addition (the Jiffy Lube property at 11800 S. Memorial Dr.) for a car lot – Approved by City Council August 11, 1987 (Ord. # 569).

BBOA-449 – Patrick Moore for SBM Corporation – Request for Special Exception to authorize a Use Unit 17 Automotive and Allied Activities for a Jiffy Lube auto service facility at 11800 S. Memorial Dr. – Denied by Board of Adjustment 10/02/2006.

BZ-318 – SBM Corporation for Eugene & Norma Green – Request for rezoning from RS-1 to OL for Lot 3 Block 5, North Heights Addition (the Jiffy Lube property at 11800 S. Memorial Dr.) – PC Recommended Approval October 16, 2006 and City Council Approved November 13, 2006 (Ord. # 953).

PUD # 54 – Jiffy Lube – Request for PUD overlay zoning for the Jiffy Lube property at 11800 S. Memorial Dr. – PC Recommended Approval 03/19/2007 and City Council Approved 04/09/2007 (Ord. # 963).

BL-351 – Khoury Engineering, Inc. – Request for Lot-Split approval to separate the north 42' of Lot 8 and add to Lot 7 of Bixby Centennial Plaza – PC Conditionally Approved 03/17/2008.

AC-08-06-05 – Santa Fe Cattle Co. – Request for Detailed Site Plan approval for a Use Unit 12 restaurant at 11982 S. Memorial Dr., the S. 264.00' of Lot 8, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 06/16/2008.

AC-08-07-01 – IBC Bank – Request for Detailed Site Plan approval for a Use Unit 11 bank at 11886 S. Memorial Dr., The N. 158.42' of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 07/21/2008.

AC-09-05-02 & AC-09-05-05 – IBC Bank – Request for approval for wall signs and a ground sign, respectively, for the IBC Bank at 11886 S. Memorial Dr., The N. 158.42' of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Approved both on 05/18/2009.

AC-12-04-02 – Communication Federal Credit Union – Sack & Associates, Inc. – Request for Detailed Site Plan approval for a Use Unit 11 bank on subject property – Pending PC consideration 04/16/2012.

BACKGROUND INFORMATION:

Previous Plans for Firestone Development. BBOA-529, BBOA-535, BL-376, and AC-11-02-01 (December 2010 to February 2011) were all applications in support of a Use Unit 17 Firestone Complete Auto Care & Tire Store development, which was to occur on the S. 165.5' of Lot 6, Block 1, Bixby Centennial Plaza. BBOA-536 was a request for the remaining land between the Firestone development and IBC Bank to have its own freestanding ground sign.

Ultimately, Firestone decided to cancel the project and did not buy the land or build the store.

Lot-Split / Lot-Combination Considerations. A Communication Federal Credit Union development is now proposed for the S. 216' of Lot 6. BL-381 was a request for Lot-Split to separate the subject property from the North 104' balance of Lot 6, which will be added to the S. 46.08' of Lot 5 to create another future development lot. The Planning Commission Approved that Lot-Split on 11/21/2012 with a Condition of lot combination, described more fully in the following paragraphs.

Per BL-350, Lot 5 to the north was approved for Lot-Split to separate the south 46.08' from the balance of that lot, which was sold and developed with an IBC Bank. Per the Planning Commission's Conditional Approval, because it would otherwise violate the 150' minimum frontage requirement of the CS district, that 46.08' "sliver tract" was required to be attached to Lot 6, Block 1, Bixby Centennial Plaza. Deed restriction language to that effect was used on the deed presented to Staff for the Lot-Split approval certificate stamp and signature. However, the Tulsa County Assessor's parcel data does not reflect the attachment. This could be because the deed Staff stamped was not used, the Assessor's Office did not recognize the deed restriction language as requiring changes to the parcel data, or did not recognize it as adequate for this purpose, such as because there was not reciprocal deed restriction specifically concerning a conveyance of Lot 6.

The deed restriction language provided that the Planning Commission could reverse the combination by future Lot-Split approval. Therefore, as a Condition of Approval for BL-381, the Planning Commission required that the deed for the northerly tract (North 104' balance of Lot 6) include a deed restriction correspondingly attaching that tract to the South 46.08' of Lot 5. That was a Condition of Approval of BL-376, but that lot-division plan supporting the then-planned Firestone development has since been abandoned.

ANALYSIS:

Subject Property Conditions. The subject property is vacant and zoned CS. It consists of the S. 216' of Lot 6, Block 1, Bixby Centennial Plaza.

The subject property is located toward the center of the Memorial Dr. frontage of the Bixby Centennial Plaza subdivision, which contains 40 acres and is primarily zoned CS. To the west are larger vacant lots in Bixby Centennial Plaza and, further west is an unplatted 11-acre vacant/agricultural tract zoned CS/OL + PUD 51.

To the east is the (across Memorial Dr.) is a 9+ acre CS district containing the Town and Country Shopping Center, a large CG district containing the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.

To the north is the vacant remaining vacant parts of Lot 6 and Lot 5, the IBC Bank bank branch zoned CS, and the Use Unit 17 Jiffy Lube zoned CG/OL + PUD 54.

General. The subject property is proposed to be developed with a Use Unit 11 Communication Federal Credit Union financial institution. The development plans call for a total of 30 parking spaces. The Zoning Code provides a minimum number of parking spaces standard, which would be, per the building size represented on the Site Plan, (3,400 / 300 =) 11 parking spaces. In addition, Zoning Code Section 11-10-2.H provides a maximum parking number standard, to discourage developers from selecting properties which are too small to contain their buildings and all of the parking they anticipate need for. The maximum number of parking spaces allowed for this property, at 3,400 square feet, is 13 parking spaces (reference Zoning Code Section 11-9-11.D), and a total of 30 parking spaces are proposed. In other words, the site is proposed to have a total of 172.7% more parking spaces than the minimum required.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Corridor + Medium Intensity + 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. It appears that similar financial institution uses in the area would exceed the maximum parking standard if built today.

Per the Staff Report and Detailed Site Plan per AC-08-07-01, the IBC Bank just to the north has approximately 3,550 square feet and 26 parking spaces. At 3,550 square feet, 12 parking spaces would be required, so the 26 parking spaces are 117% higher than the minimum number required.

Per the Detailed Site Plan per AC-08-04-01, the Bank of Oklahoma to the south has 3,548 square feet and 22 parking spaces. At 3,548 square feet, 12 parking spaces would be required, so the 22 parking spaces are 83% higher than the minimum number required.

Per aerial data and GIS, to the northeast, the Bank of the West has approximately 1,500 square feet and approximately 11 parking spaces (5 required, so 120% higher than the minimum number required).

Per aerial data and GIS, further to the northeast, the former Arvest Bank has approximately 3,040 square feet and approximately 21 parking spaces (10 required, so 110% higher than the minimum number required).

The Zoning Code's maximum parking number standard was designed to discourage developers from selecting properties which are too small to contain their buildings and all of the parking they anticipate need for. Based on the information provided site plan, the site will be 60% landscaped, which is more than the typical suburban development in Bixby. The lot itself is rather large, and provides more ample spaces than are customarily designed and built in Bixby. For example, most developments provide only the bare minimum landscaped strip widths along Memorial Dr., which is 15'. This plan proposes 20'. Most developments propose only the bare minimum two-way drive aisle widths at roughly 24'. This plan proposes 27'.

Therefore, although area precedents do not support as much of a parking exceedance than is being requested here, Staff believes that the purpose and intent of the maximum parking standard is met in this application.

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.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Ted Sack of Sack & Associates, Inc., PO Box 50070, Tulsa, stated that the *Communication Federal Credit Union* representative Jack Nance was also present. Mr. Sack stated that the site would have more landscaping and parking than was needed. Mr. Sack stated that the site would allow for an expansion of the building without disturbing the landscaping or the parking. Mr. Sack requested approval per the Staff recommendation.

There being no further discussion, Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-556. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to Jack Nance.

2. (Continued from March 05, 2012)

**BBOA-555 – James Ward for First Equity Corp.** Discussion and possible action on an appeal of a building permit denial, and the interpretation on which it was based, pursuant to Zoning Code Sections 11-4-6 and 11-4-7, which permit proposed the development of an “Ice vending machine” on property in the CS Commercial Shopping Center District with PUD 50, and to allow the project development to proceed.

Property located: Lot 1, Block 1, *Jade Crossing*; 7851 E. 151<sup>st</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart noted that this item had been Continued from the previous month’s meeting. Mr. Enyart stated that, in that meeting, the discussion primarily revolved around determining into which Use Unit the proposed ice vending machine would be categorized, and the Board received testimony from the Applicant that several other jurisdictions had permitted the ice vending machines in their [respective] cities.

Erik Enyart stated that the Applicant had provided an information packet, which was attached to the agenda packet. Mr. Enyart stated that the information the Applicant provided included a table summarizing into which Use Unit categories five (5) different cities permitted the ice vending machines. Mr. Enyart stated that, per the table, Sapulpa, Glenpool, and Tulsa had permitted them in their Use Unit 14, and Sand Springs and Coweta had permitted them in their Use Unit 13. Mr. Enyart quoted the Applicant’s information, “We respectfully ask that the Bixby Board of Adjustment consider applying use unit 13 or use unit 14 codes to our application. Thank you in advance for your consideration.”

Erik Enyart stated that he had followed up with all of the named jurisdictions to receive confirmation that each community had in fact permitted them and within the Use Units claimed. Mr. Enyart stated that he had received three (3) responses, and that in all cases, the community representatives confirmed that they had permitted them within the Use Units claimed, and in one case, specific land uses within each Use Unit category were identified.

Erik Enyart stated that it is important to identify the actual land use under the Use Unit category that [the ice vending machine] fits under. Mr. Enyart quoted from the Bixby Zoning Code Section 11-9-14:

“11-9-14: USE UNIT 14 SHOPPING GOODS AND SERVICES:

A. Description: Retail establishments engaged in the merchandising of shopping goods and services.

B. Included Uses:

[subcategory] Retail trade establishments:

Antique shop.

Art gallery, commercial.

Artist supply store.

Automobile parts and accessories store.

Bicycle shop.

Bookstore.”

Chair Jeff Wilson asked Erik Enyart if the terms “included uses” was meant to be exclusive of all other uses. Mr. Enyart responded, “Yes, my interpretation is that when it says ‘included uses,’ only those are allowed.” Mr. Enyart stated that, sometimes, the included uses list a flexibility land use such as “General merchandizing establishment, N[ot ]E[lsewhere ]Classified], to accommodate specific businesses types not anticipated, but which the City wanted to allow generally.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant James Ward of The Ice Guys[, LLC], 1402 Country Club Dr., Okmulgee, was present and stated that he had put together the information based on what the Board had asked at the meeting last month.

Chair Jeff Wilson asked how the buildings were put together, if they were modular buildings, and if they had wheels. Applicant James Ward stated that that they were permanent buildings, but could be moved. Mr. Ward stated that he knew of at least one case where one was relocated when the original site was not working out. Mr. Ward described the information packet he submitted and what information it contained from each jurisdiction. Mr. Ward referenced the email from Glenpool Planning Director Rick Malone, additional conversations he had with representatives from other jurisdictions, and building permits which demonstrated the Use Units the vending machines were approved under. Mr. Ward stated that the location in Prattville, Sand Springs, was not in place yet, but was approved, and would be placed on the Bank of Oklahoma property, next to an ATM machine.

Chair Jeff Wilson confirmed with Applicant James Ward that no other city had turned him down for a building permit.

Dave Hill asked Chair Jeff Wilson to call for a Motion.

Chair Jeff Wilson asked if there was first any discussion between the Board members.

Larry Whiteley stated that the Board has the authority to make decisions on existing codes, and that the Zoning Code did not have a place for something like this. Mr. Whiteley stated that it was not the Board’s position to add [ice vending machines] to [the Zoning Code].

Darrell Mullins indicated he was not in favor of the application.

Applicant James Ward stated that he had discussed with Erik the fact that one of the Board members was not going to be at this meeting. Mr. Ward stated that, since that member was not present, he would like to see if the Board could Continue his application to the next month's meeting. Erik Enyart and Patrick Boulden confirmed with a Board member that the Board could Continue the case as requested.

There being no further discussion, Larry Whiteley made a MOTION to CONTINUE BBOA-555 to the May 07, 2012 Regular Meeting.

Applicant James Ward stated that he had also informed Erik that "there is a gentleman behind us that wants to put one of these in" in a parking lot, so "one way or another," Bixby will see an ice vending machine.

Larry Whiteley stated that the situation would be the same for them.

Applicant James Ward stated that he understood that the fact that this would be a "standalone" use was the issue, and that if it was next to a business, it would be permitted. Erik Enyart confirmed, saying "It would be [permitted as] an accessory use if on a developed lot, yes."

The Board members asked James Ward where his optometrist business was located. Mr. Ward stated that he had a site in Okmulgee for many years and now had an office at 121<sup>st</sup> St. S. and Memorial Dr., next to Grand Bank. Mr. Ward explained that the shopping center he was located in also included Hine Dental [Family Dentistry] and Nowlin [Orthodontics], and that his business' name was "The Eye Center South Tulsa." The Board members indicated they understood.

Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Mullins, Wilson, & Whiteley
NAY:	Hill.
ABSTAIN:	None.
MOTION CARRIED:	3:1:0

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Larry Whiteley made a MOTION to ADJOURN. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

The meeting was Adjourned at 7:25 PM.

APPROVED BY:

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Chair

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Date

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City Planner/Recording Secretary