

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
May 07, 2012 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 6:00 PM.

ROLL CALL

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

Members Absent: Darrell Mullins.

1. Annual nominations and elections for Chairperson, Vice-Chairperson, and Secretary (Board of Adjustment By-Laws, Ord. 772).

Chair Jeff Wilson introduced the item. The Board members discussed the matter briefly and indicated favor for re-nominating all current office-holders. Larry Whiteley made a MOTION to Nominate and Elect Jeff Wilson as Chair, Murray King as Vice-Chair, and Erik Enyart as Secretary. Erik Enyart stated that he would be happy to serve as Secretary again. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Hill, Whiteley, Wilson, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

MINUTES

2. Approval of Minutes for April 02, 2012

Chair Jeff Wilson introduced the item and clarified with Erik Enyart that there were not two (2) pages numbered page 7, but rather, the agenda packet contained two (2) copies of the 7th page of the Minutes, due to a copier malfunction.

Chair Jeff Wilson asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of April 02, 2012 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

(Murray King Abstained as he was not present at that meeting).

OLD BUSINESS

3. (Continued from March 05 and April 02, 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. 151st 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 summarized the Staff Report as follows:

To: *Bixby Board of Adjustment*
From: *Erik Enyart, AICP, City Planner*
Date: *Thursday, May 03, 2012*
RE: *Report and Recommendations for:
BBOA-555 – James Ward for First Equity Corp.*

LOCATION: – *Lot 1, Block 1, Jade Crossing*
– *7851 E. 151st St. S.*
LOT SIZE: *1 acre, more or less*
ZONING: *CS Commercial Shopping Center District with PUD 50*
REQUEST: *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.*

SURROUNDING ZONING AND LAND USE:

North: *IL & IM; Heavy commercial / industrial uses in Jade Crossing and Jade Crossing II along Grant St.*

South: *(Across 151st St. S.) RS-2, AG, & IL; Residential in the Jim King Addition.*

East: *IL & CS; Commercial in Spartan Family Shopping Center in Wal-Mart Stores Addition.*

West: *CS; Vacant commercial lots in Jade Crossing.*

COMPREHENSIVE PLAN: *Special District # 3 + High Intensity + Industrial Area + Regional Trail.*

PREVIOUS/RELATED CASES: *(not a complete list)*

BZ-45 – Warren Morris – *Request for IH, IL, CG, & CS zoning for all of the E/2 SE/4 of this Section (80 acres, includes all of Jade Crossing) – Approved for IM, IL, and CS zoning only by the City Council 10/1976 (Ord. # 320).*

BZ-101 – Warren Morris – Request for CS, RM-2, and RMH zoning for all of Jade Crossing – City Council referred matter back to Planning Commission and Applicant withdrew application on 06/21/1981.

BZ-109 – Warren Morris – Request for CS and RM-2 zoning for southerly acreage of Jade Crossing – Approved for CS zoning only by the City Council 09/08/1981 (Ord. # 447).

Preliminary Plat of ‘151 Business Park’ aka ‘151 Center’: Preliminary Plat concerning Jade Crossing / Jade Crossing II property area approved by PC 07/16/2001 and by City Council 07/23/2001 subject to hydrology issues being worked out.

Final Plat of ‘151 Business Park’ aka ‘151 Center’: Final Plat concerning Jade Crossing / Jade Crossing II property area approved by PC 03/18/2002 and by City Council 03/25/2002.

PUD 50 – Jade Crossing – Request for PUD zoning approval for Jade Crossing / Jade Crossing II property area – Approved in May, 2006 (Ord. # 940).

Preliminary Plat of Jade Crossing: Preliminary Plat approved by PC 06/19/2006 and by City Council 06/26/2006.

Final Plat of Jade Crossing: Final Plat approved by PC 10/16/2006 and by City Council 10/23/2006.

PUD 50 Minor Amendment # 1 – Request for PUD Minor Amendment approval for subject property to change the number of permitted lots to allow for six (6) as proposed by Jade Crossing II – PC approved 01/21/2008.

Preliminary Plat of Jade Crossing II – Request for Preliminary Plat approval for Jade Crossing II – Conditionally Approved by PC 01/21/2008 and by City Council 01/28/2008.

Final Plat of Jade Crossing II – Request for Final Plat approval for Jade Crossing II – Conditionally Approved by PC 05/19/2008 and by City Council 05/27/2008 and re-approved 08/10/2009 after the initial approval expired (plat recorded 09/04/2009).

BL-378 – JR Donelson, Inc. for First Equity Corporation – Request for Lot-Split approval for Lot 1, Block 1, Jade Crossing II, addressed 15010 & 15038 S. Grant St. – PC approved 03/21/2011.

PUD 50 Minor Amendment # 2 – Request for PUD Minor Amendment approval for PUD 50 to remove the maximum number of permitted lots to allow for Lot-Split per BL-378 – PC approved 03/21/2011 subject to correcting a date reference in the text as recommended by Staff.

RELEVANT AREA CASE HISTORY: (not a complete list)

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property is a relatively flat, vacant lot in Jade Crossing. It has street frontage on 151st St. S. (State Hwy 67) and is zoned and planned for commercial use.

General. The Applicant is James Ward, Member of The Ice Guys, LLC. The property owner is First Equity Corp. The Applicant has arrangements to lease a southwestern part of the subject property for the ice vending machine use.

The Applicant submitted a building permit application which proposed to construct a “Twice the Ice” / “Ice House America” ice vending machine on part of Lot 1, Block 1, Jade Crossing.

Upon inspecting the proposed use in relation to the Zoning Code and consulting with the City Attorney, Planning Staff determined that the proposed use was an ice vending machine. The Bixby Zoning Code does not provide that this is a permitted principal use of a lot in any Zoning District. It does not fit into any land use category within Use Units 1 through 27, inclusive.

The Zoning Code does not contemplate vending machines as standalone, principal uses, as they are generally understood to be accessory uses customarily incidental to conventional principal uses. Zoning Code Section 11-7D-3.A would provide that a vending machine could be allowed as a use accessory to an allowed commercial use in Commercial districts:

“A. Permitted Accessory Uses: Accessory uses customarily incident to a principal use permitted in a commercial district are permitted in such district.”

The **closest thing** Staff found is a Use Unit 15 “General merchandising establishment, N[ot]E[lsewhere]C[lassified]” (Zoning Code, Section 11-9-15.B). However, this contemplates a

conventional retail sales business establishment, which Merriam-Webster's Dictionary of Law defines as "c : a place of residence or esp. business with its furnishings and staff."¹ (emphasis added).

What is being proposed is a vending machine, a mechanical unit which manufactures ice and vends it. It does not appear to have any rooms in which salespersons or customers can enter or conduct business. It does not appear to have any furnishings or staff.

Staff does not believe that the original authors of the Zoning Ordinance in the late 1960s / early 1970s would have contemplated ice vending machines, which apparently date back to 2003, or not much beyond that.²

Because the Bixby Zoning Code does not provide that this is a permitted principal use of a lot in any Zoning District, Staff denied the building permit application. By this application, the Applicant is appealing the denial, and the interpretation on which it is based, to the Bixby Board of Adjustment pursuant to Zoning Code Sections 11-4-6 and 11-4-7.

The application consists of:

- The application form
- A three (3) page letter from The Ice Guys, LLC, dated 02/02/2012
- A copy of two (2) page letter from the City denying the permit, dated 01/18/2012
- Three (3) pages of a printout of an email thread pertaining to development review
- A one (1) page letter from Kathleen Cook, P.E., of Cook & Associates Engineering, Inc., pertaining to development review, dated 01/16/2012
- A one (1) page "Landscape Plan" for the site dated 01/16/201[2]

The arguments set forth in the application speak for themselves. Staff will not comment on them beyond observing that the 02/02/2012 letter appears to concede that (1) the proposed development would be a vending machine and (2) such a vending machine is not provided for in the Zoning Code ("...we did an exhaustive review of the current Bixby codes and Ordinances the potentially govern the placement and operation of vending machines and found no such ordinance that prohibited the placement of such machine..." and "...no ordinance exists that addresses Ice vending machines...").

Staff Recommendation. For the reasons outlined in the analysis above, Staff believes that the Bixby Zoning Code does not allow a vending machine as a principal use of a lot in any Zoning District. Staff recommends the appeal be denied.

Staff recommends the Applicant seek a developed commercial lot, whereby the proposed vending machine would be allowed as an accessory use, or otherwise wait until after the subject property is developed with an approved commercial use.

If the Board is sympathetic to the Applicant's cause, the proper action would be to forward a recommendation to the City Council that the Zoning Code be amended to define vending machines, provide for them to fit into one Use Unit category, and provide development standards applicable to them.

NEW INFORMATION AS OF MARCH 26, 2012:

On March 22, 2012, the Applicant submitted an information packet entitled "Ice House locations and use unit codes" dated March 20, 2012. The first page of the packet includes a table indicating how five (5) different jurisdictions in the greater Tulsa area permitted other ice vending machines. Per the table, Sapulpa, Glenpool, and Tulsa permitted them under their respective Use Unit 14 (comparable to Bixby's Use Unit 14 Shopping Goods and Services) and Sand Springs and Coweta permitted them under their respective Use Unit 13 (comparable to Bixby's Use Unit 13 Convenience Goods and Services).

Staff sought confirmation and clarification from each of the named jurisdictions. Responses were received from Tulsa, Sapulpa, and Coweta. Glenpool's Planning Director had previously provided an email interpretation, which is included in the information packet. Of all the responses received, they confirm that each jurisdiction permitted them, and under the Use Units claimed or as specific land uses listed under their Use Unit as claimed.

Staff's recommendation has not changed.

NEW INFORMATION AS OF MAY 03, 2012:

¹ establishment. Dictionary.com. Merriam-Webster's Dictionary of Law. Merriam-Webster, Inc. <http://dictionary.reference.com/browse/establishment> (accessed: January 17, 2012).

² http://jacksonville.com/tu-online/stories/090805/bus_19708659.shtml

*On April 02, 2012, the Applicant requested this application be Continued to this May 07, 2012 meeting.
Staff's recommendation has not changed.*

Dave Hill asked Erik Enyart how long it would take if the Applicant went to the City Council [to have the Zoning Code changed to allow ice vending machines], as Mr. Enyart recommended. Mr. Enyart stated that it would probably take two (2) to three (3) months. Mr. Hill indicated this was not acceptable.

Patrick Boulden in at 6:05 PM.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant James Ward was present and stated that he believed Erik Enyart summarized the situation accurately. Mr. Ward emphasized that the Board understand that several other cities had approved these ice vending machines in their jurisdictions. Mr. Ward asked Mr. Enyart if it was not true that Bixby's and other cities' Zoning Codes were modeled off of Tulsa's. Mr. Enyart stated that this was true, and stated that Patrick Boulden could confirm this also. Mr. Enyart stated that the primary resemblance was the fact that all of the ones cited by the Applicant shared the same Use Unit structure, in which certain classes of uses, Use Units, were allowed in different Zoning districts by right, by Special Exception, or by PUD. Mr. Enyart stated that they were all modeled off the Tulsa Zoning Code [at one point], and then evolved on their own trajectories since. Mr. Enyart stated that those different codes were also similar due to the fact that when they are amended, they are often amended to be consistent with each other.

There being no further discussion, Chair Jeff Wilson asked to entertain a Motion. Dave Hill addressed Erik Enyart and stated that he normally voted as Mr. Enyart recommended, but that in this case, he believed Mr. Enyart was wrong. Mr. Enyart indicated no objection. Dave Hill made a MOTION to APPROVE BBOA-555. Chair Jeff Wilson SECONDED the Motion, and stated that he differed with Erik Enyart's interpretation of "establishment." Roll was called:

ROLL CALL:

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

Dave Hill asked Erik Enyart if the Council could overrule the Board's action. Patrick Boulden stated, "The answer is no, but any city official can appeal." Mr. Boulden clarified with Mr. Hill that an appeal would go to District Court, as was always the case, and not the City Council.

Dave Hill suggested that the Applicant proceed and that the City of Bixby write [ice vending machines] in [the Zoning Code] later.

Patrick Boulden stated that an appeal would stay any action, meaning that a permit could be issued but [construction activity forestalled] until the District Court ruled.

Dave Hill stated that the City was wrong in this case.

James Ward thanked the Board for its consideration and left at 6:10 PM.

Erik Enyart asked Patrick Boulden if it would not be best that the Board take a followup Motion to specify the Use Unit and land use that the ice vending machine would fall into, and Mr. Boulden indicated agreement. Mr. Enyart recommended the Board specify the Use Unit and land use that the Board determined the ice vending machine would fall into, as this information would be needed to issue the building permit. Mr. Enyart stated that, very basically, Staff needed to know the Use Unit to write on the building permit. Mr. Boulden indicated preference for Use Unit 13. Chair Jeff Wilson indicated preference for Use Unit 13, and noted that, from the copy of the Bixby Zoning Code he had reviewed, he observed it could be a “food specialty store.” Mr. Wilson stated that the Staff had written, “The closest thing Staff found is a Use Unit 15 ‘General merchandising establishment, N[ot]E[lsewhere]C[lassified]’.” Mr. Enyart stated that he would recommend the Board select the lowest Use Unit number of the two (2) it found agreeable, [if it found both agreeable].

Dave Hill made a MOTION to determine the ice vending machine fell under Use Unit 13. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS

- 4. **BBOA-557 – Sean Rohrbacker for Archland Property I, LLC and Debra L. Bailey.**
Discussion and possible action to approve a Special Exception per Zoning Code Section 11-10-2.H to exceed the maximum number of parking spaces standard for a remodeled fast food restaurant in the CS Commercial Shopping Center District.
Property located: Lot 1, Block 1, and the W. 72’ of the N. approximately 200’ of Lot 5, Block 1, *121st Center*; 12101 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, April 26, 2012*
RE: *Report and Recommendations for:
BBOA-557 – Sean Rohrbacker for Archland Property I, LLC and Debra L. Bailey*

LOCATION: – *12101 S. Memorial Dr.*
– *Lot 1, Block 1, and the W. 72’ of the N. 200’ of Lot 5, Block 1, 121st Center*
LOT SIZE: *1.25 acres, more or less, in two (2) tracts*
ZONING: *CS Commercial Shopping Center District*
EXISTING USE: *Use Unit 12 McDonald’s fast-food restaurant and vacant land*

REQUEST: Special Exception per Zoning Code Section 11-10-2.H to exceed the maximum number of parking spaces standard for a remodeled fast food restaurant in the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: (Across 121st St. S.) CS; The Town and Country Shopping Center.

South: CS; Carpet Center / Floorhaus Flooring America and the North Carolina Furniture Mart in the 121st Center shopping center.

East: CS, CS/OL/PUD 68, & CS/RM-1/PUD 6; Vacant north balance of Lot 5 and Atlas General Contractors office to the southeast in 121st Center, the "North Bixby Commerce Park" ministorage and commercial development under construction on a 16-acre tract, and the Memorial Square duplex-style apartments zoned CS/RM-1/PUD 6 across 121st St. S. to the northeast.

West: (across Memorial Dr.) CG, CS, & AG; The Pizza Hut restaurant, the My Dentist Dental Clinic, Bank of Oklahoma to the northwest across 121st St. S., and agricultural land to the southwest zoned AG.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area.

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

BZ-30 – Frank Moskowitz – Request for rezoning from AG to CS for the W/2 of the NW/4 of the NW/4 of this Section 01, T17N, R13E, including the subject property – PC on 01/27/1975 recommended CS for N. approx. 12.5 acres, OL for the S. approx. 5 acres of the N. approx. 17.5 acres, and AG zoning to remain for the balance of the 20 acres. City Council approved as PC recommended 03/18/1975 (Ord. # 270).

BL-45 – Milton Berry – Request for Lot-Split approval to separate the S. 200' of the W. 210' of the N. 825' of the W/2 of the NW/4 of the NW/4 of this Section 01, T17N, R13E (now the Spartan Self Storage) from the balance of the property, which balance was later platted as 121st Center (included part of subject property) – PC Motion to Approve died for lack of a Second 02/26/1979 and City Council Conditional Approval is suggested by case notes. Deeds recorded evidently without approval certificate stamps 05/23/1978, which would have preceded the Lot-Split application.

Preliminary Plat of 121st Center – Request for Preliminary Plat approval for 121st Center, including subject property – PC Conditionally Approved 12/28/1987 (Council action not researched).

BBOA-199 – Spradling & Associates for Arkansas Valley Development Corporation – Request for Variance to reduce the minimum lot width/frontage in CS from 150' to 125' to permit platting the subject tract as 121st Center (includes subject property) – BOA Approved 01/11/1988.

Final Plat of 121st Center – Request for Final Plat approval for 121st Center, including subject property – PC Conditionally Approved 02/29/1988, City Council Approved 07/11/1988 (per the plat approval certificate), and recorded 08/05/1988.

BBOA-261 – Jack Spradling for Arkansas Valley Development Corporation – Request for Variance for Lot 5, Block 1, 121st Center (includes subject property), to reduce the minimum lot width/frontage in CS from 150' to 0' to permit a Lot-Split creating the E. 215' of the S. 125' of Lot 5, which tract is now the Atlas General Contractors office – BOA Conditionally Approved 02/01/1993 (Mutual Access Easement created to give access to 121st St. S.).

BL-168 – Jack Spradling for Arkansas Valley Development Corporation – Request for Lot-Split approval for Lot 5, Block 1, 121st Center (included part of subject property); created a new tract, the E. 215' of the S. 125' of Lot 5, which is now the Atlas General Contractors office – PC Conditionally Approved 02/15/1993 (Mutual Access Easement created to give access to 121st St. S.).

AC-12-04-06 – McDonald's – Massey-Mann & Associates, LLC – Request for Detailed Site Plan approval for a major remodel of a Use Unit 12 fast-food restaurant on subject property – PC Conditionally Approved 04/16/2012.

BL-383 – Massey-Mann & Associates, LLC for Debra L. Bailey – Request for Lot-Split approval for part of Lot 5, Block 1, 121st Center, to be attached to Lot 1, Block 1, 121st Center (includes part of subject property) – Pending PC consideration 05/21/2012.

Change of Limits of No Access (LNA) – Massey-Mann & Associates, LLC for Debra L. Bailey – Request to remove Limits of No Access (LNA) long 121st St. S. for part of Lot 5, Block 1, 121st Center in accordance with Subdivision Regulations Section 8.2 / 12-8-2 (includes part of subject property) – Pending PC consideration 05/21/2012.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-556 – Sack & Associates, Inc. – Request for 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 for the S. 216' of Lot 6, Block 1, Bixby Centennial Plaza, located to the northwest of subject property at 11894 S. Memorial Dr. – BOA Approved 04/02/2012.

BACKGROUND INFORMATION:

McDonald's construction contractor contacted Staff on 03/12/2012 to discuss the major remodel project. Staff requested plans be emailed so that the full scope of approvals could be determined, and the draft plans were received on that date. Staff responded with a review email including detailed instructions on 03/13/2012. On 03/15/2012, a pre-development coordination meeting was held with McDonald's and their associates, including McDonald's owner operator Jay Wagner, Travis Thomason of Morrison Construction Co., W. Brett Mann of Massey-Mann & Associates, LLC, the project engineer, and the owner of Morrison Construction Co. City representatives included Mayor Ray Bowen, Economic Development Director Trish Richey, City Planner Erik Enyart, Building Inspector Bill May, Fire Marshals Jim Sweeden and Joey Wiedel, and City Engineer Jared Cottle. In the meeting, the Mayor and McDonald's developers expressed interest in an accelerated development review time. McDonald's owner Jay Wagner expressed interest in being able to proceed as soon as possible so that the project was completed by summer, in time for the heavy business periods corresponding to the summer sports season and summer break for the schools. Planning Staff suggested a Conditional / Provisional Building Permit, subject to the City Manager's authorization. The City Manager authorized it on 03/15/2012, based on Staff's summary email on that date, including as preconditions the submission of all required applications, including the Building Permit application, and Building Inspector and Fire Marshal review and approval of the building permit plans. The Building Permit application form was 03/15/2012, and included three (3) sets of draft building plans (since amended in part).

As authorized by the City Manager, on or about March 21, 2012, Staff signed the Conditional / Provisional Building Permit with Conditions listed as follows: "Conditions: This permit approves work to building only. Permit is subject to the approval of Lot-Split application BL-383, the Detailed Site Plan per AC-12-04-06, and the Special Exception application BBOA-557 and any conditions attached to the approval of any of them. Owner proceeds at their own risk prior to final approvals as required. All as per City Manager 03/15/2012."

On 03/22/2012, the City Engineer reviewed and approved an Earth Change Permit, including civil plans for drainage for the expanded parking lot area. The approved Earth Change Permit authorizes the drive-thru, parking lot, and driveway improvements work, but the owner proceeds at their own risk prior to the final approvals of Lot-Split application BL-383, the Detailed Site Plan per AC-12-04-06, the Special Exception application BBOA-557, the release of Limits of No Access (LNA) imposed by the plat of 121st Center, and any conditions attached to the approval of any of them.

ANALYSIS:

Property Conditions. Per BL-383, the W. 72' of the N. approximately 200' of Lot 5, Block 1, 121st Center ("W. 72' tract") is proposed to be separated from its original tract, presently the N. approximately 200' of Lot 5, Block 1, 121st Center, and it will be added to Lot 1, Block 1, 121st Center. Thereupon, the subject property will consist of Lot 1, and the W. 72' of the N. approximately 200' of Lot 5, Block 1, 121st Center.

The Lot 1 portion of the subject property contains a McDonald's fast-food restaurant, and the proposed "W. 72' tract" property is presently vacant and contains a gravel driveway connecting the back side of Carpet Center / Floorhaus Flooring America to 121st St. S.

The subject property is relatively flat and drains to the north to 121st St. S., which drains to the east to an upstream tributary of Fry Creek # 1. As recommended by the City Engineer, the proposed parking lot and drive-thru expansion area is now planned to connect to the City's underground stormsewer system along the south side of 121st St. S., according to the amended construction plans.

General. Per AC-12-04-06, the "Site Plan" drawing C2.0 indicates a total of 61 parking spaces upon project completion. Zoning Code Section 11-9-12.D requires a minimum of 20 parking spaces for a 3,025 square foot building. Zoning Code Section 11-10-2.H provides a "minimum plus 15%" 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, for 3,025 square feet of building, is 24 parking spaces (reference

Zoning Code Section 11-9-12.D). In other words, the site is proposed to have a total of 205% more parking spaces than the minimum required. Therefore, by this application, the Applicant has requested a Special Exception to allow the proposed additional parking spaces.

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 restaurant uses in the area would exceed the maximum parking standard if built today.

Per aerial data and GIS, the Pizza Hut restaurant to the west has approximately 1,500 square feet and approximately 35 parking spaces (17 required, so 106% higher than the minimum number required).

Per the Staff Report and Detailed Site Plan per AC-08-06-05, to the northwest, the former Santa Fe Cattle Co. restaurant has approximately 5,941 square feet and approximately 112 parking spaces (40 required, so 180% higher than the minimum number required).

Per aerial data and GIS, the Kentucky Fried Chicken to the north has approximately 2,450 square feet and approximately 21 parking spaces (16 required, so 31% 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 with the Detailed Site Plan per AC-12-04-06, the site will have more ample landscaping, in terms of number and sizes of landscaped areas, than are customarily designed and built in Bixby. The expanded lot itself will be relatively rather large. For example, most developments provide only the bare minimum landscaped strip widths along abutting major streets. For the subject property, the minimum landscaped strip width along 121st St. S. is 10', and the site is proposed to have more than 15' of landscaping along most of that frontage. Finally, although not required, the development proposes additional greenspace strip along the south line (more than 20' in width) and the east line (average of roughly 4') of the subject property, additional greenspace areas at the southeast and northwest corners of the property, and a greenspace "bump out" area at the northwest corner of the proposed "W. 72' tract."

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.

Dave Hill stated that he would hate to see [McDonald's] move like Braums did.

There being no further discussion, Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-557. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart noted that the Applicant was not in attendance and stated that he would notify them of the outcome.

5. **BBOA-558 – John Ryel.** Discussion and possible action to approve a Variance from the accessory building maximum floor area restriction per Zoning Code Section 11-8-8.B.5 to allow a new 1,200 square foot accessory structure in the south, rear yard for property in the RS-1 Single Family Dwelling District.
Property located: Lot 5, Block 5, *Houser Addition*; 8512 E. 123rd 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: *Monday, April 30, 2012*
RE: *Report and Recommendations for:
 BBOA-558 – John Ryel*

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*

LOCATION: – *8512 E. 123rd St. S.*
 – *Lot 5, Block 5, Houser Addition*

LOT SIZE: *0.9 acre, more or less*

ZONING: *RS-1 Single Family Dwelling District*

SUPPLEMENTAL ZONING: *None*

EXISTING USE: *Single family dwelling*

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 accessory structure in the south, rear yard for property in the RS-1 Single Family Dwelling District*

SURROUNDING ZONING AND LAND USE: *RS-1 & RS-2; Single-family residential and vacant lots in Houser Addition zoned RS-1 and in Southern Memorial Acres No. 2 zoned RS-2, with drainage channel land owned by the City of Bixby to the southeast zoned RS-2.*

COMPREHENSIVE PLAN: *Low Intensity + Residential Area*

PREVIOUS/RELATED CASES: *(None found)*

RELEVANT AREA CASE HISTORY:

BBOA-158 – Kenneth Grindstaff – Request for Variance from the 600 square foot restriction of Zoning Code Section 240.2.e to permit a 750 square foot accessory building for property located six (6) blocks to the south of subject property at 12455 S. 86th E. Ave. – BOA Approved 03/10/1986.

BBOA-372 – [Roger O. Nunley] – Request for Variance from the 750 square foot restriction of Zoning Code Section 240.2.e to permit a 2,000 square foot accessory building for property located one (1) block to the southeast of subject property at 8701 E. 124th St. S. – BOA Approved 10/01/2001.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. *The subject property contains a single family dwelling on a deep lot, which has 100' of frontage on E. 123rd St. S. but extends approximately 372.85' from the street to the back lot line. Per the plat of Houser Addition, the rear end of the lot is subject to a 25' Drainage and Utilities Easement, which easement contains an improved drainage channel for a Fry Creek # 1 tributary, and is within the 100-year (1% Annual Chance) Regulatory Floodplain per the FEMA FIRM map. The Applicant proposes a 30' X 40' (1,200 square foot) accessory building, to replace an existing accessory building located along the center of the east line of the subject property. The Applicant claims that the existing building (perhaps recently removed) was the same size as is now being replaced.*

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 in the south, rear yard for property in the RS-1 Single Family Dwelling 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 ($\frac{1}{4}$) 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 0.9 acres, and so does not qualify on the “sliding scale” provided in the quoted provision.

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 $\frac{1}{4}$ acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the second 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. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “One of the reasons we bought this property was because of the shop located behind the house as I needed space to work on my hobbies such as restoring vehicles and woodworking. I need this space to work on vehicles, store our ATVs, store my tools and still have a work area for my wood working equipment, etc.. The building I removed was deteriorating and needed to be replaced. This building was 30’ X 40’ and I would like to replace it with a building of the same size.”

The Applicant’s implied claim is that the strict application of the Zoning Code restrictions will result in the prohibition of the proposed 1,200 square foot accessory building, and Staff does not dispute that this claim is true. 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, “This application is not peculiar, extraordinary or exceptional to the other property in this area as there are several other properties in this area that have buildings as large, or larger, than the one I am wanting to replace.”

Notwithstanding the Applicant’s response that the application did not meet this test and standard, Staff believes that the following facts may be considered arguments in support of this test and standard:

1. *The subject property is somewhat unique in that it already has (or had) an accessory building, in the same location and of the same size hereby proposed (1,200 square feet).*
2. *The subject property is relatively large, and is only about 1/10 of an acre short of qualifying for a somewhat larger (892.8 square feet) accessory building.*
3. *The subject property is exceptionally deep in relation to its lot width, and the proposed replacement accessory building would be located within the deep back yard. Subdivision Regulations Section 12-3-4.F prohibits new lots from exceeding a depth to width ratio of 2:1. At a lot depth to width ratio of 3.73 to 1, the subject property is relatively rare and somewhat unique.*
4. *The proposed replacement accessory building would be located in an area which is adjacent to the rear yards of two (2) other properties which also have deep rear yards.*

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 building will not cause substantial detriment as the building will be over 200’ from the street. The height of the building will be 15’ which is considerably less than the other buildings in this area.”*

The Applicant’s underlying argument appears to be that the aesthetic effect would not be as pronounced in this case due to the location in relation to the public street and the relatively short stature of the proposed replacement building.

Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics). Recognizing that the subject property previously had a building of the same size for some time, evidently without protest from surrounding property owners, and that the replacement building will be located in the rear yard of a large, deep lot, in an area adjoining the rear yards of other deep-yard lots, Staff believes that the primary purpose is not as critical a concern in this instance. Building on the Applicant’s claim and the facts presented in this paragraph, it would appear that the proposed replacement accessory building would not “dominate the parcel aesthetically.” See the four (4) arguments listed under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard for details on how those arguments can apply to this test and standard.

The Board may also consider that there appear to be several other detached accessory buildings in Houser Addition and Southern Memorial Acres No. 2 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 a former 600 square foot maximum standard, in 1986 per BBOA-158. It is located six (6) blocks to the south of subject property at 12455 S. 86th E. Ave. Although approved by that application for a 750 square foot building, per aerial and GIS data, the building that is now on that property measures closer to 1,000 square feet in size. Another, much larger one also appears to have been sanctioned in 2001, under the former 750 square foot maximum standard, for a property located one (1) block to the southeast of subject property at 8701 E. 124th St. S. That one is located much more conspicuously, fronting directly on the street, on the east side of the principal dwelling, and on its own lot. It should be noted, however, that these two area examples, while in relatively close proximity, are in Southern Memorial Acres No. 2, which is not connected to the subject property in the Houser Addition by a through street (S. 88th E. Ave. was evidently removed when the Fry Creek # 1 system was constructed). The several in Houser Addition which appear to be oversized are much closer to the subject property than the ones which were sanctioned.

Although the presence of other area properties with oversized accessory buildings 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.

For all the reasons set forth above, Staff believes that that approval of 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.

Finding of Minimum Necessary. *Recognizing the intent behind the “sliding scale” flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed 400 square feet exceedance of the 800 square foot maximum, a 50% increase, is the Minimum Necessary to Alleviate the Unnecessary Hardship.*

As stated above, the subject property is relatively large, and is only about 1/10 of an acre short of qualifying for a somewhat larger (892.8 square feet) accessory building. Further, it could be argued that, since the proposed building would replace an existing building of the same size, which the Applicant claims to require for all current hobby-related activities described in the application, that the same size replacement should be found the minimum necessary.

Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.

Dave Hill stated that he had driven by the subject property and that one could not see the building [where it is to be built] from the street. Mr. Hill indicated that he knew of one of the existing large accessory buildings cited in the Staff Report.

Dave Hill made a MOTION to APPROVE BBOA-558.

Murray King confirmed with Chair Jeff Wilson that there was no one else signed up to speak on the item which may be opposed to the application.

Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to John Ryel. Mr. Ryel asked if the information he had was all that was needed for the Building Permit to be issued. Mr. Enyart stated that he was not sure what Mr. Ryel had turned in for the permit, and that [Community Development Coordinator] Donna Crawford would work with him on what information was needed for the permit. Mr. Enyart stated that the Variance the Board approved “cleared away the Zoning issues, allowing the Building Permit to be issued.”

6. **BBOA-559 – Barrick Rosenbaum for L.C. Neel & Nelle Ellen Neel.** Discussion and possible action to approve a Variance from the minimum parking lot setbacks per Zoning Code Section 11-10-3, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent an expansion of an existing Use Unit 14 gasoline service station, its parking areas, and related site improvements for property in the CS Commercial Shopping Center District.

Property located: Part of Lot 11, Block 2, *Southwood*; 11115 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, May 03, 2012
RE: Report and Recommendations for:
BBOA-559 – Barrick Rosenbaum for L.C. Neel & Nelle Ellen Neel

LOCATION: – 11115 S. Memorial Dr.
– Part of Lot 11, Block 2, Southwood
LOT SIZE: 1 acre, more or less
ZONING: CS Commercial Shopping Center District
SUPPLEMENTAL ZONING: Corridor Appearance District
EXISTING USE: Use Unit 14 Kum & Go gas station
REQUEST: Variance from the minimum parking lot setbacks per Zoning Code Section 11-10-3, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent an expansion of an existing Use Unit 14 gasoline service station, its parking areas, and related site improvements for property in the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: (Across 111th St. S.) CS; The “South Memorial Center” / “South Memorial Center II” shopping center at the 11000-block of S. Memorial Dr. and the “Market Place” and/or “Market Pointe South” (name is not certain/not distinguishable from trade center on south side of 111th St. S.) shopping and trade center development at 8303 : 8315 E. 111th St. S.

South: CS; Automobile repair and auto sales businesses, including Same Day Auto Repair, Midas, and Tune & Sons Auto Service, all in part of Lot 11, Block 2, Southwood.

East: CG & CS; The Auto Pride Car Wash aka Bixby Car Wash III carwash facility also zoned CG, the Primary Concepts Preschool & Child Development Center childcare facility, the Tej D. Lad, DDS, Inc., PC dental office, and the Kirkendall Design, LLC (and perhaps also Kirkendall Homes, LLC) business, and an automobile sales business zoned CG to the southeast at 8215 E. 111th Pl. S., all zoned CS (except as noted) and all located in part of Lot 11, Block 2, Southwood.

West: (Across Memorial Dr.) CS & CS/PUD 579A; The Advance Auto Parts auto sales shop, MidFirst Bank, and Walgreens, all in Resubdivision of Lots 3 and 4 of Bixby Commons; the Arvest Bank, the Wal-Mart Supercenter, and other commercial businesses are located to the northwest across 111th St. S. in the “Southern Crossing Shopping Center,” located in the City of Tulsa and zoned CS with PUD 579A.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area + Entry Treatment.

PREVIOUS/RELATED CASES:

BBOA-22 – Everett Forrest for L.C. Neel – Request for Special Exception to allow sales of autos, motorcycles, mobile homes, horse trailers, and campers for [all of] Lot 11, Block 2, Southwood (included subject property) – BOA Denied 11/10/1975.

BZ-43 – L.C. Neel – Request for rezoning from CS to CG for part of Lot 11, Block 2, Southwood for a nonconforming used car sales lot at 11121 / 11125 S. Memorial Dr. (included part of subject property) – PC recommended Denial 01/26/1976, Appealed, and not approved by City Council 02/17/1976.

BBOA-28 – Everett Forrest for L.C. Neel – Request for Special Exception for an existing nonconforming used car sales lot on part of Lot 11, Block 2, Southwood at 11121 / 11125 S. Memorial Dr. (included part of subject property) – BOA Conditionally Approved for one (1) year 04/13/1976.

BBOA-82 – Bill Ellis for L.C. Neel – Request for Special Exception for an existing nonconforming used car sales lot on part of Lot 11, Block 2, Southwood at 11121 / 11125 S. Memorial Dr. (included part of subject property) – BOA Conditionally Approved 01/12/1981.

BBOA-85 – L.C. Neel – Request for Special Exception to allow a Use Unit 17 auto wash on part of Lot 11, Block 2, Southwood at 11119 / 11121 S. Memorial Dr. (possibly included part of subject property) – BOA Approved 02/09/1981.

BBOA-101 – George B. Suppes for L.C. Neel – Request for Appeal from the determination of the Building Inspector to recognize propane tanks as a Use Unit 16 and not Use Unit 25 on gas station

property on part of Lot 11, Block 2, Southwood at 11115 / 11121 S. Memorial Dr. (includes subject property) – BOA Approved the Appeal 03/08/1982.

BBOA-123 – L.C. Neel – Request for Special Exception to allow a Use Unit 17 car wash on part of Lot 11, Block 2, Southwood, containing a gas station at 11115 S. Memorial Dr. (includes subject property) and the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – BOA Approved 02/13/1984.

RELEVANT AREA CASE HISTORY:

BL-5 – William G. LaForge – Request for Lot-Split approval for Lot 11, Block 2, Southwood – created lot at 8194 E. 111th St. S. – PC Approved 08/27/1973.

BBOA-164 – Condell Pollard for L.C. Neel – Request for Special Exception to allow a Use Unit 17 car sales and a Variance to allow open air storage and display of merchandise within 200’ of an R District on the W. 448’ of Lot 11, Block 2, Southwood, less and except the part containing a gas station at 11115 S. Memorial Dr. (includes subject property) – BOA Conditionally Approved 04/14/1986.

BL-119 – Donnie Reed – Request for Lot-Split approval for Lot 11, Block 2, Southwood (separated the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. from the balance of Lot 11) – PC Approved 01/26/1987.

BBOA-181 – Dennis Reed for L.C. Neel – Request for Special Exception to allow a Use Unit 17 car wash and a Variance to reduce the frontage requirement in CS from 150’ to 125’ to allow a Lot-Split on part of Lot 11, Block 2, Southwood, containing the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – BOA Approved 02/09/1987.

BL-140 – L.C. Neel – Request for Lot-Split approval for Lot 11, Block 2, Southwood – PC Approved 05/31/1988.

BBOA-204 – L.C. Neel – Request for Variance to reduce the frontage requirement in CS from 150’ to 85’ to allow a Lot-Split on part of Lot 11, Block 2, Southwood – BOA Approved 06/06/1988.

BBOA-205 – L.C. Neel – Request for Variance to reduce the frontage requirement in CS from 150’ to 100’ to allow a Lot-Split on part of Lot 11, Block 2, Southwood (the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S.) – BOA Approved 08/01/1988.

BL-141, 166, 172, 173, 201, 202, 210, 219, & 227 – L.C. Neel – Request for Lot-Split approvals for Lot 11, Block 2, Southwood – PC Approved 08/15/1988, 11/16/1992, 08/16/1993, 08/16/1993, 10/16/1995, 11/20/1995, 02/20/1996, 04/21/1997, and 01/20/1998, respectively.

BBOA-257 – L.C. Neel – Request for Special Exception to allow a single family dwelling unit in a CS district and a Variance from the frontage requirement for a 0.5-acre part of Lot 11, Block 2, Southwood containing the Tune & Sons Auto Service business at 8104 E. 111th Pl. S. – BOA Conditionally Approved 11/02/1992.

BBOA-276 – L.C. Neel – Request for Variance to allow a Use Unit 17 auto lube service in a CS district for a 0.5-acre part of Lot 11, Block 2, Southwood containing the Same Day Auto Repair business at 11121 S. Memorial Dr. – Withdrawn by Applicant 03/24/1994 after determining with the City that it would not be necessary.

BZ-237 – Robert Cook – Request for rezoning from CS to CG for part of Lot 11, Block 2, Southwood for the N. 128.6’ (should have been N. 228.6’), containing the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – PC recommended Approval 01/20/1998 and City Council Approved 02/23/1998 (Ord. # 769).

BZ-263 – Robert Kinyon – Request for rezoning from CS to CG for part of Lot 11, Block 2, Southwood for a 0.35-acre tract containing the automobile sales business at 8215 E. 111th Pl. S. – PC recommended Approval 01/18/2000 and City Council Approved 02/28/2000 (Ord. # 806).

BL-252 – Jeffrey D. Lower for Home Ventures, Inc. – Request for Lot-Split approval for Lot 11, Block 2, Southwood to adjust property lines shared with Lots 3, 4, & 5, Block 2 based on existing fence lines – PC Approved 09/18/2000.

BACKGROUND INFORMATION:

On March 14, 2012, the City Planner and City Engineer met with representatives of Kum & Go and their engineer Barrick Rosenbaum of HRAOK, LLC, to discuss Kum & Go’s plans to expand their current facility on the subject property. The expansion plans include (1) replacing the existing approximately 50’ X 60’ (3,000 square feet) building with a new 44.75’ X 111’ (4,958 square feet) in the same general location, (2) constructing a new parking lot and drive on the east side of the building, (3) constructing a new parking lot at the southwest corner of the lot, and (4) replacing an open drainage channel along the

east and south lines of the subject property with an underground in a pipe system, to be contained within a new drainage easement in favor of the City of Bixby. The existing canopy-covered gas pump areas to the front/west and front/north sides of the building will remain in place.

ANALYSIS:

Subject Property Conditions. The subject property is located at the southeast corner of 111th St. S. and Memorial Dr. It is situated in the northwest corner of the 10 2/3 acre "Commercial" Lot 11, Block 2, Southwood, platted March 11, 1965 and since subdivided into 17 tracts containing several Use Unit 17 automotive-related businesses, a few multitenant "trade center" buildings, a couple vacant lots, the subject property gas station at the major street intersection, and, along the center of the 111th St. S. frontage, a car wash, a daycare, and a couple office buildings. Together with the perimeter arterial streets, the development is served by private streets 111th Pl. S. and S. 82nd E. Pl., forming an "L" rotated 90 degrees counterclockwise.

Per case maps and a legal description found in the BL-5 file, it appears that the subject property was already a lot of record at that time (1973), perhaps predating the Subdivision Regulations, and so does not appear to have resulted from a Lot-Split.

The subject property contains a Use Unit 14 Kum & Go gas station building in the center of the lot, and canopy-covered gas pump areas to the front/west and front/north thereof. Per Exhibit A.2 of this application, an ALTA/ACSM Land Title Survey dated 2/6/12, the westernmost canopy extends to the northwest property line, but does not overhang the right-of-way. Also per the ALTA survey, there is a 10-space parking lot along the west side entrance to the building, and a four (4)-space parking lot at the northeast corner of the building. There is an open drainage channel along the east and south lines of the subject property, which conveys stormwaters from north of 111th St. S. to the borrow ditch along the east side of Memorial Dr. As a part of the City of Bixby's 2011 General Bond Issue package and Federal STP transportation funds, this intersection will be widened, and the drainage situation will be improved. The drainage ditch will be put underground in a pipe system, to be contained within a new drainage easement in favor of the City of Bixby. Kum & Go has agreed with the City Engineer to grant the drainage easement, and the City will make the drainage improvements within it as a part of the intersection improvement project.

Per Exhibit A.2 of this application, an ALTA/ACSM Land Title Survey dated 2/6/12, the existing ground sign, concrete drive paving, and two (2) pole-mounted lights are located in the 'corner cut' right-of-way platted with Southwood at the intersection of 111th St. S. and Memorial Dr. Further, the property has four (4) driveway connections, two (2) on each arterial street. Two (2) of the four (4) are located within the 'corner cut' right-of-way. Per Exhibit A.3, a Site Plan dated 02-27-2012, and the narrative submitted with this application, all four (4) are proposed to remain in place.

Southwood was platted on March 11, 1965, and the Tulsa County Assessor's records reflect that the gas station (previously a Git-N-Go per Kum & Go representatives, possibly once the site of a DX service station per the BBOA-85 legal description) was constructed in 1984. However, a letter dated 03/08/1982 from the Applicant in the case of BBOA-101 – George B. Suppes for L.C. Neel stated that the [gas] station, or at least a motor fuel sales station selling gasoline, had begun operating on the subject property on 03/07/1981. The legal description used in that case appears to have included the south part of the subject property and most of the Same Day Auto Repair business property at 11121 S. Memorial Dr. Regardless of the precise date in the early 1980s the construction of the existing gas station building began, it is evident that the Kum & Go ground sign and other improvements were constructed within the right-of-way platted with Southwood on March 11, 1965.

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 minimum parking lot setbacks per Zoning Code Section 11-10-3, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent an expansion of an existing Use Unit 14 gasoline service station, its parking areas, and related site improvements for property in the CS Commercial Shopping Center District.

Zoning Code Section 11-10-3.B Table 1 provides that the parking lots for the subject property must be set back a minimum of 15' from Memorial Dr. and 10' from 111th St. S. Per Exhibit A.2 of this application, an ALTA/ACSM Land Title Survey dated 2/6/12, the parking lot paving areas have no setback, and actually encroach somewhat onto the Memorial Dr. and 111th St. S. rights-of-way. Per Exhibit A.3 of this application, a Site Plan dated 02-27-2012, all paving areas are proposed to remain in place, but the new parking lot area at the southwest corner of the lot will be constructed with a 15' setback from Memorial Dr., as required.

Zoning Code Section 11-12-2 requires minimum standards for landscaping for the subject property, on which the building area on the lot is proposed to almost double.

Based on a cursory review of Exhibit A.3 of this application, a Site Plan dated 02-27-2012, Staff has identified the following landscaping standards which also would require a Variance as the site is presently planned for redevelopment:

- The "15% Street Yard Minimum Landscaped Area Standard" per Section 11-12-3.A.1: Standard is not less than 15% of Street Yard area shall be landscaped. The Street Yard is the required Zoning setback along an abutting street right-of-way, which is 50' from the Memorial Dr. right-of-way and 50' from the 111th St. S. right-of-way. As the paved parking area encroaches on both rights-of-way, this standard will not be met.
- The "Minimum Width Landscaped Area Strip Standard" per Zoning Code Sections 11-12-3.A.7 and 11-12-3.A.2: The minimum parking lot setbacks required by Section 11-10-3.B Table 1, at 15' from Memorial Dr. and 10' from 111th St. S., are also the minimum required landscaped strip widths per these sections. As the paved parking area encroaches on both rights-of-way, this standard will not be met, and so this application requests a Variance from these coterminous landscaped strip width requirements.
- The "Maximum Distance Parking Space to Landscaped Area Standard" per Section 11-12-3.B.1: Standard is no parking space shall be located more than 50' from a Landscaped Area, which Landscaped Area must contain at least one (1) tree. The northernmost parking spaces along the west side of the building are more than 50' from the nearest proposed landscaped areas, and so would not (and apparently do not now) comply with this standard.
- The "Street Yard Tree Requirement" per Section 11-12-3.C.1.a: Standard is one (1) tree per 1,000 square feet of Street Yard. The Street Yard is the Zoning setback along an abutting street right-of-way, which is 50' from the Memorial Dr. right-of-way and 50' from the 111th St. S. right-of-way. Per Exhibit A.3 of this application, a Site Plan dated 02-27-2012, the proposed trees will not be located in the Street Yard, but rather, in the unpaved areas along the south and east property lines.
- The "Parking Areas within 25' of Right-of-Way" standard per Section 11-12-3.C.5.a: This section provides a tree planting requirement when parking areas are within 25' of the right-of-way, as they are in this case. Compliance with this standard is traditionally interpreted as being satisfied upon and as a part of compliance with the tree standard per Section 11-12-3.C.1.a. However, as Section 11-12-3.C.1.a will not be satisfied here, approval of this Variance would release the subject property from this restriction as well.

It is possible that other aspects of the landscape plan, when eventually proposed to the Planning Commission as part of the Detailed Site Plan required by Zoning Code Sections 11-7G-4 and 11-4G-6, will not comply with minimum landscaping standards of the Zoning Code. The third element of this application requests a Variance from "any other Zoning Code requirement which would prevent an expansion of an existing Use Unit 14 gasoline service station, its parking areas, and related site improvements for property in the CS Commercial Shopping Center District." This third and final Variance component is intended to be a 'catch-all,' in the event other provisions of the Zoning Code would prevent the proposed site reconstruction but were inadvertently overlooked when determining the number of and scope of Variances necessary.

Specifically, this 'catch-all' may be applied to the existing ground sign, which is located in platted street right-of-way at the intersection of 111th St. S. and Memorial Dr. Zoning Code Section 11-9-21.C.5 requires signs be set back off the right-of-way. The Applicant has expressed, in the submitted narrative, that they will want to be permitted to "reimage[e] or replac[e]" the existing sign. Absent the submission of evidence to the contrary, it does not appear that this ground sign was ever lawfully located, and so would be illegally nonconforming. The City is prevented from issuing permits for changing the sign

faces and/or replacement of the sign 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.

All Variance request elements are inextricably related with a common nexus: The proposal to redevelop and expand the existing Use Unit 14 gasoline service station and its parking areas and make related site improvements for property. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of the maintenance and redevelopment as it is currently proposed. Therefore, this report will not divide the separate Variance components into different report sections, except where possible and appropriate.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “Pinched size of tract along with stormwater which exist and are being proposed cause severe site restrictions for improvement planned.” The provided narrative expands on the site constraints and the need to “remov[e] the existing store and [build] a newer prototype 4,958 square foot store,” which existing store is “very outdated.” On the sign matter, the narrative provides, “Due to site restrictions Kum & Go is planning on reimaging or replacing the current sign in its same location.”

The Applicant’s implied claim appears to be that the strict application of the Zoning Code restrictions will result in the prohibition of the replacement and expansion of the “very outdated” store, while leaving the canopied fuel pump areas in situ and keeping in place the improvements located within the right-of-way. Staff does not dispute that this claim is true. To comply with all of the Zoning Code restrictions from which this application requests Variance, to “bring it up to code,” would involve:

- Removal of all drives and parking areas (including the two (2) driveway connections closest to the intersection) and relocation of one (1) or both canopied fuel pump areas within 15’ of the north/west property lines (except for the remaining two (2) driveway connections), and replacement of these 15’ strip areas with landscaping.
- Relocation of one (1) or both canopied fuel pump areas elsewhere on the property, including the cost of relocating underground fuel storage wells and distribution lines and electrical lines as required for this purpose.
- Removal of the ground sign and light poles, and relocation elsewhere on the property, including all structural and electrical removal and reinstallation costs.
- Installation of a new landscaped area, containing at least one (1) tree, within 50’ of the concerned parking spaces at the northwest corner of the building (Section 11-12-3.B.1).

If the Variance was not approved and the property was made to retrofit the site according to the above, the costs involved may not justify the anticipated increase in store sales, making the redevelopment project financially unfeasible and so “effectively prohibited.”

Further, the Zoning Code requirements would involve pushing the ground sign, one (1) or both canopied fuel pump areas, and possibly the building itself, all further away from the intersection, and would require removing the two (2) driveways closest to the same. Kum & Go, and other similar gas station / convenience store businesses, would likely testify that the locations of the fuel pump areas and the building on the lot affect the convenience and accessibility of the site and its parking areas and drives, and so have a measurable effect on the profitability and viability of the store, and would likely argue that the current relative placement of improvements on the site would be more profitable than reconstructing the site to comply with the Zoning Code requirements.

Staff believes these arguments could possibly amount to an Unnecessary Hardship. However, rather than rely on Staff’s speculation and in order to use these lines of argumentation, the Board would be within its right to request the Applicant testify as to the costs to retrofit the site (including any additional retrofit issues not considered and listed above) and how the same would relate to making the project financially feasible, and the economic importance of the relative placement of site improvements and the desire to maintain the status quo.

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, “Site is currently used for a convenience store. In order to keep up with market demand while improving the site for Bixby as a whole the site restrictions listed on the narrative create significant issues.” This statement points to the provided narrative, the relevant parts of which appear to be, “Due to a very pinched site, existing pump and canopy areas, smaller lot size, along with significant existing storm sewer and proposed storm sewer structures required for the site...” and “Due to the overhead [electric] lines on the south side and east side of the store...” and “Due to site

restrictions Kum & Go is planning on reimagining or replacing the current sign in its same location..." Further, the narrative explains that Kum & Go desires to "leav[e] [in place] the 7 gasoline dispensers as shown on the site plan Exhibit A.3 and A.4 attached." Finally, Exhibit A.2 of this application, an ALTA/ACSM Land Title Survey dated 2/6/12, represents along the east side of the subject property a roughly 30'-wide "overhead and underground easement in favor of Public Service Company of Oklahoma, dated May 10, 1994...affects subject tract as shown, however, the legal description does not fully enclose and encompass the constructed electric line, as observed in the field."

In addition to the site constraints described in the application, Staff believes that the following facts may be considered arguments in support of this test and standard:

1. It does not appear that the 01/01/1976 Zoning Code, evidently in effect at the time the existing gas station was constructed in the early 1980s, required parking lot setbacks or landscaped strips for the subject property. The parking lot setbacks of Section 1120 Table 1 of the 1976 Zoning Code did not appear to apply, as the subject property was not located within 50' of an R district (per 1973's BL-5 and 1984's BBOA-123 case maps). The landscaping chapter was not introduced to the Zoning Code until 10/09/1995 per Ordinance # 727. Therefore, notwithstanding the encroachment of the parking areas into the adjacent right-of-way (which is a separate, non-Zoning Code issue), the 0' parking lot setbacks and nonexistent landscaped strips are legally nonconforming.
2. It appears that the existing locations of the canopied fuel pumps are not prohibited by the Zoning Code. As they are legal, fixed in place, and as their relocation would come at an evidently high, potentially prohibitive expense, the site redevelopment possibilities are necessarily "pinched" and relatively inflexible. These facts would have implications for the parking lot setback and most of the landscaping requirements.
3. As concerns the improvements on the right-of-way, Staff notes that the same would appear to be located on the subject property, and so comply with the Zoning Code, if not for the 'corner cut' at the street intersection.

Staff believes that the above arguments adequate to demonstrate the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional as concerns Variance from the sign setback, parking lot setback, and all but one (1) of the landscaping standards. The exception to this opinion is the "Maximum Distance Parking Space to Landscaped Area Standard" of Zoning Code Section 11-12-3.B.1, as compliance with this standard does not appear to be impacted by the site constraints.

Per Exhibit A.3 of this application, a Site Plan dated 02-27-2012, there will be a "bump out" parking lot island at the north end of the parking lot flanking the west side of the building. It would appear to be possible to plant one (1) tree in this area, in satisfaction of the "Maximum Distance Parking Space to Landscaped Area Standard" of Zoning Code Section 11-12-3.B.1. It is likely, however, that the (24-hour, in this case) daily vicissitudes of pedestrian and automobile traffic would require this tree be an established, hardy species, having sufficient physical protections, and one which would not have a wide trunk or low-hanging branches, such as would interfere with parking lot traffic visibility between the two (2) fuel pump areas. If the Board finds that the Variance tests and standards are met as concerns this Variance element, it should discuss this matter with the Applicant and weigh carefully the pros and cons of compliance with this Zoning Code standard.

It is mere speculation on the part of Staff, but a logical assumption, that the site was not surveyed and the plat was not consulted when constructing the improvements, and the developers assumed that the property came to a 90° corner, rather than having the 'corner cut' at the intersection by the plat of Southwood. It would appear that the improvements would be located on the subject property if the corner was not cut. This seems somewhat unlikely, however, as one would have to know the location of the north and east property lines to know where they would meet if at a 90° corner, and to know these lines would take a survey or the use of survey monuments located in the field, which monuments would normally be found at the actual property corners. The Board may wish to solicit testimony in this regard, and/or to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.

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 "In this fully developed area the request for the Variances listed will only allow for an improved site and better use for Bixby."

The Applicant's underlying argument appears to be that the approved Variances would allow for the expansion upon redevelopment and the "improvement" and "better use" of the site, which suggests economic and aesthetic benefits for the City of Bixby. Exhibit A.4 is a profile view / perspective drawing showing the proposed "Kum & Go Store Prototype - 4958 Square Feet."

Of the several fundamental purposes for imposing minimum parking lot setbacks and concomitant landscaped strip widths, minimum landscaping tree requirements, and minimum setbacks for ground signs, Staff believes the primary reason is for the attractiveness of Bixby's commercial corridors (aesthetics).

The submitted narrative proposes compensatory measures in terms of compliance with landscaping standards. Under the "Landscaping" section of the narrative, the total number of landscaping trees required for the site, conservatively calculated at 23, is proposed to be planted along the south and east sides of the subject property, straddling the proposed new underground stormsewer pipe, to be located within a drainage easement in favor of the City of Bixby. When the Planning Commission has approved "Alternative Compliance Plans" for landscaping pursuant to Zoning Code Section 11-12-4.D, it has done so when the total amount of landscaping required for the site is installed somewhere on the property, if not in the specific areas required by the Code. If the Board approves the Variance based on this compensatory / alternative compliance proposal, it would be in keeping with the precedent set by the Planning Commission. Staff notes, however, that the Applicant should re/locate at least one (1) or two (2) of the proposed trees to within the 15'-wide landscaped strip located at the southwest corner of the subject property, in keeping with the spirit and intent of the landscaping standards.

The remaining greenspace areas along the south and east property lines will be roughly 20' to 30' in width. The Zoning Code does not require landscaped strips along these boundaries; only along the Memorial Dr. and 111th St. S. frontages, at 15' in width and 10' in width, respectively. The Zoning Code also does not have an absolute minimum percentage lot landscaping coverage standard for the subject property. Therefore, it would appear that the proposed compensatory / alternative compliance strips are roughly proportional to the landscaped strips which would otherwise be required.

Recognizing that the subject property is legally nonconforming as to lack of parking lot setbacks and landscaping, and that the Applicant proposes compensatory / alternative compliance landscaping along the south and east property lines, Staff believes that the primary concern of those Code requirements (aesthetics) is somewhat mitigated.

As it concerns the improvements located in the public street right-of-way, the submitted narrative states, "It is understood that a right-of-way encroachment agreement is required and will be processed through normal procedures," and "Kum & Go understands that a right-of-way encroachment agreement will be required for the site and may require ODOT concurrence for all issues." The Applicant has submitted a proposed License Agreement, which the City Council is scheduled to consider on May 14, 2012. ODOT approval or concurrence (in whatever form that may take) is pending receipt. Recognizing that the improvements have been in situ for years, if not decades, with no evidence of complaint found, and that the same would be located on the subject property and comply with the Code if not for the 'corner cut' right-of-way, Staff recommends that this test and standard be found justified if and upon the required legislative and property owner approvals being granted, and the final two (2) recommended Conditions of Approval in this report correspond to this.

As stated above, the Board would be within its right to request the Applicant testify as to the costs to retrofit the site (including any additional retrofit issues not considered and listed above) and how the same would relate to making the project financially feasible, and the economic importance of the relative placement of site improvements and the desire to maintain the status quo. If the Board accepted the Applicant's testimony in favor of the status quo for reasons of economic profitability and/or viability, the Board could weigh the potential future aesthetic benefits of Code compliance versus the prospects of current site redevelopment and expansion, and may find that, for this and other reasons stated above, approval of 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.

Finding of Minimum Necessary. The application form does not provide this item in the form of a question, and the submitted information does not contain any arguments in regard to this item. However, 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.

Although the relief requested is qualitative in nature, it does have quantifiable implications, and the Applicant is proposing certain quantitative compensatory measures in respect to some of the Variance elements. Twenty- to 30'-wide landscaped strip areas, to contain the total number of landscaping trees on the lot as would otherwise be required, are proposed along the south and east property lines.

Staff Recommendation. As stated above in relation to the Hardship and No Substantial Detriment tests and standards, the Board would be within its right to request the Applicant testify as to the costs to retrofit the site (including any additional retrofit issues not considered and listed above) and how the same would relate to making the project financially feasible, and the economic importance of the relative placement of site improvements and the desire to maintain the status quo.

Also in the analysis above, Staff has recommended the Board discuss and consider with the Applicant the possibility of adding one (1) landscaping tree to the "bump out" parking lot island at the north end of the parking lot flanking the west side of the building, in satisfaction of the "Maximum Distance Parking Space to Landscaped Area Standard" of Zoning Code Section 11-12-3.B.1.

Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting. If found satisfactory, Staff recommends the Approval be subject to the following Conditions of Approval:

- 1. The redevelopment project shall substantially comply with that represented on Exhibit A.3 of this application, a Site Plan dated 02-27-2012, including, but not limited to: adding no less than the number of landscaping trees represented, maintaining landscaped strip areas along the south and east property lines at no less than their relative widths as represented, and dedicating the "proposed drainage easement" at width(s) as directed by the City Engineer.*
- 2. The Board finds with the Applicant that the Variance from the "Maximum Distance Parking Space to Landscaped Area Standard" of Zoning Code Section 11-12-3.B.1 is justified according to all the Variance tests and standards. Staff is skeptical on this point as compliance with this standard does not appear to be impacted by the site constraints.*
- 3. The Applicant shall re/locate at least one (1) or two (2) of the proposed trees to within the 15'-wide landscaped strip located at the southwest corner of the subject property, in keeping with the spirit and intent of the landscaping standards.*
- 4. The Applicant shall secure a License Agreement from the Bixby City Council to continue to maintain the existing sign, light poles, and paving in the public right-of-way for U.S. Hwy 64 / Memorial Dr. / 111th St. S., or otherwise remove said improvements.*
- 5. The Applicant shall secure an easement, license agreement, or other official approval to continue to maintain the existing sign, light poles, and paving 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), or otherwise remove said improvements.*

Larry Whiteley asked if a shrub could be used instead of a tree in the area Staff was referring to [as per recommendation # 2 in the Staff Report]. Erik Enyart responded that it was the Board's prerogative to make conditions that address the purpose and intent of the Zoning Code standards from which Variance is being sought. Mr. Whiteley stated that a shrub may cause visibility issues. Mr. Enyart stated that he shared that concern. Mr. Whiteley indicated that a tree could also cause visibility issues. Rob Wadle of *Kum & Go* mentioned "corner visibility" or "sight triangles."

Larry Whiteley asked Patrick Boulden if there would be any problem with the City granting the License Agreement for the signs and lights, and Mr. Boulden suggested that, subject to the Board's approval, the Council may be expected to approve the agreement.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Alan Hall of HRAOK, LLC stated that he had been handed the Staff Report that day and was told he would be representing the application. Mr. Hall stated that he was not prepared to say

anything in addition but would answer any questions the Board may have. Mr. Hall noted that, unlike the case of *McDonald's*, his client had nowhere to go. Mr. Hall stated that the drainage areas along the east and south would be piped, and that this would leave areas for landscaping [along] the pipe.

Alan Hall stated that he was a surveyor and could attest that, in the 1960s and 1970s, it was common to have 90° corners at intersections of major streets and highways, and that it was a relatively new thing to clip the corner at 45° angles. Mr. Hall stated that this intersection was “on the cutting edge” of that trend. Mr. Hall stated that he believed that someone just wasn't paying attention when they put the sign and improvements in the right-of-way [at the intersection].

Larry Whiteley asked if this would be impacted by an intersection widening project. Erik Enyart stated that the widening would occur within the existing right-of-way, and that any additional right-of-way needed for the improvement project would come from the north side of the street.

Chair Jeff Wilson recognized Rob Wadle of *Kum & Go*. Mr. Wadle stated that he had seen this situation a lot, on corners, where there is a diminishing asset [that needs to be replaced]. Mr. Wadle stated that this was “a hardship we have.” Mr. Wadle stated that [*Kum & Go*] wanted to replace the 3,000 square foot building with a 5,000 square foot building. Mr. Wadle stated that all the new models are LEED Certified, when put in certain markets, and that this building would be much more efficient. Mr. Wadle stated that [*Kum & Go*] wanted to keep the pumps in the same location but would be replacing the tanks due to the age. Mr. Wadle stated that [*Kum & Go*] wanted to improve the asset they had there.

Chair Jeff Wilson referenced recommended Condition of Approval # 2 in the Staff Report and asked where Mr. Enyart was suggesting the required tree would be placed. Mr. Enyart reviewed with Mr. Wilson the site plan included in the agenda packet and indicated the location of the “bump out landscaping area.”

Larry Whiteley asked what would happen if [*Kum & Go*] didn't want a bush there. Rob Wadle stated, “I don't mind not having a bush either.”

Dave Hill asked if the Board could “overlook the bushes and trees.”

Patrick Boulden asked if that was on the agenda.

Erik Enyart stated that the Board could “replace recommendation # 2 [in the Staff Report] with whatever you feel appropriate” to address the Variance from that particular landscaping standard, “or you can strike it altogether.”

Dave Hill stated the Board should “scratch it altogether.”

Chair Jeff Wilson asked Erik Enyart if removing [recommended Condition of Approval # 2 in the Staff Report] would increase the Variance. Mr. Enyart responded, “No, that takes from their Variance; # 2 reduces the scope of their Variance.” Mr. Enyart stated that, when he was reviewing their provided site plan, he identified all the different Zoning Code landscaping standards from which they would require Variance if approved based on that site plan. Mr.

Enyart stated that most of the Variances could be justified based on existing conditions, but that the site constraints did not appear to affect that particular landscaping standard.

Larry Whiteley made a MOTION to APPROVE BBOA-559 and that, in # 2, the Variance not be required to have a tree or a bush as long as it meets all five (5) recommendations. Mr. Whiteley stated that a tree would destroy a foundation, and a bush blocks view. Erik Enyart confirmed with Mr. Whiteley that his Motion is clarified as follows: "MOTION to APPROVE BBOA-559 with all five (5) Conditions of Approval as recommended in the Staff Report, except that the surviving part of recommendation # 2 is 'This application also approves a Variance from the maximum distance between a parking space and a landscaped area standard of Zoning Code Section 11-12-3.B.1.'" Mr. Enyart continued, saying, "so, no tree will be required." Mr. Whiteley suggested the [parking lot "bump out area" identified by Staff] could have [decorative] rocks. Mr. Enyart suggested the Board not specify anything for that area, so that the Planning Commission can approve the landscape plan element of the Detailed Site Plan, when that is submitted, approving "whatever [the Applicants] propose between now and then."

Chair Jeff Wilson asked Erik Enyart to re-read the Motion as he had recorded it in the notes for the Minutes. Mr. Enyart re-read the Motion as follows: "MOTION to APPROVE BBOA-559 with all five (5) Conditions of Approval as recommended in the Staff Report, except that # 2 is replaced with 'This application also approves a Variance from the maximum distance between a parking space and a landscaped area standard of Zoning Code Section 11-12-3.B.1.'" Larry Whiteley indicated approval of his Motion as read. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:39 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary