

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
August 06, 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 6:06 PM.

ROLL CALL

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

Members Absent: Dave Hill.

MINUTES

1. Approval of Minutes for July 02, 2012

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of July 02, 2012 as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Whiteley

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

OLD BUSINESS

Chair Jeff Wilson asked Erik Enyart if there was any Old Business. Mr. Enyart reported that he had none. No action taken.

NEW BUSINESS

- 2. **BBOA-563 – Program Management Group, LLC for Tulsa County.** Discussion and possible action to approve a variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a replacement restroom building with the First Finished Floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain.
Property located: Part of the NE/4 SE/4 Section 31, T18N, R14E; 11700-block of S. Garnett Rd.

- 3. **BBOA-564 – Program Management Group, LLC for Tulsa County.** Discussion and possible action to approve a variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a new restroom building in the Floodway and with the First Finished Floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain.
Property located: The E. 24 Acres of the S/2 SE/4 Section 31, T18N, R14E; 11100-block of E. 121st St. S.

Chair Jeff Wilson introduced Agenda Items numbered 2 and 3 and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, July 27, 2012
RE: Report and Recommendations for:
 BBOA-563 – Program Management Group, LLC for Tulsa County

LOCATION:

- BBOA-563: – 11700-block of S. Garnett Rd.
 – Part of the NE/4 SE/4 Section 31, T18N, R14E
- BBOA-564: – 11100-block of E. 121st St. S.
 – The E. 24 Acres of the S/2 SE/4 Section 31, T18N, R14E;

LOT SIZE:

- BBOA-563: 38 acres, more or less
- BBOA-564: 24 acres, more or less

ZONING: AG General Agricultural District

SUPPLEMENTAL ZONING: None

EXISTING USE: Part of Tulsa County’s Use Unit 5 Haikey Creek Park public park

REQUEST:

BBOA-563: Variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a replacement restroom building with the First Finished Floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain

BBOA-564: Variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a new restroom building in the Floodway and with the First Finished Floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain

COMPREHENSIVE PLAN: Development Sensitive + Recreation and Open Space + District/Regional Park (BBOA-563 only) + Entry Treatment (BBOA-564 only) + Regional Trail (BBOA-564 only).

PREVIOUS/RELATED CASES: (None found)

BACKGROUND INFORMATION:

On May 21, 2012, City Planner / Floodplain Administrator Erik Enyart and City Engineer Jared Cottle, PE met with Kirby Crowe, PE and Randy Hull, AIA, both of Program Management Group, LLC, to discuss proposed restroom improvements in the Bixby size of Tulsa County's Haikey Creek Park. Haikey Creek Park has roughly ½ of its acreage west of the Garnett Rd. Sectionline in the City of Bixby, and the balance to the east of it in the City of Broken Arrow.

From the meeting, Staff understands that there are two (2) proposed new restroom facilities in Haikey Creek Park. The first is just southeast of the existing restroom building at the northernmost circle drive / parking lot area located on part of the NE/4 SE/4 Section 31, T18N, R14E. It will replace the existing restroom, which will remain open for the amount of time the new one is being constructed (~4 months or so). The second one is a new restroom facility proposed just southeast of the southernmost circle drive / parking lot on the E. 24 Acres of the S/2 SE/4 Section 31, T18N, R14E. Tulsa County prefers that location, but an alternative location discussed would be approximately 600' to the northwest of that, in an area just outside of the Floodway designated by FEMA. However, that alternative location would be more expensive, is not as preferred for security reasons, and may exceed budget.

The first one mentioned will be just outside the Floodway, and the preferred location of the second one is within the Floodway.

Both are to be located in the 100-year (1% Annual Chance) Regulatory Floodplain, and both would be constructed with the First Finished Floor located below the Base Flood Elevation (BFE). As such, a variance from the Floodplain Regulations would be required.

Per the Applicant, the CXT-manufactured building(s) proposed are to be a [modular] precast concrete [solid wall construction] building constructed in Texas, and have been used on U.S. Army Corps of Engineers floodplain sites. It is transported to the site in two (2) or more sections and hooked together on-site. The building is designed to meet the building code requirements. The building is "wet-floodproofed," meaning it is designed to allow the free flow of floodwaters into the building by means of vents, without damaging the structure, including upon complete inundation. Electrical panels, trip switches or other cutoff devices, outlets, etc. will be elevated above the BFE to the extent possible, and water and sewer systems will be designed to prevent the infiltration of floodwaters using backflow preventers or other measures as required. Randy Hull provided an example letter from the manufacturer certifying that the buildings "will not become buoyant at any water level," and another certifying that the buildings are designed to comply with the other FEMA/NFIP requirements pertaining to flood loads and debris impact sustention. Copies of these example letters were submitted with the application. Current versions of these letters specifying the model(s) to be sited here will satisfy certain FEMA/NFIP and City of Bixby Floodplain Regulations requirements, have been respectfully requested, and the Applicant has offered to provide them prior to Building Permit issuance.

FEMA/NFIP and City of Bixby floodplain regulations do not allow for "wet-floodproofing." However, FEMA guidance suggests the local community may permit them upon approval of a variance from the requirement to either (1) elevate 1' above BFE, or (2) "[dry-]floodproof" the non-residential structure.

As Staff has previously indicated (emails 01/27/2009 and 05/04/2009), the City Engineer and the City Planner / Floodplain Administrator would not object to such a variance, provided the other minimum floodplain and development regulations are met. At that time, only the northerly restroom replacement was being discussed, and not the southerly one now proposed for a Floodway placement.

Variances must comply with 44 CFR 60.6 and Bixby Floodplain Regulations Section 13-2B-12. Variances specific to "wet-floodproofing" are subject to the certain FEMA/NFIP requirements summarized in FEMA Technical Bulletin 7-93, attached to this report and available at <http://www.fema.gov/library/viewRecord.do?id=1720>, and the same has been provided to the Applicant. 44 CFR 60.6 is also attached to this report.

Also, the Technical Bulletin lists several Planning Considerations and Engineering Considerations. A good application for variance will address the relevant issues raised in those sections (e.g. "Warning Time," "Safety and Access," "Inspection and Maintenance Plan," "Flood Emergency Operation Plan," "Foundations," "Electrical System," etc.). Some of the safety-related matters may already be addressed in the relevant parts of an Emergency Operations Plan, if Tulsa County has one, and if so, Staff has

requested the Applicant copy and include them in the application. The Applicant has agreed in the application to provide the County's flood emergency operation plan at a future date.

Regarding the proposed southerly restroom's preferred location in the Floodway, this section in particular deserves additional attention:

Floodway Encroachment; Encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway are prohibited under the NFIP unless it has been demonstrated, through hydrologic and hydraulic analysis performed in accordance with standard engineering practice, that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Floodways are usually the most dangerous portion of the floodplain, containing the highest velocity and debris-laden flood flows. Extreme caution must be used in the placement of any structure in a floodway.

Staff understands that floodwaters through this section of Haikey Creek can rise suddenly. Recognizing this fact, and the Technical Bulletin's guidance on safety and access "for anyone attempting to escape from or gain access to the site," Staff has advised the Applicant to carefully weigh the southerly restroom facility's location in the Floodway versus out of the Floodway, using flood depth information as appropriate.

Whether in the Floodway or merely in the 100-year Floodplain, FEMA/NFIP rules and the Bixby Floodplain Regulations will require certification of No Rise in BFE upstream or downstream from the project sites. Staff understands that the Applicant has already planned to perform compensatory storage design and appropriate engineering modeling, in conformity to this requirement.

Here is a summary of the informational requirements needed to justify the variance request(s):

- Certification of no rise in BFE / compensatory storage engineering [Section 13-2C-1.A; 44 CFR 60.6(a)(1)]
- Balancing of impervious surface engineering (see emails from City Engineer 09/10/2008 and 01/15/2009 pertaining this and providing other guidance related to this project)
- Elevation Certificates, demonstrating depth of variance requested at each proposed site
- A variance request and project narrative letter:
 - Addressed to the Bixby Board of Adjustment, per Section 13-2B-12.A, and requesting placement on its next available agenda.
 - Describing the project in general terms, discussing the need for replacement of one and the addition of the other, other options considered but not selected
 - Demonstration "that the variance is the minimum necessary, considering the flood hazard, to afford relief." [Section 13-2B-12.1.1; 44 CFR 60.6(a)(4)]
 - "Showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances." [Section 13-2B-12.1.2; 44 CFR 60.6(a)(3)]
 - Demonstration that the building(s) are/will be "designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy." (Section 13-2C-1.C). (Manufacturer's certification letter may satisfy this)
 - Demonstration that the building(s) are/will be "constructed with materials resistant to flood damage." (Section 13-2C-1.D). (Manufacturer's certification letter may satisfy this)
 - Description of the elevation (1' above BFE otherwise required by Section 13-2C-1.F) or otherwise floodproofing of utilities, specifying the resistance to the "infiltration of floodwaters"
 - Specification that the building(s) will comply with all other applicable Federal and Bixby Floodplain Regulations requirements. [so specified on the Architect's plans]

- Description of how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.
- A variance processing and filing fee in the amount of \$50.00 (Ordinance # 599)
- Site plan indicating the locations of critical site features, including all those discussed in the narrative.

Staff has found only one (1) prior Floodplain variance presented to the Bixby Board of Adjustment. BBOA-423 – Karen Johnson was a request for Floodplain variance “to allow fill in the floodplain without providing compensatory storage (Engineering Design Standards Section E)” for Lot One (1) Block One (1), Bixby Industrial Park, addressed 7580 E. 151st St. S., a former NAPA auto parts store that had been destroyed by fire. The Bixby Board of Adjustment Denied the application on July 13, 2004, as recommended by Staff.

This case was found among those applications to the Board of Adjustment using the conventional case numbering system, “BBOA-[sequential number].” It is possible, however, that other Floodplain variances came to the Board of Adjustment, or to some other City administrative body, but was not found due to not being among the enumerated case numbers.

In the case of BBOA-423, it appears that the Public was given a Public Notice by way of (1) newspaper publication, and (2) mailing of the Public Notice to property owners within a 300’ of that property. Based on this precedent, Staff has advertised the Public Notice for this application in the newspaper and by direct mailing to 300’ radius property owners.

ANALYSIS:

Property Conditions. The subject properties consists of two (2) parcels containing approximately 38 acres and 24 acres, are both zoned AG, and are both used as part of Tulsa County’s Use Unit 5 Haikey Creek Park public park. Haikey Creek passes in a south-southwesterly direction and passes through the south end of the BBOA-564 subject property.

With the exception of Haikey Creek, the subject properties are relatively flat. From most directions, the land slopes mildly toward the creek.

Tests and Standard for Granting Variance. Although the term “variance” in the context of FEMA/NFIP-required Floodplain Regulations is somewhat similar to “Variance” as used in the context of a Zoning Code, there are some differences. Both include somewhat similar versions of prerequisites mutually corresponding to (1) “hardship,” (2) “no substantial detriment,” and (3) “minimum necessary.” The Floodplain variance does not have a version of the “unique conditions” test and standard such as a Zoning Code Variance has. A Floodplain variance, unlike a Zoning Code Variance, has a “good and sufficient cause” prerequisite and also recognizes lot size as a factor. All of these Floodplain variance factors are considered in the analysis that follows.

FEMA [44 Code of Federal Regulations (CFR) Section 59.1] defines “variance” as:

“Variance means a grant of relief by a community from the terms of a flood plain management regulation.”

Bixby Floodplain Regulations / City Code Section 13-2B-12 provides the authority and conditions for granting floodplain variances:

“13-2B-12: VARIANCE PROCEDURES:

- A. **Requests:** The board of adjustment shall hear and render judgment on requests for variances from the requirements of this chapter, including articles A through D.
- B. **Authority:** The board of adjustment shall hear and render judgment when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement of this chapter, including articles A through D.
- C. **Persons Permitted:** Any person aggrieved by the decision of the board of adjustment may appeal such decision in the courts of competent jurisdiction.
- D. **Records Maintained; Reporting:** The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the federal emergency management agency (FEMA) upon request. [cf. 44 CFR Section 60.6(a)(6)]
- E. **Historic Places:** Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, or a state inventory of historic places, without regard to the procedures set forth in the remainder of this section. [cf. 44 CFR Section 60.6(a)]
- F. **Lot Size:** Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size, contiguous to and surrounded by

lots with existing structures constructed below the base flood level, providing the relevant factors in section [13-2A-4](#) of this chapter have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases. [cf. 44 CFR Sections 60.6(a) and 60.6(a)(2)]

- G. Conditions Attached: Upon consideration of the factors noted above and the intent of this chapter, including articles A through D, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter, including articles A through D.
- H. Increase In Flood Levels Prohibited: Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result. [cf. 44 CFR Section 60.6(a)(1)]
- I. Prerequisites: Prerequisites for granting variances:
 - 1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. [cf. 44 CFR Section 60.6(a)(4)]
 - 2. Variances shall only be issued upon a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances. [cf. 44 CFR Section 60.6(a)(3)]
 - 3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [cf. 44 CFR Section 60.6(a)(5)]
- J. Functionally Dependent Uses: Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the criteria outlined in subsections A through I of this section are met; and provided, that the structure or other development is protected by methods that minimize flood damages during the base flood create no additional threats to public safety. (2006 Code) [cf. 44 CFR Section 60.6(a)(7)]”

Most of the language in Bixby Floodplain Regulations / City Code Section 13-2B-12 is identical or nearly identical to the variance provisions of 44 CFR Section 60.2. The Federal variance provisions are referenced above to each City Code section to which they essentially correspond.

In addition to Technical Bulletin 7-93, FEMA has published additional guidance regarding Floodplain variances generally: IS-9 Managing Floodplain Development Through The National Flood Insurance Program (NFIP) (pages 7-44 to 7-54). The relevant pages are attached to this report.

This guidance document provides, on page 7-54, “It is recommended that the variance findings, conditions and authorization be recorded in the county deed records. This provides a means of permanently notifying future or prospective owners about the terms and conditions of the variance.” This would be accomplished, if the variance is approved, by specification of the approval, and any conditions attached thereto, in a Decision of Record, which would be recorded in the Land Records of the Tulsa County Clerk. Although the Zoning Code does not require a Decision of Record for a Floodplain variance, as it does a Zoning Code Variance, this should be done in this case in satisfaction of FEMA/NFIP guidelines.

Nature of Variance. From the May 21, 2012 meeting, Staff understands that there are two (2) proposed new restroom facilities in Haikey Creek Park. The first is just southeast of the existing restroom building at the northernmost circle drive / parking lot area located on part of the NE/4 SE/4 Section 31, T18N, R14E (BBOA-563). It will replace the existing restroom, which will remain open for the amount of time the new one is being constructed (~4 months or so). The second one is a new restroom facility proposed just southeast of the southernmost circle drive / parking lot on the E. 24 Acres of the S/2 SE/4 Section 31, T18N, R14E (BBOA-564). Tulsa County prefers that location, but an alternative location discussed would be approximately 600’ to the northwest of that, in an area just outside of the Floodway designated by FEMA. However, that alternative location would be more expensive, is not as preferred for security reasons, and may exceed budget.

The first one mentioned will be just outside the Floodway, and the preferred location of the second one is within the Floodway.

Both are to be located in the 100-year (1% Annual Chance) Regulatory Floodplain, and both would be constructed with the First Finished Floor located below the Base Flood Elevation (BFE). As such, a variance from the Floodplain Regulations would be required.

No Increase in Flood Levels [cf. Section 13-2B-12.H and 44 CFR Section 60.6(a)(1)]. *Whether the southerly (BBOA-564) restroom would be constructed within the Floodway or merely in the 100-year Floodplain, FEMA/NFIP rules and the Bixby Floodplain Regulations will require certification of No Rise in BFE upstream or downstream from both project sites. Staff understands that the Applicant has already planned to perform compensatory storage design and appropriate engineering modeling, in conformity to this requirement. “Compensatory storage” is essentially the removal of an equal volume of fill (typically dirt) from the property in equal proportion to the new fill which would remain after construction. This new floodwater storage capacity “compensates” for that volume of floodwater storage capacity lost to development. Plans for compensatory storage must be prepared by an engineer and be approved by the City Engineer in the format of an Earth Change Permit [Sections 13-2A-1 (definition of “Development Permit”), 13-2B.8, and 13-2B-9.A].*

Upon the receipt of the Certification of No Rise in the BFE from the Applicant’s engineer and the completion of Compensatory Storage pursuant to an approved Earth Change Permit, this prerequisite will have been satisfied.

1/2 Acre Lot Size [cf. Section 13-2B-12.F and 44 CFR Section 60.6(a)(2)]. *The subject properties contain approximately 38 acres and 24 acres, and so do not meet the Federal requirement for being less than ½ acre in lot area. However, a relevant part of 44 CFR Section 60.6(a) provides the following:*

“The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant’s hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.” (emphasis added)

It is evident that the ½ acre lot size rule is not absolute, but “as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.” It follows, then, that the subject properties are subject to a higher technical standard than much smaller lots.

It appears that this ½-acre rule is primarily intended to limit flood losses by restricting variances to small, residential lots – those on which a property owner may build a single-family detached dwelling. That is not the case here.

Furthermore, although the guidance most precisely relevant to the current applications, Technical Bulletin 7-93 does not appear to mention the ½-acre rule for “wet-floodproofing” related Floodplain variance applications.

Provided the applications comply with the recommendations contained herein and otherwise comply with the Floodplain Regulations, and provided the Board of Adjustment approves either or both applications, Staff does not believe that either application should necessarily be found at odds with this particular rule.

Good and Sufficient Cause [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. *The Applicant responded to the Good and Sufficient Cause prerequisite, in both applications, by stating, “[T]he county submits ‘good and sufficient cause’ for this variance as almost all of the accessible and usable area of the park falls within the 100-year Regulatory Floodplain and / or Floodway, and therefore any facility requiring a building permit will require this requested variance from the Floodplain Regulations. Haikey Creek Park is located where it is as a park, as many parks are, because the land is in the 100-year Regulatory Floodplain. The park in recent years, however, has become more popular to local patrons and has great need for these additional and upgraded restroom facilities.”*

Staff does not object to the recognition of the provided arguments as sufficient to satisfy this prerequisite in both cases.

“Exceptional Hardship” [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. *The Applicant claims, in both applications that an Exceptional Hardship would result absent the variances because, “The general site conditions (elevation)of the entire park require a variance for ‘wet-flood-proofing,*

because (1) locating the proposed building 1 foot above the BFE would render the project unfeasible due to the slope considerations for accessibility required by the ADA, and (2) designing the building to be 'dry-flood-proofed' would not be feasible due to the effects of hydrodynamic and hydrostatic loads including the effects of buoyancy. [Section 13-2B-12.I.1; 44 CFR 60.6(4)]”

Staff does not object to the recognition of the provided arguments as sufficient to satisfy this prerequisite in both cases, to the extent of placement of the “wet-floodproofed” restroom buildings in the Special Flood Hazard Area generally.

Specifically as it pertains to the southernmost proposed restroom building (BBOA-564), however, the Applicant has provided the following reasons for the preferred location in the Floodway, rather than an alternative location on the same parcel but outside the Floodway:

- “1. A second restroom facility is needed on the south end of the park because of the travel distance (1/3 of a mile) required to the existing facility from this heavily used portion of the park.
2. This area of the park has multiple picnic pavilions and a playground area.
3. This area of the park is adjacent to a large area of existing parking.
4. This area of the park has electric and water adjacent to the proposed site.
5. This area of the park is centrally located within this area of the park and does not have 'direct' access off of 121st street or Garnett [Road], and therefore poses less of a security issue for the park patrons than other locations might.”

Based on the above, Staff understands that the preferred location in the Floodway would have circumstantial advantages over a location approximately 600' to the northwest of that, in an area just outside of the Floodway designated by FEMA. However, convenience and economic savings are not normally given greater weight than public safety, when the two would be potentially at odds, as specified in the FEMA/NFIP guidance.

Finding of No Substantial Detriment [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. The No Substantial Detriment prerequisite for a Floodplain variance requires a “determination that the granting of a variance will not result in ... additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances.”

The transmittal letter specifies that the applications will so demonstrate in both applications, and arguments presented in the letters would appear to address this prerequisite. Specifically, assurances have been offered as to the bona fide “wet-proofed” design of the proposed buildings

Although, in the context of the Bixby Floodplain Regulations, Section 13-2B-12.J may be interpreted to recognize restrooms as functionally dependent uses in relation to existing parks in floodplains, FEMA has previously informed Staff that FEMA does not recognize them as “functionally dependent” under the definition used in FEMA regulations, because parks are not necessarily located in floodplains. It should be observed that Haikey Creek Park was developed in the Special Flood Hazard Area and is in existence. Further, it should be noted that the proposed restroom will replace a restroom that is already in existence in the Special Flood Hazard Area.

Staff does not object to the recognition of the provided and above arguments as sufficient to satisfy this prerequisite in both cases, to the extent of placement of the “wet-floodproofed” restroom buildings in the Special Flood Hazard Area generally.

However, if the southern proposed restroom is built within the Floodway, it is a relative certainty that the building will soon and often be tested by floodwaters. The Regulatory Floodway, per FEMA (44 CFR Section 59.1), is:

“Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.”

In layman’s terms, the Floodway is that area that more regularly floods, and has much higher technical standards for any encroachments therein.

Technical Bulletin 7-93 provides in part, regarding Floodway Encroachment[s], “Floodways are usually the most dangerous portion of the floodplain, containing the highest velocity and debris-laden flood flows. Extreme caution must be used in the placement of any structure in the floodway.”

Per submitted site plan SP-S and aerial and GIS data, it appears that the southern building would be located approximately 100' from the main bank of Haikey Creek. This location, combined with the high likelihood of frequent flooding, and the potential for rapidly increasing floodwaters, causes Staff to feel that BBOA-564 does not meet this test and standard, if to be located in the Floodway as proposed.

Finding of Minimum Necessary [cf. Section 13-2B-12.I.1 and 44 CFR Section 60.6(a)(4)]. The Minimum Necessary to Alleviate the Unnecessary Hardship prerequisite for a Floodplain variance requires a finding “that the variance is the minimum necessary, considering the flood hazard, to afford relief.” The application does not appear to address this prerequisite specifically.

If the Board finds that the applications meet all of the other prerequisites and are to be approved, Staff recommends that both applications be found the minimum necessary, based on the locations of the two (2) proposed restroom buildings and the elevations of the natural grade and the BFE at such sites are fixed, and if the buildings are approved for variance the Board is concomitantly recognizing that the minimum necessary rule has been satisfied. The elevations of the building sites and the BFE elevations at each must be demonstrated by a surveyor’s Elevation Certificate, as per FEMA and City of Bixby Floodplain Regulations.

However, Staff is not supportive of the proposed southerly restroom facility (BBOA-564) in the Floodway, as outlined elsewhere in this analysis, and if not approved in the Floodway, this prerequisite is not met in that case.

Staff Recommendation. For the most part, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet the prerequisites of the Flood Damage Prevention provisions of City Code and FEMA/NFIP requirements of 44 CFR 60.6, based on the “wet-floodproofing” guidelines per FEMA Technical Bulletin 7-93, for placement in the 100-year Regulatory Floodplain, outside the Floodway. Staff is not supportive of the proposed location of the southerly restroom in the Floodway, for reasons of public safety described in the analysis above.

Staff recommends the Approval be subject to:

1. Alternative placement of the southerly restroom outside of the Floodway, or otherwise Denial of BBOA-564.
2. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant’s engineer.
3. Completion of Compensatory Storage pursuant to an approved Earth Change Permit.
4. Submission of Elevation Certificates, demonstrating depth of variance requested at each proposed site.
5. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,” or using similar language to this effect (Section 13-2C-1.C).
6. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “constructed with materials resistant to flood damage,” or using similar language to this effect (Section 13-2C-1.D).
7. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable. This may be partially satisfied upon the submission of Tulsa County’s flood emergency operation plan, as stated in the application.
8. The Applicant acknowledges, upon application of signature(s) to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Erik Enyart stated that, because they were both for Floodplain variances in Haikey Creek Park, merely located on two (2) different parcels, and because they were so similar, he included both applications in one (1) Staff Report. Mr. Enyart stated that, in addition to Zoning Variances, Special Exceptions, Interpretations, and Appeals, the Bixby Floodplain Regulations give authority to the Board of Adjustment to consider variances from the Floodplain Regulations. Mr. Enyart stated that he had never processed a Floodplain variance before, so much of the report was dedicated to assessing the FEMA/NFIP regulations and guidance, the Bixby Floodplain Regulations, and how they compare to each other and apply to the applications.

Larry Whiteley asked if the slope of the ground had a relation to the application. Erik Enyart responded that the Applicant had cited, as part of the justification for the Floodplain variances, that the sites would be required to meet ADA requirements, which restrict slopes to 1:12 rise over run, and that, to achieve this slope, with the ground being about five (5) feet below the 100-year Base Flood Elevation, would require mounding a huge amount of fill dirt leading up to the restroom facilities. Mr. Whiteley confirmed with Mr. Enyart that he was referring to the slope of the ADA ramp leading to the building.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Kirby Crowe of Program Management Group, 601 S. Boulder Ave., Tulsa, was present and stated that Richard Bales, the Tulsa County Parks Director, was also present. Mr. Crowe stated that this would be the same building that was put in [Tulsa County's] O'Brien Park [& Recreation Center]. Mr. Crowe stated that it was a flood-proofable structure, was of a non damageable, solid concrete construction, has a pitched roof with what look like shingles but are concrete, and is brought in on a truck. Mr. Crowe stated that it would be sealed up and put together, taking about three (3) days in total. Mr. Crowe stated that it was developed for [U.S. Army] Corps [of Engineers] and National Park Services sites in high-vandalism areas. Mr. Crowe stated that, if subjected to wildfires, they won't burn either. Mr. Crowe stated that, after talking to Staff, the proposal was separated into two (2) applications, one for the existing and one for the new [restroom facility]. Mr. Crowe stated that the one in O'Brien Park had been there for five (5) years, and has a large concession stand in it. Mr. Crowe stated that the north restroom was very outdated, and doesn't meet ADA. Mr. Crowe stated that Tulsa County has to meet ADA, legally and morally, and wants nice facilities. Mr. Crowe stated that the location of the north one was just south of the existing restroom facility, and that there would be no new parking. Mr. Crowe stated that it was in the 100-year Floodplain so it would be built up a little to minimize some of [the effects of] regular rains. Mr. Crowe stated that both sites would be served by sanitary sewer, electric, and water [utilities]. Mr. Crowe stated that Haikey Creek Park was built to keep homes out of the Floodplain. Mr. Crowe stated that Tulsa County had made several improvements to the park. Mr. Crowe stated that the southern facility would be down by the new picnic shelters toward the south end of the park, but not all the way—it cannot be entered off of 121st St. S. Mr. Crowe stated (in regard to the southern restroom facility) “In Haikey Creek Park, there's not a lot of difference between the Floodplain and the Floodway—if it gets out of the channel it goes everywhere—there's not a lot of difference here and 100 yards away.”

Larry Whiteley asked, “What prohibits you from moving [the southern restroom facility] to the west side versus where [it is now planned]?”

Kirby Crowe stated that [the site of the proposed south restroom facility] is in the Bixby side in Haikey Creek Park, close to the picnic [shelter] and playground, and the County wanted it to be in a visible location in the park, and [it] needed to be visible [itself].

Larry Whiteley asked, “What prohibits you from raising it up?”

Kirby Crowe stated “It would eat up a lot of park ground,” and it would require you “build up an embankment six (6) or seven (7) feet.” Mr. Crowe stated that [the County] would have to do

compensatory storage on the creek bank, but that they wouldn't want it to hold water, as that would attract mosquitoes and bugs. Mr. Crowe stated that, to meet the ADA slopes, the ground would have to be sloped all around [the restroom building], and there has to be a rest base for every two (2) feet [of change] vertically.

Darrell Mullins asked if the land did not slope up along the west side of the park. Kirby Crowe responded, "No, not until you get west of us—we got the bottom land." Mr. Crowe stated that all of the park was in the Floodplain. Mr. Crowe stated, "The southern unit is a new restroom, which would give us two (2). Tulsa County is getting a lot of activity at the new shelters at the south end of the park. We did two (2) separate applications due to one being in the Floodplain and one in the Floodway."

Larry Whiteley confirmed with Kirby Crowe that the restroom facilities would have [public sanitary] sewer. Mr. Crowe stated that they use a grinder system and pump [to gravity flow sanitary sewer lines].

Kirby Crowe stated that the buildings have vents to allow water to get in, and that "the manufacturer calls it a 'FEMA vent.'" Mr. Crowe stated that, if a tree floated down the creek [and struck the building] it would not be a problem. Mr. Crowe stated that they would mount the electrical above the Base Flood Elevation, and would use stainless steel fixtures.

Larry Whiteley stated that the south end of the park needed a restroom.

Chair Jeff Wilson asked if O'Brien Park had gone through the same procedure [as what the County is applying for in these applications]. Kirby Crowe stated that Tulsa County had no Board of Adjustment [variance-approval process], and that Tulsa County had done the Floodplain review by the County Engineer. Mr. Crowe stated that [the O'Brien Park] unit was "padded up so it would not be in immediate flood [risk]." Mr. Crowe stated that it had "a couple feet of pad to get us out of the 100-year Floodplain on the old maps." Mr. Crowe stated that the new maps now show it as in [the 100-year Floodplain].

Larry Whiteley asked where O'Brien Park was located. Kirby Crowe responded that it was at 66th St. N. Mr. Crowe stated that it was more of a sports park, and had baseball, a golf course, and a training center.

Chair Jeff Wilson stated that the Board was being asked to find that the applications met the requirements for variance, and that the requirements under Bixby's Floodplain Regulations appeared to be the same as the Federal rules. Mr. Wilson read Bixby Floodplain Regulations Section 13-2B-12.I.2 as follows:

"Variances shall only be issued upon a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances."

Chair Jeff Wilson asked Kirby Crowe what he would say was the “good and sufficient cause.” Mr. Crowe asked, “Do you want restrooms in the park?” Mr. Crowe stated, “[Parks Director] Richard [Bales] has to supplement with porta-potties” during high use periods, and “the existing restroom doesn’t meet ADA, and there’s a need for more restrooms.” Mr. Crowe stated that the south one was needed because of increased activity in the park. Mr. Crowe stated, “If we don’t have sufficient funds,” the south unit would not be built at this time.

Murray King noted it would be a hardship for park patrons on the south end of the park.

Jane Carter of 9443 S. Jamestown Ave., Tulsa, asked if [Tulsa County] would tear down the old restroom building. Kirby Crowe responded affirmatively and noted that the removal of the old facility would provide “compensatory storage—offset very nearly the same area” of the replacement building’s [footprint]. Mr. Crowe stated that, originally, Tulsa County considered remodeling the old building, but that causes issues. Mr. Crowe stated that, if remodeled but a new one was built, no one would want to use the old one. Mr. Crowe stated that, if a restroom facility was built up, it would look silly and consume a lot of park land—it would be “mount toilet.” In response to a question, Mr. Crowe stated that [the southern restroom facility] could not be located somewhere else because there would be the same issue [of requiring a Floodplain variance], and that the only area not in the Floodway was “quite a bit to the northwest; it would require the construction of a parking lot and roadway to get to it; that is not where the demand is, and it is farther from utilities.”

Larry Whiteley noted that there was a house to the west up on a hill, and stated that he knew that when it floods, water gets all around it. Jim Level clarified with Mr. Whiteley that he was not referring to Mr. Level’s house.

Kirby Crowe stated that Broken Arrow would not let Tulsa County do any fill at all. Mr. Crowe stated that Tulsa County wanted to build a recreation center, but ended up not building anything because of Broken Arrow’s rules.

Darrell Mullins asked if Broken Arrow was to the east of Garnett Rd. and Erik Enyart responded that it was.

Larry Whiteley asked Erik Enyart on what page the staff recommendation was located. Darrell Mullins stated that it was on page 23 of the agenda packet. Mr. Enyart confirmed and stated that, when summarizing the report, he had given a broad overview of the recommendations, but that he was also recommending specific Conditions of Approval, if the Board desired to approve either or both applications. Mr. Enyart stated that the list of recommended Conditions of Approval included information needed to be submitted and other Conditions.

Chair Jeff Wilson asked Kirby Crowe what the application proposed in satisfaction of the “no substantial detriment” prerequisite. Mr. Crowe stated that Staff’s concern was the proximity to the channel and being in the Floodway. Mr. Crowe stated that there could be a risk of someone wanting to shelter in the building. Mr. Wilson stated that there was just that hypothetical in the [FEMA/NFIP] regulations. Mr. Crowe stated that, if they are in a flood, people should head to

higher ground, not a building. Mr. Crowe stated that there was no way to get trapped in the building.

John Carter of 9443 S. Jamestown Ave., Tulsa, stated that it would be hard to open the door. Kirby Crowe stated that there would be water on both sides of the door, and the pressure would equalize. Darrell Mullins stated that it would only equalize after the water gets in. Mr. Carter stated that it would be hard to push against the door when the water rises. Murray King stated that it would be harder than normal but you could still open it [after the pressures equalize].

Regarding “hardship,” Kirby Crowe stated that Haikey Creek Park’s challenge is [that the entire south end is in the Floodway]. Mr. Crowe stated that this was why [he and his client] did two applications.

Chair Jeff Wilson asked Kirby Crowe if there would be any increase in floodwater levels. Mr. Crowe responded, “No,” and stated that additional accommodations could be made. Mr. Crowe stated that [Tulsa County] “can haul offsite for the thickness of the walls.” Mr. Crowe stated that the walls were about 4” thick, and [Tulsa County] could haul a “dumptruck load of fill out to accomplish this.”

Murray King noted that, [per the Architect’s drawings], the difference in elevation between the north and south buildings was 618’ versus 619’.

Larry Whiteley asked Erik Enyart why he was not in favor [of the proposed southern restroom facility application]. Mr. Enyart stated that the FEMA guidance was against building anything in the Floodway, the building would be approximately 100’ from the bank of the creek per GIS, and that he understood that the waters can rise rapidly. Mr. Enyart stated, “In an abundance of caution, a better location, better planning could be applied.”

Larry Whiteley asked if [the proposed southern restroom facility] could be moved further to the west to get it away from the channel. Erik Enyart stated, “The inverse of my concern is also true: being further from the [creek] bank, out of the Floodway, higher in elevation, all these things would reduce the risk of damage to property and harm to individuals using the facility.”

Jim Level stated, “I live out there. It floods there.”

Tulsa County Parks Director Richard Bales stated, “If we’re there, we’ll get people out and put up the barricades,” but that they were not there to do that if after hours. Mr. Bales stated that they sometimes get help from the Bixby Police or the Broken Arrow Police to coordinate these efforts.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Ron Bussert of 14489 S. Gary Pl. Mr. Bussert stated that he was not attending for this item.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Tulsa County Parks Director Richard Bales of 2315 Charles Page Blvd., Tulsa. Mr. Bales indicated that he had no further comments.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Chris Griffin of 3151 E. 145th St. S. Mr. Griffin indicated that he was not attending for this item.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Roger Klein of 8806 E. 131st St. S. Mr. Klein stated that he was attending for BBOA-562. Mr. Wilson informed Mr. Klein that that application had been withdrawn. Erik Enyart stated that it was Continued to this meeting from the last meeting, but it was not on the agenda because its withdrawal removed it from being placed on the agenda. Mr. Enyart stated that he did not think it proper to add an agenda item that was no longer valid [and could not be acted upon]. Mr. Klein stated that he had not received notice. Mr. Klein stated that, since Haikey Creek Park was a Tulsa County park and not a City of Bixby park, there would be no cost to the citizens of Bixby if there is a problem, so he was not concerned. Jim Level of 8806 E. 131st St. S. and Chad Level of 8806 E. 131st St. S. stated that they were attending for BBOA-562 also. Mr. Wilson noted that it was good that they attended so that they could know about these [Haikey Creek Park applications]. Jim Level stated, “The south end needs a restroom.”

Roger Klein, Jim Level, and Chad Level left at this time.

City Attorney Patrick Boulden stated that he did not wish to contradict Erik Enyart, but that he believed the intent of the FEMA regulations was that people “not build a house in the Floodway or Floodplain.” Mr. Boulden stated that such intermittent use—people are only there sporadically—would mean that [the restrooms] “put here would not increase danger to the public, particularly because they’re building with conscious [knowledge] that it is in the Floodplain.”

Chair Jeff Wilson asked Patrick Boulden, “What if FEMA disagrees with us—would there be any penalty?” Mr. Wilson asked if “they can come in and overrule us.” Mr. Boulden indicated he did not know. Erik Enyart stated, “In my 10 years as a Floodplain Administrator, I have always been advised by FEMA representatives that, although FEMA and NFIP rules allow for [Floodplain] variances, because they have to at the Federal level, they always say ‘don’t give variances.’ But I think they are giving mixed messages if they also publish guidance on how to do a [Floodplain] variance for a wet-floodproofed structure.” Mr. Enyart stated that, in response to his question, he had been through a FEMA audit before, and that FEMA will scan the Floodplains for what looks like new developments, and require that Bixby account for them. Mr. Enyart stated that he knew that FEMA would [take exception] if any development was not [required to get a] Floodplain Development Permit, and would [take exception] if any development below the Base Flood Elevation was not [required to get a] Floodplain variance, but he could not answer what FEMA would do if they disagreed with the City’s granting of a Floodplain variance.

Chair Jeff Wilson asked Erik Enyart if the City would have to notify FEMA if they grant a [Floodplain] variance. Mr. Enyart responded affirmatively, stating that, biannually, FEMA sends a form to the City to fill out, requiring reporting of any Floodplain variances.

Chair Jeff Wilson asked the Applicant if O’Brien Park was permitted in the same way. Kirby Crowe stated that that one was not in the Floodway.

Randy Hull of Program Management Group stated, "I cannot come up with an example of a better building to put in the Floodway. I cannot think of a better area for this variance." Mr. Hull stated that the building was considered a "habitable building," that it was not actually habitable in that it is a restroom building, but the FEMA regarded it as a "habitable building."

Kirby Crowe stated that [he and Randy Hull] had met with [City Engineer] Jared [Cottle], and Jared had indicated agreement with the plans.

Erik Enyart addressed the Board and Kirby Crowe and stated, "To perhaps get off high center, recognizing the fixed points: the preferred location [of the southern restroom facility] and the concern about the Floodway, could the building not be padded up to the same elevation as the other one?" Mr. Enyart noted that it was previously stated there was only one (1) foot of elevation difference between the north and south restrooms. Mr. Enyart stated that, if it was brought up to the same elevation, it would be technically equivalent to being out of the Floodway. Mr. Crowe indicated that it would take too much fill.

Chair Jeff Wilson asked Kirby Crowe about the FEMA requirement that the owner acknowledge the increased flood insurance rates. Mr. Crowe stated that this would not be an insurable building.

Felix Ontiveros of 3277 E. 144th Pl. S. stated that he owned TRC [Disaster Solutions, Inc.] and indicated that, if a campus has buildings that are flood-insured and a new building is built below the floodplain, that will not cause all the buildings to be uninsurable, only the new one.

Larry Whiteley addressed Chair Jeff Wilson and stated that he was prepared to make a Motion to separate the applications into two (2) parts. Mr. Wilson asked to entertain a Motion.

Larry Whiteley made a MOTION to separate the two (2) applications and vote on them separately. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

Upon Erik Enyart noting recommended Condition of Approval # 1 was specific to BBOA-564 and Chair Jeff Wilson's clarification on Motion wording, Murray King made a MOTION to APPROVE BBOA-563, finding based on the facts presented in the hearing that the criteria have been satisfied, with the Conditions of Approval as recommended by Staff:

2. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant's engineer.
3. Completion of Compensatory Storage pursuant to an approved Earth Change Permit.
4. Submission of Elevation Certificates, demonstrating depth of variance requested at each proposed site.

5. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,” or using similar language to this effect (Section 13-2C-1.C).
6. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “constructed with materials resistant to flood damage,” or using similar language to this effect (Section 13-2C-1.D).
7. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable. This may be partially satisfied upon the submission of Tulsa County’s flood emergency operation plan, as stated in the application.
8. The Applicant acknowledges, upon application of signature(s) to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

In regard to BBOA-564, Larry Whiteley stated, “If FEMA has a problem with it they can come talk to us.”

Larry Whiteley made a MOTION to APPROVE BBOA-564, finding based on the facts presented in the hearing that the criteria have been satisfied, with the Conditions of Approval as recommended by Staff:

2. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant’s engineer.
3. Completion of Compensatory Storage pursuant to an approved Earth Change Permit.
4. Submission of Elevation Certificates, demonstrating depth of variance requested at each proposed site.
5. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,” or using similar language to this effect (Section 13-2C-1.C).

6. Submission of a current version of a manufacturer’s certification letter, specifying the model(s) to be sited here, and demonstrating that the building(s) are/will be “constructed with materials resistant to flood damage,” or using similar language to this effect (Section 13-2C-1.D).
7. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable. This may be partially satisfied upon the submission of Tulsa County’s flood emergency operation plan, as stated in the application.
8. The Applicant acknowledges, upon application of signature(s) to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-565 – Robert Campbell III & Karen M. Campbell.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 5,000 square foot addition to an existing 900 square foot accessory building in the rear yard for property in the RS-3 Residential Single Family District.

Property located: Part of the SE/4 NE/4 of Section 17, T17N, R13E; 14426 S. Harvard Ave.

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

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Tuesday, July 31, 2012
RE: Report and Recommendations for:
 BBOA-565 – Robert Campbell III & Karen M. Campbell

LOCATION: – 14426 S. Harvard Ave.
 – Part of the SE/4 NE/4 of Section 17, T17N, R13E
LOT SIZE: 1.0 acre, more or less
ZONING: RS-3 Residential Single Family 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 5,000 square foot addition to an existing 900 square foot accessory building in the rear yard for property in the RS-3 Residential Single Family District

SURROUNDING ZONING AND LAND USE: RS-3; Single-family residential and vacant lots in The Reserve at Harvard Ponds and vacant/wooded land across Harvard Ave. to the east zoned RS-3 + PUD 12A.

COMPREHENSIVE PLAN: Vacant, Agricultural, Rural Residences, and Open Land

PREVIOUS/RELATED CASES:

BZ-299 – Tanner Consulting, LLC – Request for rezoning for “Pierce Tract Description” of 6.230 acres and the “Sexton Tract Description” of 3.251 acres for the The Reserve at Harvard Ponds subdivision. PC Recommended Approval 12/11/2004 and City Council Approved the “Pierce Tract Description” of 6.230 acres 02/02/2004 (Ord. # 884). “Sexton Tract Description” added to Ord. # 2085 correcting Ord. # 884 approved 06/25/2012.

BL-293 – Tanner Consulting, LLC – Request for Lot-Split to separate subject property from surrounding 2.251 acres (balance of “Sexton Tract Description”) which was subsequently platted as The Reserve at Harvard Ponds – Prior Approval granted 03/10/2004.

BBOA-552 – Robert Campbell III & Karen M. Campbell – Request for Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 5,000 square foot addition to an existing 900 square foot accessory building in the rear yard for subject property in the RS-3 Residential Single Family District – Withdrawn in December, 2011 due to error in Zoning Map per BZ-299.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

The Applicant visited with Staff on November 28, 2011, and expressed desire to expand the existing 30’ X 30’ (900 square foot) accessory building in the rear / west yard of the subject property, the expansion to be 5,000 square feet. Staff informed the Applicant that the RS-3 district restricts the size of detached accessory buildings to 800 square feet for lots containing less than 1.0 acre, with additional size allowances for larger lots. At 5,900 square feet in aggregate, the accessory building would exceed the maximum allowable for the subject property of 1.0 acre. Staff advised the Applicant that this would only be allowable by Variance from the maximum size restriction. The Applicant filed an application for Variance per BBOA-552, which was to be heard by the Board of Adjustment in January, 2012.

However, in the course of researching the case history of this property, Staff found that it was included in an application for rezoning per BZ-299 (the “Sexton Tract Description” of 3.251 acres), but was not approved for rezoning to RS-3 by approving Ordinance # 884 dated 02/02/2004. Staff informed the Applicant of this fact by letter dated 12/23/2011. Staff suspects the omission was a simple error, involving writing in the ordinance the first part of the legal description (“Pierce Tract Description”) and failing to write the “Sexton,” second part of the legal description. It appears that the request was properly made and it was properly advertised to the Public in the Public Notice published in the Bixby Bulletin and mailed to property owners within a 300’ radius of the exterior of the BZ-299 subject properties.

Because the subject property was actually zoned AG, the Variance per BBOA-552 was invalid, and new Variances would have been necessary (lot size and land area requirements for the AG district, and from the 40’ rear yard setback requirement, etc.). Staff advised the Applicant to withdraw the application and seek the different Variances required if to be constructed in the AG district, or request that the City Council complete the rezoning to RS-3 as originally requested per BZ-299, and request that the Board of Adjustment Continue the Public Hearing and consideration of BBOA-552 to a later meeting date, presuming the “completion” of the rezoning. BBOA-552 was withdrawn in December of 2011.

By email sent June 15, 2012, the Applicant requested “that the City of Bixby complete the rezoning to RS-3 from AG of our property at 14426 South Harvard Avenue, Bixby, OK 74008-7618.” On June 25, 2012, the City Council approved Ordinance # 2085, correcting Ordinance # 844 by including the omitted “Sexton Tract Description” of 3.251 acres. It should be noted that, in addition to the Campbell property, the 3.251 acres included approximately 2 acres of The Reserve at Harvard Ponds abutting to the west and south.

Now that the subject property is zoned RS-3, the same Variances are required as were requested by BBOA-552. The Applicant resubmitted the original application as a new application, BBOA-565, on this agenda for consideration.

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted 1-acre tract Zoned RS-3 and containing a single family house and a 30' X 30' (900 square foot) accessory building in the rear / west yard.

The subject property would have contained 1.208 acres, which is reflected in the legal description as per the Tulsa County Assessor's parcel records. However, as a part of the Lot-Split (BL-293) creating the subject property, the east 50' of the tract (0.208 acres, more or less) was dedicated to the City of Bixby as right-of-way for Harvard Ave. When excluding the land the Assessor now shows belongs to the City of Bixby, the subject property is (perhaps exactly) 1.0 acre in size.

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 5,000 square foot addition to an existing 900 square foot accessory building in the rear yard for property in the RS-3 Residential Single Family District. Per a statement on the application form, the larger accessory building will be used "for the purpose of creating a shop for numerous machines and a scale model train layout." Per the submitted drawing and the Applicant's statement, the building would be extended to the south matching the same west line of the existing building.

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 1.0 acre, and so qualifies on the "sliding scale" for an 892.8 square foot accessory building.

The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each $\frac{1}{4}$ acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the third 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. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in Houser Addition.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "The hardship is the inability in the State of Oklahoma to find homes with large basements at a reasonable cost/solution is an above ground 'Basement.'"

The Applicant's implied claim is that the strict application of the Zoning Code restrictions will result in the prohibition of the proposed 5,900 total 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, "There are nearby properties with multiple outbuildings larger than what I am proposing / property is enclosed with 6' privacy fence."

The implied claim appears to be that, if approved for Variance, the 5,900 total square foot accessory building would be unique in relation to adjoining properties (not specified) which would have still larger accessory buildings.

Per GIS and aerial data, Staff identified what appear to be detached accessory buildings on unplatted, rural residential and agricultural tracts along Harvard Ave. between 141st St. S. and 151st St. S. A few appear to be barns. Of the roughly eight (8) observed, GIS indicates the buildings range in size from roughly 500 square feet to 3,600 square feet. All of them are located on properties zoned AG (compared to RS-3) and all of them, with one (1) exception, are located in unincorporated Tulsa County.

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

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "Have not received complaints from neighbors as to the existing[. S]ome have stated they appreciate the additional privacy the building provides." Under the previous Test and Standard, the Applicant also noted "[the] property is enclosed with 6' privacy fence."

The Applicant's argument is self-explanatory.

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).

As it regards accessory buildings on other properties in the area, 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.

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

Finding of 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.

Staff considered, but could not conceive any viable arguments in satisfaction of this test and standard. If the Board is amenable to this application, it must find that the proposed 5,007.2 square foot exceedance of the 892.8 square foot maximum, a 561% increase, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

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

Erik Enyart noted that the Applicant had informed him, since the [publication] of the Staff Report, that his request was that the building be approved "not to exceed" 5,000 square feet of additional building floor area, which meant that the building may be smaller than that.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Bob Campbell was present and stated that he had recently retired and moved to Bixby. Mr. Campbell stated that, of the six (6) homes he has previously owned, this was the only one without

a basement. Mr. Campbell stated that he found it hard to believe that, in tornado territory, houses here don't have basements. Mr. Campbell stated that he had worked 42 years for the railroad, and had a hobby of model trains, and that the ones he had were a pretty good size. Mr. Campbell stated that he had some property in Glenpool and tried to get a basement built, but when he heard the cost he was shocked, sold that property, and bought this property. Mr. Campbell stated that this property already had a building, but that it was not sufficient size for the train layout he wanted to build. Mr. Campbell stated that the building would be "not to exceed 50' X 100'," and would be attached to the 30' X 30' existing storage building. Mr. Campbell stated that the existing building was an eyesore, whether or not this addition was approved. Mr. Campbell stated that he would plant trees along the back fence, which should cover the building good and block the afternoon sun. Mr. Campbell stated that he originally planned a 50' X 100' building addition, which were "not to exceed" dimensions, and that the building could be smaller due to the way [the manufacturer] assembles the buildings. Mr. Campbell stated that he wished he could have a basement, as he wouldn't need the new building.

Larry Whiteley stated that a basement was not [the same thing as] a metal building. Bob Campbell stated that he called this his "Oklahoma basement." Mr. Whiteley stated, "The people who owned [this property] before you should have built it before Harvard Ponds [was built]." Mr. Campbell stated that the property already had a 30' X 30' building. Mr. Whiteley stated that it could not be helped that Mr. Campbell "bought it that way."

Chair Jeff Wilson asked if the layout required the building size requested. Bob Campbell responded, "Yes," and explained that the dimensions were required due to the curves in the tracks, a 7' radius and 14' across. Mr. Campbell stated that other models use "streetcar curves, as opposed to scale curves as I have."

Bob Campbell stated that this would not be a foundry. Mr. Campbell stated that there was a tablesaw, router, and machine press already in the 30' X 30' building.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Ron Bussert. Mr. Bussert stated that he was not intimately familiar with the laws and ordinances [governing Variances]. Mr. Bussert stated that he lived at 14489 S. Gary Pl., which was directly behind, west of the subject property. Mr. Bussert stated that the 900 square foot building was in place when his family purchased his property, and that it was a deterrent to his family's decision, but they liked the location and size of the house, and accepted that the building provided additional privacy. Mr. Bussert stated that he had spoken with Mr. Campbell, and his neighbor to the south, together with whom they share most of the boundary to the west of the subject property. Mr. Bussert stated that he had trouble having to oppose this application. Mr. Bussert stated, "It also troubles me to oppose restrictions to the use of property," but that it was in his family's interest and that of the neighborhood as a whole. Mr. Bussert stated that the Campbells were nice people—fine neighbors—and that he knew Mr. Campbell was interested in pursuing the hobby, and that it would be enjoyed by his grandkids and the children of the neighborhood. Mr. Bussert stated that 4,500 to 5,000 square feet of additional building was daunting, and was double the size of the footprint of his house. Mr. Bussert expressed objection to adding to the existing building and taking up the backyard. Mr. Bussert asked, "What will happen when the Campbells no longer live there—a metal building with utilities—how would it be used by new owners?" Mr. Bussert

expressed concern for the upkeep of the building by a future owner. Mr. Bussert stated, “The trees would be helpful, but maybe not adequate.” Mr. Bussert stated, “I usually go along with what people want to do—don’t go against what the neighborhood wants to do.” Mr. Bussert expressed concern that “the resale value of my home will be compromised. I am impelled to speak out, as much as it is distasteful.” Mr. Bussert stated, “I won’t be mad if you approve, but I would prefer you not grant the Variance.”

Chair Jeff Wilson asked Ron Bussert to show him where his property was located in relation to the subject property. Mr. Bussert approached the Board and indicated the location of his property on a map.

Chair Jeff Wilson asked, “How does the lady to the south feel about this?” Ron Bussert responded that she didn’t want to be involved or complain, but that she was “concerned like us for the time when the Campbells are not the owners, and the potential decline in resale value” in the future and even when the Campbells were still there.

Larry Whiteley asked Ron Bussert, “Is there any amount [of additional storage building square footage] you can live with?” Mr. Bussert responded, “I don’t know—it’s like the U.S. Supreme Court Justice’s statement on pornography: ‘I’d know it if I saw it.’” Mr. Bussert stated that he had thought of using an [approval condition] stating that, when this owner’s use ends the building must be removed, enforced by the same mechanism that prevents someone from selling their property until a thing is done. Mr. Whiteley asked Erik Enyart if this was not similar to what the Board had done [in the case of BBOA-561] the previous month, where it made it so that when [the manufactured home] went away it could not be replaced. Murray King stated that it was a mobile home [in that case], and a mobile home can be moved. The Board members indicated disfavor for this suggestion.

Larry Whiteley asked how high the building would be. Bob Campbell responded that the ceiling was 10’ in height, but that he was not sure the height of the building, and estimated it at about 14’. Mr. Campbell stated that he was not sure about the height of the 30’ X 30’ building, but that it was built to hold an RV.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Chris Griffin of 3151 E. 145th St. S. Mr. Griffin stated that he was the Harvard Pond Homeowners Association President, which Association represented 186 lots. Mr. Griffin stated, “When this came up, there was no support within the Homeowners Association.” Mr. Griffin stated that this lot drained onto 16 lots, and that it [was estimated to] cost \$10,000 for French drains. Mr. Griffin indicated that several of the 16 lots would be responsible for installing French drains. Mr. Griffin stated that some people “have lots that haven’t sold. Jane [Carter] owns four (4) lots. It’s difficult to sell lots even with a reduced price. We’ve taken a big hit” in home values already. Mr. Griffin referred to the Applicant’s statement about planting trees, and asked about the height, “how big a tree, how long [for it] to grow?” Mr. Griffin stated that it could be 10 years before [the expanded building] was covered up with trees. Mr. Griffin advocated caution and suggested an engineering study be required. Mr. Griffin stated that the Board could postpone this, to allow him to get a petition “so you can see who all don’t want this.” Mr. Griffin stated that the building already exceeded the size restriction. Mr. Griffin stated that the developer who owned the Applicant’s property before

the Applicant allowed his mother to live there, and “left it agricultural.” Mr. Griffin stated that one “can’t do anything about that—we bought knowing that.” Mr. Griffin stated that there were many in his subdivision opposed to this but he told them not to come and to allow him to represent them instead, stating that he thought it would be best the Board’s meeting not be flooded with 186 people.

Erik Enyart addressed Chair Jeff Wilson and stated, “If I may add, I have already talked to the City Engineer about this and he said, if it was approved, it would require a full engineering and drainage report.”

Chair Jeff Wilson consulted the Sign-In Sheet and recognized John and Jane Carter of 9443 S. Jamestown Ave., Tulsa. Mrs. Carter stated that she and her husband owned four (4) lots and one house.

Chair Jeff Wilson asked Jane Carter to show him where the Carter’s property was located in relation to the subject property. Mrs. Carter approached the Board and indicated the location of her property on a map.

Chair Jeff Wilson consulted the Sign-In Sheet and recognized Felix Ontiveros of 3277 E. 144th Pl. S. Mr. Ontiveros stated, “My concerns were addressed already.”

Chair Jeff Wilson recognized Mark Frie. Mr. Frie stated that he lived on Gary Ct., a cul-de-sac that backs up to the property. Mr. Frie said “Everything they said we agree with—the concerns raised tonight I echo.” Mr. Frie addressed Bob Campbell and stated, “Your property looks nice from the street, but we don’t want a bigger building than what we have already.”

Bob Campbell indicated he would reduce the height of the building and make other accommodations to enhance the request for Variance. Mr. Campbell stated that there would be a treeline on three (3) sides to hide the building and block the sun. Mr. Campbell stated that he would have to lose the Bradford pear [trees] in the back [yard]. Mr. Campbell stated that he would plant 30’ to 40’ trees along the fenceline, which would make the trees taller than the rooflines [of the surrounding houses]. Mr. Campbell stated that his property sloped down to Harvard Ave. Mr. Campbell stated that he had been on [Gary Ct.] and could see the [existing building] from the cul-de-sac.

Larry Whiteley asked Bob Campbell if he had thought about putting up the building when he bought the property, and Mr. Campbell stated that he had, and that he was not in favor of having to mow so much grass. Mr. Whiteley asked, “Did you check out if you could?” Mr. Campbell responded that his wife had urged him to buy the house.

Darrell Mullins stated that the regulations have been getting better, and they have square footage regulations, which this building exceeds by far. Mr. Mullins stated that the regulations are not perfect, but are better than they were 10 years ago or so.

Chair Jeff Wilson stated, “If we had bartered for a smaller building it would not do justice to the

homeowners that are not here.” Mr. Wilson stated that the Zoning Code had a sliding scale, which must be met.

Chair Jeff Wilson asked to entertain a Motion. Darrell Mullins made a MOTION to DENY BBOA-565. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Darrell Mullins made a MOTION to ADJOURN. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

The meeting was Adjourned at 7:44 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary