

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
September 04, 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, Dave Hill, Murray King, Darrell Mullins, and Larry Whiteley.

Members Absent: None.

**MINUTES**

1. Approval of Minutes for August 06, 2012

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of August 06, 2012 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Whiteley

NAY: None.

ABSTAIN: Hill.

MOTION CARRIED: 4:0:1

During the Roll Call, Dave Hill explained that he was Abstaining as he was not present at that meeting.

**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-566 – American Foundry Group.** Discussion and possible action to approve (1) a Variance from the 75’ setback requirement of Zoning Code Section 11-7F-4 Table 2 to allow a 57’ setback from the north property line, (2) a Variance from the minimum number of parking spaces and loading berths per Zoning Code Sections 11-10-1 and 11-9-26.D, (3) a Variance from the parking requirements of Zoning Code Section 11-10-4, and (4) a Variance from any other Zoning Code requirement which would prevent the construction of a storage building to support an existing Use Unit 26 foundry and related manufacturing facility, all for property in the IM Industrial Moderate District.

Property located: Lot 1, Block 1, *Morris-Bright Industrial Park Addition*; 14602 S. Grant St.

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

**To:** Bixby Board of Adjustment  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Wednesday, August 29, 2012  
**RE:** Report and Recommendations for:  
 BBOA-566 – American Foundry Group

LOCATION: – 14602 & 14622 S. Grant St.  
 – Lot 1, Block 1, *Morris-Bright Industrial Park Addition*  
LOT SIZE: 9.52 acres, more or less  
ZONING: IM Industrial Moderate District  
SUPPLEMENTAL ZONING: None  
EXISTING USE: Use Unit 26 foundry and related manufacturing facility  
REQUEST: A Variance from (1) the 75’ setback requirement of Zoning Code Section 11-7F-4 Table 2 to allow a 57’ setback from the north property line, (2) the minimum number of parking spaces and loading berths per Zoning Code Sections 11-10-1 and 11-9-26.D, (3) the parking requirements of Zoning Code Section 11-10-4, and (4) any other Zoning Code requirement which would prevent the construction of a storage building to support an existing Use Unit 26 foundry and related manufacturing facility, all for property in the IM Industrial Moderate District

SURROUNDING ZONING AND LAND USE:  
North: AG, IM, & IL; Agricultural.  
South: IM; Industrial and heavy commercial along S. Grant St. in the *Morris-Bright Industrial Park Addition*.  
East: (Across Grant St.) IL; Industrial and heavy commercial along S. Grant St. in the *Morris-Bright Industrial Park Addition*.  
West: AG; Agricultural.

COMPREHENSIVE PLAN: Corridor + High Intensity + Industrial Area.

PREVIOUS/RELATED CASES:  
BZ-45 – Warren Morris – Request for IH, IL, CG, & CS zoning for all of the E/2 SE/4 of this Section less Railroad right-of-way (approximately 80 acres, includes all of *Morris-Bright Industrial Park Addition*, which includes subject property) – Approved for IM, IL, and CS zoning only by the City Council 10/1976 (Ord. # 320).  
BL-24 – Warren Morris – Request for Lot-Split approval to separate the a fractional acreage (at or about Lot 6, Block 3, *Morris-Bright Industrial Park Addition*) from a parcel of land being all of the E/2 SE/4 of this Section less Railroad right-of-way (approximately 80 acres, includes all of *Morris-Bright Industrial Park Addition*, which includes subject property) – PC Approved 09/27/1976

subject to a formal application being made and Board of Trustees Approved 10/05/1976 – Applicant told the PC that the buyer agreed to include the tract in the plat.

Preliminary Plat of Morris-Bright Industrial Park Addition – Request for Preliminary Plat approval for Morris-Bright Industrial Park Addition (includes subject property) – PC recommended Conditional Approval 09/27/1976 (Board of Trustees action not researched).

Final Plat of Morris-Bright Industrial Park Addition – Request for Final Plat approval for Morris-Bright Industrial Park Addition (includes subject property) – PC recommended Conditional Approval 10/18/1976 (Board of Trustees action not researched). Final Plat recorded October 27, 1976.

BL-31 and/or BL-32 – Warren Morris – Request for Lot-Split approval to separate subject property into northern and southern approximate halves – Board of Trustees Approved 06/06/1977 and not reviewed by the PC per case notes (actual case number not known and BL-30 was also possibly known as BL-31).

BBOA-87 – Madan P. Makhani – Request for Variance from the 75' setback from the north line of subject property – BOA Denied 04/13/1981.

BLPAC-9 – American Foundry Group – Request for approval of a Landscape Plan Alternative Compliance plan per Zoning Code Section 11-12-4.D from the landscaping requirements of the Zoning Code which the subject property does not meet – Pending PC consideration 09/17/ 2012.

#### RELEVANT AREA CASE HISTORY:

#### BACKGROUND INFORMATION:

American Foundry Group (AFG) is a foundry located at the north end of Grant St. on Lot 1, Block 1, Morris-Bright Industrial Park Addition, addressed 14602 S. Grant St. The facility has been in place a number of years, “prior to 1982” per the Applicant. AFG requested Building Permit # 19128 to build a 4,800 square foot storage building (“pole barn”) at the northwest corner of their lot.

Staff received a landscape plan on July 31, 2012. Since a site plan was not submitted for Zoning Code compliance review, the landscape plan was also reviewed as an administrative site plan for general Zoning Code review. Staff reviewed the plan and provided a review email on August 01, 2012, citing known and probable deficiencies in landscaping, a proposed encroachment on the building setback from the north property line, and known and probable parking deficiencies.

By letter dated August 01, 2012, AFG requested the City of Bixby grant them a Conditional Building Permit, so that they could build the storage building as soon as possible, stating that “time is of the essence.”

Upon the authorization by the City Manager, the receipt of an Elevation Certificate and the requisite applications on August 03 and 06, 2012, all as required, Staff issued the Conditional Building Permit “subject to the approval of Variance application BBOA-566 and alternative landscape plan BLPAC-9 and any conditions attached to any of them. By acceptance of this Conditional Building Permit, owner acknowledges they proceed at their own risk prior to all required approvals.” During a site inspection August 23, 2012, Staff observed the storage building has been built and appears from the outside to be complete.

The owner has also made application for a Landscape Plan Alternative Compliance plan (Zoning Code Section 11-12-4.D) from the landscaping requirements of the Zoning Code which the landscape plan does not meet. BLPAC-9 has been placed on the September 17, 2012 Planning Commission agenda.

#### ANALYSIS:

Subject Property Conditions. The subject property is located at the north dead-end of Grant St., is addressed 14602 S. Grant St., and is zoned IM Industrial Moderate District.

The subject property consists of Lot 1, Block 1, Morris-Bright Industrial Park Addition, but is divided into two (2) parcels, evidently divided at some point in time (perhaps per BL-31 or BL-32).

The subject property contains a Use Unit 26 foundry and related manufacturing facility occupying all of its 9.52 acres. It contains a closed “V”-shaped office building with a central courtyard and with the rounded nadir pointing west, and several buildings of various sizes located about the property. The new building, a metal building for storage (“pole barn”) is located in the northwest corner of the subject property and has been issued an address of 14622 S. Grant St. for utility connection purposes.

The subject property is relatively flat and appears to drain to the north and east to a drainage basin that drains east underneath Memorial Dr. just south of 146<sup>th</sup> St. S., which in turn ultimately drains to the Arkansas River.

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 proposed building setback of 57' from north property line does not meet 75' minimum setback for the IM district when abutting AG district. The Applicant did not want to relocate the building to meet the 75' setback from the north line, and has requested a Variance to put the building where they have it indicated on the plans.

Secondly, Zoning Code Section 11-10-1 requires that, when new buildings are to be built, the minimum numbers of parking spaces and loading berths are required based on the aggregate of all buildings on the lot. For a Use Unit 26 foundry, 1 parking space is required for each 1,000 square feet of building floor area, and 1 loading berth is required per 2,000 to 40,000 square feet of floor area, plus 1 per 40,000 to 100,000 square feet, plus 1 per each additional 100,000 square feet of floor area (Section 11-9-26.D). 31 parking spaces are identified on the landscape plan. The total square footage of buildings has not been provided; however, the Applicant's site designer has estimated 256 parking spaces would be required, suggesting an aggregate of 256,000 square feet upon completion of the new storage building. However, in a letter dated August 29, 2012, the Applicant stated that there are seven (7) buildings with an aggregate of over 67,000 square feet of floor area (it was not specified whether the new storage building was part of those statistics). Loading berths, if any exist, are not identified or dimensioned. The Applicant is requesting a Variance from the minimum number of parking spaces and loading berths per Zoning Code Sections 11-10-1 and 11-9-26.D.

Individual parking space designs must comply with Zoning Code Section 11-10-4.A. Information has not been provided to demonstrate that they each and all comply with the design standards. If any of them do not, the third element of this Variance would relieve the property from this design standard.

It is possible that other aspects of the site do not comply with minimum standards of the Zoning Code. The fourth and final Variance element of this application is from "any other Zoning Code requirement which would prevent the construction of a storage building to support an existing Use Unit 26 foundry and related manufacturing facility, all for property in the IM Industrial Moderate District." This 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 landscaping deficiencies. Due to the fact that the Applicant is not proposing to comply with the minimum number of required landscaping trees, the Planning Commission should not approve the Alternative Compliance Plan per BLPAC-9. No Alternative Compliance Plans in Bixby have been approved when they did not propose compliance measures at least as good as the absolute minimum standards required. Approval of any proposal to not meet minimum landscaping requirements should only be granted in the form of a Variance. By letter dated August 29, 2012, the Applicant has requested to use this fourth Variance element for this purpose.

As the Applicant desires to apply this fourth and final Variance element to landscaping, based on a cursory review of the landscape plan dated August 01, 2012, Staff has identified the following landscaping standards which would or may require a Variance as the site is presently planned:

- 15% Street Yard Minimum Landscaped Area Standards (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, which is 25'. Landscaped area percentage of Street Yard calculations not provided. **Compliance with this standard cannot be determined.**
- Minimum Width Landscaped Area Strip Standards (Section 11-12-3.A.2 and 11-12-3.A.7): Standard is minimum Landscaped Area strip width shall be 7.5' along Grant St. Landscaped area width separating parking lot from Grant St. right-of-way not provided. **Compliance with this standard cannot be determined.**
- Building Line Setback Tree Requirements (Section 11-12-3.A.4): Standard is one (1) tree per 1,000 square feet of building line setback area. Excluding the building line setbacks along

Grant St. (which is a Street Yard), the IM district requires a 75' setback from the north and west property lines abutting an AG district. Tree requirement calculations are as follows:

- West line @  $607.35' \times 75' = 45,551$  square feet / 1,000 = 46 trees. Some trees in West Line Setback Area (total cannot be determined due to lack of representation of 75' setback line and lack of specificity in terms of caliper per each counted). **Compliance with this standard cannot be determined.**
- North line @ [ $615' - 75'$  West Line Setback – 25' Street Yard =]  $515' \times 75' = 38,625$  square feet / 1,000 = 39 trees. Six (6) trees in North Line Setback Area (but total cannot be determined due to lack of specificity in terms of caliper per each counted). **Compliance with this standard cannot be determined.**
- Street Yard Tree Requirements (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 25' setback along Grant St. Per my calculations and notes on the plan, the street yard is 12,500 square feet / 1,000 = 13 trees required in Street Yard. 2 presumed, unlabeled trees provided in the Street Yard landscaped area. **This standard is not met.**
- Tree to Parking Space Ratio Standard (Section 11-12-3.C.2): Standard is one (1) tree per 10 parking spaces. 31 parking spaces exist.  $31 / 10 = 3.1 = 4$  trees required. Total trees cannot be determined due to lack of specificity in terms of caliper per each counted). **Compliance with this standard cannot be determined.**
- Irrigation Standards (Section 11-12-3.D.2): Irrigation required for all required landscaping. Information on existing or planned irrigation not provided. **This standard is not met.**
- Miscellaneous Standards (Sections 11-12-3.C.7, 11-12-3.D, etc.): Actual caliper of counted trees less than 6" in diameter not provided. **This standard is not met.**

It should be noted that the Applicant's Zoning Code interpretations rendered in the summary notes on the Landscape Plan are not consistent with Bixby's official interpretation. The Applicant should update the summary to reconcile it with Bixby's official interpretation.

Setback Variance – Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "Setting the building 75 feet from the north property line would make the distance between the proposed pole barn and the existing building 32 feet. We desire the space on the north and south sides of the building to be relatively equal. Making the setback 57 feet allows 50 feet between the existing building and the pole barn."

Setback Variance – 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, "The land to the north of Lot 1, Block 1, Morris Bright Industrial Park is zoned 'AG' and is used for agriculture."

BBOA-87 – Madan P. Makhani was a similar request for Variance from the 75' setback from the north line of subject property. The Board of Adjustment denied it on April 13, 1981. In the report to the Board of Adjustment Staff did not appear to object to that Variance, and observed "4. The Comprehensive Plan projects high intensity industrial for the surrounding property."

The property which would naturally be most affected by this setback Variance would be the approximately 71-acre tract abutting to the north, which is zoned AG, IM, and IL. The current Comprehensive Plan designates it Corridor + High Intensity + Industrial District, except for the parts of it lying west of the E/2 of the E/2 of the Section, which is in Special District # 3.

Setback Variance – 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 "Making this setback 57 feet allows 50 feet between the existing building and the pole barn. The 57 feet setback will create no adversity to the "AG" zoned property and has no adverse impact on the American Foundry Group's property or the general public."

Setback Variance – 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 requested Variance is quantifiable and equals a ( $75' - 57' =$ ) 18' reduction in the setback. The Board will need to determine that the requested 18' setback reduction is the minimum necessary to relieve whatever hardship may be found.

Parking and Loading Number Variance – Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “Modification to the parking or loading berths would cause a disruption in the business, an additional unforeseen cost to the company. The cost to add additional parking would be an unnecessary financial burden to the company.”

Parking and Loading Number Variance – 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 presently 31 employee parking spaces at the office. Some additional employees park at or near one of the other buildings on the site. We are requesting a variance from the 4 loading berths required under this Section. Our overhead doors are presently in the desired location for the foundry business. We do not request any more or less doors for loading and unloading materials and products. The existing buildings were built prior to 1982. The parking arrangement for employees has been sufficient for the American Foundry Group business for 30 years.”

Parking and Loading Number Variance – 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 “There are presently 31 employee parking spaces at the office. Some additional employees park at or near one of the other buildings on the site. We are requesting a variance from the 4 loading berths required under this Section. Our overhead doors are presently in the desired location for the foundry business. We do not request any more or less doors for loading and unloading materials and products. The existing buildings were built prior to 1982. The parking arrangement for employees has been sufficient for the American Foundry Group business for 30 years.”

By letter dated August 29, 2012, the Applicant has added, “There are multiple parking areas on the site for employees. There is an existing employee parking lot on the east side of our main office. Additional employee parking is located in the areas closest to their work area. There is presently sufficient parking for our employees” and “The present loading berths and their sizes for each building will remain as are now in place. We are not adding any overhead doors to our existing buildings.”

Parking and Loading Number Variance – 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 requested Variance is quantifiable and equals a reduction in the number of parking and loading spaces from 256 (per the Applicant) parking spaces and 3 (calculated based on aggregate square footage provided by the Applicant) loading berths to whatever actually now exist. The Board will need to determine that the requested reductions are the minimum necessary to relieve whatever hardship may be found.

Parking and Loading Design Variance – Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “Modifying the existing parking space sizes and drive aisles [to comply with design standards] will create a severe financial burden to the company....Making the existing gravel pavement areas all weather asphalt or concrete would create a severe financial burden to the company.”

Parking and Loading Design Variance – 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, “The parking spaces are existing [in their current configurations]... Many areas of the site do have an all weather material of asphalt or concrete.”

Parking and Loading Design Variance – 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 “The parking spaces are existing [in their current configurations]... Many areas of the site do have an all weather material of asphalt or concrete.”

By letter dated August 29, 2012, the Applicant has added, “The present loading berths and their sizes for each building will remain as are now in place. We are not adding any overhead doors to our existing buildings.”

Parking and Loading Design Variance – 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. However, to determine them, one would need to know (1) precisely how many parking spaces there are, including those on unpaved surfaces, and (2) the actual dimensions of each. Then, the Board would have to determine if the number of paved parking spaces was adequate or not, and if the actual dimensions of the individual parking spaces were adequate in each case.*

Landscaping Variance Analysis. *The application does not currently request a Variance from the landscaping standards specifically.*

*As stated above, due to the fact that the Applicant is not proposing to comply with the minimum number of required landscaping trees, the Planning Commission should not approve the Alternative Compliance Plan per BLPAC-9. No Alternative Compliance Plans in Bixby have been approved when they did not propose compliance measures at least as good as the absolute minimum standards required. Approval of any proposal to not meet minimum landscaping requirements should only be granted in the form of a Variance.*

*By letter dated August 29, 2012, the Applicant has expressed desire to use the fourth and final Variance element to apply to landscaping deficiencies. The parts of the letter pertaining to this Variance element include:*

*“American Foundry Group is requesting the Bixby Board of Adjustment use the fourth Variance element to apply to landscaping on the American Foundry Group 9.52 acre site. American Foundry Group has constructed a 60’x80’ pole barn, situated on Lot 1, Block 1, Morris Bright Industrial Park. This pole barn was constructed for general storage and has no plumbing or heating/cooling. This building did not add employees to our company.*

*American Foundry Group constructed the existing seven buildings, consisting of over 67,000 sf and the parking on Lot 1, Block 1, Morris Bright Industrial Park prior to 1982. The existing seven buildings, parking, parking surfaces and landscaping have been in place for 30 years. American Foundry Group’s Bixby facility precedes the Bixby Landscape ordinance 727, 10/9/1995 and amended in 2006. American Foundry Group is therefore requesting the Bixby Board of Adjustment use the fourth Variance element for a variance to the Bixby Zoning Code Landscape requirements for the following purposes:*

- 1. There are presently 30 mature trees on the American Foundry site. Twenty two of these trees are larger than 6” caliper and are credited as forty four trees. The additional eight trees provide 52 trees for this 9.52 acre industrial site. No additional trees or plants are planned.*
- 2. The existing American Foundry Group industrial site has 158,009 sf of grass, trees and landscaping. This is 38% of the entire site.*
- 3. ....*
- 4. We presently water our plants and grass from a hose bib. We are not proposing the installation of underground irrigation system, yard hydrants or additional hose bibs.*

*....  
American Foundry Group for over 30 years has been one of the largest employers in the City of Bixby and has been a presence in the community. As a direct result of the pole barn construction, modification to the parking, loading berths and installing additional trees with irrigation would cause additional unforeseen cost to American Foundry Group. The cost to install additional parking and landscaping would be an unnecessary financial burden to the company. In today’s economy we like many businesses are doing everything we can to keep cost down for our products and services, while keeping or adding to our employee base. For these reasons we respectfully request the Bixby Board of Adjustment consider and approve our request.”*

Staff Recommendation. *The Board must find that the arguments provided by the Applicant and Staff appear to substantially meet the tests and standards of the Zoning Code and State Statutes for each of the Variance elements. 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.*

Larry Whiteley asked Erik Enyart what the tree issue was about. Mr. Enyart responded that the Applicant's design professional accounted the trees on the property, and the total was less than what was required. Mr. Whiteley asked, "How many less?" Mr. Enyart responded, "I'm not sure, it's in the report; not enough—substantially not enough." Mr. Enyart stated that the Zoning Code required compliance with the landscaping standards when the Building Permit is issued, and that, in order to not be required to plant new trees, this Variance [could] take care of that. Mr. Enyart stated that the Applicant had also submitted an application to the Planning Commission for a Landscape Plan Alternative Compliance approval, but that, since the proposal was less than the absolute minimum required by the Code, if the exception to the minimum standards was to be approved, the Variance should be the vehicle used to do it.

Larry Whiteley asked Erik Enyart where the storage building was located. Mr. Enyart responded that it was in the northwest corner of the property. Mr. Whiteley confirmed with Mr. Enyart that he said the northwest corner.

Chair Jeff Wilson recognized JR Donelson of 12820 S. Memorial Dr. # 100. Mr. Donelson approached the Board members with a full-sized copy of the landscape plan and indicated the location of the building on the property.

Larry Whiteley asked Erik Enyart, "Where do you think they could plant trees?" Mr. Enyart responded, "I didn't specify that in the report [because] it's up to them to put it in their plan, if they want to plant trees, but they're not wanting to plant trees."

JR Donelson continued to describe the location of the buildings, the stormwater detention pond, and the location of the new building at 57' off the north property line. Mr. Donelson expressed how the distance allowed for the maneuver of vehicles and use of the facility as needed for the business' operations generally.

Chair Jeff Wilson confirmed with another Board member that it was in order to entertain a Motion for each Variance individually.

Chair Jeff Wilson made a MOTION to APPROVE the Variance from the 75' setback requirement. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson asked to entertain discussion on the second Variance element. JR Donelson asked Chair Jeff Wilson, "What's the second one?" Erik Enyart stated that the second Variance element was from the number of parking spaces and loading berths required.

JR Donelson stated that there would be no new employees in relation to the storage building. Mr. Donelson stated that the storage building would have no plumbing and no heating or cooling, and

would only have electricity. Mr. Donelson stated, in regard to the additional parking, American Foundry did not need additional parking as they had added no employees. Mr. Donelson stated that there was an existing parking lot at the office building, and that the shop personnel parked elsewhere.

Larry Whiteley made a MOTION to APPROVE the Variance from the number of parking spaces and loading berths requirement. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson introduced the third Variance element. Erik Enyart stated that it was primarily pertaining to the design of parking [lots and] spaces [per Zoning Code Zoning Code Section 11-10-4.A].

JR Donelson stated that American Foundry “didn’t budget for striping.”

Erik Enyart stated that some of the same arguments just used for the parking and loading number Variance element would seem to apply to this Variance element.

Murray King made a MOTION to APPROVE the Variance from the parking lots and parking spaces design requirements per Zoning Code Zoning Code Section 11-10-4.A. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson introduced the fourth Variance element. Erik Enyart stated that the fourth element was a “catch-all,” intended to cover any other design element of which the plans would not meet the requirements of the Zoning Code. Mr. Enyart stated that, in this case, the Applicant requested that this last one be specifically applied to the landscaping requirements which the plans do not meet.

JR Donelson stated that over 30% of the land area was green, and that there were at least 30 mature trees, which counted as 52 under the Zoning Code because of their size. Mr. Donelson stated that 38% of the site was green as it is.

One of the Board members asked if there was a full list of landscaping Variances. Erik Enyart stated that the full list was located on page 32 of the Agenda Packet, and that he had identified

seven (7) of them from which the plans do not meet the requirements or could not be determined if they comply.

Larry Whiteley asked Erik Enyart how many trees were required. Mr. Enyart responded, “I can’t say because there is not enough information on the plans to determine.” JR Donelson described the tree situation briefly.

Murray King repeated that 38% of the site was landscaped and asked Erik Enyart how that did not meet the landscaping requirements. Larry Whiteley simultaneously asked a question of JR Donelson and the two discussed the matter briefly. Mr. Enyart responded to Mr. King that this was the percentage of lot greenspace that the Applicant was arguing should be recognized as compensating for the lack of compliance with the technical requirements of the Code.

Dave Hill made a MOTION to APPROVE the fourth Variance element from any other Zoning Code requirement which would prevent the construction of a storage building to support an existing Use Unit 26 foundry and related manufacturing facility, all for property in the IM Industrial Moderate District. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

3. **BBOA-567 – L.C. Neel & Nelle Ellen Neel c/o Patricia Neel, Atty.** Discussion and possible action to approve a Variance from the minimum parking lot setbacks per Zoning Code Section 11-10-3, ground sign regulations, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent the replacement and 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.

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

**To:** Bixby Board of Adjustment  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Wednesday, August 29, 2012  
**RE:** Report and Recommendations for:  
BBOA-567 – L.C. Neel & Nelle Ellen Neel c/o Patricia Neel, Atty.

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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 Corridor Appearance District  
ZONING:  
EXISTING USE: Use Unit 14 Kum & Go gas station

**REQUEST:** Variance from the minimum parking lot setbacks per Zoning Code Section 11-10-3, ground sign regulations, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent the replacement and 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 111<sup>th</sup> 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 111<sup>th</sup> St. S.) shopping and trade center development at 8303 : 8315 E. 111<sup>th</sup> 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. 111<sup>th</sup> 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 111<sup>th</sup> 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. 111<sup>th</sup> St. S. – BOA Approved 02/13/1984.

**BBOA-559 – Barrick Rosenbaum for L.C. & Nelle Ellen Neel** – Request for 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 subject property – BOA Conditionally Approved 05/07/2012.

License Agreement – HRAOK, LLC for L.C. Neel & Nelle Ellen Neel – Request for License Agreement to allow the continued maintenance of an existing ground sign, outdoor lighting, and parking and paving areas on street right-of-way for subject property, as required by BBOA-559 – City Council Approved 05/14/ 2012.

**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. 111<sup>th</sup> 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. 111<sup>th</sup> 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. 111<sup>th</sup> 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. 111<sup>th</sup> 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. 111<sup>th</sup> 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. 111<sup>th</sup> 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. 111<sup>th</sup> 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 HRAOK, LLC, to discuss Kum & Go’s plans to expand their current facility on the subject property. The expansion plans included (1) replacing the existing approximately 50’ X 60’ (3,000 square feet) building with a new 44.75’ X 111’ (4,958 square feet) building 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 were to have remained in place.

The owners made application for several Variances per BBOA-559: "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."

On May 07, 2012, the Board of Adjustment Approved BBOA-559 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. 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.
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. / 111<sup>th</sup> 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.

On May 14, 2012, the City Council approved the Applicant's request for License Agreement pursuant to # 4 above.

The latest plan would have the Kum & Go site completely flattened and rebuilt, with the singular canopy and the 4,958 square foot building set back much further than existing conditions.

The first of the list of Conditions of Approval of BBOA-559 states:

"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." (emphasis added)

Substantial compliance with the site plan would not appear to be possible with the redesign.

Because they would not be covered by BBOA-559 and Kum & Go's redesign will not bring the site fully up to code, the Applicant has requested new Variances similar to the previous application. Due to the redesign, the number and scope of Variances requested by this application is somewhat fewer and smaller, respectively, as compared to BBOA-559.

#### ANALYSIS:

Subject Property Conditions. The subject property is located at the southeast corner of 111<sup>th</sup> 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 111<sup>th</sup> St. S. frontage, a car wash, a daycare, and a couple office buildings. Along with the perimeter arterial streets, the development is served by private streets 111<sup>th</sup> Pl. S. and S. 82<sup>nd</sup> E. Pl., together 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 111<sup>th</sup> 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 Surface Transportation Program (STP) 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 111<sup>th</sup> 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 (but actually revised since), 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, ground sign regulations, certain landscaping standards per Zoning Code Section 11-12-3, and any other Zoning Code requirement which would prevent the replacement and 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 111<sup>th</sup> 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 111<sup>th</sup> St. S. rights-of-way. Per Exhibit A.3 of this application, a Site Plan dated 02-27-2012 (but actually revised since), the Applicant proposes to install 5'-wide parking lot setbacks/landscaped strips along both Memorial Dr. and 111<sup>th</sup> St. S. At 5' in width in both cases, neither street frontage will comply with the minimum parking lot setbacks, and so a Variance is being requested to reduce the required setbacks.

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] and/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.

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 (but actually revised since), Staff has identified the following landscaping standards which also would or may 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 111<sup>th</sup> St. S. right-of-way. The Applicant is proposing 5’-wide parking lot setbacks/landscaped area strips along both streets. Per the “Alt. Compliance Landscape Plan” drawing received 08/29/2012, 17% is proposed within the Memorial Dr. Street Yard and 14% within the 111<sup>th</sup> St. S. Street Yard. The latter does not comply with the requirement.
- 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 111<sup>th</sup> St. S., are also the minimum required landscaped strip widths per these sections. As the landscaped strips along both streets are only proposed to be 5’ in width, 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. It appears that the handicapped-accessible parking spaces and the two (2) regular spaces to the north of it would not comply with this standard.

It is possible that other aspects of the site development plans will not comply with minimum standards of the Zoning Code. The final element of this application requests a Variance from “any other Zoning Code requirement which would prevent the replacement and 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 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.

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 existing + proposed storm sewer improvements by the City cause setback restrictions on East property line.” The provided narrative expands on the site constraints and the need to “remov[e] the existing store and canopies to build a new 4,958 square foot store and 123’ X 49’ canopy,” which existing store is “very outdated.” On the sign matter, the narrative provides, “Due to site restrictions, Kum & Go plans on re-imaging and/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 parts of the site improvements in situ and keeping in place certain 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) 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.
- Possible relocation of underground fuel storage wells and distribution lines and electrical lines if and as required to achieve the parking lot setback / landscaped strip requirements.
- 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 in front 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 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 signs and driveway access points 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 these 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, 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, smaller lot size, and significant existing storm sewer and proposed storm sewer structures required for the site..." and "Due to site constraints as defined above and the need for necessary vehicular circulation such as the maneuvering requirements of fuel tankers, etc., Kum & Go is requesting a 5' landscape edge along 111<sup>th</sup> Street and Memorial Drive be granted to provide adequate spacing between internal curb lines, fueling stations and parking areas" and "Due to site restrictions, Kum & Go plans on re-imaging and/or replacing the current sign in its same location...." 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." However, the provided information states that the electric line will be relocated and the easement will be removed in favor of a new 20' U/E along the east line. This PSO easement removal allows the building to be reconstructed approximately 21.1' from the east property line.

In addition to the site constraints described in the application and above, 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. 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.

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, the site redevelopment possibilities were necessarily "pinched" and relatively inflexible. However, since the canopies are being demolished and replaced, this fact no longer has implications for the parking lot setback and most of the landscaping requirements.

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. At the Board of Adjustment hearing of BBOA-559, Applicant Alan Hall testified 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]. The Board may wish to solicit further 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.

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 standard and that requiring removal of other site improvements from the 'corner-cut' right-of-way.

These facts may also partially support claims to this test and standard for the parking lot setback reduction and concomitant landscaped strip requirements. However, the complete site redesign relieves site congestion by allowing additional areas for site design flexibility. The site elements are no longer as completely locked in place as they would be were the pump canopies and building locations fixed. It would appear that this change gives opportunity to bring the site up to code in terms of the 15' minimum parking lot setback / landscaped strip along Memorial Dr. and the 10' minimum parking lot setback / landscaped strip along 111<sup>th</sup> St. S. It also appears that other landscaping Variances can be avoided by a redesign intentionally seeking to bring the site up to code. Such may require adjusting the canopy and/or building slightly to ensure proper internal circulation.

The new argument advanced by this application calls on "the need for necessary vehicular circulation such as the maneuvering requirements of fuel tankers, etc., Kum & Go is requesting a 5' landscape edge along 111<sup>th</sup> Street and Memorial Drive be granted to provide adequate spacing between internal curb lines, fueling stations and parking areas." Exhibit A.3 of this application, a Site Plan dated 02-27-2012 (but actually revised since), indicates a conceptual "fuel tanker wheel path" and a conceptual "commercial vehicle wheelpath." These wheelpaths indicate relative difficulties in maneuvering large vehicles into and around the site. Staff is not confident, however, that proper maneuverability cannot be maintained while bringing the parking lot setbacks / landscaped strip widths up to minimum widths, if site elements were pushed further south and/or east to compensate. However, the Board may wish to solicit testimony as to the costs and/or other difficulties involved in making such adjustments.

The other exception to Staff's opinion of satisfaction of this test and standard 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 above-mentioned site constraints. This element is discussed in detail in the "Section 11-12-3.B.1 Analysis" section of this report.

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 variances listed will only allow for an improved site and better use for Bixby." The narrative also offers, "A portion of the pavement area (545 sf) surrounding the existing the sign will be removed and will be reconstructed to provide a curbed edge for better traffic circulation and increased aesthetic value at the intersection."

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 within the Street Yards, as required, and elsewhere about the property. It appears that compensatory greenspace areas will be along the proposed U/E and drainage easements to be located along the east and south lines, and in the area immediately south of the building. 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.

The remaining greenspace areas along the south and east property lines will be roughly 21' to 23' in width. The Zoning Code does not require landscaped strips along these boundaries; only along the Memorial Dr. and 111<sup>th</sup> 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, the Street Yard tree requirement will be met, 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, "Kum & Go...understands they shall secure an easement, license agreement, or other official approval from... the Oklahoma Department of Transportation (ODOT) to maintain the existing sign, light poles, and paving in the public right-of-way for U.S. Hwy 64 / Memorial Dr. / 111<sup>th</sup> Street." The City Council approved the required License Agreement 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 property owner approval being granted, and the final recommended Condition of Approval in this report corresponds 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. Five (5)-foot wide parking lot setbacks / landscaped strips are proposed along both Memorial Dr. and 111<sup>th</sup> St. S. Twenty-one to 23'-wide landscaped strip areas, to contain the minimum number of landscaping trees per each landscaped area as would otherwise be required, are proposed along the south and east property lines. Fourteen Per-Cent (14%) of the 111<sup>th</sup> St. S. Street yard is proposed for landscaping when 15% is required (but the Memorial Dr. Street Yard will have 17% landscaping, which would appear to compensate). The Board must find these measurable elements satisfactory in terms of this test and standard.

Section 11-12-3.B.1 Analysis. Per Exhibit A.3 of this application, a Site Plan dated 02-27-2012 (but actually revised since), there will be a “bump out” parking lot island at the north end of the parking lot flanking the west side of the building. The Applicant proposes 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 for most of that parking lot. However, it appears that the handicapped-accessible parking space and the two (2) spaces immediately north of it will not be within 50’ of this landscaped area nor the landscaped area at the south end of the building.

The Applicant is now proposing a landscaped area in the “bump out” parking lot island where the Applicant did not in the case of BBOA-559. To avoid the Variance element, the landscaped area island could be relocated further south. However, the relocation or an additional landscaped area island would necessarily be placed nearer the entrance to the building, creating a possible inconvenience to customers and thus possible financial loss to the Applicant. Further, it is likely that the (24-hour, in this case) daily vicissitudes of pedestrian and automobile traffic would cause this landscaping to be more at risk for damage, and thus more costly to maintain, than its currently-proposed location, out of the most direct and convenient path of customers travelling between their parked cars and the building entrance. Therefore, failure to gain approval of this Variance element would appear to present an Unnecessary Hardship on the Applicant.

The maximum parking space to tree standard appears to be partially designed to break up large expanses of parking lots for aesthetic purposes, heat-island effect reduction, and ecological purposes. However, at one (1) acre in lot area, the subject property is not particularly large, and the parking lot is no larger or smaller than required by the Zoning Code, which facts negate the acuity of this purpose in this case.

The purposes of the maximum parking space to tree standard appear to also include, per the landscaping chapter of the Zoning Code: promoting the “preservation and replenishment of valued trees and vegetation” (Section 11-12-1.B), and aiding in the establishment of “an ecological balance by contributing to air purification, oxygen regeneration, ground water recharge and storm water runoff retardation” (Section 11-12-1.C). In response to this, the Applicant is proposing the addition of one (1) new landscaped area island at the north end of the parking lot, in lieu of one (1) more strategically-placed landscaped area island.

These facts would appear to satisfy the No Substantial Detriment test and standard in respect to this Variance element.

The addition of one (1) new landscaped area island at the north end of the parking lot, in lieu of one (1) more strategically-placed landscaped area island would also appear to be the Minimum Necessary to relieve the hardship.

Staff is not able to conceive of any argument in furtherance of satisfaction of the Peculiar, Extraordinary, and/or Exceptional test and standard. The need for this Variance element appears to be driven by the dimensions of the building (111’ length and 44.75’ depth plus 10’-wide sidewalk). Perhaps, during the public hearing and consideration of this case at the meeting, the Board can find satisfactory an argument built on that foundation.

Staff Recommendation. As stated above in certain sections of this analysis, the Board would be within its right to request the Applicant testify as to the costs and other difficulties 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.

Secondly, the Board must find with the Applicant that the site cannot be adjusted to comply with the 15’ and 10’ parking lot setbacks / landscaped area strip width standards while maintaining adequate internal mobility.

Finally, in the analysis above, Staff has recommended the Board discuss and consider with the Applicant the Peculiar, Extraordinary, and/or Exceptional test and standard in relation to 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 the “Cover Sheet & Site Plan” and the “Alt. Compliance Landscape Plan” drawings received 08/29/2012, 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 Applicant shall secure an easement, license agreement, or other official written expression of no objection 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.*

Erik Enyart stated, “I think more effort can be put into trying to bring the property up to code.”

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Alan Hall of HRAOK, Inc., 1913 W. Tacoma Ste. A, Broken Arrow, 74012, stated that he would have comments on the recommended Conditions of Approval later, and introduced Ryan McCarty of his firm.

Ryan McCarty of HRAOK, Inc., 1913 W. Tacoma Ste. A, Broken Arrow, 74012, presented a full-size copy of the site plans and described the old site [as per BBOA-559], the proposed new site, and how they compared each to the other. Mr. McCarty stated that Kum & Go would remove the existing canopies, which extend to the right-of-way in one place, with a new, singular canopy as indicated on the plans. Mr. McCarty stated that Kum & Go had said that it would be the same cost to retrofit the site [as per BBOA-559] as it would to rebuild the entire site as per this new plan. Mr. McCarty stated that, consequently, Kum & Go [asked HRAOK, Inc.] to move the PSO easement. Mr. McCarty stated that he could only get a 5’ landscaped edge along Memorial Dr. and 111<sup>th</sup> St. S., and that the reason was that the fuel tankers could not circulate within the site [with larger landscaped strips]. Mr. McCarty presented a plan showing wheelpaths and described the motions of fuel tankers and commercial vehicles within the site.

Larry Whiteley asked Erik Enyart if the Applicant’s landscaping would cause a problem with [the City’s intersection widening project on] 111<sup>th</sup> St. S. Mr. Enyart stated that it would not because the landscaping would be on the Applicant’s lot, and the street improvements would be located within the right-of-way. Ryan McCarty indicated agreement.

Chair Jeff Wilson addressed Ryan McCarty and stated, “You were talking about the turning [movements] of trucks.” Mr. McCarty returned to using the plan drawing to describe the turning movements of fuel tankers and commercial vehicles, and stated that he used a computer system to determine the wheelpaths [under different scenarios].

Darrell Mullins noted that he visited the site frequently and asked if the old fuel tanks would remain in place. Ryan McCarty responded “Yes,” but also indicated the movement of fuel tanks within the site.

Ryan McCarty confirmed with Erik Enyart that the minimum required landscaped strips along 111<sup>th</sup> St. S. and Memorial Dr. were 10’ and 15’, respectively. Mr. McCarty stated, [Kum & Go] usually want[s] 36’ [for internal drives] but we accommodated [the City] with 5’ landscaped strips.”

Darrell Mullins asked if this site would be similar to the [Kum & Go] at 101<sup>st</sup> St. S. and Mingo Rd. Ryan McCarty responded negatively and stated, “that’s a much larger site than this is.” Alan Hall stated that the subject property was just a one (1) acre site.

Chair Jeff Wilson asked the Applicant if their argument was not, “If we had to [bring the site fully up to code] it would really confine us, and we would probably lose our design, it would be very difficult [to redevelop], and throws things off tremendously, correct?” Alan Hall or Ryan McCarty confirmed that this was their argument, and stated that “We’ve tried to accommodate as much as we can.”

Larry Whiteley asked Ryan McCarty if [Staff’s] two (2) [recommended Conditions of Approval] would be a problem, and if the number of trees would be a problem, and Mr. McCarty stated, “No, that complies.”

Larry Whiteley asked Alan Hall the same question. Mr. Hall requested clarification of the two (2) recommended Conditions of Approval. Erik Enyart summarized the following:

- “1. The redevelopment project shall substantially comply with that represented on the “Cover Sheet & Site Plan” and the “Alt. Compliance Landscape Plan” drawings received 08/29/2012, 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 Applicant shall secure an easement, license agreement, or other official written expression of no objection 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,”

as (1) site must be developed according to the site plans, and (2) ODOT concurrence in whatever form that takes.

Alan Hall stated this would be “No problem.”

Ryan McCarty stated that Kum & Go was negotiating with ODOT right now, that it was a cumbersome process because [ODOT doesn’t] want to go along with it.

Alan Hall stated, “It’s their property—there’s nothing we can do about that.”

Murray King asked if, in regard to the sign, it would create a new problem if ODOT did not approve, and Ryan McCarty responded, “We’ll put it where it can go.”

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-567 subject to the following Conditions of Approval:

1. The redevelopment project shall substantially comply with that represented on the “Cover Sheet & Site Plan” and the “Alt. Compliance Landscape Plan” drawings received 08/29/2012, 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 Applicant shall secure an easement, license agreement, or other official written expression of no objection 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 SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-568 – Roger O. Nunley, Jr.** 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 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-2 Single Family Dwelling District.  
Property located: Part of Lot 1, Block 2, *Southern Memorial Acres No. 2*; 8703 E. 124<sup>th</sup> St. S.

Chair Jeff Wilson introduced the item and observed that the Applicant was not present.

The Board members discussed its precedent for Tabling cases where the Applicant does not show up. Murray King made a MOTION to CONTINUE BBOA-568 to the October 01, 2012 Regular Meeting.

Dave Hill stated that he knew the property and property owner and indicated favor for the application.

Ms. M. Jackson of 11505 E. 121<sup>st</sup> St. S. stated that she was familiar with the situation regarding large accessory buildings constructed in Southwood and this subdivision, and expressed concern for how large they have been allowed to become.

Discussion ensued between Dave Hill and Ms. M. Jackson.

Erik Enyart reminded the Board there was a Motion on the Table.

Discussion continued.

Mrs. M. Jackson left at this time.

After further discussion, Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:45 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Planner/Recording Secretary