

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
December 11, 2012 6:00 PM**

SPECIAL MEETING

STAFF PRESENT:

Erik Enyart, AICP, City Planner

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, Darrell Mullins, and Murray King.

Members Absent: Larry Whiteley.

MINUTES

1. Approval of Minutes for November 05, 2012

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of November 05, 2012 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

OLD BUSINESS

NEW BUSINESS

2. **BBOA-569 – Sutherland’s (Reconsideration).** Discussion and possible action to approve a Variance from the 30’ maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from

being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District.

Property located: Lot 2, Block 1, *Wal-Mart Stores Addition*, Less & Except the E. 200' thereof; 15050 S. Memorial Dr.

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

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, November 30, 2012
RE: Report and Recommendations for:
BBOA-569 – Sutherland's (Reconsideration)

LOCATION: – 15050 S. Memorial Dr.
– Lot 2, Block 1, *Wal-Mart Stores Addition*, Less & Except the E. 200' thereof
LOT SIZE: 3 acres, more or less
ZONING: CS Commercial Shopping Center District
SUPPLEMENTAL ZONING: Corridor Appearance District
EXISTING USE: A Use Unit 14 Sutherland's building materials and hardware store
REQUEST: Variance from the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: CS; The Doc's Country Mart grocery store, the Med-X pharmacy/drugstore, and other businesses in the in the Spartan Family Shopping Center strip commercial center in the *Wal-Mart Stores Addition*, and the abandoned Railroad Right-of-Way containing a storage shed sales lot and the Bixby Auto Sales lot to the north of that.
South: (Across 151st St. S.) CG & RS-2; The QuikTrip gasoline service station and convenience store and single-family residential in the *Jim King Addition*.
East: CG & CH; The Sonic Drive-In fast food restaurant, the O'Reilly Auto Parts sales business, and the Taco Bueno fast food restaurant, all in the *Wal-Mart Stores Addition*, with the Bixby Car Wash and AT&T Cellular World store across Memorial Dr. both zoned CH.
West: CS/IL/IM/PUD 50; Vacant commercial lots along the 151st St. S. frontage zoned CS and commercial and heavy commercial businesses zoned IL and IM in *Jade Crossing* and *Jade Crossing II*, all with PUD 50.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area + Regional Trail.

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

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

[Final] Plat of Wal-Mart Stores Addition – Request for [Final] Plat approval for the *Wal-Mart Stores Addition* (includes subject property) – Planning Commission recommended Conditional Approval on 02/23/1981 and the City Council Approved 03/02/1981 (plat recorded 07/15/1981).

BBOA-263 – Jerry W. Ledford – Request for Special Exception to allow a Use Unit 18 (Sonic Drive-In) drive-in restaurant in the CS district on the E. 200' of the S. 150' of Lot 2, Block 1, *Wal-Mart Stores Addition* (parent tract for subject property) – BOA Conditionally Approved at a Special Meeting on 05/10/1993 after a split vote (2:2:1) at the 05/03/1993 Regular Meeting.

BL-170 – Jerry W. Ledford – Request for Lot-Split approval to split the E. 200' of the S. 150' from Lot 2, Block 1, *Wal-Mart Stores Addition* (parent tract for subject property) for the Sonic Drive-In fast food restaurant – PC Conditionally Approved 05/17/1993.

BL-212 – Ted Sack for Wal-Mart Stores – Request for Lot-Split approval split the E. 200' of the N. 135' from Lot 2, Block 1, Wal-Mart Stores Addition (parent tract for subject property) for the O'Reilly Auto Parts sales business – PC approved 08/26/1996.

AC-12-06-02 – Sutherlands – Request for Planning Commission approval of an LED / Electronic Message Center (EMC) ground sign for Sutherland's on the subject property – PC Approved (ratified approval of an approved Sign Permit) 06/18/2012.

BBOA-569 – Sutherland's – Request for Variance from the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1 and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District for subject property – BOA Denied 10/01/2012. Applicant requested a hearing for a Motion and vote for reconsideration. BOA on 11/05/2012 voted to reconsider the application after Public Notice as required for the initial case.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

This application was denied by the Board of Adjustment October 01, 2012. Pursuant to the City Attorney's guidance, the Applicant in this case has submitted a letter dated October 10, 2012, asking for the Board to reconsider the application. The letter presents new arguments in furtherance of their request for Variance.

On November 05, 2012, the Board Moved and voted in favor of a reconsideration of the application. Staff placed the matter be placed on this Special Meeting agenda (the 12/03/2012 Regular Meeting was cancelled due to a newspaper publication deadline advance for the Thanksgiving holiday week). Staff has given notice to the Public in the same manner as was done the first time, save that it has specified that it is a request for reconsideration, and not a new application.

ANALYSIS:

Subject Property Conditions. The subject property is zoned CS and consists of Lot 2, Block 1, Wal-Mart Stores Addition, Less and Except the E. 200' thereof. The E. 200' was separated by Lot-Splits in 1993 (BL-170; Sonic Drive-In) and 1996 (BL-212; O'Reilly Auto Parts). The building on the subject property is occupied by a Use Unit 14 Sutherland's building materials and hardware store. It was formerly a Wal-Mart retail store, when Wal-Mart was the anchor tenant of the shopping center in the Wal-Mart Stores Addition. The shopping center to the north of the subject property is known as the Spartan Family Shopping Center and is under different ownership. To the northeast of the subject property is the Taco Bueno fast food restaurant on an outparcel lot platted with the Wal-Mart Stores Addition.

The subject property is relatively flat and appears to drain to the south to 151st St. S., which in turn drains to the east and to the west toward Bixby Creek.

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. Per AC-12-06-02 – Sutherlands, on June 18, 2012, the Planning Commission approved (ratified approval of an approved Sign Permit) an LED / Electronic Message Center (EMC) ground sign for Sutherland's on the subject property. The sign was approved and constructed for placement on the 151st St. S. frontage, just east of the subject property's driveway connection to the street. It is a single-faced sign and faces east toward the 151st St. S. and Memorial Dr. intersection, tilted slightly to the south. It was approved for construction at the 30' maximum height restriction of Zoning Code Section 11-9-21.D.1. The Applicant is requesting a Variance from this maximum height restriction and any other Zoning Code regulation preventing an existing ground sign from being elevated to approximately 33 feet and 8 ¾ inches in height for property in the CS Commercial Shopping Center District.

A portion of the pylon extends above the LED Electronic Message Center (EMC) sign element, allowing for its elevation. At the meeting on October 01, 2012, Applicant's representative Peter Janzen of Acura Neon, Inc. stated that the current LED/EMC cabinet was mounted about four (4) feet lower than the 30' maximum height limitation, and the Sutherland's 4'-high identification sign element was permitted above it but had not been installed yet. Mr. Janzen stated that the submitted exhibit was

correct, but if this Variance was approved, the owner would place the LED/EMC on top and the identification sign element on bottom. That would mean that the LED/EMC element would be the part extending the additional height.

General. The application form does not itself include arguments, but rather points to a submitted narrative, an undated letter from Chris Jones, Controller for Sutherland Lumber & Home Center, Inc. Without specifically identifying which statements are meant to address the different tests and standards for granting Variance, the Applicant's narrative provides:

"Store signage has been proven to be one of the most effective methods of promoting that brand. The ability to be able to effectively identify our stores, through maximizing signage opportunities, continues to have a direct correlation in enabling our stores to fully service the local market.

We believe that having this new pylon at the proposed height would have great benefits at the location mentioned above. In addition the EMC would also benefit the community itself [by] providing local time, date and current temperature and could be helpful w/ providing Amber alert information.

We request that you allow a variance so that we may place an illuminated pylon sign with EMC located at the new desired height. Please advise our national sign supplier listed below of your decision on this matter."

Although the submitted narrative does not appear to make this claim, Staff would expect that the Applicant may describe concerns for the visibility of the EMC sign to stopped traffic at the 151st St. S. and Memorial Dr. intersection. The view may be somewhat hindered by the storage building (for sale) located in front of and just below the sign, and, for those southbound cars stopped at the stoplight in front of Sonic Drive-In, the Sonic facility may block their view of the sign.

Staff also notes that the subject property would have street frontage and thus the ability to place a ground sign on Memorial Dr., which has a much higher traffic count than 151st St. S., had the two (2) outparcels not been split and sold in the 1990s.

During the Public Hearing and consideration of this application at the meeting, the Board may wish to ask the Applicant for claims along these lines of argumentation.

In the October 10, 2012 letter requesting consideration, the Applicant's representative's narrative provides:

"We feel there is new evidence that should be reconsidered on this case, notably:

- A) The location of the Sonic Franchise's awning greatly cuts down on the visibility of the sign. Due to the location of that sign, we feel an extra four feet of height would clear the awning and greatly improve visibility. We feel this constitutes an unnecessary hardship.
- B) The denial of their variance request was peculiar in light of the surrounding signs in the area. Notably, the Spartan Center has an approx. 40' sign (the owner of the Spartan center objected to Sutherland's request, noting that he had no particular objection to the sign, he just didn't care to let Sutherland's have it) as well as the Quiktrip sign across the street, approx. 50'. These are estimates but I can verify that height if necessary.
- C) We feel that there is no detriment to the surrounding community; in fact the objector to the variance last month cited no specific problems with the proposed height.
- D) The height increase is the minimum necessary, knowing this customer they would probably prefer to go much higher, but feel the extra height being requested is the absolute minimum necessary to clear the Sonic."

Staff Recommendation. The Board must find that the provided arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code.

Erik Enyart noted that, prior to the meeting, he had provided the Board members copies of a letter from Jim Stephens representing The Sanditen Companies, owner of the Spartan Family Shopping Center.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Chris Sottilo of Sutherland's, 15050 S. Memorial Dr., was present and stated that, when he started working for Sutherland's 34 years ago, it was impressed upon him the importance of signs, but that[, to be useful,] they must be seen. Mr. Sottilo stated that he observed that QuikTrip raised

their sign. Mr. Sottilo stated that the sign could not be seen from Memorial Dr., and that *Sutherland's* wanted to raise it so that it could be seen from every location around [the store]. Mr. Sottilo stated that the shopping center's sign [exceeded 30' in height].

Chair Jeff Wilson asked Chris Sottilo if his argument and evidence was not that there were other signs in the area [higher than 30'] as well. Mr. Sottilo indicated agreement and stated that he had seen where *QuikTrip* asked [for a Variance] and got it. Mr. Sottilo stated that a higher sign "helps us and city revenues."

Peter Janzen of *Acura Neon, Inc.*, 1801 N. Willow Ave., Broken Arrow, OK 74012, stated that *Acura Neon, Inc.* was a third party to this application and was working with *Identity Resources* on the sign. Mr. Janzen stated that the *Sonic* [Drive-In restaurant's] awning was an impediment [to the view of the sign]. Mr. Janzen presented printouts of three (3) photographs marked with sign heights of the "Apple Market" sign, the tallest *QuikTrip* ground sign, and the Spartan Family Shopping Center sign. Mr. Janzen stated that he had conducted some measurements and claimed that the "Apple Market" sign was 65' in height, the [tallest] *QuikTrip* [ground] sign was 48' in height, and the Spartan Family Shopping Center sign was 37' in height. Mr. Janzen stated that they were "appropriately sized signs for this intersection," and that he and his client wanted [additional sign height] as well.

Dave Hill stated that, as one approached 151st St. S. from southbound Memorial Dr., first the view was blocked by the *Sonic* building, then there was a short clearing, and then the view was blocked by the *Sonic* awning.

Upon a question, Peter Janzen stated that the sign was originally permitted to have a 4'-tall ID cabinet that was to go on top of the LED cabinet, but that the two would ultimately be reversed, with the LED cabinet on top. Mr. Janzen stated that the top of the LED cabinet was at a 26' height now.

Murray King asked when the 30' height restriction was first imposed. Erik Enyart responded that he believed it was written in the original Zoning Ordinance from the early 1970s.

Dave Hill asked how much of a Variance was being requested. Peter Janzen responded that the Variance request was to go to about 33³/₄'.

Peter Janzen asked Erik Enyart if [the] Spartan [Family Shopping Center's owners] got a Variance for their sign. Mr. Enyart stated, "I did some research and did not find one for that."

Darrell Mullins clarified with Peter Janzen that the request was to go from 30' to a little more than 33' in height.

Dave Hill clarified with Patrick Boulden that the Board had the power to make a decision on this application. Mr. Boulden stated, "You're empowered if this meets the criteria."

Patrick Boulden presented printouts of five (5) photographs from the intersection of 151st St. S. and Memorial Dr. depicting the sign from vantage points having the *Sonic* facility between the

photographer and the sign. Mr. Boulden stated that he did not think the Board had this evidence, and that “it may sway you and it is worthy of consideration.” Mr. Boulden stated that the Applicant had shown “unnecessary hardship imposed by the Code,” and that the “other signs [at this intersection] were indicative that [this Variance] would not be injurious [or] detrimental to the Public welfare or good or cause injury to [the Comprehensive Plan or Zoning Code].”

Erik Enyart stated that the Board may find unique circumstances in the fact that “this lot is cut off from Memorial Dr. There are lots in front of it and it has no frontage. This was the result of a couple Lot-Splits from years ago, creating the *Sonic* and *O’Reilly Auto Parts* stores. All businesses would rather have a sign presence on Memorial Dr. The shopping center does because it has frontage, but this one cannot and doesn’t have a sign easement [from the shopping center owner].” Mr. Enyart looked to Chris Sottilo on this statement, and Mr. Sottilo indicated agreement.

Chair Jeff Wilson read the letter from Jim Stephens into the record.¹ Mr. Wilson stated that Mr. Stephens made a good point. Mr. Wilson expressed concern over setting precedent.

Erik Enyart stated that he could offer, as to the concern over precedent, it had already been set with three (3) signs [in excess of 30’ each] at this intersection, one (1) of which got a Variance, so the Board could limit the precedent by specifically recognizing this 151st St. S. and Memorial Dr. intersection as being unique in this regard.

Dave Hill asked Erik Enyart if it was not true that all applications were different and the Board did not have to listen to [arguments appealing to precedent]. Mr. Enyart responded, “Well, all are unique and have their own set of circumstances, but as the Board has discussing for the past several minutes, the Board has already” considered other signs as precedents to this application.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-569 (Reconsideration). Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

During the Roll Call, Chair Jeff Wilson explained that his part of the vote was “based on the peculiar circumstances relating to access to Memorial Dr., the lack thereof; the placement of out[parcels] since [the construction of the building that was originally a *Wal-Mart* store and is now occupied by *Sutherland’s*];” [there being] no other place to put a sign; the trees [on the *Sonic* property] are now grown up; that this is the minimum Variance necessary—3’ plus, and that the sign will not be 50”; and that the Board could tell the next person that the Variance was only about 3¾ feet. Other Board members indicated agreement.

¹ The letter is attached to these Minutes.

Dave Hill expressed objection to the City’s appeal of the Board’s approval of BBOA-555 and asked Patrick Boulden[, in light of the reconsideration of BBOA-569,] if the Board could also “redo [the] ‘ice house’ [case].” Mr. Boulden stated that the Board had lost jurisdiction over that case, as it was in District Court now. Mr. Boulden stated that the Board should not be discussing that case as it was not on the agenda.

After further discussion, Chair Jeff Wilson asked Erik Enyart to place an item on the next agenda advising the Board of the status of the appeal in District Court. Mr. Enyart agreed to do so.

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:27 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary