

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
January 07, 2013 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, Darrell Mullins, and Larry Whiteley.

Members Absent: Murray King.

MINUTES

1. Approval of Minutes for December 03, 2012 (Record of No Meeting)

Chair Jeff Wilson introduced the item. Erik Enyart clarified with Mr. Wilson that the record of no meeting was for placement in the file so that there was a record that no meeting occurred or actions taken on the date the regular meeting was scheduled.

Chair Jeff Wilson asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of December 03, 2012 (Record of No Meeting) as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

2. Approval of Minutes for December 11, 2012 (Special Meeting)

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley stated that he would have to Abstain as he was not present at that meeting.

Dave Hill made a MOTION to APPROVE the Minutes of December 11, 2012 as presented by Staff. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson consulted with the other Board Members and declared that Agenda Item Number 3 under Old Business would be moved to the end of the agenda.

NEW BUSINESS

4. **BBOA-570 – Lois & Richard Daniels.** Discussion and possible action to approve a Variance from certain bulk and area requirements of Zoning Code Section 11-7B-4.A.1 Table 3 to allow for a Lot-Split in the RS-3 Residential Single-Family District.
Property located: Lots 4, 5, & 6, Block 21, [Original Town of] *Bixby*; 313 S. Main 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: *Friday, January 04, 2013*
RE: *Report and Recommendations for:
BBOA-570 – Lois & Richard Daniels*

LOCATION: – 313 S. Main St.
– Lots 4, 5, & 6, Block 21, [Original Town of] *Bixby*
LOT SIZE: 10,500 square feet, or 0.24 acres, more or less
ZONING: RS-3 Residential Single Family District
SUPPLEMENTAL ZONING: None
EXISTING USE: Use Unit 6 single-family house
REQUEST: Variance from certain bulk and area requirements of Zoning Code Section 11-7B-4.A.1 Table 3 to allow for a Lot-Split in the RS-3 Residential Single-Family District
SURROUNDING ZONING AND LAND USE: RS-3; Single-family residential in the [Original Town of] *Bixby*, with drainage channel land owned by the City of *Bixby* across Main St. to the west. The *Bixby* Central Elementary school is located one (1) block to the north at 201 S. Main St.
COMPREHENSIVE PLAN: Development Sensitive + Residential Area
PREVIOUS/RELATED CASES: None found.
RELEVANT AREA CASE HISTORY:
BL-1 – “Application No. 01-72” – B.B. Bullock – Request for Lot-Split to separate Lot 9, Block 26, [Original Town of] Bixby into north and south halves, to add to the lots adjoining them to the north and south (403 and 405 S. Main St.), located across Second St. to the south of subject property – Application materials are dated 1972. No PC meeting Minutes or other approval documentation found; however, lot has been split consistent with application request, per Assessor’s parcel records.

BL-12 – Mrs. J. L. Goodwin – Request for Lot-Split to separate Lot 1, Block 20, [Original Town of] Bixby into eastern and western parts, located one and one-half (1 ½) blocks to the northeast of subject property at 310 and 314 E. Bixby St. – PC Approved with amendment to lot width to conform to RS-3 zoning on 07/29/1974.

BL-16 – Betty Joyce – Request for Lot-Split for Lot 5, Block 26, [Original Town of] Bixby, to add a “sliver tract” to an adopting Lot 4 of said Block 26, properties located one block to the south of subject property at 411 and 413 S. Main St. – PC Approved with amendment to the legal description on 10/20/1975.

BL-19 – Nancy Palmer – Request for Lot-Split for Lots 6 and 7, Block 22, [Original Town of] Bixby, properties located across Main St. to the west of subject property at 105 E. Second St. and 312 S. Main St. – PC Approved 02/23/1976 subject to Variance (cf. BBOA-26) and Board of Trustees Approved 03/02/1976.

BL-20 – Charles Wood – Request for Lot-Split for the N/2 Lot 6, Block 20, [Original Town of] Bixby, located one and one-half (1 ½) blocks to the northeast of subject property at 300 and 306 E. Bixby St. – PC 06/07/1976 could make no decision and voted to forward to Board of Trustees. Board of Trustees Denied 06/15/1976.

BL-25 – Tulah L. Booker – Request for Lot-Split for Lot 2, Block 32, [Original Town of] Bixby, located one and one-half (1 ½) blocks to the southwest of subject property at 102, 104, & 106 E. Stadium Rd. (the last one being, perhaps, the only tract requested for approval) – Lot division actually occurred in 1958, predating Planning Commission, and application filed as a technicality to permit the conveyance of ownership. Board of Trustees Approved 10/05/1976.

BL-33 – Dora Canter – Request for Lot-Split for Lot 3, Block 15, [Original Town of] Bixby, located (1) block to the northwest of subject property at 208 & 210 S. Main St. – PC Approved/Recommended Approval 08/29/1977 and Board of Trustees considered on or around 10/17/1977. Disposition documentation not found in case file; however, lot has been split consistent with application request, per Assessor’s parcel records (cf. BBOA-40).

BL-51a – Clyde McPherson – Request for Lot-Split for the N. 62’ of Lot 6, Block 8, [Original Town of] Bixby, located three (3) blocks to the northeast of subject property at (300 or 302?) and 304 E. 5th St. – PC Approved 10/29/1979 and Board of Trustees considered on or around 11/05/1979. Disposition documentation not found in case file; however, lot has been split consistent with application request, per Assessor’s parcel records.

BL-66 – Otto Dorris – Request for Lot-Split for Lots 6 and 7, Less the E. 60’, Block 22, [Original Town of] Bixby, located across Main St. to the west of subject property at 105 E. Second St. – PC Conditionally Approved 11/30/1981.

BL-73 – Jessie Wadkins – Request for Lot-Split for the S. 75’ of Lot 4, Block 3, [Original Town of] Bixby, located three (3) blocks to the northwest of subject property at 19 S. B Ave. & 105 E. 5th St. – PC Recommended Conditional Approval 03/29/1982 and City Council considered on or around 04/05/1982. Disposition documentation not found in case file; however, lot has been split consistent with application request per Assessor’s parcel records.

BL-127 – Mary Bynum – Request for Lot-Split for Lots 3 & 4, Block 22, [Original Town of] Bixby, located across Main St. to the west of subject property at 306 & 308 S. Main St. – PC Conditionally Approved 12/28/1987 (cf. BBOA-197).

BL-248 – Luther Metcalf – Request for Lot-Split for Lot 3, Block 8, [Original Town of] Bixby, located two (2) blocks to the northeast of subject property at 307 E. 4th St. and 108 S. E Ave. – PC Approved 03/20/2000 and City Council Approved 03/27/2000.

BL-261 – Virginia Lancaster – Request for Lot-Split for Lot 1, Block 30, [Original Town of] Bixby, located two (2) blocks to the southeast of subject property at 308 E. Stadium Rd. – Prior Approval granted 03/08/2002. No record of PC consideration found.

BL-312 – Richard Walentiny – Request for Lot-Split for Lot 14, Block 10, [Original Town of] Bixby, located two (2) blocks to the northwest of subject property at 113 & 115 S. B Ave. – PC Approved 03/21/2005.

[BZ-1] – R.D. Evans – Request for rezoning from R-1 to R-3 for “apartments” for property located one (1) block to the northeast of subject property at 305 & 307 S. D Ave. – PC hearing advertised for 03/23/1970 and evidently recommended for Denial on or about that date. Letter dated 04/16/1970 appeals denial recommendation to Board of Trustees. No approval documentation and no ordinance found indicating this was approved by the Board of Trustees.

BZ-21 – “Zoning Application No. 1” – [City of Bixby] – Request for rezoning from R-2 to R-3 for all of Blocks 7, 8, 17, 18, 19, 20, 27, [28], 29, and 30, [Original Town of] Bixby, located one (1) block to the east of subject property – PC hearing advertised for 05/07/1970. Board of Trustees approved 06/02/1970 (Ord. # 238).

BBOA-2 – Raymond Frasl – Request for Special Exception for mobile homes for all or parts of Lots 3, and 4, Block 25, [Original Town of] Bixby, located one (1) block to the southwest of subject property at 406 & 412 S. Main St. – Record of BOA consideration not found.

BZ-47 – Paul Showman – Request for rezoning from RS-3 to CG for a drive-in restaurant for property located to the north of subject property at 200 E. Bixby St. – PC recommended Denial 03/29/1976 and evidently not appealed to Board of Trustees.

BZ-203 – Patricia L. Woods – Request for rezoning from RS-3 to RMH for a “mobile home park” for Lots 6 and 7, Block 25, [Original Town of] Bixby, located one (1) block to the southwest of subject property at 405 S. B Ave. – PC recommended Denial 06/21/1993 and City Council Denied 07/12/1993.

BZ-225 – Barbara Redding – Request for rezoning from RS-3 to CS for a daycare (most recently the “A Childs Dream DayCare & Preschool Inc.”) for the S/2 of Lot 3, Block 26, [Original Town of] Bixby, located one (1) block to the southeast at 213 E. Stadium Rd. – PC recommended Approval 09/16/1996 and City Council Approved 10/28/1996 (Ord. # 747).

BBOA-26 – Nancy Palmer – Request for Variance from the bulk and area requirements in the RS-3 district to permit a Lot-Split (cf. BL-19) for Lots 6 & 7, Block 22, [Original Town of] Bixby, located across Main St. to the west of subject property at 105 E. Second St. & 312 S. Main St. – BOA Approved 03/09/1976.

BBOA-32 – Debra McLellen – Request for Variance from bulk and area requirements and a Special Exception for a mobile home in the RS-3 district for The E. 72’ of Lot 3, Block 20, [Original Town of] Bixby, located two (2) blocks to the east of subject property at 310 S. E Ave. – BOA Denied 08/10/1976.

BBOA-40 (Originally filed and advertised as the second BBOA-39) – J.C. Biggers – Request for Variance from the bulk and area requirements in the RS-3 district to permit a Lot-Split (cf. BL-33) for Lot 3, Block 15, [Original Town of] Bixby, located (1) block to the northwest of subject property at 208 & 210 S. Main St. – Case notes indicate “Withdrawn” next to date 09/08/1977; However, it was still on the BOA Agenda 10/11/1977. No Minutes for that meeting found, and no other documents indicate its ultimate disposition. However, the lot has been split consistent with the BL-33 request per Assessor’s parcel records.

BBOA-63 – Loyd Haynes – Request for Special Exception for a mobile home in the RS-3 district for Lot 3, Block 26, [Original Town of] Bixby, located one (1) block to the southeast of subject property at 213 E. Stadium Rd. – BOA Approved 06/12/1979.

BBOA-180 – Robert Amones – Request for Special Exception and Variance from setbacks for a carport and a Variance from the paving requirement for parking areas for Lot 8, Block 22, [Original Town of] Bixby, located one (1) block to the west of subject property at 103 E. Second St. – BOA Approved 12/08/1986.

BBOA-197 – Sammy Bynum – Request for Variance from the bulk and area requirements in the RS-3 district to permit a Lot-Split (BL-127) for Lot 3, Block 22, [Original Town of] Bixby, located across Main St. to the west of subject property at 306 S. Main St. – BOA Conditionally Approved 01/11/1988.

BBOA-213 – Betty Stevenson – Request for Special Exception and Variance from setbacks for a carport for the N. 43’ of Lot 3, Block 15, [Original Town of] Bixby, located one and one-half (1 ½) blocks to the northwest of subject property at 208 S. Main St. – BOA Conditionally Approved 07/03/1989.

BBOA-245 – Matthew Hodson for Aubrey Lancaster – Request for Appeal and Variance to allow a skateboard ramp on Lot 1, Block 30, [Original Town of] Bixby, located two (2) blocks to the southeast of subject property at 308 E. Stadium Rd. – BOA Denied 01/06/1992.

BBOA-321 – Barbara Redding – Request for Special Exception for a Use Unit 5 daycare (most recently the “A Childs Dream DayCare & Preschool Inc.”) for the S/2 of Lot 3, Block 26, [Original Town of] Bixby, located one (1) block to the southeast at 213 E. Stadium Rd. – Withdrawn prior to 09/03/1996 meeting.

BBOA-339 – Bixby Public Schools – Request for Special Exception to allow the expansion of the existing Use Unit 5 Bixby Central Elementary school building in the RS-3 district for all of Blocks 9 and 16, [Original Town of] Bixby, located one (1) block to the north of subject property at 201 S. Main St. – BOA Approved 08/03/1998.

BBOA-407 – Anita Lechluder – Request for Special Exception for a day care for the S. 57' of Lot 3, Block 15, [Original Town of] Bixby, located one (1) block to the northwest of subject property at 210 S. Main St. – BOA Conditionally Approved 08/04/2003.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property consists of Lots 4, 5, & 6, Block 21, [Original Town of] Bixby. It is a corner lot, addressed 313 S. Main St., and has a 140' of frontage along Second St. The platted lots are each 25' in width along Main St., and have 140' in depth. The subject property contains 10,500 square feet, or 0.24 acres, more or less. It is zoned RS-3. It contains a house located approximately in the center of its westerly half, and a carport in the rear yard sheltering a recreational vehicle (RV). According to the Tulsa County Assessor's parcel records, the house was constructed in or around 1925. The Assessor's records do not reflect the existence of the carport, and it appears to have been constructed fairly recently.

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 certain bulk and area requirements of Zoning Code Section 11-7B-4.A.1 Table 3 to allow for a Lot-Split in the RS-3 Residential Single-Family District. Per the submitted drawing and the Applicant's statements, the future Lot-Split application would seek to separate the lot into easterly and westerly halves, each measuring 70' from east to west. The westerly half would contain the existing house, and the easterly half would contain a carport. Per statements from the Applicant, Staff understands that the intent of the Lot-Split would be (1) to allow for the construction of a new dwelling on the easterly half, and (2) to have the carport structure located on the lot with the new dwelling.

Based on provided information and existing lot conditions, it appears that bulk and area standards from which Variance would be necessary would include, but not necessarily be limited to:

- (1) minimum lot area of 6,900 square feet,
- (2) minimum livability space of 4,000 square feet per dwelling unit for one or both lots,
- (3) minimum front yard setback for the existing dwelling (legally nonconforming now but to be relieved by Variance upon Lot-Split; cf. definition of "Lot Split" in Subdivision Regulations Section 12-1-5),
- (4) minimum rear yard setback for the existing dwelling from the proposed new common property line,
- (5) possible certain minimum setbacks for any proposed new house on the proposed new tract, likely to include front and/or rear yard setbacks, and
- (6) possible size and/or setback issues pertaining to the carport (cf. Zoning Code Section 11-8-8.B.9).

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "The proposed Lot is not large enough for a split."

Staff concurs that the denial of Variance in this application would prevent the owner of dividing their land. Staff recognizes that the lot is relatively large for the area, that the easterly half is (save for the carport) unused, and that the owner may realize a loss in value if it cannot be separated and put to its highest and best use. Staff believes this restriction may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "It is larger than most Lots."

Relative to its context, the subject property is fairly large. The residential lots in this area, located in the heart of the [Original Town of] Bixby, range in size but commonly measure approximately 50' X

140' (7,000 square feet / 0.16 acres). Some lots are quite small. The residential lot across the alley to the east measures 50' X 50' (2,500 square feet / 0.057 acres), and the (now vacant) lot across the alley to the east on the south side of Second St. measures 40' X 100' (4,000 square feet / 0.09 acres). The subject property measures 75' X 140' (10,500 square feet / 0.24 acres). Certain lots along Main St. were platted at 25' in width, rather than the more typical 100' elsewhere throughout the subdivision, perhaps owing to its original intent as a commercial street with storefront-style shops. It may have served this purpose in fact, until "downtown" Bixby was relocated to center at the intersection of Dawes Ave. and Armstrong St. in the Midland Addition to Bixby, platted in 1911.

Owing to its corner lot condition, and the location of the existing house within the lot, the subject property lends itself to Lot-Split, creating a lot fronting on Second St. Per Assessor's parcel data and research of area Lot-Split case history, within a three (3) block radius of the subject property, there have been about a couple dozen (~24) originally-platted lots which have been split, typically to allow for a second dwelling. In many instances, the lots were split according to multiple dwellings already constructed on a singular lot. In a handful of cases within a three (3) block radius of the subject property, there are still singular lots which contain multiple dwellings. These cases most commonly attend corner lots. The subject property is somewhat unique for this area in that it is one of the larger corner lots not previously split and on which two (2) dwellings were not originally constructed.

Staff believes, taken together, these conditions or situations can be considered Peculiar, Extraordinary, and/or Exceptional, in satisfaction of this test and standard.

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 already smaller Lots with houses[. I]t would not cause detriment to the public good or impair the purposes, spirit, and intent of the Zoning code or Comp plan."

Elsewhere on the application form, the Applicant has stated, "The [Variance] will make it possible to improve the area with new construction."

Of the several fundamental purposes for imposing minimum lot size and minimum livability space requirements, Staff believes the primary reason is for the prevention and mitigation of overcrowding, blight, substandard housing, inadequate sunlight, air, and open space, and other such historic urban problems which originally inspired these standards. Other intended results may have included the maintenance and promotion of property values. Regardless of time period in which constructed, house value is typically corollary to house size, which is itself corollary to lot size. Property values may also be maintained or promoted by the value added to individual properties when located in a neighborhood with regularity, uniformity, and basic minimum standards for lot and house sizes.

Of the several fundamental purposes for imposing minimum front yard setbacks and carport standards, Staff believes the primary reason is for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics). Purposes for rear yard setbacks likely include the creation and maintenance of meaningful open space for private use and recreation, and privacy between domestic neighbors. Additionally, by agency of imposed open space, setbacks in general combat overcrowding, blight, and the related urban ills listed above.

In sum, the regulations from which the Variance seeks relief were likely originally designed to:

1. Prevent and mitigate overcrowding, blight, substandard housing, inadequate sunlight, air, and open space,
2. Maintain and promote property values,
3. Promote aesthetics, and
4. Create meaningful open space for private use and recreation and privacy between domestic neighbors.

Overcrowding as may exist in this area of Bixby does not compare to the extreme densities and crowding issues experienced by older, highly urban centers of the late 1800s and early 1900s, when the Zoning laws regulating such bulk and area standards were originally designed.

There are approximately nine (9) contiguous acres of Public open space owned by the City of Bixby and devoted to the "Downtown Drainage" channel, located across Main St. to the west of the subject property. This connects to roughly 100 acres of Public open space owned and/or maintained by the City of Bixby and devoted to Bixby Creek, stretching from 151st St. S. through the Bixby Public Schools' campuses on Riverview Rd. to its confluence with the Arkansas River. Any crowding which existed in this area has been reduced significantly by the acquisition and demolition of dozens of houses for the

“Downtown Drainage” project to the west, the Riverview Rd. widening project to the east, and various Bixby Public Schools acquisitions and improvement projects focused on its Central Elementary campus at 201 S. Main St.

The subject property is located in an area of the [Original Town of] Bixby that has a widely divergent mix of lot sizes, with numerous substandard lots of record, and setbacks, which many houses do not meet. An overwhelming majority of the houses within a three (3) block radius of the subject property were built in the first half of the 20th Century, and were not subject to the dwellings per lot of record, lot size, or setback restrictions imposed by the early original 1970s Zoning Ordinance. Staff believes that the allowance of a Lot-Split and the construction of a new house on the eastern lot would not detract from the neighborhood, which has virtually no regularity or uniformity in metrics. See also the contextual irregularities as described under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard for possible application of those arguments to this test and standard.

Constructing a new dwelling on the eastern half of the subject property should not detract from area property values. If anything, such should help improve property values due to valuation by comparative sales method and by the sociological effect of new investment in the neighborhood.

If a new house was constructed on the eastern half of the subject property, a Variance from the front and/or rear yard setbacks may not be required. The minimum front yard setback in the RS-3 district is 25’, and the minimum rear yard setback, 20’. Zoning Code Section 11-8-9.D would allow for a reduction in the 25’ setback based on the existence of one (1) other dwelling fronting on Second St. between Main St. and D Ave. Per aerial and GIS data, it appears that this house may only set back approximately 12’, which would result in a minimum applicable setback of roughly 19’. This would result in a building envelope of roughly 36’ from north to south (front/back). Together with the width of the proposed eastern lot, this should allow for the construction of an adequately-sized house. Since a conceptual plot plan was not submitted indicating possible dimensions of new construction, the Applicant should indicate whether or not this Variance should be used to relax the front and/or rear yard setbacks to apply to the new dwelling.

If the new house was set back at least 19’ from Second St. as allowed (or with a slight Variance by this application if required for a discrepancy in estimated measurement), the aesthetic concern would be rendered moot. The western lot has a 5’ side yard setback along its north property line. This same property line would serve as the new rear yard line for the eastern lot. Since both lots would abut the same southerly side yard line of the dwelling to the north, a reasonable setback should be applied to the eastern lot. The average between the 5’ side yard setback for the western lot and the otherwise-required 20’ rear yard setback for the eastern lot is 10’. Staff recommends that any approval be subject to setting the new house back at least 19’ from Second St., with no less than a 10’ rear yard setback, or as otherwise approved by the Board upon presentation of a plot plan by the Applicant.

For all the reasons set forth above, Staff believes that that approval of the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.

Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because “The Lot split would make it possible to build a small house + the renter would not have to mow as much.”

As stated above, the Applicant is proposing to split the subject property into eastern and western halves, each to measure 70’ from east to west. Under these conditions, it appears that bulk and area standards from which Variance would be necessary would include, but not necessarily be limited to:

- (1) minimum lot area of 6,900 square feet, (Variance of 1,650 square feet)*
- (2) minimum livability space of 4,000 square feet per dwelling unit for one or both lots, (not yet determined)*
- (3) minimum front yard setback for the existing dwelling (legally nonconforming now but to be relieved by Variance upon Lot-Split; cf. definition of “Lot Split” in Subdivision Regulations Section 12-1-5), (approximately 12’, so a Variance of approximately 13’)*
- (4) minimum rear yard setback for the existing dwelling from the proposed new common property line, (distance not determined)*
- (5) possible certain minimum setbacks for any proposed new house on the proposed new tract, likely to include front and/or rear yard setbacks, (see above) and*
- (6) possible size and/or setback issues pertaining to the carport (cf. Zoning Code Section 11-8-8.B.9) (not determined).*

If approved for Variance, Staff believes that an even split, 70' and 70', and the consequent bulk and area Variances, should be deemed the Minimum Necessary to Alleviate the Unnecessary Hardship, subject to certain Conditions of Approval as listed in the following section.

Staff Recommendation. 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, and recommends Approval subject to the following Conditions of Approval:

- 1. Subject to setting the new house back at least 19' from Second St., with no less than a 10' rear yard setback, or as otherwise approved by the Board upon presentation of a plot plan by the Applicant.*
- 2. Subject to a 5' minimum rear yard setback for the existing dwelling.*
- 3. Subject to the future Lot-Split application resulting in not more than two (2) lots, each measuring not less than 75' X 70', with the possible exception of the common lot line moving a few feet to the east or west in order to fully contain the carport on the eastern lot, with as much as 3' of setback from the common property line, provided the rear 5' minimum yard setback for the western lot shall not be reduced.*
- 4. The future Lot-Split application shall require a survey precisely locating the existing house and carport to ensure that the minimum setbacks required hereby are met.*

Erik Enyart noted that, prior to the meeting, he had discussed with the Applicant his recommendation regarding front and rear yard setbacks for the new dwelling on the proposed eastern lot. Mr. Enyart stated that the Applicant expressed desire for flexibility on the front yard setback, to be permitted to have the front setback in line with the house immediately to the east. Mr. Enyart amended his first numbered recommended Condition of Approval as follows:

1. Subject to setting the new house back at least 19' from Second St., with no less than a 10' rear yard setback, or as far forward as the setback of the house immediately to the east [207 E. Second St. at approximately 12'], with the difference between 19' and the new setback to be added to the 10' rear yard setback as compensation.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Both Applicants were present, and Richard "Butch" Daniels indicated agreement with the new recommendation on the setbacks and stated that he had no problem with Staff's recommendation.

Chair Jeff Wilson asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE BBOA-570 with the Conditions of Approval as recommended by Staff as follows:

1. Subject to setting the new house back at least 19' from Second St., with no less than a 10' rear yard setback, or as far forward as the setback of the house immediately to the east at 207 E. Second St. at approximately 12', with the difference between 19' and the new setback to be added to the 10' rear yard setback as compensation.
2. Subject to a 5' minimum rear yard setback for the existing dwelling.
3. Subject to the future Lot-Split application resulting in not more than two (2) lots, each measuring not less than 75' X 70', with the possible exception of the common lot line moving a few feet to the east or west in order to fully contain the carport on the eastern lot, with as much as 3' of setback from the common property line, provided the rear 5' minimum yard setback for the western lot shall not be reduced.
4. The future Lot-Split application shall require a survey precisely locating the existing house and carport to ensure that the minimum setbacks required hereby are met.

Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

3. Report by the City Attorney on the status of Tulsa County District Court case CV-2012-00885 relating to BBOA-555 (no discussion or action to be taken).

Chair Jeff Wilson introduced the item and called on Staff to report.

City Attorney Patrick Boulden summarized his report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, January 04, 2013
RE: CITY ATTORNEY'S REPORT TO THE BOARD OF ADJUSTMENT
Appeal of BBOA-555 – James Ward for First Equity Corp.

The appeal of the Board of Adjustment's May 7, 2012 decision in Board of Adjustment Case Number 555 was lodged in the name of City Manager Doug Enevoldsen by the filing of a notice of appeal with the Clerk of the Board and the City Clerk on May 16, 2012. In accord with Title 11 Oklahoma Statutes, Section 44-110, the City Attorney transmitted the record of proceedings before the Board of Adjustment to the Tulsa County District Court on July 20, 2012. Upon filing the record of proceedings with the district court, the appeal was recorded as District Court Case Number CV-2012-885 and assigned to Tulsa County District Court Judge Dana Lynn Kuehn. On the same day that the appeal was filed, the property owner (First Equity Corp.-Mr. Ron Kelly President) and the applicant before the Board of Adjustment (Ice Guys LLC) were mailed copies of the court filing and the record before the Board. It is now the obligation of the the applicant and the property owner to enter an appearance in the district court case or otherwise move the case forward, however neither has occurred. In the meantime, pursuant to Title 11 Oklahoma Statutes, Section 44-110(D) all proceedings in furtherance of the Board's decision allowing the development have been stayed.

For the Board's convenience, the following are the provisions of Title 11 Oklahoma Statutes, Section 44-110:

Section 44-110 - Appeals From the Board of Adjustment

A. An appeal from any action, decision, ruling, judgment or order of the board of adjustment may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the municipality to the district court in the county in which the situs of the municipality is located.

B. The appeal shall be taken by filing with the municipal clerk and with the clerk of the board of adjustment, within the time limits which may be fixed by ordinance, a notice of appeal. The notice shall specify the grounds for the appeal. No bond or deposit for costs shall be required for such appeal.

C. Upon filing the notice of appeal, the board of adjustment shall forthwith transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision or ruling of the board.

D. The appeal shall be heard and tried de novo in the district court. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

E. An appeal to the district court from the board of adjustment stays all proceedings in furtherance of the action appealed from, unless the chairman of the board, from which the appeal is taken, certifies to the court clerk, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the district court upon application or notice to the administrative officer in charge of the enforcement of the terms and provisions of the ordinance, and upon notice to the chairman of the board from which the appeal is taken, and upon due cause being shown.

F. The district court may reverse or affirm, wholly or partly, or modify the decision brought up for review. Costs shall not be allowed against the board of adjustment unless it shall appear to the district court that the board acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

Patrick Boulden reported that the case had been filed, and it was incumbent upon the Applicant to get the case going. Mr. Boulden reported that [landowner/developer] Ron Kelley had told him the project was not going through. Mr. Boulden reported that the case would someday be placed on a disposition docket, and that he would be watching for this, as he did not want the case heard without his or Doug Enevoldsen's representation. Mr. Boulden reported that cities appealing a decision of its Board of Adjustment was somewhat rare, but had happened a few times when he was in Tulsa.

No action taken.

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:19 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary