

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

Members Absent: None.

MINUTES

1. Approval of Minutes for January 07, 2013

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of January 07, 2013 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Whiteley, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: King.

MOTION CARRIED: 4:0:1

During the Roll Call, Murray King explained that he was voting "Abstain" as he was not present at that meeting.

2. Approval of Minutes for February 04, 201[3] (Record of No Meeting)

Chair Jeff Wilson introduced the item. It was noted that the date needed to be corrected to 2013 from 2012. Erik Enyart noted that it was not just the agenda item but it was in the Minutes document as well.

Chair Jeff Wilson made a MOTION to have the City Planner correct the Minutes to 2013. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Larry Whiteley made a MOTION to APPROVE the Minutes of February 04, 2013 (Record of No Meeting) as corrected. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

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

NEW BUSINESS

3. **BBOA-571 – Jeff Berg**. Discussion and possible action to approve a Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow an add-on to an existing, nonconforming residence in the RS-1 Residential Single-Family District.
Property located: Lot 16, Block 9, *Southern Memorial Acres Extended*; 11795 S. 85th E. Ave.

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

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Thursday, February 28, 2013
RE: Report and Recommendations for:
BBOA-571 – Jeff Berg

LOCATION: – 11795 S. 85th E. Ave.
– Lot 16, Block 9, *Southern Memorial Acres Extended*
LOT SIZE: 0.4 acres, more or less
ZONING: RS-1 Residential Single-Family District
REQUEST: Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow an add-on to an existing, nonconforming residence in the RS-1 Residential Single-Family District

SURROUNDING ZONING AND LAND USE: RS-1; Residential single family homes on large lots in Southern Memorial Acres Extended.

COMPREHENSIVE PLAN: Low Intensity + Residential Area.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY: (not necessarily a complete list)

BBOA-34 – James Wilson – Request for Interpretation of Zoning Code Section 1240(a) (current Section 11-11-5.A) to determine if the exception for side yard setbacks along a public street applied to accessory buildings; pertained to property located to the northeast of subject property, Lot 5, Block 12, Amended Southwood Extended, 9110 E. 116th St. – BOA interpreted “accessory structures are considered as coming under the intent of said section” on 10/12/1976.

BBOA-57 – Lyle J. Davis Jr. – Request for Variance from the 15’ side yard setback along a public street for an existing detached garage on property located to the northeast of subject property, Lot 5, Block 12, Amended Southwood Extended, 9110 E. 116th St. S. – Approved by BOA 02/13/1979.

BBOA-73 – Jan R. Bemies – Request for Special Exception to be permitted to maintain a childrens’ nursery on Lot 3, Block 15, Southern Memorial Acres Extended, located 1 block to the south at 11932 S. 85th E. Ave. – Withdrawn by Applicant 07/08/1980.

BZ-164 – Kenny Gibson for C.W. James – Request for rezoning from RS-1 to RD for duplexes on Lot 1, Block 15, Southern Memorial Acres Extended, located to the southwest at 11912 S. 85th E. Ave. – Planning Commission hearing advertised for 05/29/1985. No information found in case file to indicate disposition. PC Minutes for calendar year 1985 not found. Assumed Withdrawn, Denied by City Council, or recommended for Denial by PC and not appealed to City Council due to lack of approval ordinance and lack of representation on the Zoning Map.

BBOA-434 – Craig Bay – Request for Variance to be permitted to construct a 30’ X 60’ (1,800 square feet) ‘shop’ accessory building on Lot 5, Block 7, Southern Memorial Acres Extended, located 1 ½ blocks to the west at 11848 S. 84th E. Ave. – Denied 12/06/2004.

BBOA-428 – Russell Cozort – Request for Variance from an unspecified setback for a house located to the east of the subject property, Lot 6, Block 4, Twin Creeks II, 11709 S. 96th E. Pl. – Approved by BOA 09/07/2004.

BBOA-530 – Jeff DeLaughter – Request for Variance from the 35’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow an add-on to an existing, nonconforming residence in the RE Residential Estate District for a house located to the northeast of the subject property, Lot 6, Block 7, Amended Southwood Extended, 9110 E. 115th St. S. – Approved by BOA 10/06/2010.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property consists of Lot 16, Block 9 in Southern Memorial Acres Extended, is zoned RS-1, and contains a single-family dwelling. Although it has an address on S. 85th E. Ave., it appears that the house actually faces, and has a driveway on E. 119th St. S.

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 subject property is located within an RS-1 Residential Single-Family District. For the RS-1 District, Zoning Code Section 11-7B-4.A.1 Table 3 requires minimum setbacks as follows: 35’ front yard, 25’ rear yard, and 10 and 5’ for the side yards. Per the provided survey, the house encroaches six (6) feet into the 25’ setback along 119th St. S. imposed by the plat of Southern Memorial Acres Extended. Thus, it encroaches 16 feet into the 35’ minimum Zoning setback.

The house was erected in or around 1971 per Tulsa County Assessor’s parcel data, and so would appear to be legally nonconforming as to the Zoning Code’s front yard setback. The side and rear yard setbacks appear to be in order.

Zoning Code Section 11-11-6 prohibits the expansion of structurally nonconforming dwellings.

On April 05, 2012, Staff received a Building Permit application for a construction project proposing to construct a building addition onto the rear of the house. Staff advised the building contractor by email on that date that adding a building addition to a structurally nonconforming building would be a

prohibited alteration, as it would increase the nonconformity by extending the life of a nonconforming structure. Under the nonconformities regulations of the Zoning Code, the intent is for the nonconformity and/or structures to be abated in due course through attrition. Therefore, the Applicant requested a Variance of from the 35' front yard setback in the RS-1 district.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant claims that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating "It's a corner lot... It's previous construction was before current zoning ordinances..."

According to the Tulsa County Assessor's records, the house was built in 1971. The City of Bixby did not adopt a Zoning ordinance until circa the original late 1960s or early 1970s Zoning Ordinance # 234 (or possibly an earlier ordinance), but certainly by the April 02, 1974 Zoning Ordinance # 272.

Information is not readily available that would allow for the determination of (1) when this area was annexed by the City of Bixby and (2) made subject to 35' front yard setback from a Zoning Ordinance, (3) if any such was then in existence. It is assumed that the house on the subject property became legally nonconforming at the point at which it became subject to the RS-1 district's 35' front yard Zoning setback, which was likely shortly after construction.

Zoning Code Section 11-8-9.D provides a certain exception for situations where there are existing, [legally-nonconforming] homes on the block which encroach on front yard Zoning setback, as is the case in this application. Said Section provides:

"D. If the proposed building is to be located within two hundred feet (200') of an encroaching building on one side, but not both sides, and there are no intervening buildings, the front yard or building setback shall be the average of the otherwise required front yard or setback and the setback of the nearest front corner of the encroaching building."

This situation applies to the present case, but the exception would not provide any relief, as the house on the lot abutting to the east, per GIS rough measurements, has an approximately 25' setback from 119th St. S. The average between a 25' setback and the otherwise-applicable 35' setback tied to 85th E. Ave. would be 30'. This condition or circumstance, stemming from its location at the street intersection, is unique relative to the typical lot in the RS-1 district.

The subject property may be determined to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances by virtue of the combination of the following facts:

- First and foremost, the subject property is unique in that it is disadvantaged due to being a corner lot. If it were an interior lot, the house would likely be conforming as to front yard setback due to the exception provided in Zoning Code Section 11-8-9.D.
- According to an inspection of the plats, the Southern Memorial Acres Extended was platted March 29, 1965, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.
- The plat of Southern Memorial Acres Extended only requires a 25' front-yard setback.
- Per County Assessor's records, the house on the subject property was constructed in 1971.
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.
- As noted elsewhere in this report, all the dwellings in the immediate area appear to encroach on the 35' Zoning setback.
- Most of the other dwellings in the immediate area appear to have been built in the same time frame, late 1960s and early 1970s, per Tulsa County Assessor's records, and so would also appear to be legally nonconforming.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "[It] would prevent an add on which would otherwise be appropriate... (Also this house sold through two other owners without problem including the garage extension)."

As claimed by the Applicant, the restriction from adding onto the subject property house could be considered an Unnecessary Hardship.

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 "All the houses in the immediate area encroach on

the new setbacks... (Also, the request is to build a small bathroom on the back not extending past current sunroom)."

Of the several fundamental purposes for imposing front yard setback restrictions, the primary reasons are (1) so that future street and highway expansions will not require condemnation/removal of the structure, and (2) for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

East 119th Street South has a 50-foot-wide right-of-way, which meets current Bixby development standards for right-of-way width for the functional design of a minor local residential street. The TMAPC Major Street and Highway Plan does not designate it as a Major Street, and there are no other known plans to widen the right-of-way, nor does there appear to be current or projected need to do so. The first and principal reason for the front yard setback is thus not an issue in this case.

The fact that the house is only 19' from the front lot line does not appear to be unique to the subject property. Several other dwellings appear to encroach on the Zoning Code's 35' front yard setback. Of all of the properties touching the exterior boundaries of the subject property (when excluding intervening rights-of-ways), in clockwise order starting with the dwelling to the east, the following are approximate front yard setbacks per GIS rough measurements: 25', 26', 33', 35', 39', 28', and 28'.

Recognizing that the closest dwelling to the subject property which fronts on 119th St. S. has an approximate setback of 25', together with the angle at which the house is oriented on the lot, it would not appear that the continued existence of the subject property's 19' setback would compromise the aesthetic quality of the neighborhood.

Also, the proposed building addition would be in the rear of the dwelling, and not in the same direction as the encroachment (front yard).

Further, research of area case precedents indicate there have been other houses built in the surrounding neighborhood which encroached on Zoning setbacks, and all were granted Variances.

Finally, Zoning Code Section 11-11-5.A provides exceptions to certain bulk and area standards for subdivisions platted prior to April 02, 1974. Although the subject property qualifies as a lot platted prior to April 02, 1974, this relief does not specifically provide an exception for the front yard setback situation, but does demonstrate legislative intent to provide flexibility for older, nonconforming subdivisions and lots.

Recognizing the setbacks of existing structures in the immediate area, and the visual/aesthetic conditions this presents, and for all the other reasons set forth above, Staff believes that that approval of the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.

Finding of Minimum Necessary. Recognizing the house on the subject property lacks precisely 16' of setback, a Variance of 16' would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code, Staff recommends Approval.

Darrell Mullins noted that, approximately two (2) years ago, there was a very similar situation at [91st] E. Ave. and [115th] St. S., which the Board approved.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Jeff Berg of 11795 S. 85th E. Ave. stated that he submitted the application to try to be conforming to the City. Mr. Berg stated that, he was not sure when, but some time about two (2) sellers ago the garage was expanded, and he found out at some point that that was an issue. Mr. Berg stated that, evidently as a part of the City's drainage project along his street, his driveway was re-poured, and it was not in line with the garage. Mr. Berg stated that this would need to be fixed, so he was doing two (2) things to the property: (1) adding driveway and (2) adding a bathroom in the back of the house.

Chair Jeff Wilson asked to entertain a Motion. Darrell Mullins made a MOTION to APPROVE BBOA-570. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:13 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary