

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
April 23, 2013 6:00 PM**

SPECIAL MEETING

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 6:03 PM.

ROLL CALL

Members Present: Jeff Wilson, Dave Hill, Larry Whiteley, Darrell Mullins,¹ and Murray King.

Members Absent: None.

MINUTES

1. Approval of Minutes for April 01, 2013

Chair Jeff Wilson made a MOTION to APPROVE the Minutes of April 01, 2013 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Whiteley, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

OLD BUSINESS

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

¹ In at 6:06 PM

NEW BUSINESS

Erik Enyart addressed Chair Jeff Wilson and stated that, because it should not take nearly as long, the Board may want to take the agenda items out of order and consider BBOA-578 at this time. Mr. Enyart stated that he had asked the other Applicant, Khaled Bakri, and Mr. Bakri indicated he was okay with this.

Chair Jeff Wilson declared that the agenda items would be taken out of order and that agenda item # 3, BBOA-578 would be considered at this time.

- 3. **BBOA-578 – Daniel & Leanne Martin.** Discussion and possible action to approve (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a building addition to an existing house on an existing lot of record in the AG Agricultural District.
Property located: Part of the W/2 NE/4 of Section 06, T17N, R14E; 12305 S. 109th 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: Friday, April 19, 2013
RE: Report and Recommendations for:
 BBOA-578 – Daniel & Leanne Martin

LOCATION: – Part of the W/2 NE/4 of Section 06, T17N, R14E
 – 12305 S. 109th E. Ave.

LOT SIZE: 3.3 acres, more or less

ZONING: AG Agricultural District

REQUEST: (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a building addition to an existing house on an existing lot of record in the AG Agricultural District

SURROUNDING ZONING AND LAND USE: RS-1 & AG; Rural residential to the north along 109th E. Ave. and along 121st St. S. zoned AG and RS-1; agricultural to the west in Lon-Jan-Addition and surrounding properties zoned RS-1 and AG, vacant, wooded, and agricultural land to the south and east.

COMPREHENSIVE PLAN: Low Intensity/Development Sensitive + Vacant, Agricultural, Rural Residences, and Open Land

PREVIOUS/RELATED CASES: (not a complete list)
BZ-272 – Scott Sherrill – Request for rezoning from AG to RS-1 for the N. approximately 2.5 acres of an original tract containing approximately 19 acres, which included subject property – PC Recommended Approval 05/21/2001 and City Council Approved 06/11/2001 (Ord. # 826).
BL-267 – Scott Sherrill – Request for Lot-Split approval to separate into two (2) tracts the N. approximately 2.5 acres of an original tract containing approximately 19 acres, which included

subject property – Appears to have been approved by Staff 07/12/2002 – No record of PC consideration between June and December, 2002.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-74 – Elsie McLearn – Request for Special Exception to allow mobile home(s) in the AG district for the E. 346.5' of the W. 742.5' of the S/2 SE/4 of Section 31, T18N, R14E, 10.5 acres located north of subject property at or about 10617 E. 121st St. S. – BOA Conditionally Approved 06/10/1980.

BZ-136 – Ted R. Burke – request for rezoning from AG to CS for approximately 40 acres (the NE/4 NE/4; includes subject property) abutting subject property to the east for commercial purposes – Withdrawn by Applicant 03/22/1983 per case notes.

BZ-145 – Eddie McLearn – Request for rezoning from AG to CG for the E. 346.5' of the W. 742.5' of the S/2 SE/4 of Section 31, T18N, R14E, 10.5 acres located north of subject property at or about 10617 E. 121st St. S. – Withdrawn by Applicant by phone 09/06/1983 per notes in case file.

BBOA-121 – Eddie McLearn – Request for Special Exception for a [Use Unit 4] “nursery (horticultural)” in the AG district for the N. 630' of the E. 346.5' of the W. 742.5' of the S/2 SE/4 of Section 31, T18N, R14E (5 acres) located north of subject property at or about 10617 E. 121st St. S. – BOA Approved 10/11/1983.

BBOA-274 – Dr. Cecil Wells Jr. – Request for Variance from the minimum area standard in the AG district to allow for a Lot-Split (BL-176) of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by BOA 02/07/1994.

BBOA-275 – Dr. Cecil Wells Jr. – Request for Variance from the minimum frontage standard in the AG district to allow for a Lot-Split (BL-176) of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by BOA 02/07/1994.

BL-176 – Dr. Cecil Wells Jr. – Request for Lot-Split of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by PC 03/02/1994.

BBOA-270 – Gary McDaniel – Request for Special Exception to allow to allow retail sales as a “seasonal retail horticultural stand” accessory use in the AG district (See Zoning Code Section 11-7A-3.A Table 2) for all of the land the Applicant then owned in the E. 346.5' of the W. 742.5' of the S/2 SE/4 of this Section, property located to the north of subject property at 10617 E. 121st St. S. – BOA Approved 01/04/1994.

BBOA-272 – Sue Trumbo – Request for Variance from the minimum lot size requirement in the AG district to allow a Lot-Split (BL-175) to create north and south halves of a 2-acre tract (E. 132' of the S. 660' of the of the W. 528' of the SW/4 of the SE/4 of this Section) to the north of subject property at 10101/10101-B E. 121st St. S. (not to be confused with the ½-acre tract to the east of the subject property which also has an associated address of 10101 E. 121st St. S.) – BOA Approved 02/07/1994.

BBOA-273 – Sue Trumbo – Request for Variance from the frontage requirement in the AG district to allow a Lot-Split (BL-175: see below and see BBOA-272 above) – BOA Conditionally Approved 02/07/1994.

BL-175 – Sue Trumbo for Elsie McLearn – Request for Lot-Split to create north and south halves of a 2-acre tract (E. 132' of the S. 660' of the of the W. 528' of the SW/4 of the SE/4 of this Section) to the north of subject property at 10101/10101-B E. 121st St. S. (not to be confused with the ½-acre tract to the east of the subject property which also has an associated address of 10101 E. 121st St. S.) – PC Approved 03/02/1994.

BL-269 – Scott Sherrill – Request for Lot-Split approval to create two (2) lots along the east of 109th E. Ave. just north of subject property – PC Approved 08/19/2002.

BL-307 – Scott Sherrill – Request for Lot-Split approval to create two (2) lots along the east of 109th E. Ave. just north of subject property – PC Approved 09/23/2004.

BL-360 – Chisholm Ranch, LLC for Patricia Wells Trust – Request for Lot-Split approval for a small land trade for property to the west of subject property at 9740 and 10288 E. 121st St. S. – PC Conditionally Approved 09/15/2008.

BL-361 – Chisholm Ranch, LLC for the Juniper Hill Farm, Inc. – Request for Lot-Split approval for a small land trade for property to the west of subject property at 9740 and 10288 E. 121st St. S. – PC Conditionally Approved 09/15/2008.

BBOA-520 – Denny Redmon for Bobby Gillean – Request for Special Exception per Zoning Code Section 11-9-4.C.1.c to allow a Use Unit 4 cellular communications tower facility to be located closer than ½ of a mile from an existing tower, on a 34-acre tract in an AG Agricultural District located to the east of the subject property in part of Government Lot 1, (NE/4 NE/4) of Section 06, T17N, R14E, addressed 11198 E. 121st St. S. – BOA Denied 05/03/2010 – Appealed (Case No. 10-CV-349-CVE-PJC) and found in favor of Plaintiff U.S. Cellular in late 2010 per City Attorney.

BBOA-560 – Dr. C. G. Wells Jr. for Marcia D. Wells – Request for Variance from (1) Zoning Code Section 11-8-5 to be permitted to maintain two (2) dwellings on a singular tract of land, (2) the 40' rear yard setback and 2.2 acre minimum land area per dwelling unit standards of Zoning Code Section 11-7A-4 Table 3, and, (3) any other Zoning Code requirement preventing the placement and maintenance of a Use Unit 9 single-wide manufactured home on a lot containing a Use Unit 6 single family dwelling and the Juniper Hill Farm a Use Unit 15 nursery business in the AG Agricultural District, all for property to the west of subject property at 9740 and 10288 E. 121st St. S. – Conditionally Approved by BOA 06/04/2012.

BBOA-561 – Dr. C. G. Wells Jr. for Marcia D. Wells – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow an existing Use Unit 9 single-wide manufactured home in the AG Agricultural District, all for property to the west of subject property at 9740 and 10288 E. 121st St. S. – Conditionally Approved by BOA 07/02/2012.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 3.3 acres, addressed 12305 S. 109th E. Ave., and Zoned AG. The parcel contains an existing house located toward its southeast corner, a large accessory building about its northwest corner, and miscellaneous smaller structures about the property. Per the Applicant and the Tulsa County Assessor's records, the house was constructed in 1970. Its driveway continues south from the subject property to another acreage tract the Applicant owns. The subject property was a certain "middle" part of a former approximately 19-acre tract of land. To the south are approximately 14 acres that appear to have been separated from the subject property at some point. Most of the 14 acres also belong to the Applicant, but a certain southeast portion of approximately 1.6 acres the City of Bixby recently acquired as right-of-way for the Haikey Creek Flood Improvement Project.

In or around 2001/2002, a previous owner of the former 19 acres rezoned the northerly approximately 2.5 acres thereof and separated it into two (2) smaller tracts, on which new homes have been since constructed. Those two (2) homes, and the four (4) tracts on the east side of 109th E. Ave., may be informally known as "Haikey Creek Farm/s," an unplatted subdivision. Though not a part of the original 19-acre tract, there are four (4) tracts on the east side of 109th E. Ave. that were also created by Lot-Splits in 2002 and 2004. One (1) of those lots appears to have had an older house on it, and the other three (3) lots had new homes constructed on them around the mid-2000s.

Staff is not certain when the 109th E. Ave. was assigned this street name. It appears to be associated with a 20'-wide "Roadway Easement" dedicated "to the Public for roadway purposes" and recorded January 10, 1966 on Book 3666 Page 416 of the records of the Tulsa County Clerk. This 1966 dedication presumably predated the City of Bixby's annexation of this area, and may suggest that, if recognized as a Public road, may have been a County road prior to annexation. Per the Applicant, the City of Bixby paved the street "in the past 10 years." Per a site inspection March 28, 2013, S. 109th E. Ave. has a street name sign bearing this name, green in color indicating a standard Public street. Since Staff's inquiry to the Public Works Director by email on March 25, 2013, the Public Works Director has not disclaimed it as a City street. The subject property has 20' of frontage on the south-dead end of the easement associated with 109th E. Ave., and so has 20' of Public street frontage.

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 has submitted a Building Permit application seeking to build an addition to the north/side of the existing house. The building addition includes “a garage and utility room,” per the application form.

Zoning Code Section 11-8-4 requires that all lots used for residential purposes have a minimum of 30’ of street frontage:

“11-8-4: STREET FRONTAGE REQUIRED:

No lot shall contain any building used in whole or in part for residential purposes unless such lot has a minimum of thirty feet (30') of frontage on a public street or dedicated right of way, except as provided for a substandard lot of record, a lot dedicated within an approved planned unit development, and a lot within an approved townhouse development. (Ord. 272, 4-2-1974)”

The subject property has only 20’ of frontage on the south dead-end of 109th E. Ave., and so does not meet this standard.

The subject property appears to meet the other minimum bulk and area standards for the AG district, including the 2.0-acre minimum lot area and the 2.2-acre minimum land area, and the house appears to meet the required Zoning setbacks.

Zoning Code Section 11-8-1 restricts the issuance of building permits for nonconforming lots.

Therefore, the Applicant is requesting a (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a house on an existing lot of record in the AG Agricultural District.

Detailed Analysis. The Applicant has provided several arguments explaining how the proposed Variance would meet the tests and standards for Variance. Staff believes that these arguments are sound and reasonable, and has provided further refinements and additional arguments in the following paragraphs.

The former 19-acre tract had 143.46’ of frontage on 121st St. S. prior to the separation of its northerly approximately 2.5 acres as associated with Lot-Split application BL-267 in 2002. It also had 770.4’ of frontage along the west side of S. 109th E. Ave. and the 20’ of frontage on the south dead-end of that street as it presently maintains. It appears that the Lot-Split itself created three (3) tracts, the third being the subject property by default. Thus, the subject property appears to have fallen out of compliance with the 30’ frontage requirement in 2002.

At 20’, the frontage is just 10’ shy of the 30’ minimum required by the Zoning Code.

One of the fundamental purposes for having and administering Subdivision Regulations is to ensure that all lots created comply with the Zoning Code and have unrestricted, direct access to a public street or dedicated right-of-way. The Zoning Code requires that all lots approved as required by the Subdivision Regulations comply with the Zoning Code standards.

Per Zoning Code Section 11-8-4, the minimum frontage required for a house 30’. Per BL-267, however, the Planning Commission approved a Lot-Split allowing the creation of the subject property, despite the fact that the proposed lot would not comply with the minimum 30’ of public street frontage required. It is presumed the Applicant was not aware of the frontage standards of the Zoning Code, and relied upon the Planning Commission’s approval. If this is the case, by no fault of the Applicant, a substandard lot of record was created, with sanction by the City of Bixby.

The subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property by virtue of the Lot-Split approval conferred upon it by BL-267, approved in 2002, the Public road easement, and the other lot division particulars described hereinabove.

Such extraordinary or exceptional conditions or circumstances are peculiar to the subject property and do not apply generally to other property in the same district because substandard lots of record are generally not permitted to be created by the City of Bixby within the AG or other districts, and a survey of existing AG districts in Bixby would likely prove this statement true.

Strict application of the bulk and area standards to the subject property would cause an unnecessary hardship, by disallowing the expansion of the house. Further, the subject property is presently “unbuildable” due to its illegally nonconforming status and Zoning Code Section 11-8-1.

Because the subject property has existed in its present state since approximately 2002 without complaints or adverse impacts on adjoining properties, has legal access to 109th E. Ave., a Public street maintained by the City of Bixby, and recognizing that the Planning Commission approved the creation of

the subject property for Lot-Split, thus allowing for the construction of a dwelling, as is hereby proposed, Staff would advise 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. Staff believes that the Variance of 10', the difference between the 20' existing and the 30' of frontage required, would be the minimum necessary to alleviate the unnecessary hardship. Staff Recommendation. Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. Staff recommends Approval.

Darrell Mullins in at 6:06 PM.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Danny Martin and Scott Sherrill stated that they wanted to add a garage and room addition to the house.

After further discussion, Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-578. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to Danny Martin.

2. **BBOA-577 – Khal[e]d Bakri.** Discussion and possible action to approve a variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a horse stable (barn) building structure with the dirt floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain.

Property located: Part of the S/2 NE/4 SE/4 Section 01, T17N, R13E; 12808 S. Mingo Rd.

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, April 18, 2013
RE: Report and Recommendations for:
BBOA-577 – Khal[e]d Bakri

LOCATION: – 12808 S. Mingo Rd.
– Part of the S/2 NE/4 SE/4 Section 01, T17N, R13E
LOT SIZE: 7 acres, more or less
ZONING: AG General Agricultural District
SUPPLEMENTAL ZONING: None
EXISTING USE: Vacant

REQUEST: *Variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a horse stable (barn) building structure with the dirt floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain*

COMPREHENSIVE PLAN: *Low Intensity + Vacant, Agricultural, Rural Residences, and Open Land*

PREVIOUS/RELATED CASES:

Sketch Plat of "Pecan Grove Estates" – Request for Sketch Plat approval for a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way), including subject property – PC reviewed and discussed only 07/17/2000.

Preliminary Plat of "Pecan Grove Estates" – Request for Preliminary Plat approval for a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way), including subject property – PC Conditionally Approved 08/21/2000. A 02/21/2001 letter from then Assistant City Manager Mike Jones indicates City Council had previously Denied the application.

BACKGROUND INFORMATION:

History of the Application. *By email on February 19, 2012, Staff advised the Applicant about the Floodplain situation, including that "[t]he property is in the 100-year (1% Annual Chance) Regulatory Floodplain per the FEMA Floodplain maps and cannot be built upon without (1) elevating the structure to 1 foot above [Base Flood Elevation], as evidenced by an Elevation Certificate, (2) providing compensatory storage, and (3) complying with stormwater requirements of Title 13. This will require your hire of a qualified engineer to produce calculations and plans in satisfaction of floodplain and stormwater regulations."*

The Applicant purchased the subject property of approximately 7 acres (7.1 acres if including 24.75'-wide Statutory Right-of-way) by deed dated December 17, 2012 and recorded on December 18, 2012.

The Applicant has contacted Staff several times in the months since the purchase asking various questions about site development, including a house at some future date. On March 20, 2013, the Applicant visited with City Staff to ask questions about constructing a "horse barn" on the subject property, to shelter a certain number of horses already purchased by the Applicant. Staff explained the Floodplain Development Permit and Floodplain Regulation options in detail, and provided the Applicant a drawing with notes showing the three (3) options that would allow for compliance with the Floodplain Regulations:

- 1. Flow-through foundation, elevate 1st Floor 1' above 100-year Base Flood Elevation*
- 2. Floodproof – airtight below Base Flood Elevation (BFE)*
- 3. Elevate ground to 1' above BFE – Requires Engineer and Compensatory Storage*

Instead of selecting one of these options, the Applicant has requested a Floodplain variance to allow the construction of the horse-barn building at grade. During an internal Staff Meeting held on or around March 21, 2013, the City Manager contacted the property owner and discussed the situation, and the owner asked the City Manager to expedite the approval process by calling a Special Meeting of the Board of Adjustment. On March 22, 2013, the Applicant submitted the Floodplain variance application. Staff contacted the Board Chair, who agreed to call a Special Meeting if quorum could be determined. Based on Board member availability and Public Notice requirements, the earliest Special Meeting date was April 23, 2013, which is what this application has been scheduled for.

Floodplain Variance Application Process. *Staff has found three (3) prior Floodplain variances presented to the Bixby Board of Adjustment. BBOA-423 – Karen Johnson was a request for Floodplain variance "to allow fill in the floodplain without providing compensatory storage (Engineering Design Standards Section E)" for Lot One (1) Block One (1), Bixby Industrial Park, addressed 7580 E. 151st St. S., a former NAPA auto parts store that had been destroyed by fire. The Bixby Board of Adjustment Denied the application on July 13, 2004, as recommended by Staff.*

On August 06, 2012, the Board of Adjustment approved BBOA-563 and BBOA-564 (Program Management Group, LLC for Tulsa County) pertaining to restroom buildings in Haikey Creek Park. BBOA-563 allowed the replacement of a restroom building, and BBOA-564 allowed the construction of a new restroom building, both having the First Finished Floor located below the BFE of the 100-year (1%

Annual Chance) Regulatory Floodplain. In the case of BBOA-564, the new restroom was approved for location in the Floodway.

These cases were found among those applications to the Board of Adjustment using the conventional case numbering system, "BBOA-[sequential number]." It is possible, however, that other Floodplain variances came to the Board of Adjustment, or to some other City administrative body, but were not found due to not being among the enumerated case numbers. Staff has not discovered any hard copy case files or electronic records for any other Floodplain variances, however.

In all three (3) cases, the Public was given a Public Notice by way of (1) newspaper publication, and (2) mailing of the Public Notice to property owners within a 300' of that property. Based on this precedent, Staff has advertised the Public Notice for this application in the newspaper and by direct mailing to 300' radius property owners, and has posted a Board of Adjustment notice sign on the property, as per custom.

Pecan Grove Estates. The subject property is located in an area of approximately 36.18 acres, that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way. The area is an unplatted, informal subdivision containing approximately 11 tracts of land and five (5) houses. All tracts have access to Mingo Rd. via a private drive which runs east-west lengthwise through the center (more or less) of the acreage. The drive has a fairly large bridge over the deep drainage ditch along the west side of Mingo Rd.

The area may have been informally known as "Pecan Trail Estates," per a 02/21/2001 letter from then Assistant City Manager Mike Jones to all of the property owners within it. However, Staff believes it more likely that it may have gone by another name. On August 21, 2000, the Planning Commission conditionally approved a Preliminary Plat of "Pecan Grove Estates," a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way), which area included the subject property. The Sketch Plat by this name was reviewed and discussed only by the Planning Commission on July 17, 2000. The Planning Commission Conditionally Approved the Preliminary Plat of "Pecan Grove Estates" on August 21, 2000. The only records of this plat were found in the Planning Commission Minutes; no copy of that plat and no case files were found. It appears the subdivision did not proceed beyond Planning Commission approval of the Preliminary Plat. The 02/21/2001 letter states "the submittal was denied by the City Council because it did not comply with City ordinances and regulations."

At 14 lots, the lots would average roughly the size of several of the ones that have been created. It would have, evidently, incorporated several tracts of land already in existence as of the plat's review in 2000. The "subdivision" appears to have been created by a series of deeds parceling out tracts of approximately 2.51 acres and larger. The first one appears to have been a deed for six (6) acres recorded 12/08/1994 (Book 5677 Page 500). Today this is the "flag lot" of approximately three (3) acres at 12830 S. Mingo Rd. and the vacant tract of approximately three (3) acres immediately to the west. Another parcel (not necessarily the second in the area) was per a deed for 2.5 acres recorded 05/22/1998 (Book 6054 Page 2286), now addressed 12832 S. Mingo Rd. The other tracts in this area appear to have been deeded around the late 1990s / early 2000s.

None of the deeds of which Staff has copies have Lot-Split approval certifications on them. There were two (consolidated?) Lot-Split applications, BL-189 and BL-190 (Benjamin Dixon as Applicant in both cases), Conditionally Approved 03/17/1995. However, the land division as approved was not ultimately realized – the lot line patterns are now different than then proposed. In all of this acreage, there was only one (1) other Lot-Split application, BL-278 (Benjamin Dixon), which proposed the creation of the "flag lot" of approximately three (3) acres at 12830 S. Mingo Rd. and the vacant tract of approximately three (3) acres immediately to the west. It was administratively Approved by Staff March 14, 2003. There is no record of Planning Commission approval or consideration of this case between March 17, 2003 (at which meeting BL-277 was considered) and November 17, 2003 (at which the next Planning Commission-considered Lot-Split was approved, BL-282).

Lot-Split approval may not have been required, as the Subdivision Regulations have jurisdiction over "subdivisions," defined in Section 12-1-5 as:

"SUBDIVISION:

A. The division of a parcel of land shown as a unit or contiguous units on the last proceeding tax roll into five (5) or more lots or parcels, any one of which contains

two and one-half (2¹/₂) acres or less, for the purpose of transfer of ownership or building development;

...” (emphasis added)

And “Lot-Splits,” defined in Section 12-1-5 as:

“ LOT SPLIT: A transfer or agreement or negotiation to transfer any tract of land of two and one-half (2¹/₂) acres or less where such tract of land was not shown of record in the office of the county clerk and does not comprise an entire lot of record. The lot split must meet minimum requirements for bulk and area in the particular zoning district.” (emphasis added)

The Tulsa County Assessor’s records indicate that each tract is 2.51 acres or larger, and based on Staff’s calculations, all of them are at least 2.5097 acres, with one (1) exception. A deed recorded 02/06/2004 (Book 7228 Page 2399) conveyed a 30’ wide strip of land lying east of the vacant tract of 2.51 acres (recorded 08/09/2000 Book 6400 Page 2216). It would appear to have been part of the overall leftover tract until it was deeded separately in 2004. There is a title curative statute that essentially states that, even if the deed to a parcel of land does not bear the approval certificate of the Planning Commission having jurisdiction, after it has been filed of record for a period of five (5) years, it is cured of that title defect. That does not, however, relieve the property owner from compliance with the Bixby Subdivision Regulations.

ANALYSIS:

Property Conditions. The subject property consists of an unplatted tract containing approximately 7 acres (7.1 acres if including 24.75’-wide Statutory Right-of-way), is zoned AG, and is presently vacant. It is approximately 934’ deep and has 331.2’ of frontage on Mingo Rd. The property is relatively flat and appears to drain to the east to an unnamed tributary of Haikey Creek, which traverses the subject property from north to south along a deep ditch paralleling the west side of Mingo Rd. Per the plans for the Haikey Creek Flood Improvement Project, this tributary, downstream of the subject property at 131st St. S., will be rerouted within a new channel to become a tributary of another drainageway, possibly known as “Twin Hills Creek.” Per the EPA My WATERS Mapper, “Twin Hills Creek” was that drainageway that, since the Fry Ditch project was constructed, is now known as Fry Creek # 2 from its northernmost extent to its confluence with Fry Creek # 1. The creek was also previously rerouted southwest of the intersection of 141st St. S. and Mingo Rd. to discharge directly to the Arkansas River.

See the relevant part of the Background Information section of this report for a longer description of the “Pecan Grove Estates” unplatted subdivision, in which the subject property is located.

The subject property and all other tracts in “Pecan Grove Estates” have access to Mingo Rd. via a private drive which runs east-west lengthwise through the center (more or less) of the 36-acre area. The drive has a fairly large bridge over the deep drainage ditch along the west side of Mingo Rd. It is unlikely the Applicant will construct a new bridge over the drainage ditch, and the Applicant has expressed to Staff intent to access the property via the existing private drive, on which the subject property has approximately 500’ of “frontage.” Per the provided site plan, the only easement found by the surveyor attending the drive and affecting the subject property was a “Unrecorded 30’ Easement,” which is described in the Notes as “An undated and unrecorded 30’ “Roadway Easement”, signed by Grantor “Mark Anthony Parker and Karen Denise Parker, Husband and Wife”, to Grantee “Mary Kay Campbell” is deficient but shown on this survey in a reasonable position based on description and actual improvements located. Affects subject property as shown. The surveyor makes no determination to its validity.” On April 17, 2013, Staff has contacted the owner of the parcel on which the front part of the drive is located to ask if there was “an easement associated with the existing drive that would allow the City of Bixby to use the drive to do permit inspections, or otherwise if you would grant temporary license to the City officials for purposes of inspections.” Staff recommends this Floodplain variance be subject to the receipt of documentation adequately demonstrating the City will have legal access to the property for purposes of permit inspections.

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

sufficient cause” prerequisite and also recognizes lot size as a factor. All of these Floodplain variance factors are considered in the analysis that follows.

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

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

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

“13-2B-12: VARIANCE PROCEDURES:

- A. *Requests: The board of adjustment shall hear and render judgment on requests for variances from the requirements of this chapter, including articles A through D.*
- B. *Authority: The board of adjustment shall hear and render judgment when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement of this chapter, including articles A through D.*
- C. *Persons Permitted: Any person aggrieved by the decision of the board of adjustment may appeal such decision in the courts of competent jurisdiction.*
- D. *Records Maintained; Reporting: The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the federal emergency management agency (FEMA) upon request. [cf. 44 CFR Section 60.6(a)(6)]*
- E. *Historic Places: Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, or a state inventory of historic places, without regard to the procedures set forth in the remainder of this section. [cf. 44 CFR Section 60.6(a)]*
- F. *Lot Size: Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($1/2$) acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 13-2A-4 of this chapter have been fully considered. As the lot size increases beyond the one-half ($1/2$) acre, the technical justification required for issuing the variance increases. [cf. 44 CFR Sections 60.6(a) and 60.6(a)(2)]*
- G. *Conditions Attached: Upon consideration of the factors noted above and the intent of this chapter, including articles A through D, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter, including articles A through D.*
- H. *Increase In Flood Levels Prohibited: Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result. [cf. 44 CFR Section 60.6(a)(1)]*
- I. *Prerequisites: Prerequisites for granting variances:*
 - 1. *Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. [cf. 44 CFR Section 60.6(a)(4)]*
 - 2. *Variances shall only be issued upon a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public*

expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances. [cf. 44 CFR Section 60.6(a)(3)]

3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [cf. 44 CFR Section 60.6(a)(5)]

- J. *Functionally Dependent Uses: Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the criteria outlined in subsections A through I of this section are met; and provided, that the structure or other development is protected by methods that minimize flood damages during the base flood create no additional threats to public safety. (2006 Code) [cf. 44 CFR Section 60.6(a)(7)]*

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

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

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

Nature of Variance. According to the Applicant's Elevation Certificate, the Base Flood Elevation at the proposed building site is 607.4' above Mean Sea Level (MSL), and the existing ground elevation is MSL + 604.6'. This means that, during a 100-year (1% Annual Chance) flood event, FEMA's modeling indicates flood waters would be nearly 3' deep.

Per the provided site plan, the Applicant proposes to build a 50' X 32' "horse barn" on the subject property. The Applicant has hand-drawn proposed setbacks on the site plan drawing (survey), but upside down in relation to the orientation of the site plan, so Staff is not certain where on the property the building would be located. This would have to be clarified prior to Building Permit issuance.

Per the Application, the building will have a "natural dirt floor." Per other statements made in conversation by the Applicant, the Applicant will agree to have openings along the base of the structure, to allow the free entry of flood waters if and during a flood event. This would effectively negate the need for Compensatory Storage for the building itself, since the flood waters would not be displaced onto other properties. The openings must comply with FEMA Technical Bulletin 1-93 "Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas" and be approved by the Building Inspector.

However, the new impervious surface constructed (roof, etc.) will cause stormwater runoff. Per City Code and the City Engineer, the new impervious surfaces will require the design and construction of a stormwater detention/retention facility, which stormwater storage area must be out of the 100-year Floodplain, meaning elevated or having its high banks elevated above the BFE. This stormwater storage area will displace 100-year Floodwater storage, and so will require "Compensatory Storage" (compensation for lost flood storage capacity), thus mitigating the displacement of flood waters onto other properties. Compensatory Storage is essentially the removal of fill (typically dirt), from within the same drainage basin, in equal proportion to the new volume which would remain after development. Plans for compensatory storage must be prepared by an engineer and be approved by the City Engineer

in the format of an Earth Change Permit [Sections 13-2A-1 (definition of “Development Permit”), 13-2B.8, and 13-2B-9.A].

As it is expected to be designed, the building may be considered “wet-floodproofed,” meaning designed to allow the free flow of floodwaters into the building by means of vents or other openings. The structure must be designed to allow this to occur without damaging the structure (Section 13-2C-1.D). With 100-year Flood elevations of roughly 3’, the structure is not anticipated to incorporate design modifications for complete inundation. Normally, electrical panels, trip switches or other cutoff devices, outlets, etc. must be elevated above the BFE to the extent possible, and water and sewer systems must be designed to prevent the infiltration of floodwaters using backflow preventers or other measures as required. However, the Applicant has stated that there will be no water or electric service to the building, and Staff expects there would be no other utility connections either.

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

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

Also, the Technical Bulletin lists several Planning Considerations and Engineering Considerations. A good application for Floodplain variance will address the relevant issues raised in those sections (e.g. “Warning Time,” “Safety and Access,” “Inspection and Maintenance Plan,” “Flood Emergency Operation Plan,” “Foundations,” “Electrical System,” etc.). By email on the date of this report, Staff has asked the Applicant to respond to these considerations as a part of this application.

FEMA/NFIP rules and the Bixby Floodplain Regulations [Section 13-2C-1.A; 44 CFR 60.6(a)(1)] will require certification of No Rise in BFE upstream or downstream from the project sites.

Here is a summary of the informational requirements needed to justify a Floodplain variance request generally:

- Certification of no rise in BFE / compensatory storage engineering [Section 13-2C-1.A; 44 CFR 60.6(a)(1)]
- Elevation Certificate demonstrating depth of variance requested (attached to this report)
- A variance application/request and project narrative:
 - Application to the Bixby Board of Adjustment, per Section 13-2B-12.A, and requesting placement on its next available agenda.
 - Describing the project in general terms, discussing the need for the proposed structure and other options considered but not selected
 - Demonstration “that the variance is the minimum necessary, considering the flood hazard, to afford relief.” [Section 13-2B-12.I.1; 44 CFR 60.6(a)(4)]
 - “Showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances.” [Section 13-2B-12.I.2; 44 CFR 60.6(a)(3)]
 - Demonstration that the building will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.” (Section 13-2C-1.C).
 - Demonstration that the building will be “constructed with materials resistant to flood damage.” (Section 13-2C-1.D).
 - Description of the elevation (1’ above BFE otherwise required by Section 13-2C-1.F) or otherwise floodproofing of utilities, specifying the resistance to the “infiltration of floodwaters” if/as applicable
 - Specification that the building will comply with all other applicable Federal and Bixby Floodplain Regulations requirements.

- Description of how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.
- A variance processing and filing fee in the amount of \$50.00 (Ordinance # 599) (paid; Receipt # 01057660)
- Site plan indicating the locations of critical site features, including all those discussed in the narrative (attached to this report).

No Increase in Flood Levels [cf. Section 13-2B-12.H and 44 CFR Section 60.6(a)(1)]. FEMA/NFIP rules and the Bixby Floodplain Regulations will require certification of No Rise in BFE upstream or downstream from the project site. See the other section in this analysis pertaining to stormwater detention/retention and Compensatory Storage.

Upon the receipt of the Certification of No Rise in the BFE from the Applicant's engineer and the completion of any required Compensatory Storage, which design may require an approved Earth Change Permit, this prerequisite will have been satisfied.

1/2 Acre Lot Size [cf. Section 13-2B-12.F and 44 CFR Section 60.6(a)(2)]. The subject property contains approximately 7 acres, and so does not meet the Federal requirement for being less than 1/2 acre in lot area. However, a relevant part of 44 CFR Section 60.6(a) provides the following:

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

It is evident that the 1/2 acre lot size rule is not absolute, but "as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases." It follows, then, that the subject property is subject to a higher technical standard than much smaller lots.

It appears that this 1/2-acre rule is primarily intended to limit flood losses by restricting variances to small, residential lots – those on which a property owner may build a single-family detached dwelling. That is not the case here.

Although the guidance most precisely relevant to the current application, Technical Bulletin 7-93 does not appear to mention the 1/2-acre rule for "wet-floodproofing" related Floodplain variance applications.

Good and Sufficient Cause [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. Although the application form used does not provide a request that the Applicant respond to the Good and Sufficient Cause prerequisite, the Applicant's relevant narrative would appear to be as follows: "It would alleviate the unnecessary hardships I am facing because the City of Bixby wants me to build my barn three Feet above ground because it is in a flood zone, but I know the City of Bixby is about to Lift/Remove the area from a Flood Zone. Also they tell me that I can't use the dirt from my own land to raise the Barn by three feet and that I also cannot Bring dirt on to my Land from an outside source. So there for I am completely restricted from building a barn to house my horses and agricultural equipment."

The statement that the City of Bixby told the Applicant he could not "use the dirt from my own land to raise the Barn by three feet" is factually inaccurate. Staff provided this as the third of three (3) options which would comply with the Floodplain Regulations. This option, however, would likely be expensive, as it would require hiring an engineer to demonstrate compliance with the Floodplain Regulations, including Earth Change Permit engineering.

The statement that "the City of Bixby is about to Lift/Remove the area from a Flood Zone" is a reference to the [Vision 2025 Haikey Creek Flood Improvement Project](#), which is designed to remove several hundred acres from the 100-year (1% Annual Chance) Regulatory Floodplain, including in this area per 2006 conceptual plans. The Haikey Creek Project consists of the construction of new channels, the rerouting of existing drainageways into new channel alignments, and the construction of a levee in certain areas. The Haikey Creek Project is awaiting final disposition of an Eminent Domain lawsuit on a right-of-way parcel, FEMA approval of the project, replacement of County bridges along Sectionline roads, and then construction of the rest of the project. Prior to the affected areas being removed from the 100-year Floodplain, As-Built/Record surveying must be conducted to determine the final grade

elevations for the project area. The survey data will be attached to a Letter Of Map Revision (LOMR) application, to be completed and submitted to FEMA for its approval. Upon and presuming FEMA approval, the official Floodplain maps will be amended to remove the certain affected areas from the floodplain, and recalculate Base Flood Elevations for the balance of the affected area. The entire process may take some time, and a definitive timeline is not available. Staff has no specific data demonstrating that the subject property will be removed, in whole or in part, from the 100-year Floodplain upon the completion of the project. Staff recognizes that the project scope does not involve elevating the subject property or any other land in the area of the subject property, nor does it indicate any changes to the deep drainage ditch along Mingo Rd.

“Exceptional Hardship” [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. See the Applicant’s narrative under the Good and Sufficient Cause prerequisite section of this report, as the same would appear to apply to this prerequisite.

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

Certain statements in the provided narrative would appear to address this prerequisite, as follows:

“All the surrounding properties have Barns, horses, + other livestock. My Property is Not Much Different from My neighbors.”

“My Property is Located on Land zoned for Agriculture. I only intend on building a barn to house My three horses + farm equipment. There is No concrete, water or electric (Natural Dirt floor) in the Barn.”

“7 acre Land and I would Like to Put a barn on My Land. [A]ll of My surrounding Neighbors have Barns on their Land. My Property is zoned for Agriculture.”

See also the discussion in this report pertaining to the Haikey Creek Project, which would be seen in the context of this prerequisite as mitigating detriment from a time and/or flood height standpoint. That is, it is a relative certainty that at some point in the next few years, the Project will be complete, and the subject property may be removed, in relevant part or in whole, or otherwise the Base Flood Elevation may be reduced at the site of the structure. The above caveat still holds that Staff has no specific information on the outcome of this project on the subject property.

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

Staff is concerned, however, for the welfare of the horses that may be living in the horse barn if and during a 100-year (1% Annual Chance) flood event, during which FEMA estimates floodwaters may approach three (3) feet in height at the proposed site of the barn building. Per [Wikipedia’s entry on “Horse,”](#) most non-pony, non-miniature adult horse breeds range in height from 4 2/3 feet to 6 feet. Foals will normally be shorter. FEMA has modeled larger flood events; the 500-Year Floodplain shows areas that have a 0.2% chance of being inundated in any given year (i.e., every year). The 1986 flood event was larger than a “100-year,” 1% Annual Chance event, but was not a 500-year (0.2% Annual Chance) event. Base Flood Elevations above the 100-year event are not known for this site. Even if a “heavy or draft horse” at 6’ in height, it would appear to frighten the animal if Floodwaters rose up on the horse to a height approaching three (3) feet. Per Wikipedia, horses have a “strong fight-or-flight instinct.” The barn may not always shelter only horses; other animals not reaching this height may be contained within the structure during the period of its existence. If the Board approves this application, Staff recommends the Applicant submit a flood event response plan describing how the horses or other animals will be able to seek higher ground to avoid floodwaters approaching three (3) feet if and during such an event. Staff would think an elevated platform with ramp may allow for escape to a higher elevation, in the event of such a flood and if the owner could not get to the property and release the animals before waters begin to enter the barn building. However, this design would appear to require extensive modifications to the stalls. The Applicant may propose other plans to achieve the same result.

Finding of Minimum Necessary [cf. Section 13-2B-12.I.1 and 44 CFR Section 60.6(a)(4)]. The Minimum Necessary to Alleviate the Unnecessary Hardship prerequisite for a Floodplain variance requires a finding “that the variance is the minimum necessary, considering the flood hazard, to afford relief.” The application form points to the following relevant part of the provided narrative as a response to the “Minimum Necessary” question:

“It would alleviate the unnecessary hardships I am facing because the City of Bixby wants me to build my barn three Feet above ground because it is in a flood zone, but I know the City of Bixby is about to Lift/Remove the area from a Flood Zone.”

The Applicant is citing the approximately 3’ (3.8’ with the City of Bixby’s 1’ above BFE “freeboard” minimum standard) difference between the existing ground elevation and that required to comply with the Floodplain Regulations.

If the Board finds that the application meets all of the other prerequisites and is to be approved, Staff recommends that the application be found the minimum necessary, based on the location of the proposed barn building and the elevations of the natural grade and the BFE at such site is fixed, and if the building is approved for variance the Board is concomitantly recognizing that the minimum necessary rule has been satisfied. The elevations of the building site and the BFE have been established by a surveyor’s Elevation Certificate, as per FEMA and City of Bixby Floodplain Regulations. Per the Elevation Certificate, the depth of flooding would be 2.8’ at the building site, and with the freeboard, the Floodplain variance would be 3.8’.

Staff Recommendation. The City Planner / Floodplain Administrator does not object to the requested Floodplain variance, provided the minimum floodplain and development regulations are met. If the Board should Approve this application, Staff recommends the Approval be subject to:

- 1. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant’s engineer.*
- 2. Submission, City Engineer Approval, and completion of a design for stormwater detention/retention to address the increase in impervious area from site development.*
- 3. Submission, City Engineer approval, and completion of a design for compensatory storage if any issues result from the detention/retention design.*
- 4. Submission of a flood event response plan describing how the horses or other animals will be able to seek higher ground to avoid floodwaters approaching three (3) feet if and during a 100-year (1% Annual Chance) flood event.*
- 5. Submission of documentation adequately demonstrating that the City will have legal access to the subject property for purposes of permit inspections.*
- 6. Submission of an adequate site plan, dimensioned and to scale, clearly indicating the proposed location of the building on the subject property.*
- 7. Submission of design information demonstrating the use of openings along the base of the structure’s walls, to allow the free entry of flood waters if and during a flood event, which design for openings must comply with FEMA Technical Bulletin 1-93 “Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas” and be approved by the Building Inspector.*
- 8. Submission of information demonstrating that the building will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,” or using similar language to this effect (Section 13-2C-1.C).*
- 9. Submission of information demonstrating that the building will be “constructed with materials resistant to flood damage,” or using similar language to this effect (Section 13-2C-1.D).*
- 10. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.*
- 11. All of the Conditions of Approval requiring specific action must be satisfied prior to Building Permit / Floodplain Development Permit issuance.*
- 12. The Applicant acknowledges, upon application of signature to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.*

Concluding the summary of the report, Erik Enyart stated that he had attempted to mention the pertinent things, but this was a complex application and, for any he missed, they should rise to the top during the discussion of this item. Mr. Enyart offered to answer any questions at this time or as they come up [during discussion].

Larry Whiteley asked Khaled Bakri what the building was for, and Mr. Bakri stated that it was for his two (2) horses for himself and his family. Mr. Bakri stated that he had just purchased the property two (2) months ago. Mr. Bakri stated that it would be too expensive to bring the dirt level up four (4) feet.

A Board member asked how big the building would be, and Khaled Bakri responded “32’ X 36’, maybe bigger.”

Larry Whiteley advised Khaled Bakri that, “When you buy in the floodplain, you should know” [about the Floodplain Regulations]. Mr. Bakri responded, “But it’s coming out of” [the 100-year Regulatory Floodplain].” Erik Enyart stated that the Haikey Creek Flood Improvement project included plans to build a large levee or dike and rechannelize some areas, but the only map he had which showed what areas would be removed from the floodplain was a conceptual map from the [U.S. Army] Corps of Engineers from 2005 or 2006. Mr. Enyart stated that he did not know if the subject property would be removed in whole or in part, or to what extent there would be a reduction in the Base Flood Elevation as a result of this project. Mr. Enyart stated that the project still required FEMA approval, the resolution of a final right-of-way parcel acquisition, the replacement of the County roads, the completion of the project, and then FEMA acceptance of As-Built plans. Mr. Enyart stated that this would take some time, and so the Variance would perhaps only be temporary, but it was not known definitively.

The Board members discussed with Erik Enyart and Khaled Bakri some of the recommended Conditions of Approval.

A Board member asked Khaled Bakri if the pole barn would have sides, and Mr. Bakri responded that it would but that he would “leave the bottom open.”

Erik Enyart noted that, prior to the meeting, he had spoken to Khaled Bakri and, as regards recommendation # 4, Mr. Bakri had told him that the barn building would be left open and, if floodwaters rise, the horses can simply run away. Mr. Bakri stated, “Most of the time it will be open.”

Khaled Bakri stated that the original building plans he showed the City had stalls, but he was considering doing something different now.

Murray King confirmed with Khaled Bakri that Mr. Bakri would be storing other things within the building, including equipment. Mr. Bakri stated that his neighbor “behind me” has a barn at the “same level as mine.” Mr. Bakri stated that he was paying \$600 every month to keep the horses [boarded at a stable located a] 30 minutes drive every weekend.

Mark Palmer indicated he was helping Khaled Bakri with the building of the barn. Mr. Palmer asked how the City would know if the building was built as the City was requesting. Erik Enyart responded that there would be a Building Permit and the building would be inspected. Mr. Palmer expressed doubt that a Building Permit was required for a barn on an agricultural acreage.

A Board member asked Khaled Bakri if he understood the Staff's recommendations. Erik Enyart stated that he had emailed the staff report to Mr. Bakri the previous week, but Mr. Bakri told him before the meeting that he had not checked it, so he had discussed it briefly with Mr. Bakri and printed a copy of the recommendations from the Staff Report and gave it to him.

Murray King suggested that the Board Continue the application to the next meeting to allow the Applicant to read Staff's recommendations. Discussion ensued.

Chair Jeff Wilson stated that it would be best to go through the recommendations one at a time. Mr. Wilson read the recommended Conditions of Approval, and further discussion was held as follows:

1. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant's engineer.

Erik Enyart stated that a hydrologist would be needed for this item.

2. Submission, City Engineer Approval, and completion of a design for stormwater detention/retention to address the increase in impervious area from site development.
3. Submission, City Engineer approval, and completion of a design for compensatory storage if any issues result from the detention/retention design.

Erik Enyart stated that items number 2 and 3 were related and were per the City Engineer. Mr. Enyart stated that he had asked the City Engineer for his comments on this project, and these two (2) items were his response as to what would be required. Mark Palmer and Khaled Bakri expressed doubt that these things were required for this building. Discussion ensued. Mr. Palmer stated that there would be no stormwater runoff. Mr. Enyart stated that the roof would be impervious. Mr. Palmer stated there would be a dirt floor. Mr. Enyart stated that, perhaps, [some of] the water could roll off the roof and then find its way back down inside and then soak in the ground, but he expected there would be some measurable amount of runoff that would have to be detained. Mr. Enyart stated that, perhaps, if [the project] were explained to him in sufficient detail, the City Engineer may come to the same conclusions [as Mr. Palmer stated]. Discussion ensued. Mr. Enyart stated, "I'm not a hydrologist, but the City Engineer is well versed in matters of hydrology, and I trust his opinion."

Khaled Bakri asked the Board members if he would not be allowed to construct a building less than 200 square feet without any of these things being required. Erik Enyart asked Patrick Boulden if the recently-adopted Building Code did not have an exemption from the Building Permit requirement for structures less than or 200 square feet or less, and Mr. Boulden indicated this was correct. Mr. Enyart stated that the Building Code was adopted by ordinance, but that the Floodplain Regulations were adopted by a different ordinance, and stated that anything built in the Regulatory Floodplain was subject to the Floodplain Regulations. Mark Palmer stated that [Community Development Coordinator] Donna Crawford told him that the City would not require anything if the building was 200 square feet or smaller. Mr. Enyart stated, "I'm certain she would qualify every statement appropriately."

Mr. Palmer stated that he had a hydrologist that would look at this.

4. Submission of a flood event response plan describing how the horses or other animals will be able to seek higher ground to avoid floodwaters approaching three (3) feet if and during a 100-year (1% Annual Chance) flood event.

Erik Enyart reiterated that Khaled Bakri told him before the meeting that the building would be open and that the horses could simply run away if floodwaters begin to rise.

Khaled Bakri stated that he would not promise that the horses would not stay in their stable stalls. Mr. Bakri stated that he lived five (5) miles from the subject property, and if it began to flood he would come and open the stalls. Mark Palmer stated that horses could swim and were tall enough to have their heads above water. A Board member noted that goats may not [have their heads above the 3' flood height mark]. Mr. Palmer conceded the point.

5. Submission of documentation adequately demonstrating that the City will have legal access to the subject property for purposes of permit inspections.

Erik Enyart stated that, per the survey submitted by the Applicant, the singular private drive leading into the property may not be covered by an easement, and it did not appear likely that the Applicant would build a new driveway across the deed drainage ditch along Mingo Rd. Khaled Bakri and Mark Palmer indicated no new driveway would be constructed. Mr. Bakri stated that all of the property owners on the drive had the right to use it. Mr. Enyart stated that the records did not reflect an easement covered the part of the drive that goes through the parcel to the south to the subject property. Discussion ensued. Mr. Enyart stated that he emailed the owner of the property to the south, Patrick Roark, whom he knew from working with him on a previous zoning-type application some years ago. Mr. Enyart stated that Mr. Roark emailed back and indicated he would be willing to grant the City of Bixby temporary license to use the drive through his property for purposes of inspections.

Mark Palmer stated that he had heard that all five (5) of the residents in this subdivision shared one (1) waterline and the water bill.

6. Submission of an adequate site plan, dimensioned and to scale, clearly indicating the proposed location of the building on the subject property.

Erik Enyart stated that most of these items were required for Building Permit purposes anyway.

7. Submission of design information demonstrating the use of openings along the base of the structure's walls, to allow the free entry of flood waters if and during a flood event, which design for openings must comply with FEMA Technical Bulletin 1-93 "Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas" and be approved by the Building Inspector.

Erik Enyart stated that Donna Crawford had offered to assist the Applicant in preparing documentation in this regard.

8. Submission of information demonstrating that the building will be “designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,” or using similar language to this effect (Section 13-2C-1.C).
9. Submission of information demonstrating that the building will be “constructed with materials resistant to flood damage,” or using similar language to this effect (Section 13-2C-1.D).

Erik Enyart stated that, for recommendations number 8 and 9, he believed the City Engineer would describe this area as either “ineffective flow area” or a “backflow area,” which means it is not adjacent to a stream which would have velocities which may carry debris. Mr. Enyart stated that he understood this area to be subject to floodwaters that back up into the area. Mark Palmer indicated that he did not think items number 8 or 9 would be a problem, and that the building would be made of metal.

10. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.

Dave Hill asked Mark Palmer if Khaled Bakri understood all of the Staff’s recommendations. Mr. Palmer stated that he did not know what this was but would have the hydrologist look at it too. Mr. Palmer stated that the hydrologist he was referring to was a friend of his that was a hydraulic engineer.

11. All of the Conditions of Approval requiring specific action must be satisfied prior to Building Permit / Floodplain Development Permit issuance.

Khaled Bakri indicated he understood this item.

12. The Applicant acknowledges, upon application of signature to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Chair Jeff Wilson noted that this was a requirement of the Floodplain Regulations.

Chair Jeff Wilson recognized Phillip Cook of 10201 E. 114th Pl. S. from the Sign-In Sheet. Mr. Cook asked where the building would be located, and the Applicant responded that it would be “in the middle” of the property.

Darrell Mullins stated that he lived in a house in another part of Bixby that did not used to be in a floodplain when it was built, but was mapped in the floodplain in the 1970s. Mr. Mullins stated that, with later development it did flood, and so he understood flooding issues and the rules.

Larry Whiteley stated that the Board was not against the application, and wanted to be sure the Applicant understood the rules that the Staff was explaining to him.

Chair Jeff Wilson stated that, practically, this sounded like a self-made problem.

Phillip Cook asked if the Applicant should have known about the [Floodplain and Floodplain Regulations] two (2) months ago when he purchased the property.

Khaled Bakri stated, “Mr. Erik told me I would face trouble if I build a house,” but he was not building a house but only a barn.

Erik Enyart stated that he had been discussing the Floodplain Regulations with Khaled Bakri for several months before he purchased the property the previous December. Mr. Enyart stated that all of the things recommended to be Conditions of Approval were required by the Floodplain Regulations anyway, and would be required to be issued a Building Permit, and he had listed them for the convenience of the Applicant, who could use it as a “checklist” for getting a Building Permit.

A Board member asked Khaled Bakri if he understood the recommendations, and suggested the application could be Continued to a later meeting to allow Mr. Bakri more time to consider the recommendations. Discussion ensued. Mr. Bakri conferred with Mark Palmer and stated, “Let’s approve on those conditions.” Mr. Bakri indicated that he wanted the approval and, if any of the Conditions were not able to be met, he would simply not build. Erik Enyart stated that, if any of the Conditions were problematic, the Applicant could always return to the Board of Adjustment for reconsideration or amendments to the Conditions.

Chair Jeff Wilson asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE BBOA-577 subject to the 12 Conditions of Approval as recommended by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

Khaled Bakri asked the Board members what they would do if they found that he had built the barn without getting this approved. Discussion ensued. A Board member and Mark Palmer informed Mr. Bakri that the City had the ability to have it torn down or issue fines which accumulate every day the building remains in violation of the Codes.

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:54 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary