

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
June 03, 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, and Larry Whiteley.

Members Absent: Darrell Mullins.

1. Annual nominations and elections for Chairperson, Vice-Chairperson, and Secretary (Board of Adjustment By-Laws, Ord. 772).

Chair Jeff Wilson introduced the item. The Board members discussed the matter briefly and indicated favor for re-nominating all current office-holders. Larry Whiteley made a MOTION to NOMINATE and ELECT Jeff Wilson as Chair, Murray King as Vice-Chair, and Erik Enyart as Secretary. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Hill, Whiteley, Wilson, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

MINUTES

2. Approval of Minutes for April 23, 2013

Chair Jeff Wilson introduced the item. Larry Whiteley made a MOTION to APPROVE the Minutes of April 23, 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

3. Approval of Minutes for May 06, 2013 (Record of No Meeting)

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of May 06, 2013 (Record of No Meeting) as presented by Staff. Larry Whiteley 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.

NEW BUSINESS

[4]. (Continued from April 01, 2013)

BBOA-576 – Jack Selby for the Bixby Rotary Club and Bixby Funeral Service.

Discussion and possible action on an appeal of a sign building permit denial, and the interpretation on which it was based, pursuant to Zoning Code Sections 11-4-6 and 11-4-7, which permit proposed the construction of signs on property in the CG General Commercial District, and to allow the project development to proceed.

Property located: Part of the SW/4 NW/4 Section 12, T17N, R13E; Northeast corner of the intersection of 134th St. S. and Memorial Dr.

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

*To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, May 24, 2013
RE: Report and Recommendations for:
BBOA-576 – Jack Selby for the Bixby Rotary Club and Bixby Funeral Service*

LOCATION: – Part of the SW/4 NW/4 Section 12, T17N, R13E
– Northeast corner of the intersection of 134th St. S. and Memorial Dr.
LOT SIZE: 1 acre, more or less

ZONING: CG General Commercial District (RM-3 zoning located along east side of subject property parcel)

REQUEST: Appeal of a sign building permit denial, and the interpretation on which it was based, pursuant to Zoning Code Sections 11-4-6 and 11-4-7, which permit proposed the construction of signs on property in the CG General Commercial District, and to allow the project development to proceed

SURROUNDING ZONING AND LAND USE:

North: CG, RM-3, & RS-1; The RiverCrest Event Center, the Bixby Funeral Service zoned CG and RM-3, the Riverview Missionary Baptist Church on unplatted property zoned CG and in part of Gardenview Addition zoned RS-1, and single-family residential to the northeast in Gardenview Addition zoned RS-1.

South: (Across 134th St. S.) CG & CS/PUD 49; Vacant land zoned CG and the Tulsa Teachers Credit Union, the Self Storage Deptot ministorage business, and a vacant commercial lot, all within Bixby Crossing zoned CS with PUD 49.

East: RM-3; A vacant 4-acre tract belonging to the Riverview Missionary Baptist Church and the Autumn Park assisted living facility.

West: (Across Memorial Dr.) CG & CS/PUD 13a; Office-type businesses including Family Eye Care, Baker Small Animal Clinic, the Daily Family YMCA of Bixby, and a vacant former daycare facility, and vacant/wooded land zoned CS/PUD 13a to the southwest.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area

PREVIOUS/RELATED CASES: (not a complete list)

BZ-35 – L.C. Neel – Request for rezoning from AG to CG for 10 acres (NW/4 SW/4 NW/4), including subject property – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BZ-123 – L.C. Neel – Request for rezoning from CS and CG to RM-3 for the east approximately 9.5 acres of a reportedly 11.5883-acre original tract (includes an easterly portion of subject property) for apartments – PC Recommended Approval 09/27/1982 and City Council Approved 11/01/1982 (Ord. # 467).

BL-80 – Carol Selby – Request for Lot-Split approval to separate a 0.6-acre tract (now the Bixby Funeral Service lot at 13307 S. Memorial Dr.) from a reportedly 11.5883-acre original tract (remainder tract contained subject property) – PC Recommended Approval 03/28/1983.

BL-93 – Jack Selby for L.C. Neel – Request for Lot-Split approval to separate a 20' X 130' tract to the west of the Bixby Funeral Service lot at 13307 S. Memorial Dr., in order to allow additional parking to offset right-of-way being purchased from the State Highway Department for U.S. Hwy 64 / Memorial Dr. – original tract contained approximately 11 acres (remainder tract contained subject property) – PC Recommended Approval 05/29/1984 and notes on the application form indicate [the City Council] granted Conditional Approval June 01, 1984.

BL-112 – L.C. Neel – Request for Lot-Split approval to separate (1) a ½-acre tract (now the RiverCrest Event Center lot at 13329 S. Memorial Dr.) and (2) a ½-acre tract from the southwest corner of an original tract containing approximately 11 acres (second ½-acre tract would have been a part of subject property, and remainder tract contained the balance of subject property) – Approved 05/27/1986 per notes on the application form (the second ½-acre tract was evidently not since created).

BZ-176 – L.C. Neel – Request for rezoning from RM-3 to CG for a strip of land containing approximately 0.4 acres of subject property and tract abutting to the north – PC Recommended Approval 08/25/1986 and City Council Approved 09/23/1986 (Ord. # 543).

BL-249 – Ron Smith for Resco Enterprises, Inc. – Request for Lot-Split approval to separate a 4-acre tract and a 1-acre tract from a 5-acre tract (now the Autumn Park assisted living facility and a related independent living housing section) abutting to the east (5-acre tract evidently previously separated from balance of property which contained subject property) – City Planner Approved 05/12/2000.

BBOA-401 – Riverview Missionary Baptist Church – Request for Special Exception to allow a Use Unit 5 church use in the RM-3 district for approximately 5 acres (including subject property) – BOA Approved 04/07/2003.

BL-330 – Ron Wale for Riverview Baptist Church – Request for Lot-Split approval to separate 1-acre subject property from the 4-acre tract balance to the east belonging to the Riverview Missionary Baptist Church – PC approved 10/17/2005.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-29 – Charles E. Norman for Frates Property, Inc. – Request for CS, OM, RD, RS-3, & RM-2 zoning for approximately 231 acres to the east/southeast of subject property – PC Recommended Approval as requested 10/17/1974 and Town Board of Trustees Approved as requested 11/05/1974 (Ord. # 286).

BZ-34 – L.C. Neel – Request for rezoning from RS-1 to CG for 3.5 acres to the north of subject property (now the South Plaza Center shopping center and the building complex containing the Green Acres Sod Farm, Inc. Corporate Office and the Ron's Hamburgers & Chili restaurant) – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BZ-53 – L.C. Neel – Request for rezoning from RD to CS for approximately 5 acres to the east of subject property (now the Autumn Park assisted living facility and a related independent living housing section) – PC Recommended Approval 02/14/1977 and Town Board of Trustees Approved 02/15/1977 (Ord. # 327).

BZ-56 – Adrian Watkins for Watkins Brothers – Request for rezoning from AG to CG for approximately 6.25 acres to the northwest of subject property (now part of Riverview Plaza and part of Riverbend Commercial Center) – PC Recommended Approval 08/29/1977 and Town Board of Trustees Approved 09/19/1977 (Ord. # 336).

BZ-83 – Delcia G. Wilson – Request for CG, RMH, & RM-2 zoning for approximately 70 acres to the west of subject property – PC Recommended Approval and City Council Approved 04/07/1980 (Ord. # 390 Amended by Ord. # 536 01/14/1986).

BBOA-96 – Frank Clifton – Request for Special Exception to allow a horticultural nursery in a CS, RD, & OM district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 01/11/1982.

BZ-113 – R. C. Volentine – Request for rezoning from CS, RM-2, RD, & OM to IL for approximately 30 acres (includes, more or less, all of Bixby Crossing and all of Knight Industrial Park) to the south of subject property – PC Recommended Approval of the S. 15 acres (more or less, Knight Industrial Park) 01/25/1982 and City Council Approved the S. 15 acres 02/22/1982 (Ord. # 454).

BZ-129 – Watkins Sand Co., Inc. – Request for rezoning from RS-1 to CG for approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – PC Recommended Approval 01/31/1982 and City Council Approved 02/07/1983 (Ord. # 472).

BBOA-142 – Ray A. Bliss for Watkins Sand Co., Inc. – Request for Special Exception to allow a horticultural nursery in a CG district on approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – BOA Conditionally Approved 02/18/1985 per case notes.

BBOA-209 – Wilson Memorial Properties – Request for Variance from the 26' maximum building height to 30' to permit construction of the Daily Family YMCA of Bixby on property to the west of subject property (platted/replatted as Bixby YMCA) – BOA Approved 01/03/1989 per case notes.

BBOA-222 – Dale Isgrigg for Bixby YMCA – Request for Variance of the 170 parking spaces to 87 for the Daily Family YMCA of Bixby on property to the west of subject property in the Bixby YMCA subdivision – BOA Approved 12/04/1989 per case notes.

BBOA-247 – Helen L. Bartlett – Request for Special Exception to allow a “community service cultural & recreational facilities (softball fields)” in a RD & RM-2 district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 02/04/1992 per case notes.

BBOA-253 – Jack Selby – Request for Variance of the 600 square foot maximum floor area for detached accessory building in the RS-1 district to permit the existing 720 square foot accessory building for property located to the northeast of subject property at 8300 E. 133rd St. S., Lot 1, Block 3, Gardenview Addition – BOA Approved 07/06/1992 per case notes.

BBOA-254/BBOA-254a – Tim Terral of Pitman, Poe and Associates, Inc. for Lorice T. Wallace – Request for Special Exception to allow a Use Unit 5 golf course in an AG district on 145.1 acres to the west of subject property (see PUD 13/13A) – BOA Approved Revised Application 01/04/1993 per case notes.

PUD 13/13A / BZ-201/201A – “River Oaks” – Pittman, Poe and Associates, Inc. – City of Bixby applications (part of the overall 278-acre, dual-jurisdiction PUD for “River Oaks,” a golf and residential development, with the Bixby portion containing approximately 215 acres) requesting RS-1 and AG zoning and then RS-1 and CS zoning and PUD approval for approximately 215 acres to the west of subject property – Approved for RS-1 and AG zoning in January, 1993 (Ord. # 681 and # 682) and then re-approved for RS-1 and CS zoning, removing the part that became the Fry Creek Channel and zoning the same AG, in June, 1994 (Ord. # 703 and # 704).

BBOA-298 – Carl C. Jensen – Request for Special Exception to allow a Use Unit 17 used auto sales in a CS district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 05/01/1995, but owner found another site and BOA removed the S.E. 07/03/1995.

BBOA-327 – Ted Hill / Jay Ward – Request for Variance from the 100’ lot width requirement in the CG district for Lot 1, Block 2, Riverbend Commercial Center (13402 and 13404 S. Memorial Dr.) to the west of subject property to allow for Lot-Split – BOA Approved 04/07/1997 per case notes.

BBOA-408 – Abbas Momeni – Request for Variance from a ground sign setback requirement for the Car Country used automobile sales lot at 13288 S. Memorial Dr. to the northwest of subject property – BOA Approved 09/02/2003.

PUD 49 – “Bixby Crossing” – Sack & Associates, Inc. – Request for PUD supplemental zoning approval on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – PC Recommended Approval 03/20/2006 and City Council Approved 04/10/2006 (Ord. # 938).

BBOA-446 – Sack & Associates, Inc. – Request for Variance to Section 11-9-17D, parking requirements for ministorage area on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – Approved by BOA 09/05/2006.

BBOA-452 – Jim Capps for Riverview Missionary Baptist Church, Inc. – Request for Variance to allow a manufactured or modular building to be used as a classroom for Riverview Missionary Baptist Church on property located to the north at 13201 S. Memorial Dr. – Withdrawn in April, 2007.

BACKGROUND INFORMATION:

The Bixby Rotary Club is an outstanding community-based civic organization that provides financial and other forms of assistance for various charitable causes in the Bixby community. The City of Bixby and its Staff support the Club and its mission, and all of the good and worthy works it does within the community. Certain members of City Staff are Rotarians and participate in the Club’s functions. The annual Bixby BBQ & Blues Festival is one of the largest and most well received events the Club organizes, and proceeds from this and other events are put into its charitable programs. Although the City of Bixby wholeheartedly supports the Club and its mission, it is responsible for administering the Zoning Code, and has not allowed its relationship with the Club to influence its fair, objective, and impartial administration of the Code in this matter.

This application was continued from the April 01, 2013 regular meeting as requested by the Applicant at the meeting. On May 16, 2013, John Sawyer of the Rotary Club submitted six (6) copies a letter from the Club in support of its request. The letters were mailed by the City to the Board members as requested, and one (1) copy was retained for the file, and is attached to this report. Staff’s recommendation has not changed.

ANALYSIS:

Property Conditions. The subject property is a relatively flat, vacant lot at the northeast corner of the intersection of 134th St. S. and Memorial Dr. (US Hwy 64). It is a “flag-lot” with the “panhandle” extending north along the east side of the RiverCrest Event Center lot abutting to the north. Per the Zoning Map, the west/front part of the property, including the area in which the sign contemplated by this application would be located, is zoned CS, and an easterly portion of the lot is zoned RM-3.

At one time, the subject property had a billboard-type sign of some sort at the southwest corner of the lot. Per the Applicant, there are still remnants of the base of the sign in the location they wish to construct the new sign contemplated by this application.

Using the “Historical Imagery” function of Google Maps to scroll back in time, it appears that the latest aerial photo in which the sign was evident was dated October 06, 2004. The sign appears to have been on the land since at least February 23, 1995, the oldest aerial imagery available through Google Maps.

The subject property appears to have been created by General Warranty Deed from Riverview Missionary Baptist Church to the Applicant, Bixby Funeral Service, Inc., recorded December 02, 2005 (cf. BL-330 approved 10/17/2005).

General. The Applicant is Jack Selby, owner of the land through the entity Bixby Funeral Service, Inc.

In or around February, 2013, the Applicant and John C. Sawyer, representing the Bixby Rotary Club, submitted a sign permit application which proposed to construct a 35'-high, two-cabinet ground sign at the southwest corner of the subject property. Although the permit application did not indicate this, per Staff's previous conversations with John Sawyer or possibly others involved in this project, the top 10' high by 20' wide sign cabinet would be a static sign with copy reading "Bixby Funeral Home." The information provided did not appear to indicate whether this would be internally or externally illuminated, or illuminated at all. Below this top cabinet, another 10' high by 20' wide sign cabinet would be an "LED Digital Double Faces Sign," which would be mounted on the monopole sign support structure ("pole") at a slightly-downward-facing angle. Although the provided information was not clear, per Staff's previous conversations with John Sawyer or possibly others involved in this project, Staff understood this would be the "billboard" element, which would have LED/electronic signage programming sometimes advertising community events, including the Rotary's BBQ & Blues Festival, and unused time would be sold to other businesses for advertisements. The revenue generated would be used by their foundation to support their charitable functions.

Upon inspecting the proposed use in relation to the Zoning Code, Staff determined that the proposed Use Unit 21 sign could not be permitted. The Bixby Zoning Code does not provide that this is a permitted principal use of a lot in any Zoning District. Further, Zoning Code Section 11-9-21.F explicitly prohibits "Outdoor Advertising Signs," "billboards," thus:

"F. Outdoor Advertising Signs:

- 1. There shall be no commercial outdoor advertising signs (billboards) permitted within the city.*
- 2. "Outdoor commercial advertising signs" are defined as those signs which are off premises from the property (business location) which is sought to be promoted or identified by the placement of such sign.*
- 3. Off site commercial advertising signs (billboards), which are in place prior to July 1, 2002, shall be permitted for so long as they comply with other city ordinances governing and pertaining to the placement and use of such signs as permitted prior to the enactment of this subsection. (Ord. 852, 7-8-2002)"*

Other definitions which the Board may deem pertinent to its decision, found in Zoning Code Section 11-2-1 of the Zoning Code, include the following:

"SIGN, BUSINESS: A sign which directs attention to a business, commodity, service or entertainment conducted on the premises."

"SIGN, OUTDOOR ADVERTISING: A sign which directs attention to a business, commodity, service or entertainment, sold or offered elsewhere than the premises and only incidentally on the premises, if at all."

Therefore, by letter to Jack Selby of the Bixby Funeral Service, Inc. and John C. Sawyer of the Bixby Rotary Club dated February 21, 2013, Staff denied the sign permit application.

By this application, the Applicant is appealing the denial, and the interpretation on which it is based, to the Bixby Board of Adjustment pursuant to Zoning Code Sections 11-4-6 and 11-4-7.

The application consists of:

- The two (2) page application form*
- A one (1) page "Detailed Narrative to Board of Adjustment Application"*
- Another one (1) page narrative dated 02/28/2013*

- A one (1) page site plan
- A one (1) page sign exhibit
- A copy of Staff's letter denying the sign permit dated 02/21/2013

For the most part, the arguments set forth in the application speak for themselves. Staff responds to the application and the arguments in the following paragraphs.

Although the narrative mentions terms such as "Hardship," "Variance," "Special Exception," etc., and the application form was not marked within the "Interpretation" box, the application is a request for (1) an Appeal of the sign permit denial, and (2) the Zoning Code interpretation on which the denial was based, and it is not an application for Variance or Special Exception. The Appeal and Interpretation sections of the application form have been completed, and the proper application review fees associated with these two items have been paid. Further, the Appeal and Interpretation were requested pursuant to specific advice given by the City on how to proceed upon sign permit denial.

The narrative written within the Appeal section of the application form is as follows:

"We maintain that this is not a new site for a sign – The existing sign was taken down but the base is still on the property – If land owner had known he could [lose] Billboard rights [the owner] would never had sign taken down."

This narrative appears to concede that the proposed sign would be a "billboard," in calling it thus by name.

Zoning Code Section 11-11-4 (not modified by Section 11-9-21.F.3) provides:

"11-11-4: NONCONFORMING SIGNS:

A sign lawfully existing at the effective date hereof or amendment of this title, but which would be prohibited under the terms of this title or amendment to this title, shall be deemed nonconforming, and may continue, including normal maintenance and change of face, if not rebuilt, enlarged, extended or relocated; provided, that if the sign was erected within an AG district after the effective date hereof and becomes nonconforming upon rezoning to an R or O district and is not accessory to an on site principal use, the sign shall be removed within six (6) months from the effective date of the rezoning; other nonconforming signs if located in an R district and not accessory to an on site principal use, shall be removed within six (6) months from the date the sign became nonconforming. (Ord. 272, 4-2-1974)"
(emphasis added)

Presuming the old sign was lawful in the first place, this provision applies to the subject property, which had a sign since at least 1995, which sign became nonconforming upon passage of the billboard prohibition amendment in 2002. Under this provision, a sign completely removed cannot lawfully be rebuilt, regardless of the passage of any amount of time. Further, the last two sentences under this provision demonstrate legislative intent not only to abate sign nonconformities through time by attrition, but also to require the removal of certain legally nonconforming signs under certain circumstances. The argument that the base of the former sign was not fully removed with the sign itself does not appear to be a valid argument for the allowance of the construction of a new nonconforming billboard sign.

The narrative written within the Interpretation section of the application is as follows:

"Our Boards are "On Premise" Marketing boards that market a product that can be purchased "on site" at our kiosk on the property. 80 to 90% of profits go to others (City of Bixby)."

For the record, the City of Bixby receives no money from the Bixby Rotary Club, other than normal fees for services or application processing, nor does it receive revenues from billboards throughout the City. Similar language in the narrative dated 02/28/2013, "...amount of money we give to the City of Bixby," and "...profits from the sign go back to the City of Bixby..." should not be interpreted as meaning the Club gives money to the City of Bixby, and is presumed to mean they money the Club spends on charitable causes within the Bixby community.

The "kiosk" referenced in the narrative, based on previous discussions with the billboard manufacturer, John Sawyer, and others representing the Bixby Rotary Club, sometimes come in the form of a small, portable building installed at the base of the sign, technically open for someone to enter and purchase a service or good advertised on the billboard (or anything else) using an Internet-connected computer located within the building. In the case of this application, the Applicants have discussed, in the alternative, installing a computer kiosk within the RiverCrest Event Center building on the ½-acre tract abutting to the north. Although this is a clever gimmick for deeming a billboard an "on-premise ground sign," which may be permitted in other jurisdictions, it would present a problematic precedent for the City, as any house, office, or commercial building containing an Internet-connected computer could request permission to erect a billboard.

The narrative dated 02/28/2013 expands on the arguments inscribed within the Appeal and Interpretation sections of the application form, but present no new arguments requiring Staff comment. Staff Recommendation. For the reasons outlined in the analysis above, Staff believes that the Bixby Zoning Code Section 11-9-21.F explicitly proscribes the proposed billboard / outdoor advertising sign and disallows a Use Unit 21 sign as a principal use of a lot in all Zoning districts. Staff recommends the appeal be denied.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. John Sawyer of 3939 E. 110th St. S., Tulsa, asked for “an exception to the rule or ordinance for this sign.” Mr. Sawyer stated that the sign would allow the Bixby Rotary Club to “take everything to the next level.” Mr. Sawyer described the Rotary Club’s charitable contributions to causes in the Bixby community. Mr. Sawyer stated that the Rotary Club’s Barbecue & Blues Festival has grown so large the Club has to beg to get people to give sponsorships. Mr. Sawyer stated that the proceeds go to various causes in Bixby. Mr. Sawyer stated that the sign would cost \$300,000 to purchase and install. Mr. Sawyer stated that 95% of the revenue would be given to the Bixby community, including the Bixby Community Outreach Center. Mr. Sawyer stated that this was seen as a way to maximize the Club’s efforts. Mr. Sawyer stated that he understood the concern that this would set a precedent, but he believed the City could confine this to a narrow corridor. Mr. Sawyer stated that, if the sign was put up by Whistler or Lamar, all of the revenues would go out of the community. Mr. Sawyer stated that the base of the sign was still in the ground. Mr. Sawyer stated that the sign could be used for Amber Alerts and Silver Alerts and could be used for community announcements. Mr. Sawyer stated that the sign would not just describe the make and model and license number of the car, but would show pictures of the missing child. Mr. Sawyer stated that the sign could announce the [Green] Corn Festival, along with pictures, and City Council meetings, and “special this or that.” Mr. Sawyer provided an example of an alert.

Larry Whiteley noted that, if the sign was gone, it “cannot be put back.” Mr. Whiteley asked rhetorically why, if this was granted, someone else would not ask for the same approval. Mr. Whiteley confirmed with John Sawyer that the Rotary Club would not stop its charitable giving if it was not approved for this sign.

Larry Whiteley stated that the Board was not in the position to [approve the billboard prohibited by law]. Mr. Whiteley stated that the City Council had the final say, but “they won’t allow new [billboards].” Mr. Whiteley stated that the Board could not give an “exception to something against the law.”

John Sawyer expressed objection that [he and the Rotary Club] were told by the City to try this application but it appeared they were wasting their time.

Erik Enyart addressed the Board members and John Sawyer in turn and stated, “We counseled the Applicant that this would be the recourse if they wanted to proceed, despite our admonition not to apply for the permit. They are proceeding as we counseled. The burden is on you to demonstrate that the City of Bixby has made some error in interpretation of Code, some error in fact or [conclusions of law]. This is very much a fact- and law-centered case.” Mr. Enyart stated that another option discussed in meetings with the Applicant included asking the City Council to repeal the 2002 billboard prohibition ordinance, but this would legalize billboards for everybody, and so was not recommended to the Applicant.

Chair Jeff Wilson recognized Jack Maxwell of 11616 S. Fulton Ave., Tulsa, but asked Patrick Boulden to speak first from a legal standpoint. Mr. Boulden stated that a change to the Zoning Code would require the Planning Commission hold a Public Hearing, and then make a recommendation to the City Council, but [the Rotary Club] could ask the City Council to direct the [Planning Commission] to do that. Mr. Boulden stated that the City could not allow uses not allowed by the [Zoning] Code in a certain districts, but billboards were prohibited everywhere. Mr. Boulden stated that State Statutes prohibits this Board from granting a “Use Variance, and City Ordinance prohibits this Board from granting a “Use Variance.” Mr. Boulden stated that, if it were granted, it would be “illegal and void from the beginning.”

Jack Maxwell spoke in favor of the application and noted that the Rotary Club organized the first BBQ & Blues Festival to generate \$45,000 to install a sign for the [Bixby Public Schools District]. Mr. Maxwell stated that the City of Bixby matched the Rotary Club’s money to put up the amphitheater [in Washington Irving Memorial Park & Arboretum]. Mr. Maxwell stated that the [Bixby Optimist Club] also made a deal with the City of Bixby so that the restroom facility looks like Washington Irving’s “ice house.” Mr. Maxwell stated that the Food Network contacted [the Club] because they had heard of the BBQ & Blues Festival, and “the Pit Masters [show] was filmed in our event.” Mr. Maxwell stated, “The City of Bixby should find some way to help us.”

Larry Whiteley stated, “We know it’s against the law” to permit this sign, and suggested the Applicant take their case to the City Council.

One of the Applicants suggested that the City Council could keep the billboard prohibition but authorize [the Rotary Club] to have one due to its [nonprofit status and/or charitable activities].

Erik Enyart stated that it would not be proper to “carve out an exception for certain classes of citizens, such as charitable organizations,” over all others, to make a “*prima facie* determination of who gets to exercise their First Amendment free speech rights.” Mr. Enyart stated that the City was obligated to “apply sign regulations equally to all citizens.”

Buster McCurtain of 12801 S. 14th Cir., Jenks, stated that he and the others had met with the City Attorney and Erik Enyart [about this before the application was filed]. Mr. McCurtain stated that everyone was in this together and everyone should work together. Mr. McCurtain stated, “It’s not our intent to put you folks on the spot.” Mr. McCurtain stated that he understood that, “if you turn this down, our only recourse is to sue you guys in civil court.”

Larry Whiteley stated that, although it would be more difficult, another option may be to get enough signatures to get the citizens to vote in a special election.

Erik Enyart addressed the Applicant and stated that, although asking the City Council to amend the Zoning Code to repeal the billboard prohibition of 2002 was an option available to them, he did not want to mislead them by [pointing this out]. Mr. Enyart stated that City Staff would not recommend the City Council do this, if so proposed.

Murray King confirmed with Erik Enyart that the definition of a “billboard” was a sign that was not on premise. Mr. King asked if the *Sutherland’s* sign was allowable, and Mr. Enyart stated that it was because it “exclusively advertises *Sutherland’s*.” A Rotarian stated that that sign had advertised the BBQ [& Blues Festival].

Larry Whiteley suggested the Applicant, instead of facing denial, Withdraw the application, which would require that the Applicant appeal to District Court, rather than pursue other options.

Jack Maxwell asked about existing signs and “grandfathering.” Mr. Maxwell asked if the Bixby Public Schools’ sign could be replaced with a larger sign. Mr. Maxwell stated that a gentleman earlier in the meeting made a statement that needed correction for the record: 90% of the revenues go back to the community, not 95%.

Erik Enyart stated that Jack Maxwell had a good question but he would have to investigate it before answering.

Patrick Boulden stated that a lawfully permitted use cannot be expanded or changed to another nonconforming use. Mr. Boulden stated that [that Bixby Public Schools’ sign] would have to stay the same size and location.

Applicant Jack Selby of 14814 S. 52nd E. Ave. stated, “I respectfully request you withdraw this application.” Dave Hill confirmed with Mr. Selby that he did not want to face a denial vote and have to go to District Court. Mr. Selby stated that he was not completely disinterested in the case, as he would receive a monthly rent, but he did not want to go forward with the application.

Patrick Boulden declared that the Board had recognized the application as Withdrawn.

Chair Jeff Wilson stated that there was no action for the Board to take, since the application was Withdrawn. Mr. Wilson advised the Applicant that they could “still go the legislative route” and ask the Council to “amend the ordinance.”

Jack Selby asked if he would be permitted to install a sign here only for his business. Erik Enyart responded that the sign would be on a vacant 1-acre tract, and could not be permitted at this time. Mr. Enyart stated that signs were only permitted on the lot containing the business being advertised. Mr. Enyart stated that Mr. Selby could legally combine that tract with the lot containing the business, and then it would be permit-able, provided it exclusively advertised the funeral service.

Larry Whiteley asked the Applicant if the City had not counseled them. Erik Enyart responded, “We did have meetings with them.” Mr. Whiteley asked why the Applicant proceeded, and Mr. Enyart responded, “We advised against making application, but told them that if they wanted to proceed anyway, this was the way to go.”

Buster McCurtain stated that [he and the Rotary Club] would pursue other options.

John Sawyer, Jack Maxwell, Jack Selby, and Buster McCurtain left at this time.

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:44 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary