

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
July 01, 2013 6:00 PM**

STAFF PRESENT:

Erik Enyart, AICP, City Planner
Patrick Boulden, Esq., City Attorney

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 6:00 PM.

ROLL CALL

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

Members Absent: None.

MINUTES

1. Approval of Minutes for June 03, 2013

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of June 03, 2013 as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Whiteley, & Hill

NAY: None.

ABSTAIN: Mullins.

MOTION CARRIED: 5:0:1

During the Roll Call, Darrell Mullins explained that he was abstaining as he was not present at that meeting and could not vote.

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

- 2. **BBOA-579 – Paul & Jimme Beth Hefner for Mary Elizabeth Brown.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an AG Agricultural District.
Property located: Part of the SE/4 SE/4 Section 24, T17N, R13E; 9013/9017 E. 161st St. S.

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: Tuesday, June 25, 2013
RE: Report and Recommendations for:
 BBOA-579 – Paul & Jimme Beth Hefner for Mary Elizabeth Brown

LOCATION: – Part of the SE/4 SE/4 Section 24, T17N, R13E
 – 9013/9017 E. 161st St. S.
LOT SIZE: 16 acres, more or less
ZONING: AG Agricultural District
REQUEST: Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: AG; The Bixby Public Schools’ landholding and school facilities located between Riverview Rd. and Mingo Rd.
South: (Across 161st St. S.) AG, OL, CS, RM-1, & RS-2; Rural residences and agricultural land.
East: (Across Mingo Rd.); Rural residences along 161st St. S., Bixby Creek within its right-of-way, and agricultural land; other than the Bixby Creek right-of-way, all areas to the east of Mingo Rd. are in unincorporated Tulsa County.
West: AG & CS; The Bixby Public Schools’ Central Intermediate campus at 9401 E. 161st St. S. and rural residences along the south side of 161st St. S.

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

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

BBOA-92 – Triple “S” Drilling Company for Clifton W. Brown – Request for Special Exception to allow oil well drilling on the SE/4 SE/4 of this Section, including subject property – BOA Conditionally Approved 11/09/1981.
BBOA-314 – Guy & Wendy McCoy – Request for Special Exception to allow a Use Unit 9 mobile home in the AG district for subject property, then approximately 20 acres in size – BOA Conditionally Approved 03/04/1996.

RELEVANT AREA CASE HISTORY: (not a complete list and does not include cases in unincorporated Tulsa County)

BZ-22 – Robert Leikam – request for rezoning from AG to CS, OL, RM-2, and RS-2 for an approximately 75 acres abutting subject property to the south/southeast across 161st St. S., the E/2 NE/4 Less & Except the W/2 NW/4 NE/4 of this Section – PC Recommended Approval, to include amending the RM-2 part to RM-1, on 05/07/1974 and City Council Approved with the amendment on 06/18/1974 (Ord. # 274).
BBOA-228 – Lisa Graves for Violet D. Young – Request for Variance from certain bulk and area requirements to allow a Lot-Split (BL-154) for approximately 5 acres to the west of subject property, including the tracts at 703/707 and 711 S. Riverview Rd. and an approximately 0.8-acre tract located just south of 711 S. Riverview Rd. – BOA Conditionally Approved 08/06/1990.

BBOA-303 – J.C. Devine – Request for Variance from certain bulk and area requirements to allow a Lot-Split (BL-199) for a 4-acre tract to the southwest of subject property at 8710 E. 161st St. S. – BOA Conditionally Approved 10/02/1995.

BBOA-282 – Bixby Public Schools – request for Special Exception to allow a Use Unit 5 school on part of the SW/4 SE/4 of the section (appears to include all of the school-owned tracts in the SW/4 SE/4 lying south of Bixby Creek) to the west of subject property – BOA Approved 08/01/1994.

BBOA-299 – Carolyn Wagnon – request for (1) a Special Exception to permit Use Unit 15 in a CS district, and (2) a Variance of certain bulk and area requirements in the AG district to permit a Lot-Split for property located to the west of subject property at 711 S. Riverview Rd. – BOA Approved 06/05/1995.

BL-192 – Wagnon Construction – request for Lot-Split for an approximately 0.8-acre tract to the west of subject property located just south of 711 S. Riverview Rd. – PC Approved 06/19/1995.

BZ-213 – Carolyn Wagnon – request for rezoning from AG to CS for an approximately 0.8-acre tract to the west of subject property located just south of 711 S. Riverview Rd. – City Council Approved 07/24/1995 (Ord. # 720).

BZ-224 – Carolyn Wagnon – request to rezone about 1 acre to the west of subject property from AG to CG at about 703/707 S. Riverview Rd. – Withdrawn in 1996.

BBOA-321 – Carolyn Wagnon – request for Special Exception to allow Use Unit 23 in the CS district for land to the west of subject property at about 703/707 S. Riverview Rd. – Withdrawn in 1996.

BBOA-338 – James H. Powell – request for Variance to allow a Use Unit 9 mobile home on a former approximately 1.15-acre tract of the school property to the north of subject property at the approximately 15700-block of S. Mingo Rd. – Denied 08/03/1998.

BZ-245 – James H. Powell – Request for rezoning of an approximately 1.15-acre tract of the school property to the north of subject property at the approximately 15700-block of S. Mingo Rd. from AG to RMH for a mobile home site – Approved in November, 1998 (Ord. # 783).

Plat Waiver for Bixby Public Schools – Request for Waiver of the platting requirement per Zoning Code Section 11-8-13 for 32 acres of the school property to the north of subject property – Approved by City Council 03/08/2010 after accepting right-of-way and U/E dedications at the same meeting.

BBOA-519 – JR Donelson for Bixby Public Schools – request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility in an AG Agricultural District on 32 acres of the school property to the north of subject property – BOA Approved 04/05/2010.

BLPAC-6 – JR Donelson, Inc. for Bixby Public Schools – request for approval of a Landscaping Plan Alternative Compliance plan per Zoning Code Section 11-12-4.D for a Vocational-Agriculture building for Bixby Public Schools on 32 acres of the school property to the north of subject property – PC Conditionally Approved 04/19/2010.

BZ-348 – JR Donelson, Inc. for Bixby Public Schools – request for rezoning approximately 20 acres at approximately 15600 S. Mingo Rd. and the former approximately 1.15-acre tract to the north of subject property at the approximately 15800-block of S. Mingo Rd. from RMH to AG for school land use and development purposes – PC recommended Approval 04/19/2010 and City Council Approved 05/10/2010 (Ord. # 2037).

BACKGROUND INFORMATION:

One of the several changes the “General Cleanup” Zoning Code Text Amendment (Ord. # 2031 approved December 21, 2009) made included providing an approval process for Accessory Dwelling Units (ADUs). Zoning Code Section 11-2-1 now provides a definition for an ADU:

“DWELLING UNIT, ACCESSORY (ADU): A subordinate residential unit incorporated within, attached to, or detached from a single-family residential unit and having its own sleeping, cooking, and sanitation facilities. Such subordinate unit shall not be subdivided or otherwise segregated in ownership from the principal residential unit. Such unit shall not be occupied by more than three (3) persons. See Section 11-8-5.”

Section 11-8-5 was amended to read as follows:

“11-8-5: ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD:

Not more than one single-family dwelling may be constructed on a lot, except in the case of a lot which is within an approved planned unit development or an Accessory Dwelling Unit (ADU) approved by Special Exception as follows:

- A. A lot of record which is subject to a restrictive covenant prohibiting more than one (1) dwelling unit per lot shall not be eligible for an ADU Special Exception;
- B. The Board of Adjustment shall consider the specific plans for the ADU and its relation to the principal dwelling and surrounding neighborhood and shall place reasonable conditions on the Special Exception approval as may be necessary to prevent undue adverse impacts;
- C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;
- D. An ADU shall not be subdivided or otherwise segregated in ownership from the primary residential unit;
- E. An ADU shall not contain more than one (1) bedroom;
- F. Manufactured and modular homes shall not be used as ADUs;
- G. ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any;

H. An ADU shall not be considered in calculating livability space or land area per dwelling.” This is the second Special Exception for an ADU requested under the new ADU amendment to the Zoning Code. The first, BBOA-524 – Richard Ekhoﬀ, was Conditionally Approved 08/02/2010 for an acreage located at 9024 E. 101st St. S.

ANALYSIS:

Property Conditions. The subject property contains approximately 16 acres and is zoned AG. Although a singular parcel, it is physically separated by the Bixby Creek right-of-way acquired by the City of Bixby some years ago. To the north of the creek are approximately 11.5 acres, entirely within the 100-year (1% Annual Chance) Regulatory Floodplain, part of that within the Floodway, which is somewhat wooded and used for livestock grazing. The southerly approximately 4.5 acres is agriculturally-used and contains three (3) buildings:

- 1. A single-wide mobile home along the west side,
- 2. A metal barn toward the center of the 161st St. S. frontage, and
- 3. A small agricultural or storage building just to the southeast of the barn.

This application proposes to construct the ADU as a building addition to the existing barn building.

The subject property is located in an unplatted rural residential and agricultural area centered along 161st St. S. between Riverview Rd. and the Arkansas River. To the east of Mingo Rd., save for the Bixby Creek right-of-way, the land is located in unincorporated Tulsa County.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Community Trail.

The existing residential use and proposed ADU residential use element should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily AG, and the surrounding land is primarily rural residential and agricultural on acreage tracts.

The existing residential and agricultural uses and proposed ADU residential use element would appear to be not inconsistent with surrounding land uses and zoning patterns.

Accessory Dwelling Units (ADUs). Because Accessory Dwelling Units by Special Exception are a newly allowed land use element, and experience with them in Bixby is limited, care should be taken to ensure that the approval is not detrimental to the neighborhood. To this end, in addition to the standard regulations for ADUs provided in the Zoning Code, Staff has provided specific recommended Conditions of Approval listed in the Staff Recommendation section of this report.

The Applicant provided a sketch site plan showing a 30' X 50' building addition to the north end of the west side of the barn.

Zoning Code Section 11-8-5.G provides, “ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any.” Staff notes that the existing dwelling is a mobile home, and this provision will not apply if the owners wish to ‘upgrade’ the exterior materials from that which would match the mobile home.

Staff Recommendation. Based on the application, the Comprehensive Plan, surrounding zoning and land use patterns, and the arguments presented in the analysis above, Staff believes that the proposed Special Exception for an ADU would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff recommends Approval subject to the following Conditions of Approval:

- 1. The ADU approval shall only extend to the proposed building addition to the existing barn as proposed by the Applicant.*
- 2. The ADU shall fully comply with the Building Code.*
- 3. If the ADU building is ever substantially damaged, meaning for these purposes that the cost to repair such damage would exceed 50% of the pre-damaged value of the building, the Special Exception shall expire and be automatically vacated and the ADU use of the building addition shall not be restored, absent further Zoning approval as may be then required.*
- 4. If any of the facilities necessary to support living quarters (sleeping, kitchen/cooking, sanitation, etc.) are disabled or removed, the Special Exception shall expire and be automatically vacated and the ADU use of the building shall not be restored, absent further Zoning approval as may be then required.*

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Paul Hefner of 9013 E. 161st St. S. was present and stated that the mobile home on the property was [occupied by] his wife’s grandmother, and that it would be removed when she no longer lived there. Mr. Hefner stated that, then, the [subject] property would be a single-dwelling property when the mobile home was removed.

A Board member confirmed with Paul Hefner that there were no other dwellings on the property.

Jimme Beth Hefner stated that the [subject] property lacked only 45’ from being able to be split [such that the second dwelling would be allowed, and without a rezoning].

A Board member clarified with Paul Hefner that he planned to live in the [dwelling unit]. The Board member asked Mr. Hefner where he lived now, and Mr. Hefner responded, “300 yards east of there.”

Chair Jeff Wilson asked Paul Hefner if he was okay with the [recommended] Conditions [of Approval], and Mr. Hefner responded that [he and his family] were okay with them and would do whatever was required anyway.

Darrell Mullins clarified with Erik Enyart, using the case map, where the City Limit was in relation to the subject property. Mr. Enyart explained that everything east of Mingo Rd., except the Bixby Creek right-of-way, was in unincorporated Tulsa County.

Chair Jeff Wilson made a MOTION to APPROVE BBOA-579 subject to the four (4) Conditions of Approval as recommended by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to Paul Hefner.

3. **BBOA-580 – Dr. Richard Stephens.** Discussion and possible action to approve a Variance from the 35’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow a building addition to an existing, nonconforming residence in the RE Residential Estate District.
Property located: Lot 6, Block 5, *Amended Southwood Extended*; 8933 E. 115th St. S.
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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: *Wednesday, June 26, 2013*
RE: *Report and Recommendations for:
BBOA-580 – Dr. Richard Stephens*

LOCATION: – 8933 E. 115th St. S.
– Lot 6, Block 5, *Amended Southwood Extended*

LOT SIZE: *1 acre, more or less*

ZONING: *RE Residential Estate District*

REQUEST: *Variance from the 35’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow a building addition to an existing, nonconforming residence in the RE Residential Estate District*

SURROUNDING ZONING AND LAND USE: *RE; Residential single family homes on large lots in Amended Southwood Extended.*

COMPREHENSIVE PLAN: *Low Intensity + Residential Area*

PREVIOUS/RELATED CASES: *None found.*

RELEVANT AREA CASE HISTORY: *(not necessarily a complete list)*
BBOA-34 – James Wilson – Request for Interpretation of Zoning Code Section 1240(a) (current Section 11-11-5.A) to determine if the exception for side yard setbacks along a public street applied to accessory buildings; pertained to property located 2 blocks to the south of subject property, Lot 5, Block 12, *Amended Southwood Extended*, 9110 E. 116th St. – BOA interpreted “accessory structures are considered as coming under the intent of said section” on 10/12/1976.
BBOA-57 – Lyle J. Davis Jr. – Request for Variance from the 15’ side yard setback along a public street for an existing detached garage on property located 2 blocks to the south of subject property, Lot 5, Block 12, *Amended Southwood Extended*, 9110 E. 116th St. S. – Approved by BOA 02/13/1979.
BBOA-153 – Lucile S. Humbrecht – Request for Variance from the 15’ side yard setback for an existing house located to the north of the subject property, Lot 14, Block 2, *Amended Southwood Extended*, 11225 S. 90th E. Ave. – Approved by BOA 12/09/1985.
BBOA-428 – Russell Cozort – Request for Variance from an unspecified setback for a house located to the southeast of the subject property, Lot 6, Block 4, *Twin Creeks II*, 11709 S. 96th E. Pl. – Approved by BOA 09/07/2004.

BBOA-436 – L. Richard Howard – Request for Variance from the 25' front yard setback for an existing house located to the east of the subject property, Lot 5, Block 9, Amended Southwood Extended, 11435 S. 94th E. Ave. – Approved by BOA 01/03/2005.

BBOA-530 – Jeff DeLaughter – Request for Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow an add-on to an existing, nonconforming residence in the RE Residential Estate District located 1 block to the south of the subject property, Lot 6, Block 7, Amended Southwood Extended, 9110 E. 115th St. S. – Approved by BOA 12/06/2010.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property consists of Lot 6, Block 5 in Amended Southwood Extended, zoned RE. It contains a single-family dwelling fronting south onto 115th St. S.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The subject property is located within an RE Residential Estate District. Zoning Code Section 11-7B-4.A.1 Table 3 requires minimum setbacks as follows: 35' front yard, 25' rear yard, and 15' for both side yards. The existing house appears to be nonconforming, having a little more than a 25' front yard setback, according to the Applicant. Zoning Code Section 11-11-6 prohibits the expansion of structurally nonconforming buildings. The side and rear yard setbacks appear to be in order.

The Applicant has submitted a Building Permit application (# 20107) proposing to add a two-car garage and a patio onto the rear of the house. Due to the structural nonconformity, the house is presently ineligible for expansion, as such would increase the nonconformity by extending the life of a nonconforming structure. Therefore, the Applicant requested a Variance from the 35' front yard setback in the RE district. The exact distance between the front of the house and the front lot line is not known; per the "Architectural Site Plan," which the Applicant's building contractor stated on June 25, 2013 was based on a Mortgage Inspection Plat, and appears to reflect a previous building addition, the house is just beyond the 25' Building Line established by the plat of Amended Southwood Extended. Based on a rough estimate of relative proportions, it appears to be a few feet beyond the 25' Building Line, estimated for purposes of this Staff Report at 27'.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. In an attached narrative, the Applicant makes certain that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional. The claims appear to be modeled off of claims made by Staff in a proximate, recent, and nearly identical Variance application, BBOA-530, the report for which Staff provided this Applicant for this purpose. As much of the language appears to have been copied/pasted, some of it is not entirely relevant to this application as much as it was for BBOA-530. Staff will not repeat it here, but the following claims made by Staff are similar to the same Staff made for BBOA-530, and thus, those in the attached narrative.

According to the Tulsa County Assessor's records, the house was built in 1968. The City of Bixby did not adopt a Zoning ordinance until circa the original late 1960s or early 1970s Zoning Ordinance # 234 (or possibly an earlier ordinance), but certainly by the April 02, 1974 Zoning Ordinance # 272.

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

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

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

This situation applies to the present case, but the exception would not provide any relief, as the house on the lot abutting to the west, per GIS rough measurements, has an approximately equal setback from 115th St. S. The average between a 27' setback and the otherwise-applicable 35' setback tied to 91st E. Ave. would be 31'. This condition or circumstance, stemming from its location at the street intersection, is unique relative to the typical lot in the RE district.

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

- First and foremost, the subject property is unique in that it is disadvantaged due to being a corner lot. If it were an interior lot, the house would likely be conforming as to front yard setback due to the exception provided in Zoning Code Section 11-8-9.D.*
- According to an inspection of the plats, the Amended Southwood Extended subdivision was platted on or around December 30, 1966, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.*
- The plat of Amended Southwood Extended only requires a 25' front-yard setback. Approval of the Variance would not conflict with the setbacks as established by the plat.*
- Per County Assessor's records, the house on the subject property was constructed in 1968.*
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.*
- As noted elsewhere in this report, a number of the dwellings in the immediate area appear to also encroach the 35' Zoning setback.*
- All the other dwellings in the immediate area appear to have been built in the same time frame, late 1960s and early 1970s, per Tulsa County Assessor's records, and so would also appear to be legally nonconforming if encroaching the 35' setback.*

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because “...The property owners desire to improve the existing standard of the dwelling house and its appurtenances by expanding to the existing two (2)-car garage and adding a patio cover. Said improvements will transform the older house into a more contemporaneous property in keeping with newer homes. The [current] code will prevent such improvements that may prove detrimental to the owners. The current code would prevent an add-on which would otherwise be appropriate.”

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

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because “All the houses in the immediate area encroach on the new setback.” Per GIS and aerial data, it appears a large number of houses in the immediate area, defined here as adjacent to or across the street from the subject property, but not quite all of them. The Applicant also claims, “that the proposed expansion would in fact enhance the existing property values, the overall appeal of the neighborhood and [contribute] to its unique attributes.”

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

East 115th Street South has a 50-foot-wide right-of-way, which meets current Bixby development standards for right-of-way width for the functional design of a minor local residential street. Neither the adopted Comprehensive Plan nor the TMAPC Major Street and Highway Plan designate it as a Major Street, and there are no other known plans to widen the right-of-way, nor does there appear to be current or projected need to do so. The first and principal reason for the front yard setback is thus not an issue in this case.

The fact that the house is only approximately 27' from the front lot line does not appear to be unique to the subject property. Several other dwellings appear to encroach on, not only the Zoning Code's 35' front yard setback, but also the 25' (private) setback established by the plat of Amended Southwood Extended.

Also, the proposed building addition would be in the rear of the dwelling, and not in the same direction as the encroachment (front yard). This could effectively "balance out" the appearance of the structure in respect to the lot, improving the proportionality of this dynamic from an aesthetic standpoint.

Further, research of area case precedents indicate there have been other houses built in the surrounding neighborhood which encroached on Zoning setbacks, and all were granted Variances. BBOA-530 appears most relevant, due to proximity, recentness, and virtually identical nature and circumstances.

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

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

Finding of Minimum Necessary. Recognizing the house on the subject property lacks approximately 8' of setback, a Variance of approximately 8' would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship.

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

Darrell Mullins noted that he used to live in this neighborhood, and that the building lines used to be 25'. Erik Enyart confirmed that the front Building Lines were 25' per the plat, but that those were supplemental private setbacks, and that the Zoning Code required the 35' setback [after the plat was recorded and several homes built]. Mr. Mullins confirmed with Murray King that Mr. Mullins' former house was "catty-corner from the pond."

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant's representative Duane Higgins of 9516 S. Lakewood, Tulsa, was present and stated that his client had lived there approximately five (5) years, and that his main desire was to add on to the garage. Mr. Higgins stated that it was brought to [his and his client's] attention that this would be required, and that they wanted to do things properly and go through this Board. Mr. Higgins stated that the concrete patio was already there, and that he would put a cover over it.

Darrell Mullins clarified with Duane Higgins that he was proposing a "two-plus size garage to the north, rear" of the dwelling. Mr. Higgins stated that a year or two before his client purchased the property there was a major expansion that approximately doubled the size of the house. Mr. Higgins stated that he did not know if it went through the Variance process or not, but it was before the Dr. bought it. Erik Enyart indicated there had been no previous Variance.

Darrell Mullins noted that, just [down] the street, a few years ago, another house had an addition to the south end, and that in that case, "They came in and we approved it."

Larry Whiteley noted that this subdivision was "all in town now."

Murray King noted that all these houses were “built before the [Zoning] Code.”

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-580. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:17 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary