

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
July 07, 2014 6:00 PM**

In accordance with the Oklahoma Open Meeting Act, Title 25 O.S. Section 311, the agenda for this meeting was posted on the bulletin board in the lobby of City Hall, 116 W. Needles Ave., Bixby, Oklahoma on the date and time as posted thereon, a copy of which is on file and available for public inspection, which date and time was at least twenty-four (24) hours prior to the meeting, excluding Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

STAFF PRESENT:

Erik Enyart, AICP, City Planner

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Prior to the meeting, Erik Enyart explained that he was in a meeting with the City Attorney, who incidentally would not be attending as he would be in another meeting. Mr. Enyart apologized for arriving late and explained that the City had “a lot going on right now.”

Meeting called to order by Chair Jeff Wilson at 6:04 PM.

ROLL CALL

Members Present: Jeff Wilson, JR Donelson, Darrell Mullins, and Larry Whiteley.

Members Absent: Murray King.

MINUTES

- 1 Approval of Minutes for June 02, 2014

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of June 02, 2014 as presented by Staff. JR Donelson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Wilson, Donelson, & Whiteley

NAY: None.

ABSTAIN: King.

MOTION CARRIED: 4:0:1

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

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-589 – Randy Even for Paul Reynolds.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an RE Residential Estate District.

Property located: Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma; 13466 E. 205th St. S.

Chair Jeff Wilson introduced the item and asked Erik Enyart if it was not to be Continued to the next meeting. Mr. Enyart confirmed that it was, along with BBOA-590, Agenda Item # 3,

3. **BBOA-590 – Randy Even for Paul Reynolds.** Discussion and possible action to approve a Variance from the matching exterior materials requirement of Zoning Code Section 11-8-5.G for a proposed Accessory Dwelling Unit in an RE Residential Estate District.

Property located: Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma; 13466 E. 205th St. S.

Erik Enyart explained that the Applicant had requested a Continuance to the August 04, 2014 Regular Meeting, since there was now a third application submitted, a Variance, and they all were to be heard concurrently. Mr. Enyart recommended that both cases be Continued to the August 04, 2014 Regular Meeting as requested by the Applicant.

Chair Jeff Wilson made a MOTION to CONTINUE BBOA-589 and BBOA-590 to the August 04, 2014 Regular Meeting. Larry Whiteley SECONDED the Motion.

Gregg Batary of 13364 E. 205th St. S. stated that he had submitted a response to the application, and understood that it would be forwarded to the Board members. Erik Enyart confirmed that he had received the document and would include a copy in the agenda packet for the August 04, 2014 Regular Meeting.

Roll was called:

ROLL CALL:

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

4. **BBOA-591 – Kyle & Paulette Baker.** Discussion and possible action to approve (1) a Variance from the minimum lot area, (2) a Variance from the minimum land area, and (3) a Variance from any other bulk and area standards of the AG General Agricultural District with which the subject property does not comply, Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a pool 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; 12221 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: Thursday, June 26, 2014
RE: Report and Recommendations for:
BBOA-591 – Kyle & Paulette Baker

LOCATION: – Part of the W/2 NE/4 of Section 06, T17N, R14E
– 12221 S. 109th E. Ave.

LOT SIZE: 1.4 acres, more or less

ZONING: AG Agricultural District

REQUEST: (1) a Variance from the minimum lot area, (2) a Variance from the minimum land area, and (3) a Variance from any other bulk and area standards of the AG General Agricultural District with which the subject property does not comply, Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a pool on an existing lot of record in the AG Agricultural District

SURROUNDING ZONING AND LAND USE: RS-1 & AG; Rural residential to the north and south 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)

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

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-74 – Elsie McLearan – 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) abutting subject property to the east for commercial purposes – Withdrawn by Applicant 03/22/1983 per case notes.

BZ-145 – Eddie McLearan – 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 McLearan – 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 10240, 10250, 10280, 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 10240, 10250, 10280, 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 10240, 10250, 10280, 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 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 which also has an associated address of 10101 E. 121st St. S.) – PC Approved 03/02/1994.

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

BL-307 – Scott Sherrill – Request for Lot-Split approval to create two (2) lots along the east side 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 10240, 10250, 10280, 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 10240, 10250, 10280, 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 10250, 10280, 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 10250, 10280, and 10288 E. 121st St. S. – Conditionally Approved by BOA 07/02/2012.

BBOA-578 – Daniel & Leanne Martin – Request for (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 for property of 3.3 acres abutting subject property to the south at 12305 S. 109th E. Ave. – BOA Approved 04/23/2013.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 1.4 acres, contains a single-family house addressed 12221 S. 109th E. Ave., and is Zoned AG. It is a rectangular tract having 210' of frontage on 109th E. Ave. and has 285' of depth. Part of the easternmost portion of the property (rear yard) is in the 100-year (1% Annual Chance) Regulatory Floodplain. The subject property is moderately sloped and appears to drain to the east to Haikey Creek.

In or around 2001/2002, a previous owner of the former 19 acres abutting to the west and south 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. One of these four (4), the house on the subject property was constructed in 2007 per the Tulsa County Assessor's records.

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 in BBOA-578 in 2013, 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.

Because the street is contained within an easement, rather than a right-of-way, the subject property's 1.4 acres of lot area equals its land area.

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 a pool in the east/rear yard of the existing house.

The subject property does not meet the 2.0-acre minimum lot area or the 2.2-acre minimum land area standards for the AG district. The lot and the house appear to meet the required Zoning setbacks and other bulk and area standards for the AG district.

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

Therefore, the Applicant is requesting (1) a Variance from the minimum lot area, (2) a Variance from the minimum land area, and (3) a Variance from any other bulk and area standards of the AG General Agricultural District with which the subject property does not comply, Zoning Code Section 11-

7A-4 Table 3, all to allow for the construction of a pool 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.

Per case maps from the 1970s, it appears that the subject property was previously part of a 2.5-acre tract, the balance of the 2.5 acres being the 1.15-acre tract abutting to the north at 12201 S. 109th E. Ave. That property has a house constructed in 1965 per the Tulsa County Assessor's records, which is consistent with the 20'-wide "Roadway Easement" dedicated "to the Public for roadway purposes" and recorded January 10, 1966. If accurate, the former 2.5-acre tract exceeded the 2.0-acre minimum lot area and 2.2-acre minimum land area requirements of the AG district prior to the separation of its northerly approximately 1.15-acre counterpart as associated with Lot-Split application BL-269 in 2002. Thus, these two (2) tracts, including the subject property, appear to have fallen out of compliance with these requirements in 2002.

One of the fundamental purposes for having and administering Subdivision Regulations is to ensure that all lots created comply with the bulk and area requirements of the Zoning Code. The Zoning Code requires that all lots approved as required by the Subdivision Regulations comply with the Zoning Code standards.

Per BL-267, however, the Planning Commission approved a Lot-Split allowing the creation of the subject property, despite the fact that the two (2) proposed lots would not comply with the minimum lot and land areas required. The Applicant acquired the subject property after it had been created with the Planning Commission's approval. 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-269, approved in 2002, the preexisting 2.5-acre tract with a house constructed in 1965, 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.

The subject property is presently "unbuildable" due to its illegally nonconforming status and Zoning Code Section 11-8-1. Strict application of the bulk and area standards to the subject property would cause an unnecessary hardship, by disallowing the proposed pool any further building permits for the subject property.

Recognizing:

- The subject property has existed in its present state since approximately 2002 without complaints or adverse impacts on adjoining properties,
- 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, and
- A similar case with nearly identical circumstances, for the 3.3-acre tract abutting to the south, was found to meet the Tests and Standards for Variance per BBOA-578 – Daniel & Leanne Martin on 04/23/2013,

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 approximately 0.6 acres of lot area and 0.8 acres of land area, the difference between the 1.4 acres of each existing and those of each respectively 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.

Erik Enyart stated that he had supplemented the arguments the Applicant had provided with some of his own, which he believed together met the prerequisites of State Statutes and the Zoning Code for the granting of Variance.

Larry Whiteley discussed with Erik Enyart and Applicant Kyle Baker the ownership and use of other properties to the west of the subject property.

Chair Jeff Wilson asked if the City had not had a hand in the circumstances [with the previous Lot-Splits], and Erik Enyart confirmed and stated, “We had a chance to see that it was done right,” and noted that, since it had approved the Lot-Splits creating the nonconformity, the City was “somewhat culpable.” Mr. Wilson indicated this was a unique situation, and Mr. Enyart indicated agreement.

After further discussion, JR Donelson made a MOTION to APPROVE BBOA-591 as recommended by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to Mr. and Mrs. Baker. Mr. and Mrs. Baker asked about the Building Permit, and Mr. Enyart stated that he would notify Donna [Crawford] the following morning that this had been approved, and she would provide him the Building Permit, which he would sign if the floodplain issues were resolved. Mr. Baker stated that he believed he had done all that was required as concerned the floodplain. Mr. Enyart explained the Building Permit issuance process, including that Donna would set up the permit in the system, would take care of any other required matters, the permit would be transmitted to City Hall, and the people in City Hall would contact Mr. Baker when his permit was ready to be picked up and paid for.

Kyle Baker asked if his neighbors would have to do the same thing when they go to build, and Erik Enyart stated that most of them likely would as well. Paulette Baker asked whether this was required when they built their house, and Mr. Enyart responded that it “was supposed to have been done” at that time. Mr. and Mrs. Baker clarified with Mr. Enyart that they would not need to do this again in the future. Mr. Enyart stated that the property is now “perfect,” and would again be eligible for Building Permits.

5. **BBOA-592 – Whitney & Coats Construction, LLC for Don Schmidt.** 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 1, Block 8, *Southwood*; 8266 E. 114th St. S.

Chair Jeff Wilson introduced the item. It was observed that the Applicant was not present. Darrell Mullins noted that the Board usually does not hear cases for which the Applicant does not attend to represent, but indicated his willingness to consider this one, since he was familiar with the neighborhood and similar cases in the area. Erik Enyart stated that the Applicant had called

and left a voicemail earlier that day, which he returned with a voicemail confirming that the Applicant needed to attend and be available to answer any questions, but indicated the Board could hear the case.

Discussion ensued.

JR Donelson noted that he was also familiar with the neighborhood. Darrell Mullins noted that the setbacks used to be 25', but were changed to 35'. Mr. Mullins noted that he had built his house in the early 1970s, and the setbacks were 25' at the time. Mr. Donelson confirmed that the setbacks used to be less than they are today. Erik Enyart stated that he was not entirely sure the sequence of events, but indicated he believed that the Southwood subdivisions were platted, the City of Bixby annexed them, and then the City of Bixby applied RE zoning to them when it adopted its first Zoning Ordinance in the early 1970s, believed to be about 1972 or 1974. Mr. Donelson and Mr. Mullins indicated agreement, and their favor for these homes that had been "grandfathered" but were now subject to the new rules.

During the discussion, Erik Enyart summarized several points from the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Friday, June 27, 2014
RE: Report and Recommendations for:
BBOA-592 – Whitney & Coats Construction, LLC for Don Schmidt

LOCATION: – 8266 E. 114th St. S.
– Lot 1, Block 8, Southwood
LOT SIZE: 1.4 acres, 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 Southwood and Resubdivision of Lots 10 through 15 Inclusive, Block 3 and Lots 4 through 6 inclusive, Block 5 Southwood Addition.

COMPREHENSIVE PLAN: Low Intensity + Residential Area

PREVIOUS/RELATED CASES: None found

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

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

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

BBOA-69 – Melvin & Goldie Crow – Request for Variance of the side yard requirements to permit a carport and storage for Lot 15, Block 3, Resubdivision of Lots 10 through 15 Inclusive, Block 3 and Lots 4 through 6 inclusive, Block 5 Southwood Addition, 8171 E. 114th St. S., located across 114th St. S. to the north of subject property – Approved by BOA 01/08/1980.

BBOA-153 – Lucile S. Humbrecht – Request for Variance from the 15' side yard setback for an existing house located to the northeast of the subject property, Lot 14, Block 2, Amended Southwood Extended, 11225 S. 90th E. Ave. – Approved by BOA 12/09/1985.

BZ-274 – Lawrence Simmons – Request for rezoning from RE to CG for Lot 4, Block 9, Southwood, 11450 S. 82nd E. Ave., located 2 blocks to the southwest of subject property – PC recommended Denial 08/20/2001 and City Council Denied upon appeal September 24, 2001.

BZ-275 – James Hargrove – Request for rezoning from RE to CS or CG for Lot 5, Block 9, Southwood, 8119 E. 116th St. S., located 2 ½ blocks to the southwest of subject property – PC recommended Denial 08/20/2001 and City Council Denied upon appeal September 24, 2001.

BZ-276 – John Mumey – Request for rezoning from RE to CS for Lots 9 and 10, Block 10, Southwood, 11601 S. Memorial Dr., located 3 blocks to the southwest of subject property – PC recommended Denial 08/20/2001 and City Council Denied upon appeal September 24, 2001.

BBOA-397 – Jerry Stone – Request for Variance to construct an addition of 24' X 30' (720 sq. ft.) to an existing 24' X 40' detached garage for a total of 1,680 square feet on property located to the southeast of subject property, Lot 5, Block 12, Amended Southwood Extended, 9110 E. 116th St. S. – BOA Approved 02/03/2003.

BBOA-399 – Stephan & Pattie Schalo – Request for Variance to exceed the 750 square foot maximum accessory building floor area in an RE District, to allow a 828-square-foot replacement accessory storage building for property located 1 block to the east of subject property, Lot 1, Block 7, Southwood, 11402 S. 85th E. Ave. – BOA Approved 03/03/2003.

BBOA-416 – Leo Eash – Request for Variance to exceed the 750 square foot maximum accessory building floor area in an RE District, to allow a 864-square-foot accessory storage building for property located 1 ½ blocks to the southeast of subject property, Lot 3, Block 7, Southwood, 11444 S. 85th E. Ave. – BOA Approved 02/02/2004.

BBOA-418 – Billy Ray Cooper – Request for “Special Exception” to exceed the 750 square foot maximum accessory building floor area in an RE District, to allow a 21' X 41' (861 square feet) accessory storage building for property to the northwest of subject property, Lot 10, Block 2, Southwood, 8115 E. 112th St. S. – BOA Approved 03/01/2004.

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-430 – Charles Bunch – Request for Variance to exceed the 750 square foot maximum accessory building floor area in an RE District, to allow a 1,200-square-foot accessory storage building for property located 2 blocks to the southeast of subject property, Lot 1, Block 6, Southwood, 11416 S. 87th E. Ave. – BOA Denied 12/06/2004.

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.

BZ-314 – John Mumey – Request for rezoning from RE to CS for Lots 10, 9, and the W/2 of Lot 8, Block 10, Southwood, 11601 S. Memorial Dr., located 3 blocks to the southwest of subject property – Recommended for Denial by PC 11/21/2005 and Withdrawn [by Applicant] 11/21/2005 per notes on the application form.

BZ-316 – John Mumey – Request for rezoning from RE to CS and OL (front/west half to CS and back/east half to OL) for Lots 10, 9, and the W/2 of Lot 8, Block 10, Southwood, 11601 S. Memorial Dr., located 3 blocks to the southwest of subject property – Continued from 04/17/2006 to 05/15/2006 and then Continued to 07/17/2006. Notes on the application form indicate that the PC recommended Denial 07/17/2005. However, Minutes of that meeting were not found in hard copy or electronic format. Notes on the August meeting agenda indicated the PC approved the Minutes of the June meeting, and not the July meeting, suggesting there may have been no July meeting. June Minutes do not reflect consideration of this application. No item was found in the City Council Minutes of 07/24/2006 or 08/14/2006, and so the matter is assumed withdrawn or not appealed to the City Council.

BBOA-471 – David Caffey – Request for (1) Variance from the Zoning Code to allow a garage accessory structure as a principal use prior to the construction and occupancy of the principal dwelling, and (2) Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,176 square foot garage accessory structure in the

RS-1 Residential Single Family District for property located approximately to the southeast of subject property, Lot 4, Block 11, Southern Memorial Acres Extended, at 11717 S. 87th E. Ave. – BOA Conditionally Approved 03/03/2008.

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 to the southeast of the subject property, Lot 6, Block 7, Amended Southwood Extended, 9110 E. 115th St. S. – Approved by BOA 12/06/2010.

BBOA-580 – Dr. Richard Stephens – Request for 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 located to the east of the subject property, Lot 6, Block 5, Amended Southwood Extended, 8933 E. 115th St. S. – Approved by BOA 07/01/2013.

BCPA-10 – JR Donelson for James Hargrove et al., PUD 77 – “Southwood on Memorial” – JR Donelson, Inc., and BZ-366 – James Hargrove et al. – BCPA-10 requested (1) to change the intensity to Medium Intensity and (2) to remove the Residential Area specific land use designation, PUD 77 was a request for PUD approval, and BZ-366 was a request for rezoning from RE to CS, all for Lot 10, Block 2, Lot 9, Block 3, all of Block 9, and Lots 10, 9, and the W/2 of Lot 8, Block 10, Southwood, and Lot 10, Block 3, Resubdivision of Lots 10 through 15 Inclusive, Block 3 and Lots 4 through 6 inclusive, Block 5, Southwood Addition, located from the 11100-block to the 11600-block of S. Memorial Dr. (located 1 ½ blocks to the west of subject property) – PC Recommended Denial 08/19/2013 (not appealed to City Council).

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property consists of Lot 1, Block 8 in Southwood, zoned RE. It contains a single-family dwelling fronting north onto 114th 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 30' (or just less than) front yard setback, according to the Applicant's site plan. 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 (# 31310) proposing to add a building addition to 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 “New Site Plan” drawing A-200, the house appears to encroach slightly on the 30' Building Line established by the plat of Southwood. The site plan does not give a specific dimension. A linetype appears to encroach on the 30' Building Line, but it may be indicative of the wall or an overhanging eave. The Applicant's narrative indicates a 5' Variance is needed, suggesting a 30' setback. Based on a rough estimate of relative proportions and the Applicant's statement, it is estimated for purposes of this Staff Report as having a 30' setback.

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 following claims made by Staff are similar to the same Staff made for BBOA-530 and BBOA-580.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. According to the Tulsa County Assessor's records, the house was built in 1972. 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 Southwood, 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 does not apply to the present case because the house on the lot abutting to the west, per GIS rough measurements, has a greater setback from 114th St. S. 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 could have been 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 Southwood subdivision was platted on or around March 11, 1965, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.
- The plat of Southwood only requires a 30' front-yard setback. Approval of the Variance may not conflict with the setbacks as established by the plat, if the house has at least a 30' setback.
- Per County Assessor's records, the house on the subject property was constructed in 1972.
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.
- As noted in the reports for BBOA-530 and BBOA-580, a number of the dwellings in the "Southwood" neighborhoods 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 current code would prevent this addition, 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 "Almost all of the other houses in this immediate area encroach on the new setback." Per GIS and aerial data, it appears that most of houses in the immediate area, defined here as adjacent to or across the street from the subject property, meet or exceed the 35' setback. However, as documented in the cases of BBOA-530 and BBOA-580, numerous houses in other parts of the "Southwood" neighborhoods do not meet this requirement.

The Applicant also claims, "The proposed addition would increase the property value and should enhance the overall curb appeal and visual balance of the house."

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 114th 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 30' from the front lot line does not appear to be unique to the subject property. Several other dwellings in the "Southwood" neighborhoods appear to encroach on, not only the Zoning Code's 35' front yard setback, but also the 25' and 30' (private) setbacks established by the plats.

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 and BBOA-580 appear the 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 5' of setback, a Variance of approximately 5' 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.

Based on the arguments presented, Darrell Mullins made a MOTION to APPROVE BBOA-592
Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Larry Whiteley made a MOTION to ADJOURN. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting was Adjourned at 6:20 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary