

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
April 06, 2015 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
Patrick Boulden, Esq., City Attorney

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 6:03 PM.

ROLL CALL

Members Present: Jeff Wilson, JR Donelson, Murray King, and Darrell Mullins.

Members Absent: Larry Whiteley.

MINUTES

1. Approval of Minutes for March 02, 2015

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of March 02, 2015 as presented by Staff. JR Donelson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Donelson, & Mullins

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

- 2. **BBOA-599 – A-Max Sign Co., Inc. / Lori Worthington for Mabrey Bank.** Discussion and possible action to approve a Variance from the maximum ground sign height restriction of Zoning Code Section 11-7C-3.B.4.a to allow for the replacement of an existing ground sign measuring approximately 29.8’ above ground level for Lot 1, Block 1, *Citizens Security Bank Addition*, located within the OL Office Low Intensity District. Property located: 11402 S. 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: *Thursday, April 02, 2015*
RE: *Report and Recommendations for:
 BBOA-599 – A-Max Sign Co., Inc. / Lori Worthington for Mabrey Bank*

LOCATION: – 11402 S. Memorial Dr.
 – Lot 1, Block 1, *Citizens Security Bank Addition*

LOT SIZE: 2.87 acres, more or less

ZONING: OL Office Low Intensity District

SUPPLEMENTAL ZONING: Corridor Appearance District

EXISTING USE: Use Unit 11 Mabrey Bank

REQUEST: Variance from the maximum ground sign height restriction of Zoning Code Section 11-7C-3.B.4.a to allow for the replacement of an existing ground sign measuring approximately 29.8’ above ground level for Lot 1, Block 1, *Citizens Security Bank Addition*, located within the OL Office Low Intensity District

SURROUNDING ZONING AND LAND USE:

North: CS; Commercial in the “Bixby Commons” shopping center, anchored by the Reasor’s grocery store and the Lowe’s in Bixby Commons and Resubdivision of Lots 3 and 4 of Bixby Commons.

South: CS, CG, & AG: Vacant commercial lots straddling 115th St. S. in *The Links at Bixby* zoned CS, the *Enterprise Sod Store* zoned CG, and the *Hardscape Materials business* zoned CS and AG.

East: (Across Memorial Dr.) RE; Single-family residential estate homes in *Southwood* and Resubdivision of Lots 10 through 15 Inclusive, Block 3 and Lots 4 through 6 inclusive, Block 5, *Southwood Addition*.

West: RM-1/PUD 16; *The Links at Bixby* a.k.a. *The Links on Memorial Golf and Athletic/Country Club* and *The Links on Memorial Apartment Community* apartment complex and 9-hole golf course in Lot 1, Block 1, *The Links at Bixby*.

COMPREHENSIVE PLAN: Corridor + Medium Intensity + Commercial Area

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

BZ-60 – Citizens Security Bank and Trust for John B. Tate, Trustee – Request for rezoning from AG to OL for one (1) acre of subject property for “electronic banking” – Planning Commission

Recommended Approval 12/19/1977 and Town Board of Trustees Approved 08/07/1978 (Ord. # 360).

BL-36 – Citizens Security Bank and Trust for John B. Tate, Trustee – Request for Lot-Split approval to split one (1) acre from a larger tract, which one (1) acre became part of subject property – Planning Commission Approved 12/19/1977 subject to final approval of OL zoning per BZ-60.

BZ-168 – Citizens Security Bank and Trust Company for 116th and Memorial LTD – Request for rezoning from AG to CS for approximately 2.06 acres of subject property, to the west of 1-acre “electronic banking facility” rezoned OL per BZ-60, for a new branch bank – Planning Commission Recommended Approval of OL zoning 10/28/1985 and City Council Approved OL zoning 11/26/1985 (Ord. # 535).

[Final] Plat of Citizens Security Bank Addition – Request for [Final] Plat approval for the Citizens Security Bank Addition plat of subject property – Plat # 4629 recorded 02/28/1986 and was presumably approved by the City of Bixby at some time prior (Preliminary Plat approvals not researched).

BBOA-173 – Craig Neon, Inc. for Citizens Security Bank – Request for Variance to allow 60 square feet of display surface area for a ground sign in an OL district for subject property – BOA Approved 06/09/1986.

BBOA-226 – Acura Neon, Inc. for Citizens Security Bank – Request for Variance to allow up to 180 square feet of display surface area for a ground sign in an OL district for subject property – BOA Approved 06/04/1990.

RELEVANT AREA CASE HISTORY: (Not researched)

BACKGROUND INFORMATION:

Citizens Security Bank was recently renamed Mabrey Bank and has applied for Sign Permits for both bank branches located in Bixby. The subject property contains the bank branch at 11402 S. Memorial Dr., and the preexisting ground sign, at approximately 29’ 8”, exceeded the 20’ maximum height in the OL district, and the new replacement sign will need a Variance.

Based on the arguments Staff was able to conceive in February, 2015, and recognizing Mabrey Bank’s need to have signage installed in time for the name change, Staff requested, and the City Manager granted authorization to sign a Conditional/Provisional Sign Permit, enabling the bank to proceed at their own risk prior to Variance approval. The Conditional/Provisional Sign Permit was issued on or around February 23, 2015.

ANALYSIS:

Subject Property Conditions. The subject property is zoned OL and consists of Lot 1, Block 1, Citizens Security Bank Addition. The rectangular property of approximately 2.87 acres is 500’ deep and has 250’ of frontage on Memorial Dr. It is developed with a Use Unit 11 branch of a Mabrey Bank.

The subject property is moderately sloped and appears to drain the west, south, and east toward Memorial Dr.

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 is requesting a Variance from the maximum ground sign height restriction of Zoning Code Section 11-7C-3.B.4.a to allow for the replacement of a preexisting ground sign measuring approximately 29’ 8” above ground level for Lot 1, Block 1, Citizens Security Bank Addition, located within the OL Office Low Intensity District. Zoning Code Section 11-7C-3.B.4.a provides for ground signs in the OL district as follows:

“a. One business sign may be erected on each street frontage of a lot. The sign shall not exceed two-tenths ($\frac{2}{10}$) of a square foot of display surface area per lineal foot of street frontage; provided, however, that in no event shall the sign be restricted to less than thirty two (32) square feet nor be permitted to exceed one hundred fifty (150) square feet of display surface area. Ground signs in the OL and OM districts shall not exceed the height of the building in which the principal use is located, or twenty feet (20’), whichever is lower. No

business sign shall be located within fifty feet (50') of any R district if visible from such district. Illumination, if any, shall be by constant light.”

The subject property was rezoned and the bank constructed in the 1970s and 1980s. Per BBOA-173 – Craig Neon, Inc. for Citizens Security Bank, on June 09, 1986, the Board of Adjustment approved a Variance to allow 60 square feet of display surface area for a ground sign in an OL district for subject property.

Per BBOA-226 – Acura Neon, Inc. for Citizens Security Bank, on June 04, 1990, the Board of Adjustment approved a Variance to allow up to 180 square feet of display surface area for a new ground sign in an OL district for subject property. Per the exhibit included as part of that application, it was a

“Citizens Security

Bank

& Trust Company

CSB Bixby, Oklahoma”

sign with a digital timeclock and static changeable message board. Per the scaling of the exhibit, it appears it was about 20' in height.

At some point thereafter, it appears a newer sign was erected, which was in place as of January 23, 2015. Per the sign permit information received January 23, 2015, the display surface area of that preexisting sign, in place as of that date, did not exceed the 180 square feet approved per BBOA-226, but exceeded the 20' maximum height restriction in the OL district. The precise height was not known, but per the Sign Permit exhibits, the new sign was to be mounted at the same height, 29' 8" +/- . This will require a Variance, requested by this application.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “The sign was approved by [B]BOA-226 in 1990. After the approval a sign was installed making the height taller than allowed with no permit. Mabrey has taken over bank and was uninformed that the sign was non conforming.”

Contrary to the statement that the preexisting sign (in place as of January 23, 2015) was installed “with no permit,” Staff has speculated that the City of Bixby likely did issue a Sign Permit, since large signs like this, especially years ago, rarely went up without a Permit.

The argument presented is similar to the one Staff conceived in February of 2015, and more logically applies to the “Peculiar, Extraordinary, or Exceptional Conditions or Circumstances” Test and Standard.

Staff believes that the fact that (1) the bank would be required to reduce the height of the sign that appears to have been in place for years, if not decades, (2) that the reduced sign height would cause the same to be less visible from the perspective of Memorial Dr.-southbound motorists coming from higher elevations, (3) the reduced sign height may be less visible still when factoring the locations, sizes, and configurations of the Robertson Tire, Chili's, BTC Broadband, and other signs along Memorial Dr. south of 111th St. S., and (4) a height-reduced sign would be disadvantaged compared to other competing banks' signs located in commercial districts, which are not restricted to 20' in height, individually and together may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, “The property was purchased without knowledge of the sign being non conforming to the code.”

Staff believes that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional because:

- Property has been approved for Variances two (2) times previously for related matters,
- The additional height is negligible and less than the adjacent commercial zoning would allow by right,
- The property would likely be a good candidate for commercial zoning, per the Comprehensive Plan and surrounding CS and CG zoning and commercial land use patterns,
- The City likely permitted the sign at its present height, since large signs like this, especially years ago, rarely went up without a Permit, and
- The number of years the current sign has been in place at the new height, without any record of complaint or evidence of adverse effect.

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 “The sign being installed is a name change and removal of message unit. The sign has been at its current height and location for years and been well maintained.”

Elsewhere on the application form, the Applicant provides, “The sign is setback and high enough to be seen but does not interfere with any traffic and or parking.” This statement would appear to be most applicable to this Test and Standard.

These provided arguments may be augmented by the arguments which Staff supplied for the “Peculiar, Extraordinary, or Exceptional Conditions or Circumstances” Test and Standard, which also appear applicable to this Test and Standard.

For all the 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. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because “The sign was installed without a permit after 1990 variance approval. We are getting the sign back in to conformity with the least expense and ground interruption. We are only changing cabinets.”

Since the proposed 29.8’ height would be equal to the preexisting sign (in place as of January 23, 2015), which was evidently in place for years, if not decades, Staff believes that this 9.8’ height Variance 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 the tests and standards of the Zoning Code and State Statutes. The Board may also wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting. Approval should be subject to a maximum of 29’ 8” as represented on the sign exhibit to the application.

Chair Jeff Wilson recognized Andrew Shank, Esq. of Eller & Detrich, representing *Mabrey Bank*. Mr. Shank indicated agreement with the Staff recommendations. Mr. Shank stated that the hardship was the fact that the property was zoned office but surrounded by commercial zoning, which would allow 30’ to 50’ all around. Mr. Shank noted that the fact that there had been no concerns raised speaks to the fact that it would not be injurious to the neighborhood. Mr. Shank stated that this would be compatible with the Public good and in harmony with the Comprehensive Plan.

JR Donelson asked, if the property were to be rezoned to commercial, if a PUD would be required. Erik Enyart stated that that would be a bit speculative, and that he had put that in as an argument because he considered it relevant to the subject. Mr. Enyart confirmed Mr. Donelson was referring to the new policy put in place the previous summer. Mr. Enyart stated that the new policy did require a PUD when rezoning to commercial in a commercial corridor, but there were other factors such as the land use designation that he would have to check.

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-599. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Donelson, & Mullins
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

ADJOURNMENT

Darrell Mullins made a MOTION to ADJOURN. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Donelson, & Mullins
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 4:0:0

Meeting was Adjourned at 6:09 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary