

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
September 08, 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 Vice/Acting Chair Murray King at 6:00 PM.

ROLL CALL

Members Present: Larry Whiteley, Richard Altmann, JR Donelson, Murray King, and Darrell Mullins.

Members Absent: None.

Vice/Acting Chair Murray King recognized, and the other Board Members welcomed Richard Altmann to the Board of Adjustment. Mr. King noted that Jeff Wilson had moved out of the City and so Mr. Altmann had been appointed in his place.

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

Vice/Acting Chair Murray King introduced the item and called for nominations and Motions to elect officers.

JR Donelson made a MOTION to NOMINATE and ELECT Murray King as Chair. Mr. King indicated willingness to accept the position if elected.

Darrell Mullins in at this time.

Larry Whiteley SECONDED the Motion to NOMINATE and ELECT Murray King as Chair. Roll was called:

ROLL CALL:

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

Larry Whiteley made a MOTION to NOMINATE and ELECT JR Donelson as Vice-Chair. Mr. Donelson indicated willingness to accept the position if elected. Chair Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart stated that he would be happy to serve as Secretary again if nominated. Larry Whiteley made a MOTION to NOMINATE and ELECT Erik Enyart as Secretary. JR Donelson SECONDED the Motion. Roll was called:

ROLL CALL:

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

MINUTES

1. Approval of Minutes for July 06, 2015

Chair Murray King introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of July 06, 2015 as presented by Staff. JR Donelson SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

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

NEW BUSINESS

3. **BBOA-603 – Dale Bennett for Woodlake Assembly of God.** Discussion and possible action to approve a Variance from certain sign standards of Zoning Code Sections 11-7A-3.B.2 and 11-9-21 for a Use Unit 5 church in the AG Agricultural District for part of the E/2 of the E/2 of Section 25, T18N, R13E.
Property located: 10444 S. Mingo Rd.
-

Chair Murray King 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, September 01, 2015
RE: Report and Recommendations for:
BBOA-603 – Dale Bennett for Woodlake Assembly of God

LOCATION: – 10444 S. Mingo Rd.
– Southwest corner of the intersection of 104th St. S. (a.k.a. 103rd Pl. S.) and Mingo Rd.
– Part of the E/2 of the E/2 of Section 25, T18N, R13E

SIZE: 27 acres, more or less

ZONING: AG General Agricultural District

SUPPLEMENTAL ZONING: None

EXISTING USE: Vacant / wooded with Use Unit 5 church under construction

REQUEST: Variance from certain sign standards of Zoning Code Sections 11-7A-3.B.2 and 11-9-21 for a Use Unit 5 church in the AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: RT/PUD 35 & RT/PUD 36; Attached single-family residential in Spicewood Pond and detached single-family residential in Spicewood Villas across 95th E. Ave. / 104th St. S. (a.k.a. 103rd Pl. S.).

South: RS-3; Single-family residential in Legends II.

East: (Across Mingo Rd.) R-1, R-2, and R-2/PUD-112; The Cedar Ridge Country Club and single-family residential in several “Cedar Ridge” subdivisions, all in the City of Broken Arrow.

West: RS-3 & RT/PUD 35; Detached single-family residential in Legends II zoned RS-3 and attached single-family residential in Spicewood Pond to the northwest across 95th E. Ave.

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

PREVIOUS/RELATED CASES:

BBOA-431 – Merwin Pickney of Woodlake Assembly of God for AGO Trust – Request for Special Exception to allow a Use Unit 5 church for subject property – BOA Approved 11/01/2004.

BBOA-582 – Rosenbaum Consulting, LLC for Woodlake Assembly of God – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 church in an AG Agricultural District for subject property (BBOA-431 had expired per Zoning Code Section 11-4-9.D due to non-utilization) – BOA Conditionally Approved 01/06/2014.

BBOA-583 – Rosenbaum Consulting, LLC for Woodlake Assembly of God – Request for Variance from certain landscaping tree requirements of Zoning Code Section 11-12-3.C for property in an AG

Agricultural District for subject property – Withdrawn by Applicant in January, 2014 due to lack of need.

Plat Waiver for Woodlake Assembly of God – Request to Waive the platting requirement per BBOA-582 for subject property – City Council Conditionally Approved 06/23/2014 upon acceptance of separate instrument dedications of right-of-way, Utility Easement, and Drainage Easement.

Plat Sidewalk Waiver for Woodlake Assembly of God – Request to temporarily Waive the sidewalk requirement per the 06/23/2014 Plat Waiver for a southerly portion of subject property – City Council Conditionally Approved temporary Waiver 02/23/2015, with the sidewalk construction requirement to be restored prior to the development of the southerly acreage.

RELEVANT AREA CASE HISTORY: (not necessarily a complete list; case history not available in the City of Broken Arrow)

PUD 35 – Spicewood Pond – Tanner Consulting, LLC – Request for PUD approval and RT underlying zoning for Spicewood Pond abutting subject property to the northwest – PC Recommended Approval 11/15/2004 and City Council approved 12/13/2004 (Ord. # 899).

PUD 36 – Spicewood Villas – Tanner Consulting, LLC – Request for PUD approval and RT underlying zoning for Spicewood Villas abutting subject property to the north – PC Recommended Approval 12/20/2004 and City Council approved 01/24/2005 (Ord. # 900).

BZ-311 – Brumble Dodson Construction – Request for rezoning from AG to RS-3 for approximately 93 acres (now Legends, Legends II, and Village at Legends) abutting subject property to the west and south – PC Recommended Approval 08/15/2005 and City Council Approved 09/12/2005 (Ord. # 912).

PUD 36 Minor Amendment # 1 – Request for Minor Amendment to PUD 36 (abutting subject property to the north) to provide flexibility to allow for 0' and 10', or 5' and 5', or any combination of two (2) side yards which ultimately results in all dwellings maintaining a 10' separation between each other dwelling – PC Approved 09/17/2007.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property of 27 acres, more or less, is vacant and wooded and is zoned AG Agricultural District. Per the approved site plans, the Use Unit 5 Woodlake Church church campus under construction will ultimately occupy the north approximately 15.170 acres of the 27-acre tract. The subject property is believed to have been part of a former tree farm. It is moderately sloped and appears to drain to the south. It is in the Oliphant Drainage and Detention System / Fry Creek # 1 drainage basin.

Per the legal description, the subject property has 1,589.61' of frontage on Mingo Rd., and 974.34' of frontage on 95th E. Ave. / 104th St. S. (a.k.a. 103rd Pl. S.). The name of the east-west segment of the street is not clear. It was dedicated with Spicewood Villas as 104th St. S., and Staff has found no ordinance renaming it. That name was also recognized with the plat of Spicewood Pond (Plat # 5923 recorded 11/17/2005). However, it has "103rd Pl. S." street signs, and the Tulsa County E-911 system recognizes it as "103rd Pl. 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 sign codes are primarily found in Zoning Code / City Code Section 11-9-21, but those provisions do not pertain to signs in the AG Agricultural District. Zoning Code Section 11-7A-5.A.1 provides: "The accessory use provisions of the agricultural district pertaining to signs are applicable to accessory signs for uses permitted by special exception."

The Woodlake Church property is zoned AG, and so the following from Section 11-7A-3.B.2 applies: "2. Accessory Signs In AG District:

a. One bulletin board may be erected on each street frontage of an educational, religious, institutional or similar use requiring announcement of its activities. The bulletin board shall not exceed thirty two (32) square feet in display surface area, nor twenty feet (20') in height, and illumination, if any, shall be by constant light.

b. One identification sign may be erected on each street frontage of a permitted nonresidential use. The sign shall not exceed two-tenths (2/10) of a square foot of display surface area per linear 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. The sign shall not exceed twenty feet (20') in height, and illumination, if any, shall be by constant light."

The Zoning Code strictly limits signage for allowable Use Unit 5 churches in the AG districts, and perhaps did not fully contemplate or comprehensively provide for such more intensive uses. The above subsection b. allows one "identification sign." An "identification sign" is not defined in the definitions, and may allow for its placement on a building wall (making it a "wall sign") or in the ground (making it a "ground sign"). Per the approved site plans, the church's one (1) allowable "identification sign" will take the form of a wall sign attached to the front of the building exhibiting the logo "WC" and attendant text "Woodlake Church." The church would like to have another, non-illuminated wall sign on the south-facing elevation of the building reading "WC Kids," to identify the children's church building entrance. This application therefore makes a request for Variance to be permitted to have another identification / wall sign. The "WC Kids" wall sign will measure 4' in letter height, approximately 13' in aggregate letter width, and so will contain 51.92 square feet in display surface area.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant claims that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating "Only church in the area." The provided argument does not appear to correspond to the question asked.

At four 27 acres in size, the subject property is fairly large, and is the largest developed parcel fronting on Mingo Rd. from the Creek Turnpike to 121st St. S. The subject property also has 1,589.61' of frontage on Mingo Rd., and 974.34' of frontage on 95th E. Ave. / 104th St. S. (a.k.a. 103rd Pl. S.), which is the most of any developed parcel within said area. The building on the subject property is also fairly large, especially in respect to the size of the proposed signage.

Recognizing the church is only permitted one (1) identification sign that is fairly restricted as to display surface area in relation to the subject property's size and street frontage, and building size, and for the other reasons set forth herein, Staff believes that the Application substantially meets the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "Create confusion on where to drop off children at a certain location on the property." The Applicant is referring to the "wayfinding" or "directional" purpose for the "WC Kids" sign. The sign, likely visible from Mingo Rd., may also serve as additional identification for the church.

As suggested in the "Nature of Variance" section above, a Use Unit 5 church is allowed by Special Exception in an AG district, but when permitted, it is not allowed the same measure of signage as is afforded other churches in most other Zoning districts.

Therefore, there appears to be an evident disconnect between allowing a Use Unit 5 churches in an AG district, but not similarly allowing wall signage typical, customary, and reasonably necessary for such use, which, strictly enforced, would put the Applicant at a competitive disadvantage to other churches employing such signage. This disadvantage by the disallowance of the additional sign may be considered an Unnecessary Hardship on the property owner.

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 "Signage is not large or obtrusive to the surrounding area. It is used only for a wayfinding sign." Staff concurs that the proposed "WC Kids" wall sign will be relatively small in relation to the size of the building, size of the property, and amount of street frontage. It should also be observed that the church has elected not to have a ground sign, or the allowed bulletin board sign (which often take the form of LED / Electronic Message Board signs), both of which signs are almost always employed for new church campuses.

The subject property is located on a Secondary Arterial, a County road which, by definition, is planned (as future resources allow) to be widened to four (4) lanes, with or without an additional center turn lane. The posted speed limit on Mingo Rd. between 101st St. S. and 111th St. S. is 50 MPH in both directions. Most intensive uses may reasonably be expected to have signage appropriate for the speed of traffic and intensity of uses along the Secondary Arterial. Therefore, it would not appear to cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or

the Comprehensive Plan if the subject property was allowed signage typical, customary, and reasonably necessary for a church of this size and scale.

Finding of Minimum Necessary. *The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because “Minimum square footage on signage, and non-illuminated.”*

Per the sign plans included with the site plan, the front/east-facing building wall will have “WC” and attendant text “Woodlake Church” with an aggregate of 143.7 square feet of display surface area, which complies with the two-tenths (2/10) of a square foot of display surface area per linear foot of street frontage (150 square feet ultimate maximum). Thus, only the second identification sign requires a Variance.

Recognizing the Applicant proposes a secondary “WC Kids” wall sign at 51.92 square feet in display surface area, a Variance of 51.92 square feet would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship, should hardship be determined.

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 one (1) additional wall sign at 51.92 square feet of display surface area as proposed in the application.*

Chair Murray King asked if the Applicant was present and wished to speak on the item. Applicant Dale Bennett of Claude Neon Federal Sign Co. was present and stated that the “WC Kids” sign should be seen as a “wayfinding” sign, designed to allow people to find their way to where they pickup and drop off kids for the children’s church. Mr. Bennett noted that the sign would be “non-lit.”

Richard Altmann expressed concern for sign heights and a preference for lower signs.

A question was raised about what was proposed for the land south of the church. Church representative John Brandon of 5711 E. 104th St. S., Tulsa, noted that the land to the south was about 10 acres, and stated that the [“WC Kids”] sign couldn’t be seen until one was “almost there.”

JR Donelson recalled experience with the *Andy’s Frozen Custard* site, and asked if the church would need more signage.

Richard Altmann expressed concern that the [“WC Kids”] sign might be seen from the neighborhood if the trees on the 10-acre area came down and nothing was built in its place.

Dale Bennett suggested the Board might require a clause that, if [the church campus or the 10-acre area to the south] were to be sold, this would have to come back and be re-voted on.

John Brandon stated that the church had 27 acres and they were only building on the north side of it. Mr. Brandon stated that one would have to strain to see the proposed [“WC Kids”] sign. Mr. Brandon suggested the church could leave additional trees.

Darrell Mullins stated that he admired the church and how they went about this matter.

JR Donelson asked the Applicant if they anticipated need for any additional signage.

Richard Altmann asked, if the ["WC Kids"] sign were to be lit in the future, would the Variance have to come back to the Board, and Erik Enyart responded affirmatively.

Chair Murray King confirmed with the Applicant that the wall sign on the front of the building would be lit. Mr. King confirmed with Erik Enyart that this would not require another Variance.

Chair Murray King recognized David Oligschlaeger of 9523 E. 107th St. S., from the Sign-In Sheet. Mr. Oligschlaeger stated that he was relieved to find out the nature of the sign[s]. Mr. Oligschlaeger mentioned the churches at Mingo Rd. and 111th St. S. Mr. Oligschlaeger stated that he was glad this church did not propose bright, LED type sign[s], and stated that he appreciated [Richard Altmann's] comments in respect to the neighborhood.

Dale Bennett stated that the ["WC Kids"] sign would be about 4' in height and 14' in width, and mounted at a height of approximately 12' to 14' to the top of the sign. JR Donelson clarified with Mr. Bennett that this would put the bottom of the sign at approximately 9' [above grade].

Mr. Oligschlaeger stated, "Having viewed it, I have no objection."

Chair Murray King recognized Arlin Plender of 10238 S. 96th E. Ave., from the Sign-In Sheet. Mr. Plender confirmed that the ["WC Kids"] sign would be "non-lit" and asked if it would face north or south. Mr. King showed Mr. Plender the south-facing sign from the Agenda Packet. Mr. Plender stated that he was in the Spicewood neighborhood. Mr. Plender expressed concern that the sign[s] would be like the one at the church at 3500 W. 101st St. S. / New Orleans St. [in Broken Arrow]. Dale Bennett stated that this was not the same church as that one. Mr. Plender indicated agreement.

Erik Enyart noted that the Variance may be seen as proportionally less than if it took the form of a ground sign sticking out toward the street.

There being no further discussion, Larry Whiteley made a MOTION to APPROVE BBOA-603 as recommended by Staff. Chair Murry King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Altmann, Donelson, & Whiteley.
NAY: Mullins.
ABSTAIN: None.
MOTION CARRIED: 4:1:0

4. **BBOA-604 – Chris & Rachel Taylor.** Discussion and possible action to approve a Variance from certain bulk and area requirements in the AG Agricultural District per Zoning Code Section 11-7A-4 Table 3, including the minimum lot width for part of the NW/4 of the NE/4 of Section 27, T17N, R13E.
Property located: 5858 E. 161st St. S.

Chair Murray King 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, September 02, 2015
RE: Report and Recommendations for:
BBOA-604 – Chris & Rachel Taylor

LOCATION: – 5858 E. 161st St. S.
– Part of the NW/4 of the NE/4 of Section 27, T17N, R13E
LOT SIZE: 4.33 acres, more or less
ZONING: AG Agricultural District
SUPPLEMENTAL None
ZONING:
EXISTING USE: Vacant/wooded
REQUEST: A Variance from certain bulk and area requirements in the AG Agricultural District per Zoning Code Section 11-7A-4 Table 3, including the minimum lot width

SURROUNDING ZONING AND LAND USE:

North: (across 161st St. S.) RE, RM-3, and CG; Approximately 236 acres of agricultural and vacant/wooded land zoned RE, RM-3, and CG, previously proposed for an “Atherton Farms Equestrian Estates” housing addition (never built), and a 2.7-acre unplatted, rural residential tract zoned RE and CG at 15802 S. Sheridan Rd.

South: RS-1; Residential homes and vacant land in an 80-acre RS-1 district, the S/2 of the NE/4 of this Section, including Atkinson Acres, Atkinson Acres Blocks 4, 5, and 7, Atkinson Acres (Amended Plat (Blocks 1 & 6), and Atkinson Acres II, and a 4.6-acre unplatted tract at 16522 S. Joplin Ave.

East: AG; Rural residential, agricultural, and vacant/wooded land along 161st St. S. and S. Sheridan Rd.

West: AG; Rural residential, agricultural, and vacant/wooded land along 161st St. S.

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

PREVIOUS/RELATED CASES: (none found)

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-73 – Roger Miner for Town of Bixby on behalf of J.R. Atkinson – Administrative rezoning from AG to RS-1 to resolve a zoning designation change upon annexation for approximately 30 acres abutting subject property to the south, which 30 acres was later partially platted as Atkinson Acres Blocks 4, 5, and 7, partially platted as Atkinson Acres II, and otherwise consists of a 4.6-acre unplatted tract at 16522 S. Joplin Ave. – PC Recommended Approval 01/08/1979 and City Council Approved 01/15/1979 (Ord. # 372).

BBOA-76 – William C. Bailey – Request for Special Exception to allow a mobile home in an AG district on 40 acres abutting subject property to the east including current rural residential tracts at 6300 and 6440 E. 161st St. S. – BOA Conditionally Approved 07/08/1980.

BBOA-77 – Sherman Lewis – Request for Special Exception to allow an existing double-wide mobile home in an AG district on a 1-acre tract to the east of subject property at 6408 E. 161st St. S. – BOA Conditionally Approved 08/12/1980.

BBOA-91 – Eugene L. Harrison – Request for Special Exception to allow oil well drilling in an AG district on approximately 50 acres abutting subject property to the east including rural residential tracts at 6300, 6440, and 6408 E. 161st St. S. and 16210 and 16352 S. Sheridan Rd. – BOA Conditionally Approved 09/14/1981.

BBOA-95 – Eugene L. Harrison – Request for Special Exception to allow oil well drilling in an AG district on approximately 13 acres to the west of subject property and including rural residential tracts at 5712 and 5716 E. 161st St. S. – BOA Conditionally Approved 02/08/1982.

BBOA-105 – Randy Buchanan of Home Folks, Inc. for Claude E. & Dewell Bailey / William C. & Gertrude Bailey – Request for Special Exception to allow an addition to an existing mobile home in an AG district on 40 acres abutting subject property to the east including rural residential tracts at 6300 and 6440 E. 161st St. S. – BOA Conditionally Approved 05/18/1982.

BZ-120 – Calvin Tinney – Request for rezoning from AG to RS-3 for the E/2 of the SW/4 of Section 22, T17N, R13E (80 acres) to the northwest of subject property – PC Recommended Approval 08/30/1982 and City Council Approved 09/07/1982 (Ord. # 460).

BZ-126 – Georgina Landman – Request for rezoning from RS-3 to RS-1 for approximately 80 acres (E/2 SW/4 Section 22, T17N, R13E) to the northwest of subject property – Applicant did not own the property requested for downzoning – PC Recommended Approval 12/27/1982 and City Council Denied 01/03/1983 upon recommendation of City Planner and City Attorney.

BZ-132 – J.R. Atkinson for Atkinson et al. – Request for rezoning from RS-1 to AG for gas or oil well drilling for approximately 13 acres abutting subject property to the southwest, which 13 acres was later rezoned to RS-1 (BZ-146) and platted as Atkinson Acres II – PC Recommended Approval 02/28/1983 and City Council Approved 03/07/1983 (Ord. # 475).

BBOA-114 – J.R. Atkinson for J.R. Atkinson Development Co. – Request for Special Exception to allow oil well drilling in an AG district on approximately 18 acres abutting subject property to the south, which 18 acres was later platted as Atkinson Acres II and otherwise consists of a 4.6-acre unplatted tract at 16522 S. Joplin Ave. – BOA Conditionally Approved 03/14/1983.

BBOA-124 – Shaun McLauray for Reggie Cooke – Request for Special Exception to allow a mobile home on approximately 1.5 acres (E. 1.5 acres of the NE/4 NE/4 NE/4 NE/4; less right-of-way = 0.95 acres) to the east of subject property at the southwest corner of 161st St. S. and Sheridan Rd., which acreage is a part of the rural residential tract at 16210 S. Sheridan Rd. – BOA Denied 03/12/1984.

BBOA-166 – Gertrude Bailey – Request for Variance to allow for Lot-Split per BL-111 (Denied 05/22/1986) / BL-116 (Denied 08/25/1986) / BL-123 (Approved 08/31/1987 but not now divided as approved) for a 5-acre tract to the east of subject property at 6300 E. 161st St. S. – BOA Conditionally Approved 06/09/1986.

BZ-181 – W.S. Atherton – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres abutting subject property to the north, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E, for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – City Council Approved 06/23/1987 (Ord. # 562).

BBOA-190 – W.S. Atherton – Request for “Use Variance” to allow the keeping of horses on individual lots as an accessory use for approximately 240 acres located to the west of subject property, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E, for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – BOA Approved 07/13/1987.

BBOA-218 – Marthell Laster – Request for Variance from the bulk and area requirements in the AG district for a former 5-acre tract to the east of subject property at 6800/6802 E. 161st St. S. to allow for a Lot-Split – BOA Approved 11/19/1989.

BBOA-244 – James E. Bruner – Request for Special Exception to allow a mobile home on approximately 4.33 acres to the west of subject property at 5716 W. 161st St. S. – BOA Approved 08/05/1991.

BBOA-307 – Bobby & Karrie Applegarth – Request for Special Exception to allow a mobile home on a 6.4-acre tract to the east of subject property at 6710 E. 161st St. S. – BOA Conditionally Approved 11/16/1995.

BBOA-310 – Gary Goins for Juanita Watkins – Request for Variance from bulk and area requirements to allow for Lot-Split per BL-205 (Approved 12/18/1995 but not now divided) for a 4.33-acre tract abutting subject property to the east at 5988 E. 161st St. S. – BOA Approved 01/02/1996.

PUD 20 – Atherton Farms Equestrian Estates – Phillip Faubert – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres abutting subject property to the north, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E, for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – PC Recommended Approval 01/20/1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. Further, PUD 20 does not exist on the official Zoning Map. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no records or notes were found to determine the eventual disposition of this request, if any.

BZ-238 – W.S. Atherton – Request for rezoning from AG to RE for approximately 10 acres located to the north of subject property for part of an “Atherton Farms Equestrian Estates” residential subdivision (never built), part of 240 acres located to the west of subject property, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E – Approved by City Council 02/23/1998 (Ord. # 768).

BZ-246 – Al Osko of Metro Realty of Tulsa, Inc. for Atkinson Trust – Request for rezoning from AG to RS-2 for approximately 13 acres abutting subject property to the southwest, which 13 acres was later platted as Atkinson Acres II – PC Recommended Approval of RS-1 zoning 11/16/1998 and City Council Approved RS-1 zoning 03/22/1999 (Ord. # 789; RS-2 zoning shown on official Zoning Map in error and correction request to INCOG placed 09/01/2015).

BBOA-386 – Catholic Diocese of Tulsa – Request for Special Exception to allow the construction of a church, private school, and associated uses in the AG district for the E/2 of the NW/4 of this Section (80 acres) to the west of subject property – BOA Approved 07/01/2002.

PUD 48 – “Pecan Meadows” –Tanner Consulting – Request for rezoning from AG to RS-2 and PUD approval for approximately 40 acres to the southeast of subject property, the SW/4 of the NW/4 of Section 26, T17N, R13E for a residential subdivision (never built) – PC Recommended Approval 11/21/2005 and City Council Approved 12/12/2005 (Ord. # 927).

BZ-334 – Jack Byers – Request for rezoning from AG to RE for approximately 3.5 acres tract to the east of subject property at 16101 S. Sheridan Rd. to facilitate a Lot-Split application (BL-349) – Withdrawn by Applicant prior to PC meeting 09/17/2007.

BBOA-485 – Phillip Faubert – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract at 15802 S. Sheridan Rd., located to the northeast of subject property within 240 acres, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E, previously proposed to be the “Atherton Farms Equestrian Estates” residential subdivision (never built) – BOA Approved 08/04/2008.

BBOA-486 – Phillip Faubert – Request for Variance from certain bulk and area requirements of Zoning Code Section 11-7D-4 Table 2, including, but not necessarily limited to: The setback from an abutting R district and the 100-foot minimum street frontage requirement, to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract at 15802 S. Sheridan Rd., located to the northeast of subject property within 240 acres, the SE/4 and the E/2 of the SW/4 of Section 22, T17N, R13E, previously proposed to be the “Atherton Farms Equestrian Estates” residential subdivision (never built) – BOA Approved 08/04/2008.

BBOA-503 – Brandon & Elisha Long – Request for (1) A 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) A Variance from the Zoning Code to allow said accessory structure to be used as a residence, including after such time as the primary residence is constructed and occupied, all in the AG Agricultural District, for a 6.4-acre tract to the east of subject property at 6710 E. 161st St. S. – BOA Conditionally Approved 04/06/2009.

BBOA-514 – Jerry & Mary Ezell – 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 house on an existing lot of record in the AG Agricultural District for approximately 2.04 acres to the southeast of subject property at 16315 S. Sheridan Rd. – BOA Approved 12/07/2009.

BBOA-575 – Blake Fugett – Request for a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25’ X 60.25’ (2,425) square foot accessory building in the rear yard for property in the RE Residential Estate District for approximately 1.2 acres to the northwest of subject property at 5257 E. 161st St. S. – BOA Approved 04/01/2013.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract containing approximately 4.33 acres of vacant/wooded land zoned AG. It is a narrow, deep tract having 190.42’ of frontage on 161st St. S. and 1320.05’ (1/4 mile) of depth, according to the provided survey.

The subject property is moderately sloped and appears to drain to the north to 161st 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 Applicant has submitted a Building Permit application seeking to build a house on the subject property. The subject property has 190.42' of frontage on 161st St. S. The southerly half of the tract, at 94.70', is narrower than the front half.

Lot width is defined by Zoning Code Section 11-2-1 as:

“LOT WIDTH: The average horizontal distance between the side lot lines.”

The average of the front and rear lot lines is 142.56'. Per Zoning Code Section 11-7A-4 Table 3, the minimum lot width in the AG district is 200', and so the subject property does not meet the minimum lot width required in the AG district. The lot and the house appear to meet the 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 Variance from certain bulk and area requirements in the AG Agricultural District per Zoning Code Section 11-7A-4 Table 3, including the minimum lot width, to allow for the construction of a house on an existing lot of record in the AG Agricultural District.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “The property was purchased to build our home. If we can't build, it is worthless. The only use is for a homesite.”

Staff agrees with the Applicant that the literal enforcement of the Zoning Code would result in the prohibition of home construction. Further, the subject property is presently completely “unbuildable” due to its illegally nonconforming status and Zoning Code Section 11-8-1, including for agricultural buildings. Strict application of the bulk and area standards to the subject property would cause a severe Unnecessary Hardship, by disallowing the proposed house or any other building on the subject property. 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 shape of the southern property is narrow. This area is only +/- 1 acre of 4.3 total.”

As suggested by the Applicant, it appears that the tract configuration is irregular. This irregularity contributes to the lack of lot width, but does not cause it, however.

Staff searched all Lot-Split records and found no record of any Lot-Split approval pertaining to the subject property. Staff searched all Board of Adjustment records and found no record of any Variance or other application pertaining to the subject property. Some of the older case maps from the 1970s and 1980s reflected that the subject property was part of a larger tract, suggesting the land was divided in the 1980s or later, while within the Bixby City Limits. However, at 4.33 acres, and as the other adjoining tracts likely previously sharing parent tracts with the subject property are also 4.33 acres in lot area, the threshold for requiring a Lot-Split would not have been reached. Thus, when the parent tracts were divided, the City of Bixby would not have been in the position to review or advise the then owner of the pending creation of a Zoning nonconformity.

Such Extraordinary or Exceptional Conditions or Circumstances may be considered 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.

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 site is surrounded by homes. This home will help/increase property values in the area.”

Of the several fundamental purposes for imposing minimum lot size, land area, and lot width requirements, Staff believes the primary reason is for the prevention and mitigation of overcrowding, blight, substandard housing, inadequate sunlight, air, and open space, and other such historic urban problems which originally inspired these standards. Other intended results may have included the maintenance and promotion of aesthetics and property values. Regardless of time period in which

constructed, house value is typically corollary to house size, which is itself corollary to lot size and lot width. Property values may also be maintained or promoted by the value added to individual properties when located in a neighborhood with regularity, uniformity, and basic minimum standards for lot and house sizes and lot widths.

In sum, the regulations from which the Variance seeks relief were likely originally designed to:

- 1. Prevent and mitigate overcrowding, blight, substandard housing, inadequate sunlight, air, and open space,*
- 2. Maintain and promote aesthetics,*
- 3. Maintain and promote property values, and*
- 4. Create meaningful open space for private use and recreation and privacy between domestic neighbors.*

Overcrowding in this area of Bixby does not appear to be the case here, and in any event does not compare to the extreme densities and crowding issues experienced by older, highly urban centers of the late 1800s and early 1900s, when the Zoning laws regulating such bulk and area standards were originally designed.

The subject property is located in a primarily rural residential area between the 5700- to 6900-blocks of E. 161st St. S. that has a divergent mix of land uses, lot sizes, lot widths, and substandard lots of record. Abutting to the west of the subject property are two (2) tracts, one with a mobile home and one vacant/wooded, both having only 142.5' of lot width and ¼ mile of depth. Several tracts near the intersection of 161st St. S. and Sheridan Rd. have inadequate lot area/land area, lot widths, and/or frontage in the AG district. Many tracts in the area were created by Lot-Splits, and some (such as the subject property) did not meet the threshold for requiring Lot-Split approval. Many of the tracts, when divided, were granted Variances from bulk and area requirements. When considering the enumerated purposes above, Staff believes that the allowance of the existing 142.56'-wide tract would not detract from the neighborhood, which has little regularity or uniformity in bulk and area metrics.

The subject property has evidently existed in its present state for many years without record of any complaints or evidence of adverse impacts on adjoining properties.

Zoning Code Section 11-11-5.A provides:

“A. Residential Districts: In the residential districts, on any lot which title is filed of record on or before April 2, 1974, or on any lot within a subdivision having received the approval of the city council on or before April 2, 1974, a single-family detached dwelling may be erected without complying with the required area or width of the required side yard which abuts a public street; provided, that no side yard shall be less than five feet (5') and all other requirements of the use district are complied with.”

As noted elsewhere herein, some of the older case maps from the 1970s and 1980s reflected that the subject property was part of a larger tract, suggesting the land was divided in the 1980s or later, while within the Bixby City Limits. Thus, it appears that the exemption of Zoning Code Section 11-11-5.A, using “grandfathering” date April 02, 1974, does not apply to the subject property. However, Staff believes it demonstrates legislative intent to promote single-family house construction on nonconforming lots of record, which would appear to weigh in favor of this test and standard for granting Variance.

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 “Without the Variance we will not be allowed to build.”

Staff believes that the Variance of approximately 57.44' of lot width, the difference between the 200' required and the 142.56' of existing lot width, 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. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting. If the Board should approve, it should be subject to the subject property maintaining its present bulk and area metrics, so as not to allow further land division absent zoning approval.

A Board Member asked if the configuration of the tract caused the need for the Variance. Erik Enyart responded that it did not cause the need for it but, if not for the configuration, the property would not need as much of a Variance.

A question was raised regarding a fence. Erik Enyart indicated that the application did not concern fences and stated that any [future] fence matter would be an issue between the private property owners.

Larry Whiteley asked if the owner was going to develop the property. Applicant Chris Taylor of 5858 E. 161st St. S. stated that he was going to build his personal home. Richard Altmann asked if it would be built as it was shown in the application, and Mr. Taylor responded affirmatively.

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-604. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Darrell Mullins made a MOTION to ADJOURN. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting was Adjourned around 6:35 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary