

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
November 02, 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 Murray King at 6:06 PM.

ROLL CALL

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

Members Absent: JR Donelson.

MINUTES

1. Approval of Minutes for September 08, 2015

Chair Murray King introduced the item and asked to entertain a Motion. Richard Altmann made a MOTION to APPROVE the Minutes of September 08, 2015 as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Altmann, Whiteley, & Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

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

- 2. **BBOA-605 – Chad Bland.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow a professional inspections and consulting services business and related activities as a home occupation in the AG Agricultural District for the N/2 of the SE/4 of Section 20, T17N, R13E.
Property located: 15600-block of S. Harvard Ave.

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, October 28, 2015
RE: Report and Recommendations for:
 BBOA-605 – Chad Bland

LOCATION: – 15600-block of S. Harvard Ave.
 – The N/2 of the SE/4 of Section 20, T17N, R13E

LOT SIZE: 80 acres, more or less

ZONING: RS-2 Residential Single-Family District (AG Agricultural District pending City Council consideration 11/09/2015 per BZ-386)

SUPPLEMENTAL ZONING: None

EXISTING USE: Agricultural and vacant/wooded land

REQUEST: Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow a professional inspections and consulting services business and related activities as a home occupation in the AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: AG, RS-2, & CS; An automobile junkyard on a 5-acre tract at 15556 S. Harvard Ave., a single-family house and the “The RG Tool Company” farrier tool home-based business on a 5-acre tract at 15506 S. Harvard Ave., a single-family house and the “Automotive Specialists” automotive repair business on 10 acres at 15504 S. Harvard Ave., and agricultural, vacant, and rural residential tracts along the west side of Harvard Ave., all zoned AG. To the northeast is agricultural land zoned RS-2 except for approximately 40 acres of CS zoning at the southeast corner of 151st St. S. and Harvard Ave.

South: AG, RS-2, RD, & CS; Agricultural, vacant/wooded, and rural residential tracts along 161st St. S. and Harvard Ave., all zoned AG in unincorporated Tulsa County. To the southeast is agricultural land zoned RS-2, RD, and CS in the City of Bixby, with agricultural and rural residential land farther southeast zoned AG in unincorporated Tulsa County.

East: (Across Harvard Ave.) RS-2 & AG; Agricultural land including 26 acres belonging to Bixby Public Schools at the 15500:15600-block of S. Harvard Ave. and a rural residential tract at 15625 S. Harvard Ave.

West: AG; Vacant/wooded and agricultural land in unincorporated Tulsa County.

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

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

BZ-75 – B. V. Blackburn for McRae Development Co. – Request for rezoning from AG to RS-1 for approximately 198.5 acres including subject property and land to the east in Sections 20 and 21, T17N, R13E – PC recommended Approval 01/29/1979 per approved Minutes but case notes state the PC “Denied” 01/29/1979. City Council action documentation not found.

BZ-128 – Lynn Burrow for D.A.L. Corporation / The Timbercrest Companies, Inc. – Request for rezoning from AG to RE and CS for approximately 318 acres including the subject property and land to the east in Sections 20 and 21, T17N, R13E – Withdrawn December 1982.

BZ-154 – Charles E. Norman for D.A.L. Management Corporation Defined Pension Trust, et al. – Request for rezoning from AG to RS-3, RM-1, and CS for approximately 315 acres including subject property and land to the east in Sections 20 and 21, T17N, R13E – PC recommended Modified Approval for CS, RD, and RS-2 on 08/02/1984 and City Council Approved Modified zoning per the PC recommendation 08/14/1984 (Ord. # 508).

BZ-386 – Chad Bland – Request for rezoning from RS-2 to AG for subject property – PC recommended Approval 10/19/2015. City Council consideration pending 11/09/2015.

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

BBOA-127 – Aubrey Miller – Request for Special Exception to allow a Use Unit 5 church in an AG district for a 3-acre agricultural tract, the E/2 NE/4 NW/4 NW/4 of Section 21, T17N, R13E, located to the northeast of the subject property at the 3600-block of E. 151st St. S. (abuts New Beginnings Baptist Church to the west) – BOA Conditionally Approved 05/14/1984.

BZ-175 – Gerald Pope – Request for rezoning approximately 30 acres from AG to CS, the NW/4 NW/4 less the NW/4 NW/4 NW/4 of Section 21, T17N, R13E, located to the north of the subject property – PC recommended Approval 06/30/1986 and City Council Approved 07/22/1986 (Ord. # 542).

BBOA-182 – Paul Hughart – Request for Variance from the 300’ required lot width in the AG district for a then-20-acre tract to the north of subject property, the S/2 SE/4 NE/4 of Section 20, T17N, R13E, addressed 15504 S. Harvard Ave., to allow a Lot-Split per BL-120 – Applicant amended the request to only the south 10 acres – BOA Approved as modified 02/09/1987.

BL-120 – Paul Hughart – Request for Lot-Split for a 20-acre tract to the north of subject property, the S/2 SE/4 NE/4 of Section 20, T17N, R13E, addressed 15504 S. Harvard Ave., to separate the S. 8.25’, which S. 8.25’ became part of the 5-acre tract at 15506 S. Harvard Ave. – PC Denied 01/26/1987 and Conditionally Approved 02/23/1987.

BL-203 – Pastor Kevin Lewis for Midwest Agape Chapel, Inc. – Request for Lot-Split approval for a 3-acre agricultural tract, the E/2 NE/4 NW/4 NW/4 of Section 21, T17N, R13E, located to the northeast of the subject property at the 3600-block of E. 151st St. S. (abuts New Beginnings Baptist Church to the west), to separate the 3-acre tract from the north 250’, taken as right-of-way for State Highway 67 – PC Conditionally Approved 11/20/1995.

BZ-241 – George Suppes for Paul Hughart / Mike’s Lawn Service, Inc. – Request for rezoning approximately 5 acres from AG to CG, the S/2 S/2 S/2 SE/4 NE/4 of Section 20, T17N, R13E, for a landscaping business, abutting subject property to the north at 15556 S. Harvard Ave. – PC Tabled the application 07/20/1998 (no documentation found indicating appeal to the City Council).

BBOA-353 – Midwest Agape Chapel Foundation for Sitton Properties – Request for Variance to allow an outdoor advertising / billboard sign in a CS district for a 3-acre agricultural tract, the E/2 NE/4 NW/4 NW/4 of Section 21, T17N, R13E, located to the northeast of the subject property at the 3600-block of E. 151st St. S. (abuts New Beginnings Baptist Church to the west) – BOA Denied 02/07/2000.

BBOA-355 – New Beginnings Baptist Church – Request for Special Exception to allow a Use Unit 5 church in an AG district for 17-acre church property to the northeast of subject property at 4104 E. 151st St. S. – BOA Approved 03/06/2000.

PUD 41 – CedarCrest Business Park – Randall Pickard for Kevin Walsh – Request for rezoning from AG to CS and PUD 41 for a “CedarCrest Business Park” commercial and “office warehouse” development on an 8.32-acre tract to the northeast of subject property (abuts New Beginnings Baptist Church to the east) – PC Recommended Approval 06/20/2005 and City Council Approved 07/11/2005 (Ord. # 908).

BZ-324 – Jim Ham – Request for rezoning approximately 0.9 acres from AG to CG for commercial resale, located to the north of subject property at the southwest corner of the 151st St. S. and Harvard Ave. intersection – Applicant amended the request to CS zoning at the PC meeting on

01/16/2007 – PC recommended Approval of CS zoning 01/16/2007 and City Council Approved CS 02/12/2007 (Ord. # 959).

BBOA-522 – JR Donelson, Inc. for Bixby Public Schools – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility, including a football field, in an RS-2 Residential Single Family District for 26 acres abutting subject property to the east at the 15500:15600-block of S. Harvard Ave. – BOA Approved 06/22/2010.

BBOA-523 – JR Donelson for Bixby Public Schools – Request for a temporary Variance from Zoning Code Section 11-10-4.H to allow a gravel parking lot and drives for the school football field facility in an RS-2 Residential Single Family District for 26 acres abutting subject property to the east at the 15500:15600-block of S. Harvard Ave. – BOA Conditionally Approved 09/07/2010.

BBOA-601 – Roger H. Grant – Request for Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow to allow the “The RG Tool Company” farrier hammer and tools assembly, online sales, and related activities as a home occupation within a detached accessory building in the AG Agricultural District for a 5-acre tract to the north of subject property at 15506 S. Harvard Ave. – BOA Conditionally Approved 07/06/2015.

BBOA-602 – Roger H. Grant – Request for Variance from Zoning Code Sections 11-2-1 and 11-7B-5.B to allow to allow the “The RG Tool Company” farrier hammer and tools assembly, online sales, and related activities as a home occupation within a detached accessory building in the AG Agricultural District for a 5-acre tract to the north of subject property at 15506 S. Harvard Ave. – BOA Tabled 07/06/2015 as Variance was determined not necessary.

BACKGROUND INFORMATION:

The Applicant acquired the subject property per deed recorded October 02, 2014. In July, 2015, the Applicant’s Architect Doug Huber presented the City of Bixby with plans for a large storage building, which building would contain vehicles/equipment and/or certain other business activities connected to the Applicant’s professional inspections and consulting business. Staff advised Mr. Huber and the Applicant that the Zoning Code does not allow a storage building except as an accessory building to a house, which house was not yet planned, that the storage building could not be used for business activities absent approval of a Special Exception for a home occupation, if allowed, and that the size of the building was larger than that permitted in the RS-2 district. Large storage buildings in rural areas are also not encouraged, as they tend to become attractive to business uses which are not zoned for such commercial use. The Applicant has since revised plans for the property, and is now proposing to build the Applicant’s house and have restricted business activities within an office portion of the house, subject to Special Exception approval requested pursuant to BBOA-605. See the narrative provided by the Applicant, attached to this report. The Applicant has also stated that there will be need to park trailers within the storage building a few times a year when not being employed elsewhere. Staff understands that the Applicant is seeking to “downzone” the subject property from RS-2 to AG, per BZ-386, in order to be permitted a larger accessory building by right. Staff has counseled the Applicant about some of the pros and cons of “downzoning” from RS-2 to AG, including the relative difficulty of securing zoning entitlements today and in the future.

ANALYSIS:

Subject Property Conditions. The subject property consists of the N/2 of the SE/4 of Section 20, T17N, R13E (approximately 80 acres), is zoned RS-2 Residential Single-Family District, and is agricultural in use, except for vacant/wooded areas attending drainageways. It has approximately ¼ mile of frontage on Harvard Ave. AG zoning is pending City Council consideration per BZ-386 on November 09, 2015.

The subject property is not served by Bixby sanitary sewer or water service. The subject property may lie within the service district of Creek County Rural Water District # 2, and may or may not have access to a waterline. Electric, natural gas, telephone, and cable utility access is not known. Borrow ditches attend Harvard Ave. to provide street and streetside drainage.

The subject property is moderately sloped and appears to primarily drain to several upstream tributaries of Posey Creek, which all flow northeasterly. A small part of the front/east end of the subject property appears to drain to the southeast corner of the subject property, which is within the 100-Year (1% Annual Chance) Regulatory Floodplain attending one of the tributaries. The balance of the property appears to drain to the other upstream reaches / tributaries of Posey Creek. There appear to be one or more existing “farm ponds” along the tributaries.

There is a driveway with gate toward the center of the Harvard Ave. frontage. Along the north side, there appears to be the remains of a former house or other structure.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow the Industrial Inspection & Consulting, www.industrial-inspection.net, a professional inspections and consulting business as a home occupation within the Applicant's proposed house and detached accessory building for property located within the (pending per BZ-386) AG Agricultural District.

Zoning Code Section 11-2-1 defines "Home Occupation" thus:

"HOME OCCUPATION: That accessory use of a dwelling which constitutes some or all of the livelihood of a person living in the dwelling."

Per the application and other information secured from the Applicant, Staff understands that the professional inspections and consulting business is a relatively benign accessory use. See the attached narrative describing the scale and scope of activities.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity/Development Sensitive and (2) Vacant, Agricultural, Rural Residences, and Open Land. Staff believes that the proposed home occupation by Special Exception as an accessory use to the proposed single-family dwelling should not be found inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning is primarily AG, RS-2, RD, and CS, all as depicted on the case map and as described in further detail in the paragraphs that follow.

Abutting the subject property to the north is an automobile junkyard on a 5-acre tract at 15556 S. Harvard Ave. zoned AG. Farther north is a single-family house and the "The RG Tool Company" farrier tool home-based business on a 5-acre tract at 15506 S. Harvard Ave., a single-family house and the "Automotive Specialists" automotive repair business on 10 acres at 15504 S. Harvard Ave., and agricultural, vacant, and rural residential tracts along the west side of Harvard Ave., all zoned AG. To the northeast is agricultural land zoned RS-2 except for approximately 40 acres of CS zoning at the southeast corner of 151st St. S. and Harvard Ave.

For the two (2) nonresidential uses of the tracts to the north which are the subjects of code enforcement actions, these nonresidential uses will likely be vacated and so should not logically be used to support the nonresidential character of the application. Per BBOA-601 in July, 2015, the 5-acre tract at 15506 S. Harvard Ave. was granted a Special Exception to permit the continued operation of "The RG Tool Company" home-based business. In that case, that business activity was similarly described as being "benign" and not inappropriate for its surrounding zoning and land use context, and was found to meet the standards for Special Exception.

To the south are agricultural, vacant/wooded, and rural residential tracts along 161st St. S. and Harvard Ave., all zoned AG in unincorporated Tulsa County. To the southeast is agricultural land zoned RS-2, RD, and CS in the City of Bixby, with agricultural and rural residential land farther southeast zoned AG in unincorporated Tulsa County.

Across Harvard Ave. to the east is agricultural land, including 26 acres belonging to Bixby Public Schools at the 15500:15600-block of S. Harvard Ave., and a rural residential tract at 15625 S. Harvard Ave.

West of the subject property is vacant/wooded and agricultural land zoned AG in unincorporated Tulsa County.

The City of Bixby does not see many applications for Special Exception for home occupations. BBOA-601 was the most recent, and closest in proximity, and has been described elsewhere herein.

The one prior to this which Staff was able to locate was BBOA-538 – Bill Bromley, a request for Special Exception per Zoning Code Section 11-7B-3.A Table 2 to allow internet retail sales and limited trade show sales as a home occupation in the RS-3 Residential Single Family District for Lot 7, Block 2, WoodCreek, addressed 11225 S. 73rd E. Ave. The Board of Adjustment Conditionally Approved that application on April 04, 2011. In that case, the Board ascertained from the Applicant at the meeting that "no sales would be conducted at the residence, but incidental storage of sale items may be involved. Mr. Bromley stated that there would be deliveries, but that they would be no different than normal [FedEx] or UPS deliveries and that there would not be many at a time." Staff also recalls testimony that there was occasional equipment assembly and maintenance included as a part of that case's accessory use. The Applicant had also submitted a narrative explaining how the "internet retail sales and limited trade show sales" would comply with all of the use conditions for a home occupation per Zoning Code Section 11-7B-5.B.

Recognizing the broad language used to define “Home Occupation” in Zoning Code Section 11-2-1 and the relative dearth of home occupation cases, the Board of Adjustment should approach such applications with caution and an eye for avoiding the establishment of unfortunate precedents.

Staff believes that the proposed professional inspections and consulting business is materially similar to both BBOA-601 and BBOA-538, but that the accessory use is relatively less intensive than BBOA-601. Staff believes it should be seen as consistent with the intensity of most home occupations contemplated by the Zoning Code.

Zoning Code Section Zoning Code Section 11-7B-5.B.9 provides:

“All business activities associated with a home occupation shall be conducted entirely within an enclosed structure, either within the primary dwelling unit or an accessory building on the same parcel in which the home occupation is conducted. A maximum limit of six hundred (600) square feet of floor area shall be allowed to be utilized for home occupation purposes in the RE and RS residential districts. A maximum limit of one thousand (1,000) square feet of floor area shall be allowed to be utilized for home occupation purposes in the AG agricultural district where the gross land area of the AG parcel in which the home occupation is conducted exceeds a minimum of one acre in physical land area size.” (emphasis added).

It is clear, based on the above passage, that the Zoning Code intends greater flexibility be extended to properties zoned AG and of sufficient size (greater than 1 acre). The intent should be projected further onto the subject property and present application. Since the subject property is zoned AG, contains 80 acres, and is presently within an exceptionally rural context, Staff believes that the home occupation presented in this application should be found acceptable in this case.

Based on the relatively benign nature of the home occupation activity and the Comprehensive Plan and surrounding zoning and land use patterns, Staff believes that the proposed professional inspections and consulting business home occupation accessory use would be in harmony with the spirit and intent of the Zoning Code and would not be incompatible or inconsistent with surrounding zoning and land use patterns, injurious to the neighborhood, or otherwise detrimental to the public welfare, provided it maintains its residential character and complies with the use conditions of Zoning Code Section 11-7B-5.B.

By letter dated October 26, 2015, Marco Placencia, CCIM, SIOR, Managing Broker of Equitas Realty Advisors, LLC, representing adjacent landowner Bara Acres, LLC, has expressed certain concerns about the scope of business activities contemplated by this application. Staff believes the scope outlined by the Applicant does not generally conflict with the specific restrictions suggested by Mr. Placencia, with the possible exception of “Onsite storage of service trucks, vehicles and equipment related to the business...[e]ven if such vehicles or equipment storage were screened...” The scope outlined by the Applicant includes the infrequent storage of mobile office trailers [within the storage building]. The Board may wish to discuss this matter further and take any actions deemed necessary and appropriate for the benefit of all concerned.

Zoning Code Section 11-7B-5.B.9 provides that the Board of Adjustment, upon Special Exception approval, may grant an allowance of operating hours beyond 8:00 AM to 6:00 PM. It is possible that the business activities may occur at varying hours of the day. Based on the characteristics of the proposed activity and the circumstances of the area, Staff has no objection to removing restrictions on hours of operation.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for additional approval conditions, for all the reasons outlined above, Staff recommends Approval subject to:

- (1) Subject to City Council final approval of AG zoning per BZ-386.
- (2) The subject property shall maintain a residential character and the use shall maintain full compliance with the use conditions of Zoning Code Section 11-7B-5.B.
- (3) The approval should be generally restricted to the scale and scope of business activities as outlined in the application. A radical departure or substantial increase in the scale or scope of the business, if and as may be determined by the Board of Adjustment at such future date, should require new Zoning approval as may then be required.
- (4) Vehicle and equipment storage, as outlined in the application, shall be restricted to enclosed accessory buildings and/or enclosed, attached garages.
- (5) The restrictions on hours of operation are suspended pursuant to Zoning Code Section 11-7B-5.B.9.

Erik Enyart noted that, unlike the after-the-fact case of BBOA-601, the Applicant was applying for approval prior to initiating the home-based business. Mr. Enyart stated that he would be happy to answer any questions the Board may have, and that the Applicant was also present.

Chair Murray King asked if the Applicant was present and wished to speak on the item. Applicant Chad Bland was present. Mr. King asked Mr. Bland about his business, and Mr. Bland stated that he had a professional consulting and inspections business, and worked with clients with pressure testing, heat exchangers, and similar equipment for companies similar to, but not including the Holly Refinery in Tulsa. Mr. King confirmed with Mr. Bland that he did office work at his home. Mr. Bland stated that he currently operated from his home. Mr. Bland stated that he had applied for the Special Exception due to what was occurring next to [the subject property].

Richard Altmann referenced the letter in the Agenda Packet dated October 26, 2015, Marco Placencia, CCIM, SIOR, Managing Broker of Equitas Realty Advisors, LLC, representing adjacent landowner Bara Acres, LLC, and asked Chad Bland if he planned to store his [mobile office trailers] inside [the accessory building]. Mr. Bland indicated agreement and stated that he had two (2) "FEMA trailers" which he had bought from Louisiana and Texas, removed the insides and put in desks, and which look like campers. Mr. Bland estimated that they would need to be parked onsite up to five (5) times a year, but that this was a high estimate. Mr. Bland stated that they would be parked inside, except during the period he would be building the accessory building. Mr. Altmann read the second concern expressed by the October 26, 2015 letter,

"2. Storing, testing, manufacturing or using any materials which would cause disturbing odors or noise on the property."

Chad Bland stated that there would be "no concern for that."

Chad Bland asked where the Bara Acres, LLC property was located, and Erik Enyart showed and described to Mr. Bland, on the case map on page 26 of the Agenda Packet, the location of the Bara Acres, LLC property tracts sharing a common line beginning toward the back end of Mr. Bland's property and extending northerly and easterly toward Harvard Ave. Mr. Bland stated that he did not know that owner yet.

Darrell Mullins stated, in reference to the author of the letter and/or the author's represented clients, in times past, if they did not come in and present their case, they do not have much bearing with the Board of Adjustment.

Chad Bland stated that no one would have known if [he had started his business onsite without seeking approval], but that he wanted to address this beforehand because of the [code enforcement] situation with [several of] his neighbors.

Chair Murray King recognized Doug Morris of 3107 E. 161st St. S. from the Sign-In Sheet. Mr. Morris confirmed with Chand Bland that there would be no chemicals [as associated with the home occupation business] stored on the property. Mr. Morris asked if every business starting in Bixby had to go through this process and if they all get approved. Erik Enyart addressed Chair Murray King and agreed with him to field this question. Mr. Enyart stated that new, principal use

businesses go through the commercial rezoning process to build a new business, but that the Zoning Code provided this Special Exception process for home-based businesses to seek Board of Adjustment approval, and that each such Special Exception is weighed on the specifics of each case. Mr. Morris asked Chad Bland if there would be extraordinary traffic, and Mr. Bland stated that he sometimes met with his employees, his project managers, and would have the [mobile office trailers] at certain times, [but otherwise there was not much traffic related to the business].

Patrick Boulden addressed Chad Bland and asked him if he would have any problem if the Board of Adjustment limited him to the two (2) mobile office trailers as noted in the application narrative. Mr. Bland stated that he had been thinking about getting rid of the two (2) and getting one (1) big one, but then it couldn't be stored [within the planned storage building on the subject property]. Mr. Bland stated that, if he did this, it could be in two (2) to three (3) years from now. Mr. Bland stated that he hesitated to [accept a restriction of two (2) mobile office trailers]. Mr. Bland stated that he could see having three (3) to five (5) within five (5) to 10 years from now. A Board member suggested Mr. Bland could return to the Board of Adjustment in the future if more trailers were desired.

Erik Enyart was asked, and responded that recommended Condition of Approval # 3,

“The approval should be generally restricted to the scale and scope of business activities as outlined in the application. A radical departure or substantial increase in the scale or scope of the business, if and as may be determined by the Board of Adjustment at such future date, should require new Zoning approval as may then be required,”

could restrict the Applicant to the two (2) [mobile office trailers as outlined in the narrative,] unless the Board included a higher number in its [Approval] Motion.

Chair Murray King recognized Mrs. Morris from the audience. Mrs. Morris stated that she had lived in this Section since 1958 and asked Chad Bland what he was going to do with his property and if he was going to build a big metal building like other businesses. Mr. Bland responded that he was going to build his home and a storage/accessory/shop building, which would be metal like others in the area. Mrs. Morris stated that she was not protesting, and just wanted to know what was going on [with this application].

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-605 with all of the Conditions of Approval as recommended by Staff. Larry Whiteley SECONDED the Motion.

Erik Enyart stated that he was not clear if the Board members had intended to specify approval for a certain number of mobile office trailers beyond two (2). The Board Members discussed the matter and indicated that they had intended two (2) to be the maximum [as set forth in the Applicant's narrative].

Roll was called:

ROLL CALL:

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

- 3. **BBOA-606 – Mario Gonzales.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-8.B.9 to allow an approximately 20’ X 20’ carport within the required front yard setback for property within the RS-3 Residential Single-Family District for Lot 15, Block 3, *Blue Ridge Estates*.
Property located: 8804 E. 133rd Pl. 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, October 28, 2015
RE: Report and Recommendations for:
BBOA-606 – Mario Gonzales

LOCATION: – Lot 15, Block 3, Blue Ridge Estates
– 8804 E. 133rd Pl. S.
LOT SIZE: 7,986 square feet, 0.18 acres, more or less
ZONING: RS-3 Residential Single-Family District
REQUEST: Special Exception per Zoning Code Section 11-8-8.B.9 to allow an approximately 20’ X 20’ carport within the required front yard setback for property within the RS-3 Residential Single-Family District
SURROUNDING ZONING AND LAND USE: RS-3, RS-1, & RS-3/PUD 78; Single-family houses in Blue Ridge Estates, Blue Ridge II, Sun Burst zoned RS-3 and in Gardenview Addition zoned RS-1, with vacant lots and single-family houses under construction to the northeast in Willow Creek Estates zoned RS-3/PUD 78.
COMPREHENSIVE PLAN: Low Intensity + Residential Area
PREVIOUS/RELATED CASES: (not necessarily a complete list)
BZ-29 – Charles E. Norman for Frates Property, Inc. – Request for CS, OM, RD, RS-3, & RM-2 zoning for approximately 231 acres including the subject property – legal descriptions not researched/verified – subject property included in that area designated RS-3 per the official Zoning Map – PC Recommended Approval as requested 10/17/1974 and Town Board of Trustees Approved as requested 11/05/1974 (Ord. # 286).
RELEVANT AREA CASE HISTORY: (Staff found no Special Exception cases for any carports in this Section 12, T17N, R13E; not otherwise researched)
BACKGROUND INFORMATION:
At the March 23, 2009 City Council (“Council”) meeting, the Council approved a temporary moratorium on new carport permits until it had time to study the matter.
On April 27, 2009, the Council approved an item to authorize Staff to proceed with a possible amendment to the Zoning Code to provide a Special Exception requirement when located in required yards and other Zoning regulations for carports.
Per Zoning Code Section 11-11-8.B.6 as previously written, carports were allowed in required yards by right. The amendment’s primary effect was to (1) add a Special Exception requirement for carports when located in required yards / setbacks, and (2) add location and appearance standards for all carports.

On June 22, 2009, the Council approved an agenda item to direct staff to prepare an ordinance amending the Zoning Code, based on the recommendations by the Planning Commission on 06/15/2009, the City Planner, and the City Attorney. The Council approved Ordinance # 2020 on July 27, 2009, which included certain last-minute changes as recommended by Staff June 22, 2009 and as the Council indicated favor for at that meeting. That last-minute change removed most of the “rigidity” originally borrowed from the City of Tulsa Zoning Code example, and put in its place more flexibility for the Board of Adjustment to determine size and appearance standards on a case-by-case basis, and after considering the surrounding context of the property in question.

The changes to the Zoning Code per Ordinance # 2020 are as follows:

Section 11-7B-3.B.1.b was amended as follows:

“b. A detached accessory building shall not be located in the front or side yard.”

Section 11-8-8.B.6 was amended as follows:

“6. Swimming pools, tennis courts, patios, fallout and other protective shelters in the rear yard only, unless approved for a Special Exception in accordance with the substantive and procedural standards for the same set forth in this Zoning Code. Carports shall comply with the Special Exception and other carport regulations set forth in this Zoning Code.”

New Section 11-8-8.B.9 is as follows:

“9. Carports may be permitted in required yards by Special Exception, as provided in Chapter 4 of this Title. Carports in all other areas shall be permitted by right, provided such carport does not cover an area of more than 400 square feet and provided that no portion of a carport structure shall be nearer to the side lot lines than the principal building on the lot, nor five (5) feet, whichever is a greater distance from the side lot line.

No portion of any carport structure shall extend more than twenty (20) feet from the front of the existing principal building. Carports may be a detached accessory structure or an integral part of the principal building. The maximum floor area limitations of this Title pertaining to accessory buildings shall not apply to carports.”

11-4-9: SPECIAL EXCEPTION:

“A. General: The board of adjustment, upon application and after hearing, subject to the procedural and substantive standards hereinafter set forth, may grant the following special exceptions:....”

New Section 11-4-9.A.8 is as follows:

“8. Within an R district, any type of carport occupying a portion of a required yard, subject to the requirements of Section 11-8-8.B.9 of this Title. When evaluating the requested Special Exception, the Board shall consider the following factors:

- a. The existence, location, and design of other carports in the immediate vicinity of the request;
- b. Any possible sight obstruction to motorists at street intersections;
- c. The visual impact of the proposed carport on the streetscape of the neighborhood;
- d. The uniqueness of the request and whether granting the Special Exception will set a precedent for justifying other carports throughout the neighborhood;
- e. The compatibility of the carport with the architectural style of the dwelling and the predominant architectural style of the neighborhood; and
- f. Constructive criticism and suggestions from property owners within the neighborhood.”

ANALYSIS:

Property Conditions. The subject property contains one (1) single-family house on Lot 15, Block 3, Blue Ridge Estates, addressed 8804 E. 133rd Pl. S. The subject property contains approximately 7,986 square feet (0.18 acres) and is zoned RS-3 Residential Single-Family District.

Property slope and drainage patterns are not evident.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-8-8.B.9 to allow an approximately 20' X 20' carport within the required front yard setback for property within the RS-3 Residential Single-Family District. See the Compatibility section of this report for further analysis.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity and (2) Residential Area. The proposed carport by Special Exception attending the existing single-family dwelling would not be inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use. The nearest surrounding zoning and land use patterns consist of single-family residential houses in Blue Ridge Estates, Blue Ridge II, Sun Burst zoned RS-3 and in Gardenview Addition zoned RS-1, with vacant lots and single-family houses under construction to the northeast in Willow Creek Estates zoned RS-3/PUD 78. The proposed carport by Special Exception attending the existing single-family dwelling would not be inconsistent with the surrounding Zoning and land use patterns.

Compatibility. The carport would set back from the right-of-way approximately 23 feet, according to the Applicant's statement and a provided plot plan. Because it would be located approximately 20 feet into the 25' setback required in the RS-3 district, a Special Exception is required.

The carport would be constructed over the existing driveway.

The Applicant has provided a listing of four (4) other houses in the surrounding neighborhoods which have carports. At least one (1) of these appears to have been installed since 2011, per available GIS and Google Street View data.

Upon a cursory review, Staff observed additional carports in the surrounding neighborhoods, not included on the Applicant's list.

A Special Exception was been required for placement of carports in required Front Yard setbacks at least until the January 01, 1976 Zoning Code, but at some point, carports were permitted by right, until the carport Zoning Code Text Amendment described in the Background Information section of this report. Staff found no Special Exception cases for any carports in this Section 12, T17N, R13E.

The provided plans indicate the structure would be relatively substantial. The Applicant submitted a photograph of another dwelling with a carport which appears similar to that reflected by the provided proposed carport sketch. It may be intended to reflect the type of construction planned, but the narrative does not confirm this or describe the intent for the photograph. Phone calls placed with the Applicant and Standard Builders (believed to be assisting the Applicant in this application) could not be returned at the time of publication of this report. The Board may ask for clarification during the meeting. The quality of construction proposed should be made a Condition of Approval, if approval is granted.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff has no objection, subject to (1) substantial conformance to the plans provided by the Applicant and (2) full compliance with carport standards in the Zoning Code.

Erik Enyart noted that, prior to the Zoning Code Text Amendment in 2009, carports [in required building setback areas] did not require a Special Exception as is requested here. Mr. Enyart stated that the neighborhood already had some, including one evidently installed recently, but he found no other cases of Special Exceptions here. Mr. Enyart speculated that they may have gone up in the extended window of time when no special approval was required. Mr. Enyart stated that the 1970s-era Zoning Code had required this approval, but then it had been removed a few years later. Mr. Enyart stated that he had clarified with the applicant that the photograph of an existing house with a carport was indicated to represent the kind of carport the Applicant was proposing. Mr. Enyart stated that he would be happy to answer any questions the Board may have, and that the Applicant was also present.

Erik Enyart noted that, prior to the meeting, he had provided an aerial map showing the subject property and the location of the right-of-way/propertyline.

Richard Altmann stated that he had driven by the site and measured [the dimensions involved]. Mr. Altmann stated that there was another carport to the west and south of the subject property. Mr. Altmann stated that there were not many in the neighborhood, and expressed concern that, with inclement weather, there could be several new ones, and the [neighborhood] could have four (4) or five (5) next to each other all having carports, while other areas of the neighborhood would not have any. Mr. Altmann expressed concern for [the appearance of this potential arrangement]. Mr. Altmann stated that he did not think “this adds anything positive to the neighborhood,” but “if done correctly,” it could add “to the house and property values.” Mr. Altmann indicated that he considered this particular one proposed to be “great.”

The Board members discussed with Richard Altmann his concerns. Mr. Altmann stated that he had “no problem with this [application] at all.”

Richard Altmann discussed with Erik Enyart and other Board members the typical arrangements of street rights-of-way, right-of-way widths (typically 50’ for a local, minor residential street), roadway widths and alignments within rights-of-ways (typically 26’ and centered), curbs (typically ½ foot in width) and curblines, right-of-way/propertylines (typically approximately 12’ beyond curblines), sidewalks in certain subdivisions (typically right-of-way/propertyline delimiters where constructed), and Utility Easements beyond rights-of-ways in certain subdivision plats. Mr. Altmann discussed and was assured that any future road widening and water, sanitary sewer, and other utility maintenance should not be compromised by the carport here due to the 50’ width of the street right-of-way, customary location of waterlines and sanitary sewerlines in rights-of-ways, and language in the Deeds of Dedication of plats providing that the utility companies are not responsible for the replacement of private improvements if removed for utility work. Mr. Enyart stated that he did not have a copy of the plat but did not expect that the carport would be located in any [typically 5’ wide] Utility Easement. Another Board member noted that the carport would be wholly located on the Applicant’s property. Mr. Altmann asked about trees and vegetation in rights-of-ways and zoning setback areas. Mr. Enyart stated that he was not sure if there were any restrictions on planting trees or vegetation in rights-of-ways, as this did not come up [to his attention] often. Mr. Enyart and other Board members noted that there were no restrictions on planting trees or vegetation in Zoning setback areas, as the homeowner owned that land.

Chair Murray King recognized Applicant Mario Gonzales of 8804 E. 133rd Pl. S. from the Sign-In Sheet. Mr. Gonzales stated that he was listening but had no comments at this time.

Chair Murray King recognized John Bradley of 8803 E. 133rd Pl. S. from the Sign-In Sheet. Mr. Bradley described himself as the neighbor across the street and stated that he was “in favor” of this application because “I want one too.”

There being no further discussion, Larry Whiteley made a MOTION to APPROVE BBOA-606 subject to the Conditions of Approval as recommended by Staff. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. Approval of schedule of meetings and application cutoff dates for 2016

Chair Murray King introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the memo and proposed schedule from the agenda packet as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Wednesday, October 28, 2015
RE: Board of Adjustment meeting schedule and application deadlines for 2016

The following is proposed to be the 2016 schedule for the Board of Adjustment:

<u>DATE</u>	<u>TIME</u>	<u>PLACE OF MEETING</u>
January 04, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
February 01, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
March 07, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
April 04, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
May 02, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
June 06, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
July 05, 2016 (Tue)	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
August 01, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
September 06, 2016 (Tue)	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
October 03, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
November 07, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby
December 05, 2016	6:00 PM	116 W. Needles Ave., City Hall Council Chambers, Bixby

APPLICATION DEADLINES

Four (4) weeks prior to the meeting plus one (1) working day, or the newspaper's Public Notice publication deadline plus one (1) working day, whichever is sooner. The City Manager shall have the authority to make an exception to the deadline in cases of hardship or unusual circumstances.

Erik Enyart observed that, other than the month of September, in which the meeting would be the day after the Labor Day holiday, all other months would have the meeting on the first Monday of the month. A Board member noted that the July meeting would also be on a Tuesday [due to the Independence Day holiday], and Mr. Enyart indicated agreement.

Larry Whiteley made a MOTION to APPROVE the schedule of meetings and application cutoff dates for 2015. Richard Altmann SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Chair Murray King made a MOTION to ADJOURN. Richard Altmann SECONDED the Motion.
Roll was called:

ROLL CALL:

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

Meeting was Adjourned around 6:40 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary