

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
January 03, 2011 6:00 PM**

STAFF PRESENT:

Erik Enyart, AICP, City Planner

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Acting/Vice-Chair Darrell Mullins at 6:00 PM.

ROLL CALL

Members Present: Murray King, Darrell Mullins, and Dave Hill.

Members Absent: Lonnie Jeffries and Jeff Wilson.

MINUTES

1. Approval of Minutes for December 06, 2010

Acting/Vice-Chair Darrell Mullins introduced the item and asked to entertain a Motion. Dave Hill made a MOTION to APPROVE the Minutes of December 06, 2010 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 3:0:0

OLD BUSINESS

None.

NEW BUSINESS

2. **BBOA-531 – Charles Allcorn.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment

Ordinance # 2020), to allow an 20' X 20' carport within the required front yard setback for property within the RS-1 Residential Single Family District.

Property located: Lot 1, Block 2, *Riverview Terrace Addition*; 800 N. Riverview Rd.

Acting/Vice-Chair Darrell Mullins 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, December 23, 2010*
RE: *Report and Recommendations for:
BBOA-531 – Charles Allcorn*

LOCATION: – 800 N. Riverview Rd.
– Lot 1, Block 2, *Riverview Terrace Addition*

LOT SIZE: *Approximately 0.3 acres*

ZONING: *RS-1 Residential Single Family District*

REQUEST: *Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment Ordinance # 2020), to allow a 20' X 20' carport within the required front yard setback for property within the RS-1 Residential Single Family District*

SURROUNDING ZONING AND LAND USE:

North: *RS-1 & RS-2; Residential in Riverview Terrace Addition and the Bentley Park Sports Complex.*

South: *RS-1, RS-3, & AG; Residential in Riverview Terrace Addition and the Keas Soccer fields.*

East: *RS-1 & AG; Residential in Riverview Terrace Addition and agricultural land along Keas Rd. with the Keas Soccer fields to the southeast.*

West: *RS-1, RS-2, & IL; Residential in Riverview Terrace Addition and the Bentley Park Sports Complex.*

COMPREHENSIVE PLAN: *Development Sensitive + Residential Area.*

PREVIOUS/RELATED CASES: *None found.*

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

BZ-65 – Omaha Miller – *Request for rezoning from AG to RM-0, RD, RS-3, & FD for approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Recommended Approval of RD and RS-2 zoning on 04/24/1978 and the City Council Approved per PC recommendation in 08/1978 after a possible appeal per correspondence and notes in the case file (Ord. # 363).*

Preliminary and Conditional Final Plat of Garden Spot Estates – *Request for Preliminary and Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Conditionally Approved the Preliminary Plat only 09/11/1978.*

BBOA-59 – Luther Metcalf – *Request for Special Exception to allow a beauty shop as a home occupation in the RS-1 district on Lot 5, Block 2, Riverview Terrace Addition, located to the northeast of the subject property at 808 N. Riverview Rd. – BOA Approved 03/13/1979.*

Conditional Final Plat of Garden Spot Estates – *Request for Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Conditionally Approved 07/11/1979 (recording information not available; plat evidently later vacated).*

BZ-79 – Luther Metcalf – *Request for rezoning from RS-1 to RD for Lots 6 and 12, Block 2, Riverview Terrace Addition, located to the northeast of subject property at 406 & 410 E. Westminster Place – PC Recommended Approval 09/24/1979 and the City Council Approved 10/01/1979 (Ord. # 381).*

BZ-100 – Hillis Inv. Corp. – *Request for rezoning from [RD and] RS-2 to RM-1 for approximately 30 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S.*

and Bentley Park) – PC Recommended Approval of 02/23/1981 and the City Council Approved 03/02/1981 (Ord. # 421).

PUD 5 – Pecan Valley – WMD Development, LTD – Request for PUD zoning approval for a 160-unit townhouse development on approximately 31 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Recommended Approval of 03/28/1983 and the City Council Approved 04/04/1983 (Ord. # 479).

Preliminary and Conditional Final Plat of Pecan Valley Addition – Request for Preliminary and Conditional Final Plat approval for Pecan Valley Addition on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Approved 03/28/1983 and City Council Approved 04/04/1983 (plat recorded 05/11/1983).

BBOA-179 – Evert Shanks, Jr. – Request for a Variance from the front yard setback from 60' from the centerline of Riverview Rd. to 37' to permit an addition to an existing house at 701 N. Riverview Rd. (Lot 2, Block 1, Riverview Terrace Addition) to the southwest of subject property – BOA Approved 11/10/1986 subject to the addition's floor elevation being at 600'.

BZ-105 – Philip & June Winsett – Request for rezoning from RS-1 to RD for Lots 3 and 4, Block 3, Riverview Terrace Addition, located to the east of subject property at 805 N. Terrace Dr. – PC Recommended Denial 05/26/1981 (evidently not appealed to City Council).

BBOA-262 – City of Bixby – Request for Special Exception to allow “Community Services, Cultural, and Recreational Facilities” in an AG district on approximately 60 acres located to the southeast of subject property and containing the Keas Soccer fields, rodeo grounds, baseball fields, sewer treatment plant, city maintenance building, and related facilities at 560, 636, and 1081 E. Keas Rd. and 9501 and 9575 E. 151st St. S. – BOA Approved 04/05/1993.

BZ-326 – Kevin Partin of Free Properties, LLC for Roger Green – Request for rezoning from RS-1 to RD for all of Block 1, Riverview Terrace Addition located to the southwest of subject property – PC recommended Denial 03/19/2007 (evidently not appealed to City Council).

BL-375 – David Bergman for Free Properties, LLC – Request for Lot-Split to divide Lot 5, Block 1, Riverview Terrace Addition located to the south of subject property – PC Approved with Conditions on 06/21/2010.

BZ-350 – David Bergman for Free Properties, LLC – Request for rezoning from RS-1 to RS-3 for Lot 5, Block 1, Riverview Terrace Addition located to the south of subject property – PC recommended Approval 07/19/2010 and City Council Approved 08/09/2010 (Ord. # 2043).

BBOA-532 – Charles Allcorn – Request for Special Exception to allow a 20' X 20' carport within the required side yard setback for property abutting to the southeast – BOA consideration pending 01/03/2011.

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 a single-family house on approximately 0.3 acres, and is zoned RS-1 Residential Single-Family Low Density District. The house faces northwest onto Riverview Rd. (and so should have an odd house number but does not). The property is flat; drainage patterns are not immediately recognizable.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment Ordinance # 2020), to allow a 20' X 20' carport within the required front yard setback. The carport would be located in front of the two-car garage, and would set back from the right-of-way approximately 23 feet, according to the submitted plot plan.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Development Sensitive 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. Surrounding zoning patterns are primarily RS-1, RS-2, RS-3, and AG, and land uses consist of residential and recreational in the surrounding Bentley Park Sports Complex and Keas Soccer fields. 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. Including the subject property, there are 10 single-family dwellings (one under construction and one additional house permitted but not yet built) and two (2) duplexes in the Riverview Terrace Addition, which contains a total of approximately 21 building lots (one was removed for right-of-way and one was added by Lot-Split). There is a single-family house located just outside of the Addition to the northeast at 409 E. Westminster St. on an unplatted agricultural acreage.

There appear to be two (2) carports in the area. The closest one is at 701 N. Riverview Rd., located three (3) lots to the southwest of the subject property, which has a lean-to style carport on the south end of the house. It is the first house in the subdivision that one encounters when approaching from Riverview Road, the main street leading into the addition.

Per the information submitted by the Applicant, the other is a carport attending the duplex located at 401 E. Westminster Pl. to the northeast. It appears to be a simple metal carport, white in color.

Therefore, there does not appear to be a consistent appearance pattern which stands to be broken by the approval of this application, and so no precedent stands to be set.

The area underneath the carport is existing concrete, consistent with the requirement that the carport be located over an all-weather asphalt or concrete pavement surface.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff recommends Approval with no special conditions, with the carport to be in full compliance with carport standards in the Zoning Code as per Ordinance # 2020.

Acting/Vice-Chair Darrell Mullins asked if the Applicant was present and wished to speak on the item. Applicant Charles Allcorn was present and stated that he wanted to put in a standard carport. Mr. Allcorn presented a color brochure for a carport, and stated that the carport depicted was not the one he was considering but was similar to it.

Acting/Vice-Chair Darrell Mullins asked if anyone else wished to speak to this item.

Mike Daniels of 802 N. Terrace Dr. stated that he owned property next to the subject property and was not opposed to the application.

Murray King observed that the provided site plan indicated the carport would be 30' X 20' but the application indicated it would be 20' X 20'.

Mike Daniels clarified with Charles Allcorn that he was requesting a 30' X 20' carport for this application, and a 20' X 20' carport for the other application. Mr. Allcorn indicated he may have made an error on his application.

Murray King clarified with Mike Daniels and Charles Allcorn that this application requested a 30' X 20' carport.

Erik Enyart stated that the Zoning Code did not require that the dimensions be included in the Public Notice, and that he had taken it upon himself to add that detail in the interest of public awareness. Mr. Enyart clarified with Murray King that he did not believe that the inclusion of the 20' X 20' dimensions in the Public Notice would critically compromise the Public Notice, and that he believed the Board was in order to act on the carport at this meeting.

Dave Hill clarified with Erik Enyart that it would be in order to include the 30' X 20' dimensions in the Motion.

Acting/Vice-Chair Darrell Mullins asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-531 with the carport allowed to be 30' X 20'. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Mullins, Hill, & King
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	3:0:0

3. **BBOA-532 – Charles Allcorn.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment Ordinance # 2020), to allow an 20’ X 20’ carport within the required side yard setback for property within the RS-1 Residential Single Family District.
Property located: Lot 7, Block 2, *Riverview Terrace Addition*; 800 N. Terrace Dr.
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Acting/Vice-Chair Darrell Mullins 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, December 23, 2010
RE: Report and Recommendations for:
 BBOA-532 – Charles Allcorn

LOCATION: – 800 N. Terrace Dr.
 – Lot 7, Block 2, Riverview Terrace Addition
LOT SIZE: Approximately 0.3 acres
ZONING: RS-1 Residential Single Family District
REQUEST: Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment Ordinance # 2020), to allow a 20’ X 20’ carport within the required front yard setback for property within the RS-1 Residential Single Family District

SURROUNDING ZONING AND LAND USE:

North: RS-1 & RS-2; Residential in Riverview Terrace Addition and the Bentley Park Sports Complex.
South: RS-1, RS-3, & AG; Residential in Riverview Terrace Addition and the Keas Soccer fields.
East: RS-1 & AG; Residential in Riverview Terrace Addition and agricultural land along Keas Rd. with the Keas Soccer fields to the southeast.
West: RS-1, RS-2, & IL; Residential in Riverview Terrace Addition and the Bentley Park Sports Complex.

COMPREHENSIVE PLAN: Development Sensitive + Residential Area.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-65 – Omah Miller – Request for rezoning from AG to RM-0, RD, RS-3, & FD for approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Recommended Approval of RD and RS-2 zoning on 04/24/1978 and the City Council Approved per PC recommendation in 08/1978 after a possible appeal per correspondence and notes in the case file (Ord. # 363).

Preliminary and Conditional Final Plat of Garden Spot Estates – Request for Preliminary and Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Conditionally Approved the Preliminary Plat only 09/11/1978.

BBOA-59 – Luther Metcalf – Request for Special Exception to allow a beauty shop as a home occupation in the RS-1 district on Lot 5, Block 2, Riverview Terrace Addition, located to the northeast of the subject property at 808 N. Riverview Rd. – BOA Approved 03/13/1979.

Conditional Final Plat of Garden Spot Estates – Request for Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Conditionally Approved 07/11/1979 (recording information not available; plat evidently later vacated).

BZ-79 – Luther Metcalf – Request for rezoning from RS-1 to RD for Lots 6 and 12, Block 2, Riverview Terrace Addition, located to the northeast of subject property at 406 & 410 E. Westminster Place – PC Recommended Approval 09/24/1979 and the City Council Approved 10/01/1979 (Ord. # 381).

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PUD 5 – Pecan Valley – WMD Development, LTD – Request for PUD zoning approval for a 160-unit townhouse development on approximately 31 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Recommended Approval of 03/28/1983 and the City Council Approved 04/04/1983 (Ord. # 479).

Preliminary and Conditional Final Plat of Pecan Valley Addition – Request for Preliminary and Conditional Final Plat approval for Pecan Valley Addition on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148th St. S. and Bentley Park) – PC Approved 03/28/1983 and City Council Approved 04/04/1983 (plat recorded 05/11/1983).

BBOA-179 – Evert Shanks, Jr. – Request for a Variance from the front yard setback from 60' from the centerline of Riverview Rd. to 37' to permit an addition to an existing house at 701 N. Riverview Rd. (Lot 2, Block 1, Riverview Terrace Addition) to the southwest of subject property – BOA Approved 11/10/1986 subject to the addition's floor elevation being at 600'.

BZ-105 – Philip & June Winsett – Request for rezoning from RS-1 to RD for Lots 3 and 4, Block 3, Riverview Terrace Addition, located to the east of subject property at 805 N. Terrace Dr. – PC Recommended Denial 05/26/1981 (evidently not appealed to City Council).

BBOA-262 – City of Bixby – Request for Special Exception to allow “Community Services, Cultural, and Recreational Facilities” in an AG district on approximately 60 acres located to the southeast of subject property and containing the Keas Soccer fields, rodeo grounds, baseball fields, sewer treatment plant, city maintenance building, and related facilities at 560, 636, and 1081 E. Keas Rd. and 9501 and 9575 E. 151st St. S. – BOA Approved 04/05/1993.

BZ-326 – Kevin Partin of Free Properties, LLC for Roger Green – Request for rezoning from RS-1 to RD for all of Block 1, Riverview Terrace Addition located to the southwest of subject property – PC recommended Denial 03/19/2007 (evidently not appealed to City Council).

BL-375 – David Bergman for Free Properties, LLC – Request for Lot-Split to divide Lot 5, Block 1, Riverview Terrace Addition located to the south of subject property – PC Approved with Conditions on 06/21/2010.

BZ-350 – David Bergman for Free Properties, LLC – Request for rezoning from RS-1 to RS-3 for Lot 5, Block 1, Riverview Terrace Addition located to the south of subject property – PC recommended Approval 07/19/2010 and City Council Approved 08/09/2010 (Ord. # 2043).

BBOA-531 – Charles Allcorn – Request for Special Exception to allow a 20' X 20' carport within the required front yard setback for property abutting to the northwest – BOA consideration pending 01/03/2011.

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 a single-family house on approximately 0.3 acres, and is zoned RS-1 Residential Single-Family Low Density District. The subject property is a corner lot and the house faces southeast onto Terrace Dr. The property is flat; drainage patterns are not immediately recognizable.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-8-8.B.9 (as per Zoning Code Text Amendment Ordinance # 2020), to allow a 20' X 20' carport within the required side yard setback. There is no garage serving the house. The existing concrete parking pad over which the carport would be placed is connected to East Park Lane, which connects Riverview Rd. to the parallel Terrace Dr. There is another existing concrete parking pad in front of the house connecting to Terrace Dr.

The carport would set back from the right-of-way approximately 1.5 feet, according to the submitted plot plan.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Development Sensitive 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. Surrounding zoning patterns are primarily RS-1, RS-2, RS-3, and AG, and land uses consist of residential and recreational in the surrounding Bentley Park Sports Complex and Keas Soccer fields. 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. Including the subject property, there are 10 single-family dwellings (one under construction and one additional house permitted but not yet built) and two (2) duplexes in the Riverview Terrace Addition, which contains a total of approximately 21 building lots (one was removed for right-

of-way and one was added by Lot-Split). There is a single-family house located just outside of the Addition to the northeast at 409 E. Westminster St. on an unplatted agricultural acreage.

There appear to be two (2) carports in the area. The closest one is at 701 N. Riverview Rd., located to the southwest of the subject property, which has a lean-to style carport on the south end of the house. It is the first house in the subdivision that one encounters when approaching from Riverview Road, the main street leading into the addition.

Per the information submitted by the Applicant, the other is a carport attending the duplex located at 401 E. Westminster Pl. to the northeast. It appears to be a simple metal carport, white in color.

Therefore, there does not appear to be a consistent appearance pattern which stands to be broken by the approval of this application, and so no precedent stands to be set.

The area underneath the carport is existing concrete, consistent with the requirement that the carport be located over an all-weather asphalt or concrete pavement surface.

Staff would normally be concerned for the placement of a carport in the proposed location on this corner lot, for reasons of sight triangles / visibility at the intersection of Park Lane and Terrace Dr. However, these areas are already used for parking with two (2) existing concrete parking pads. There are also, occupying the same corner of the intersection, a street light, a brick mailbox, and a basketball goal attending the south parking lot. Therefore, the addition of the carport is expected to have a negligible effect on visibility. Also, due to the nature of the street intersection and the short lengths of the streets, high speeds are not anticipated.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff recommends Approval with no special conditions, with the carport to be in full compliance with carport standards in the Zoning Code as per Ordinance # 2020.

Acting/Vice-Chair Darrell Mullins recognized Applicant Charles Allcorn. Mr. Allcorn indicated he would like approval of this application as well.

Acting/Vice-Chair Darrell Mullins asked if anyone else wished to speak on the item. No one else spoke on the item.

Acting/Vice-Chair Darrell Mullins asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-532. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 3:0:0

4. **BBOA-533 – Clay Smith.** Discussion and possible action to approve a Special Exception to allow a Use Unit 23 warehouse use for property within the CG General Commercial District.

Property located: Lot 4, Block 5, *Southern Memorial Acres Extended*; 11835 S. Memorial Dr.

Acting/Vice-Chair Darrell Mullins 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: Monday, December 27, 2010
RE: Report and Recommendations for:

LOCATION: – 11835 S. Memorial Dr.
– Lot 4, Block 5, Southern Memorial Acres Extended

SIZE: 0.43 acres, more or less

ZONING: CG General Commercial District

EXISTING USE: (1) Use Unit 11 Rod Smith Company real estate business, and
(2) Use Unit 11 DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office

REQUEST: Special Exception to allow a Use Unit 23 warehouse use for property within the CG General Commercial District

SURROUNDING ZONING AND LAND USE:

North: CG; The Advantage Motors of Oklahoma used car sales lot, a vacant lot, and the existing or former J. Carol Real Estate office building along S. Memorial Dr.

South: CG & CS; Bank of the West and the Town and Country Shopping Center.

East: RS-1 & RD; Single-family residential along S. 82nd E. Ave. and duplex residential along the south side of E. 119th St. S. in Southern Memorial Acres Extended.

West: (Across Memorial Dr.) CS, OL, and CG/OL + PUD 54; The IBC Bank and vacant lots in Bixby Centennial Plaza and the Jiffy Lube to the northwest.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-12 – Bill Ramsey [for John & Dixie Smith] – Request for Variance from the 10’ side yard setback along the north side of subject property for a northerly 38’-wide add-on to the original 1965 60’-wide building, which add-on was under construction before the application was filed – BOA Denied 10/30 or 10/31/1973, on the advice of the Town Attorney, per notes found in the case file (Minutes not found for any BOA meetings in 1973).

AC-10-12-03 – “Smith Warehouse Expansion” – Stava Building Corporation / SBC Architecture – Request for Detailed Site Plan approval for subject property – PC Conditionally Approved 12/20/2010.

BBOA-534 – Clay Smith – Request for Variance from the screening requirement per Zoning Code Sections 11-9-11.C and/or 11-9-23.C and from certain parking design standards – Pending BOA consideration 01/03/2011.

BACKGROUND INFORMATION:

The Applicant is proposing to add an 88.5’ X 50’ (4,425 square foot) metal building addition to the rear / east side of the existing building, to be used as a Use Unit 23 warehouse for the owner’s ROSCO, LLC business, per the owner’s letter dated December 07, 2010. The new building will also provide two (2) safe rooms for emergencies.

According to the Applicant’s letter dated November 03, 2010, the existing building’s two (2) tenants are the Use Unit 11 Rod Smith Company real estate business office and the Use Unit 11 DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office.

Warehousing Use Unit 23 is only allowed in the CG district by Special Exception. On December 01, 2010, the Applicant submitted a Special Exception application per BBOA-533.

On December 20, 2010, the Planning Commission Conditionally Approved the Applicant’s Detailed Site Plan request per AC-10-12-03. Recognizing that the Use Unit 23 warehouse use of the proposed building is not presently authorized in the current CG Zoning District, and if disallowed for warehouse use, the site would not comply with minimum number of parking spaces per the Zoning Code, the Planning Commission conditioned its approval on the approval of BBOA-533.

As it relates incidentally to AC-10-12-03, Zoning Code Section 11-9-11.C requires a screening fence be used to screen the commercial building from the RS-1 residential district abutting to the east, and there is currently no screening fence on the lot.

On December 01, 2010, the Applicant also submitted BBOA-534, a request for Variance from the screening fence requirement, also pending Board of Adjustment consideration on January 03, 2011. As recommended to the Applicant on November 23, 2010, the Detailed Site Plan now indicates a “6’ Wood Screening Fence (Owner Option; Subject to Variance.)” and a profile view/elevation diagram of the

screening fence per Zoning Code Section 11-8-10.E. This way, if the Variance is not approved, the approved Detailed Site Plan represents the screening fence which would then be required.

ANALYSIS:

Subject Property Conditions. The subject property is relatively flat and appears to drain, if only slightly, to the south. According to draft grading and drainage engineering plans, the Applicant is proposing to build a stormwater detention facility in the rear yard along S. 82nd E. Ave., which will provide an outlet drain pipe to the borrow ditch along S. 82nd E. Ave.

The subject property is zoned CG and has an existing building, constructed in two parts per available information: the Tulsa County Assessor's parcel data, provided site plan drawings, and BBOA-12 case file information. The original building, built in 1965, measures approximately 60' (north-south) X 40.25' and hugs the south property line, with 8" of setback therefrom. The northerly add-on was constructed in or after 1973, and measures approximately 29' (north-south) X 40.25'. According to the site plan drawings, the total width of the building is 88.5' (north-south), and so contains 3,562.125 square feet.

Special Exception Request. As described in the Background Information section of this report, the Applicant is requesting a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 23 warehouse use for the subject property. The proposed back / east building addition would contain the Use Unit 23 warehouse use for the owner's ROSCO, LLC business, per the owner's letter dated December 07, 2010. The existing building would continue to be occupied its two (2) tenants: The Use Unit 11 Rod Smith Company real estate business office and the Use Unit 11 DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Medium Intensity and (2) Commercial Area. Although the proposed Special Exception use would not necessarily be inconsistent with the Comprehensive Plan, it should be noted that the lowest-intensity zoning district which provides for Use Unit 23 by right is the CH district, which would not be in accordance with the Medium Intensity designation.

Surrounding Zoning and Land Use. Zoning patterns to the north, west, and south are CG and CS, and to the east are RS-1 and RD.

To the north lies the Advantage Motors of Oklahoma used car sales lot, a vacant lot, and the existing or former J. Carol Real Estate office building along S. Memorial Dr., all zoned CG.

To the south are the Bank of the West and the Town and Country Shopping Center zoned CG and CS, respectively.

Across Memorial Dr. to the west, the IBC Bank and vacant lots in Bixby Centennial Plaza are zoned CS and OL, and to the northwest, the Jiffy Lube is zoned CG and OL with PUD 54.

To the east is single-family residential along S. 82nd E. Ave. zoned RS-1 and duplex residential along the south side of E. 119th St. S. zoned RD, both areas located in Southern Memorial Acres Extended.

The proposed Use Unit 23 warehouse use should not be incompatible with surrounding commercial zoning and commercial land uses. However, much care should be taken when allowing an increase in the intensity of a nonresidential use when located in close proximity to a residential district, as is found to the east of the subject property in Southern Memorial Acres Extended.

According to the Applicant's letter dated December 07, 2010, the warehouse will be leased to the owner's ROSCO, LLC business, which will "hold building materials (i.e. wooden studs, metal studs, sheet rock, restroom facilities and the like), document storage and equipment. NO flammable products will be stored within the premises."

In Staff's opinion, Use Unit 23 primarily anticipates large, warehouse buildings with long loading docks elevated to receive and distribute bulk goods onto semi-tractor-trailer and flatbed trucks. However, the Use Unit does include "Storage, [Not Elsewhere Classified]," which is the closest line-item land use listed in the Zoning Code which corresponds to the proposed use.

Although the proposed storage use may be anticipated to have lower traffic volume than a traditional warehouse operation or other uses which are allowed by right in the CG district, care should be taken to ensure that the Use Unit 23 use does not adversely affect the adjoining residential district to the east in Southern Memorial Acres Extended. This could be accomplished by limiting the Special Exception approval to the 4,425 square feet in floor area proposed and to the limited storage use as described by the Applicant.

Staff Recommendation. If controlled as to potential adverse impacts on the adjoining residential neighborhood to the east, the proposed Use Unit 23 warehouse occupancy of the new building expansion

would appear to be in harmony with the spirit and intent of the Zoning Code and would not appear to be injurious to the neighborhood or otherwise detrimental to the public welfare.

Therefore, Staff can support the proposed Special Exception on the condition that:

- 1. The warehouse use of the property does not exceed 4,425 square feet in floor area, and*
- 2. The warehouse use does not expand, beyond reason, the scope as represented by the Applicant: storage for building materials, documents and equipment, and the like.*

Dave Hill asked for clarification regarding the location of the subject property in relation to the [Advantage Motors of Oklahoma] car sales lot. Erik Enyart stated that it was just south of that property. Applicant Clay Smith stated that it was between the car sales lot and the *Bank of the West*. Mr. Smith clarified with Mr. Hill that the building used to be used for several things, including a liquor store, gun shop, and hair salon, and that it used to be owned by Bill Ramsay.

Acting/Vice-Chair Darrell Mullins asked if Clay Smith would like to discuss the application, and Mr. Smith and Brian Lambert agreed that Mr. Lambert would speak.

Brian Lambert of Stava Building Corporation / SBC Architecture stated that the building would be expanded all the way back [for the full width of the existing building] for 50' to the [east] building line.

Acting/Vice-Chair Darrell Mullins asked if anyone else wished to speak on the item.

Carolyn Mabry of 11828 S. 83rd E. Ave. asked what type of materials would be stored in the warehouse. Clay Smith stated that it would be building materials, mostly, including electrical materials. Ms. Mabry stated that she would "like the fence up," as it would look better for the neighborhood if the fence was up. One of the Board members advised Ms. Mabry that the next application would deal with the fence, and that this application only pertained to the warehouse use [of the building]. Ms. Mabry stated that she had no problems with the warehouse itself.

Murray King asked Erik Enyart if there would be any other problems if the Board approved the application. Mr. Enyart stated that he had worked with the Applicant's [design professionals] to make all the required corrections, and now the Detailed Site Plan demonstrated compliance with the Zoning Code in all other respects.

Acting/Vice-Chair Darrell Mullins asked to entertain a Motion. After clarifying the Motion with Erik Enyart, and after Clay Smith indicated to Mr. Enyart agreement with the recommendations, Murray King made a MOTION to APPROVE BBOA-533, subject to the following Conditions of Approval:

1. The warehouse use of the property does not exceed 4,425 square feet in floor area, and
2. The warehouse use does not expand, beyond reason, the scope as represented by the Applicant: storage for building materials, documents and equipment, and the like.

Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 3:0:0

5. **BBOA-534 – Clay Smith.** Discussion and possible action to approve a Variance from the sight-proof screening fence requirement per Zoning Code Sections 11-9-11.C and/or 11-9-23.C for property within the CG General Commercial District.

Property located: Lot 4, Block 5, *Southern Memorial Acres Extended*; 11835 S. Memorial Dr.

Acting/Vice-Chair Darrell Mullins 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, December 28, 2010*
RE: *Report and Recommendations for:
BBOA-534 – Clay Smith*

LOCATION: – *11835 S. Memorial Dr.*
– *Lot 4, Block 5, Southern Memorial Acres Extended*
SIZE: *0.43 acres, more or less*
ZONING: *CG General Commercial District*
EXISTING USE: (1) *Use Unit 11 Rod Smith Company real estate business, and*
(2) *Use Unit 11 DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office*
REQUEST: *Variance from the sight-proof screening fence requirement per Zoning Code Sections 11-9-11.C and/or 11-9-23.C for property within the CG General Commercial District*

SURROUNDING ZONING AND LAND USE:

North: *CG; The Advantage Motors of Oklahoma used car sales lot, a vacant lot, and the existing or former J. Carol Real Estate office building along S. Memorial Dr.*
South: *CG & CS; Bank of the West and the Town and Country Shopping Center.*
East: *RS-1 & RD; Single-family residential along S. 82nd E. Ave. and duplex residential along the south side of E. 119th St. S. in Southern Memorial Acres Extended.*
West: *(Across Memorial Dr.) CS, OL, and CG/OL + PUD 54; The IBC Bank and vacant lots in Bixby Centennial Plaza and the Jiffy Lube to the northwest.*

COMPREHENSIVE PLAN: *Medium Intensity + Commercial Area*

PREVIOUS/RELATED CASES: *None found.*

BBOA-12 – Bill Ramsey [for John & Dixie Smith] – *Request for Variance from the 10' side yard setback along the north side of subject property for a northerly 38'-wide add-on to the original 1965 60'-wide building, which add-on was under construction before the application was filed – BOA Denied 10/30 or 10/31/1973, on the advice of the Town Attorney, per notes found in the case file (Minutes not found for any BOA meetings in 1973).*

AC-10-12-03 – “Smith Warehouse Expansion” – Stava Building Corporation / SBC Architecture – *Request for Detailed Site Plan approval for subject property – PC Conditionally Approved 12/20/2010.*

BBOA-533 – Clay Smith – *Request for Special Exception to allow a Use Unit 23 warehouse use on the subject property – Pending BOA consideration 01/03/2011.*

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

AC-10-02-05 – AKiN’s Natural Foods – Request for Detailed Site Plan approval for an exterior remodel for a grocery store in the Town and Country Shopping Center to the south of subject property at 12003 S. Memorial Dr. – PC Conditionally Approved 02/16/2010.

BACKGROUND INFORMATION:

The Applicant is proposing to add an 88.5’ X 50’ (4,425 square foot) metal building addition to the rear / east side of the existing building, to be used as a Use Unit 23 warehouse for the owner’s ROSCO, LLC business, per the owner’s letter dated December 07, 2010. The new building will also provide two (2) safe rooms for emergencies.

According to the Applicant’s letter dated November 03, 2010, the existing building’s two (2) tenants are the Use Unit 11 Rod Smith Company real estate business office and the Use Unit 11 DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office.

Warehousing Use Unit 23 is only allowed in the CG district by Special Exception. On December 01, 2010, the Applicant submitted a Special Exception application per BBOA-533.

On December 20, 2010, the Planning Commission Conditionally Approved the Applicant’s Detailed Site Plan request per AC-10-12-03. Recognizing that the Use Unit 23 warehouse use of the proposed building is not presently authorized in the current CG Zoning District, and if disallowed for warehouse use, the site would not comply with minimum number of parking spaces per the Zoning Code, the Planning Commission conditioned its approval on the approval of BBOA-533.

ANALYSIS:

Subject Property Conditions. The subject property is relatively flat and appears to drain, if only slightly, to the south. According to draft grading and drainage engineering plans, the Applicant is proposing to build a stormwater detention facility in the rear yard along S. 82nd E. Ave., which will provide an outlet drain pipe to the borrow ditch along S. 82nd E. Ave.

The subject property is zoned CG and has an existing building, constructed in two parts per available information: the Tulsa County Assessor’s parcel data, provided site plan drawings, and BBOA-12 case file information. The original building, built in 1965, measures approximately 60’ (north-south) X 40.25’ and hugs the south property line, with 8” of setback therefrom. The northerly add-on was constructed in or after 1973, and measures approximately 29’ (north-south) X 40.25’. According to the site plan drawings, the total width of the building is 88.5’ (north-south), and so contains 3,562.125 square feet.

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. Zoning Code Section 11-9-11.C requires a screening fence be used to screen the commercial building from the RS-1 residential district abutting to the east, and there is currently no screening fence on the lot.

On December 01, 2010, the Applicant submitted BBOA-534, a request for Variance from the screening fence requirement, the subject of this report.

As recommended to the Applicant on November 23, 2010, the Detailed Site Plan now indicates a “6’ Wood Screening Fence (Owner Option; Subject to Variance.)” and a profile view/elevation diagram of the screening fence per Zoning Code Section 11-8-10.E. This way, if the Variance is not approved, the approved Detailed Site Plan represents the screening fence which would then be required.

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 “The other properties along this block do not have screen fences along S 82nd E Ave.”

Staff could not conceive viable arguments in satisfaction of this test and standard. The provided argument presented in the application does not appear to materially address this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

The argument referencing other properties on the block is addressed more comprehensively later in this report. As it concerns this test and standard, it does not follow that the subject property is different because it is the same as the surrounding properties.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because “Placing the fence as required by code would create a traffic issue with the drive access on S 82nd East Avenue.”

Staff could not conceive viable arguments in satisfaction of this test and standard. The provided argument presented in the application does not appear to materially address this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

The traffic argument is addressed more comprehensively in the section that follows.

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 “Building the fence as shown on sheet A1.1 would cause more traffic problems and would not be the norm for the other surrounding properties.”

The primary purpose for imposing a screening fence requirement on nonresidential developments is to help buffer the nonresidential use from adjoining residential uses. The screening fence will block the view of the nonresidential buildings, parking areas, or other elements which may be visually objectionable from the standpoint of residential uses. Screening fences, to a lesser extent, may also mitigate sounds from nonresidential uses, and may contribute positively to the aesthetic quality of the neighborhood. They may also help to visually separate distinct land use areas and so distinguish the edges of a neighborhood, and may foster a sense of order and place.

The Applicant argues that the fence “would cause more traffic problems.” In conversations with the Applicant, they have indicated that the gate on the fence would cause delay in entering the property, and so the implication is that vehicles stopped in front of the gate would interfere with traffic on S. 82nd E. Ave., or perhaps that it could impair visibility at the intersection of the driveways and S. 82nd E. Ave.

Based on Site Plan drawing A1.1, it appears that there is in excess of 20’ between the property line (where the fence would be installed) and the edge of the paving. 20’ is the standard depth of a parking space, and so should be adequate clearance for avoiding contact issues with traffic on S. 82nd E. Ave., whether coming or going.

The Applicant also argues that “[b]uilding the fence... would not be the norm for the other surrounding properties.”

According to Assessor’s parcel data, from 117th St. S. to 119th St. S., the strip of commercial/nonresidential uses were constructed, in order of sequence from north to south:

- House converted to Bixby Small Animal Hospital (1965),
- Former gas station now used as the Express Lane / Cars & Credit convenience store and used auto sales business (1986),
- BTC Broadband TV communications facility (Unknown date),
- The former Superior Bank / Arvest Bank (1995),
- Kentucky Fried Chicken restaurant (1998),
- Urgent Care of Green Country medical offices (1995),
- Existing or former J. Carol Real Estate office building (2005),
- Vacant lot (N/A),
- Advantage Motors of Oklahoma used car sales lot (1985),
- Subject property (1965/1973), and
- Bank of the West (1979).

The only landuses from the above list which have a screening fence separating their properties from the residential properties are the Bixby Small Animal Hospital and BTC Broadband TV communications facility. Except for the vacant lot, all of the listed uses are required to install a screening fence between their lots and the R Residential districts to the east.

Per AC-10-02-05, when the Town and Country Shopping Center to the south was remodeled for the AKiN’s Natural Foods grocery store, the shopping center owner brought the property up to code by installing the missing section of screening fence along the north side of the east line of the property, that part shared with the duplexes along E. 119th St. S.

For the most part, therefore, the Applicant's claim that building the fence would not be the norm is accurate. However, it does not appear to be a useful argument for purposes of this test and standard, as it would not be logical that, since other businesses do not have their screening fences, the rule has no benefit under the Zoning Code or Comprehensive Plan. The Applicant may, however, be arguing from an aesthetic standpoint, and if so, they should clarify this and expand on the argument at the Public Hearing on this application.

Even if arguing from an aesthetic standpoint, it should be recognized that, through time, other properties will likely be brought up to code as it concerns the screening fence standard. Like the Town and Country Shopping Center, when the above-listed properties are renovated, they too will be brought up to code by the installation of a screening fence as required.

Finding of Minimum Necessary. Staff would note that the Minimum Necessary to Alleviate the Unnecessary Hardship standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief.

Staff Recommendation. Except as noted otherwise hereinabove, the arguments advanced by the Applicant do not appear to materially answer the tests and standards for granting Variance under State Statutes and the Bixby Zoning Code, and Staff was not able to conceive of any other arguments to justify the same.

The Board may wish to consider the arguments presented in the application, or others that the Applicant and Board may discover during public hearing and consideration of this case at the meeting, to identify with the Applicant how the requested Variance would be in accordance with each of the tests and standards provided in State Statutes and the Bixby Zoning Code. Unless all of the tests and standards are determined satisfied in this application, Staff cannot recommend approval.

Dave Hill clarified with Erik Enyart that the fence around the BTC property may have been primarily erected for security purposes.

Acting/Vice-Chair Darrell Mullins asked if the Applicant wished to speak on the item. Applicant's agent Brian Lambert stated that the issue was that the fence wouldn't match anything in the area. Mr. Lambert stated that the plans show something like gates but that they were not gates. Mr. Lambert stated that the [spans] would have to be 5' to 6', and that the fence sections would be short, with only 10' on one side and 40' in the middle. Mr. Lambert stated that there would be three (3) fences. Mr. Lambert stated that there was not a lot of traffic, but that vehicles would generally be backing out into the street, and that it would be hard to see [if there was a fence]. Mr. Lambert stated that he had run into this [situation] in Tulsa, and that there were traffic issues, as the project was located on Harvard [Ave.]. Mr. Lambert stated that, in that case, there was an accident and the City [of Tulsa] was determined liable because they required the fence be there. Dave Hill stated that that sounded like a threat.

Murray King clarified with Brian Lambert that there would be no fence along the sides of the property. Clay Smith stated that a fence was not required on those sides.

Clay Smith stated that there would not be cars but box trucks for deliveries.

Acting/Vice-Chair Darrell Mullins asked how much traffic was expected, and Clay Smith stated that there would be approximately 15 to 20 deliveries per month, and that they were not there long but would quickly drop off the materials and depart. Mr. Smith stated that the trucks would have a lift gate and would be heavy. Mr. Mullins stated that, rather than pulling in and backing out, it would seem to him that the trucks would back in to make deliveries. Mr. Mullins stated that that is what he would do. Mr. Smith considered the statement for a moment and then said that it would depend on if cars were parked on the street. Mr. Smith stated that there was a

homeowner across the street that parks on the street, and sometimes with his landscape business vehicle and trailer. Dave Hill indicated that the neighbor could not run a business from a house. Mr. Smith stated that, right now, he had enough land for trucks to turn around on the property.

Murray King clarified with Erik Enyart and Clay Smith that the only thing that will be in the rear yard upon project completion would be the stormwater detention pond.

Carolyn Mabry asked if the delivery trucks would come into the property from Memorial Dr. or 82nd E. Ave., and Clay Smith responded that they would come in from 82nd E. Ave. Ms. Mabry stated that this was not a good thing, as this was a residential street, and it was not good to have heavy trucks on the street. Mr. Smith indicated that the trucks would not be heavy and were more like UPS or box trucks. Ms. Mabry asked if the [pickups and deliveries] would be a regular occurrence, and Mr. Smith stated that there were semis on the street now, delivering the used cars for the car sales lot to the north. Ms. Mabry stated that they would ruin the street.

Dave Hill advised Carolyn Mabry that the warehouse [use of the property] was already approved, and that the Board was now considering the fence. Ms. Mabry stated that people park on the street now. Mr. Hill stated that parking on the street was not a good thing. Mr. Hill clarified with Ms. Mabry that residents do park on this street, but she was not one of them. Ms. Mabry indicated objection to delivery trucks and Mr. Hill stated that such trucks drive in front of his house all the time. Ms. Mabry stated, "I want a fence," and returned to her seat. Mr. Hill addressed Acting/Vice-Chair Darrell Mullins and asked if he would not summon Ms. Mabry to return to the podium, and stated that he wanted to know why she wanted a fence. Murray King stated that she had already expressed that she wanted the fence and indicated that that should suffice. The Board members agreed that Ms. Mabry could speak from her seat since others had already been doing this. Ms. Mabry stated that she wanted the fence so that the property "doesn't look so much like a warehouse" and because "right now, the building is not clear out to the street" and "there's grass back there."

Erik Enyart stated that, as described in his report, there are other benefits to a screening fence beyond just screening a non-residential property from a residential district, but mostly the benefits could be reduced to aesthetics. Mr. Enyart and discussed with the Board members the requirements for screening fences, including that they must be opaque and placed along the property line bordering an R Residential district. Clay Smith indicated objection to placing gates in the fence. After some discussion, Mr. Enyart stated that he believed that the Zoning Code would require gates be used to achieve the screening requirement, but that he would have to consult the Zoning Code to be sure. After agreeing with Acting/Vice-Chair Darrell Mullins to do so, Mr. Enyart left the meeting to retrieve a copy of the Zoning Code, and then returned with it. Mr. Enyart cited Zoning Code Section 11-8-10.B and stated that it did not say whether gates were required on a screening fence. Mr. Enyart stated that he had not had to answer this question before, but that his interpretation was that the intent and purpose of the Zoning Code could only be achieved if gates were used. Acting/Vice-Chair Darrell Mullins asked how he could be sure. Mr. Enyart stated that this was his interpretation, but if questioned, he would sometimes ask the chief staff at TMAPC for their opinion on how their Zoning Code is interpreted in Tulsa. Mr. Mullins asked how long it would take to get an answer from them, and Mr. Enyart stated that he

was not sure, but it would likely take a few days. Mr. Mullins indicated preference for Continuing the application to the next meeting to allow for the outside opinion.

Clay Smith asked what would happen if he just left the gates open.

Carolyn Mabry asked, if the Applicant was remodeling, why he could not design the building for loading and unloading from the front of the building. Dave Hill advised Ms. Mabry that the Applicant was not remodeling the front of the building.

Malek Elkhoury of Khoury Engineering, Inc., 1435 E. 41st St. S., Tulsa, OK 74105, stated that his interpretation was that the screening requirement was intended to screen equipment, and not so much the building, because people could just see the building over the fence anyway.

Clay Smith stated that he would not have anything in the back yard except the driveways.

Murray King asked where the trash dumpster would be located, and Clay Smith stated that he did not have one and did not need one.

Acting/Vice-Chair Darrell Mullins stated that, if he lived across the street, he would want a fence. Mr. Mullins stated that, if one were to go through a new neighborhood, they would see that they all have fences.

Clay Smith stated that, as for the *AKiN's* screening fence, it was already laying over. Erik Enyart stated that it was not laying over when he drove by it. Mr. Smith stated that it was as of the previous Thursday, and Mr. Enyart stated that the fence was up when he visited the site the previous week.

Dave Hill prompted Acting/Vice-Chair Darrell Mullins to call for a Motion.

Dave Hill made a MOTION to APPROVE BBOA-534. Time passed and no one Seconded the Motion. Erik Enyart clarified with Acting/Vice-Chair Darrell Mullins that, after a moment had passed, the thing to do would be to declare the Motion dead for lack of a Second and call for another Motion as needed.

Acting/Vice-Chair Darrell Mullins recognized the Motion had died for lack of a Second.

Acting/Vice-Chair Darrell Mullins asked if there were would be any new Motion.

Murray King made a MOTION to DENY BBOA-534. Acting/Vice-Chair Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Mullins & King
NAY:	None.
ABSTAIN:	Hill.
RESULT:	2:0:1

Erik Enyart discussed the outcome of the vote, and stated that he was not sure that this was a carried or failed Motion, since a quorum was three (3). Mr. Enyart expressed doubt that any new Motion would achieve a quorum to pass. Mr. Enyart stated that he believed, however, under Oklahoma law, an “Abstain” vote may be counted as a “no” vote.

Erik Enyart advised that the Applicant could request that this item be reconsidered at the next meeting, at which a different set of Board members may be present.

After some discussion, Dave Hill clarified with Erik Enyart that he and the other Board members recognized the application had been denied and that there was no need for the application to be returned to the next month’s agenda.

Clay Smith stated that he would build the screening fence. Mr. Smith indicated he may paint the fence pink. Erik Enyart stated that the Zoning Code did not say what color the fence could be painted (but it was later discovered that Zoning Code Section 11-8-10.B.7 required “earhttone” colors if the fence was to be painted).

Malek Elkhoury questioned Erik Enyart on the matter of whether the Zoning Code required a gate over driveways. Mr. Enyart stated that[, while retrieving the Zoning Code,] he had searched the Zoning Code online for the operative term he had recalled, “vehicular,” and found that it was only used in regard to an exemption from the landscaping requirement at “vehicular access points,” and the same exemption did not apply to screening fences.

- 6. **BBOA-535 – Khoury Engineering, Inc.** Discussion and possible action to approve a Variance from (1) the 150’ minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.9.a, (2) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3 to allow two (2) square feet of display surface area for ground signs, and (3) any other Zoning Code restriction preventing the erection of two (2) freestanding ground signs at three (3) square feet in display area, all for property within the CS [Commercial] Shopping Center District.
Property located: Lot 6, Block 1, *Bixby Centennial Plaza*; 11894 S. Memorial Dr.

Acting/Vice-Chair Darrell Mullins 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, December 29, 2010*
RE: *Report and Recommendations for:
 BBOA-535 – Khoury Engineering, Inc.*

LOCATION: – *11894 S. Memorial Dr.*
 – *Lot 6, Block 1, Bixby Centennial Plaza*
LOT SIZE: *2 acres, more or less*
ZONING: *CS Commercial Shopping Center District*
EXISTING USE: *Vacant*
REQUEST: *Variance from (1) the 150’ minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a, (2) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3, and (3) any other*

Zoning Code restriction preventing the erection of two (2) freestanding ground signs at three (3) square feet in display area [each], all for property within the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: CS, OL, and CG/OL + PUD 54; The IBC Bank and the Jiffy Lube.

South: CS; A vacant lot, the Santa Fe Cattle Co. restaurant, and a Bank of Oklahoma bank branch, all in Bixby Centennial Plaza.

East: (Across Memorial Dr.) CS & CG; The Town and Country Shopping Center, the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.

West: CS; Vacant lots in Bixby Centennial Plaza and an unplatted 10-acre vacant/agricultural tract zoned CS/OL + PUD 51.

COMPREHENSIVE PLAN: Corridor + Medium Intensity + Commercial Area.

PREVIOUS/RELATED CASES: None found.

BZ-279 – Charles Norman/Martha Plummer Roberts et al. – Request for rezoning from AG to CS, OM, RM-1, and RS-2 for 73 acres, more or less, which became Bixby Centennial Plaza and Fox Hollow and an unplatted 10-acre tract later approved as PUD 51 – PC Recommended Approval as amended for CS, OM, OL, RS-3, and RS-2 on November 19, 2001 and Approved by City Council December 10, 2001 (Ord. # 842). Subject property included in that part approved for CS zoning.

Preliminary Plat of Bixby Centennial Plaza – Request for Preliminary Plat approval including subject property – PC Approved 07/17/2006 and City Council Approved 07/24/2006.

Final Plat of Bixby Centennial Plaza – Request for Final Plat approval including subject property – PC Approved 10/16/2006 and City Council Approved 10/23/2006 (plat recorded 04/04/2007).

BL-350 – Khoury Engineering, Inc. – Request for Lot-Split approval to separate the south 46.08' of Lot 5 of Bixby Centennial Plaza and add to subject property – PC Conditionally Approved January 2008.

BBOA-529 – Khoury Engineering, Inc. – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 automotive repair and sales business use in the CS Commercial Shopping Center District for subject property – BOA Approved 12/06/2010.

BL-376 – Khoury Engineering, Inc. for Bixby Investors, LP – Request for Lot-Split approval for subject property – PC Conditionally Approved 12/20/2010.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-182 – Eugene Green – Request for rezoning from RS-1 to CG for Lots 1 and 2 of Block 5, North Heights Addition (the Jiffy Lube property at 11800 S. Memorial Dr.) for a car lot – Approved by City Council August 11, 1987 (Ord. # 569).

BBOA-449 – Patrick Moore for SBM Corporation – Request for Special Exception to authorize a Use Unit 17 Automotive and Allied Activities for a Jiffy Lube auto service facility at 11800 S. Memorial Dr. – Denied by Board of Adjustment 10/02/2006.

BZ-318 – SBM Corporation for Eugene & Norma Green – Request for rezoning from RS-1 to OL for Lot 3 Block 5, North Heights Addition the Jiffy Lube property at 11800 S. Memorial Dr. – PC Recommended Approval October 16, 2006 and City Council Approved November 13, 2006 (Ord. # 953).

PUD # 54 – Jiffy Lube – Request for PUD overlay zoning for the Jiffy Lube property at 11800 S. Memorial Dr. – PC Recommended Approval 03/19/2007 and City Council Approved 04/09/2007 (Ord. # 963).

BL-351 – Khoury Engineering, Inc. – Request for Lot-Split approval to separate the north 42' of Lot 8 and add to Lot 7 of Bixby Centennial Plaza – PC Conditionally Approved 03/17/2008.

AC-08-06-05 – Santa Fe Cattle Co. – Request for Detailed Site Plan approval for a Use Unit 12 restaurant at 11982 S. Memorial Dr., the S. 264.00' of Lot 8, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 06/16/2008.

AC-08-07-01 – IBC Bank – Request for Detailed Site Plan approval for a Use Unit 11 bank at 11886 S. Memorial Dr., The N. 158.42' of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 07/21/2008.

AC-09-05-02 & AC-09-05-05– IBC Bank – Request for approval for wall signs and a ground sign, respectively, for the IBC Bank at 11886 S. Memorial Dr., The N. 158.42’ of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Approved both on 05/18/2009.

AC-09-06-03 – IBC Bank – Request for approval for a temporary banner sign to be attached to the building wall of the IBC Bank at 11886 S. Memorial Dr., The N. 158.42’ of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Approved 06/15/2009.

BACKGROUND INFORMATION:

On December 06, 2010, the Board of Adjustment Approved BBOA-529, an application for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 automotive repair and sales business use in the CS Commercial Shopping Center District for the subject property.

On December 20, 2010, the Planning Commission Conditionally Approved BL-376, an application for Lot-Split to divide the subject property into two (2) lots for commercial development. The proposed use of the southern lot would be a Firestone Complete Auto Care & Tire Store, which provides automobile maintenance and repair, and tire and automotive parts sales.

Per BL-350, Lot 5 to the north was approved for Lot-Split to separate the south 46.08’ from the balance of that lot, which was sold and developed with an IBC Bank. Per the Planning Commission’s Conditional Approval, because it would otherwise violate the 150’ minimum frontage requirement of the CS district, that 46.08’ “sliver tract” was required to be attached to the subject property. Deed restriction language to that effect was used on the deed presented to Staff for the Lot-Split approval certificate stamp and signature. However, the Tulsa County Assessor’s parcel data does not reflect the attachment. This could be because the deed Staff stamped was not used, the Assessor’s Office did not recognize the deed restriction language as requiring changes to the parcel data, or did not recognize it as adequate for this purpose, such as because there was not reciprocal deed restriction specifically concerning a conveyance of Lot 6.

The deed restriction language provided that the Planning Commission could reverse the combination by future Lot-Split approval.

As a Condition of Approval for BL-376 recommended by Staff, the Planning Commission required that the northerly tract be deeded from the owner to the owner with a deed restriction correspondingly attaching that tract to the South 46.08’ of Lot 5.

ANALYSIS:

Subject Property Conditions. The subject property consists of vacant Lot 6, Block 1 in Bixby Centennial Plaza, zoned CS.

The subject property is in the middle of the Memorial Dr. frontage of the Bixby Centennial Plaza subdivision, which contains 40 acres and is primarily zoned CS. To the west are larger vacant lots in Bixby Centennial Plaza and, further west is an unplatted [11]-acre vacant/agricultural tract zoned CS/OL + PUD 51.

To the east is the (across Memorial Dr.) is a 9+ acre CS district containing the Town and Country Shopping Center, a large CG district containing the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.

To the north is the IBC Bank bank branch zoned CS and the Use Unit 17 Jiffy Lube zoned CG/OL + PUD 54.

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. Per the submitted information, the Applicant proposes one (1) freestanding ground sign along Memorial Dr. to exclusively advertise the Firestone business, in addition to wall signage as may be proposed. That sign would be located towards the northeast corner of the lot.

Also, the Applicant proposes one (1) freestanding combined development entrance sign for the shopping center businesses behind the frontage lots. According to the exhibit attached to the “Declaration of Sign Easement” recorded February 22, 2008 at Document # 2008018401 in the records

of the Tulsa County Clerk, that sign would be located within a 10' X 20' sign easement, which has its closest corner located 33' north and 17.5' west of the southeast corner of the subject property. The submitted "Sign Exhibit" No. A indicates there would be 122' of separation between the two (2) ground signs on the lot.

Zoning Code Section 11-9-21.C.8.a has a 150' minimum lot-width / minimum spacing standard between ground signs in the CS district. Not coincidentally, the Zoning Code also requires a minimum 150' lot width in the CS district. The two (2) 150' standards work together to ensure that there are not more than one (1) ground sign per 150', which helps to maintain the aesthetic quality of the City's commercial corridors, and also operates to ensure all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

One or the other of the Applicant's proposed signs would be prohibited by the strict application of the 150' standard, due to the proposed locations of the future exclusive Firestone ground sign and the Bixby Centennial Plaza combined development entrance sign. The first Variance component would address the 150' minimum lot-width / minimum spacing standard of Zoning Code Section 11-9-21.C.8.a.

The Zoning Code currently does not have a provision exempting combined development entrance signs from the location and square footage limitations, and the development was not processed as a PUD. Thus, the existing square footage of the future combined development entrance sign, located on the subject property, is limited to the display surface area of the CS district, which uses street frontage as the limiting factor. In the CS district, ground signs are permitted, per Zoning Code Section 11-9-21.D.3, "two (2) square feet per each lineal foot of street frontage if only one such sign is erected, and shall not exceed one square foot per each lineal foot of street frontage if more than one sign is erected." In addition to the 150' separation standard, this display surface area standard also helps to maintain the aesthetic quality of the City's commercial corridors, and also operates to ensure all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

At 165.5' of street frontage and two (2) ground signs (presuming approval), the subject property is limited to 165.5 square feet of display surface area (which could be, for example, 10' X 16.55'), to be divided between the two (2) signs. This would not allow the erection of both future signs (of reasonable size), as the combined development entrance sign itself could easily be anticipated to exceed those dimensions.

Therefore, for the second Variance component, the Applicant is requesting a Variance from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3.

The third and final Variance component is intended to be a 'catch-all,' in the event other provisions of the Zoning Code would prevent the erection of two (2) freestanding ground signs at three (3) square feet in display area [each], but were inadvertently overlooked when determining the number of and scope of Variances necessary.

All three (3) Variance requests are inextricably related with a common nexus: The proposal to erect two (2) freestanding ground signs on the subject property. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of said signs. Therefore, this report will not attempt to divide the separate Variance components into different report sections.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "The City Code allows for one free-standing sign per 150-feet of lot frontage. The future shopping center sign easement will only benefit Lots 1, 2, and 3. Therefore, Lot 6 will not benefit from that sign."

The Applicant could seek to utilize one of the sign cabinets on the future combined development entrance sign and/or rely solely on wall signage. However, per the Applicant, the prospective Firestone developer wants to be able to erect their own freestanding Firestone sign on the subject property in the location indicated on the submitted "Sign Exhibit" No. A, and the answer to this test and standard implies that there would be a hardship if the Firestone lot owner was not allowed its own exclusive sign.

In addition to the one described above, there are two (2) other known sign easements recorded in Bixby Centennial Plaza since the plat was recorded: One on vacant Lot 1, Block 1 with 121st St. S. frontage, and one at the southeast corner of Lot 8, Block 1 (containing the Santa Fe Cattle Co. restaurant). None of the easements contain a combined development entrance sign, as none of the "back" lots have yet been developed with shopping center buildings. Based on aerial and GIS data, it would appear that the Lot 8, Block 1 sign easement should have adequate room to meet the 150'

separation standard from the existing ground signs on Lot 8 (Santa Fe Cattle Co. restaurant) and Lot 9 (Bank of Oklahoma).

The 150' minimum lot-width / minimum spacing and the display surface area restriction standards amount to an effective prohibition of both the combined development entrance sign and an exclusive ground sign for the subject property, which could be considered an unnecessary hardship, as either (A) the development would not have a combined development entrance sign (of reasonable size) advertising the businesses located behind the frontage lots, placing it at a competitive disadvantage vis-à-vis other area shopping centers, or (B) the Firestone business would not be permitted an exclusive ground sign (of reasonable size) to advertise its business, as have all other surrounding businesses fronting on Memorial Dr., and so it would be at a competitive disadvantage.

From the standpoint of the Bixby Centennial Plaza developers, most, if not all of the other area shopping centers have combined development entrance signs, including the Town and Country Shopping Center across the street to the east, the Bixby Commons shopping center located $\frac{3}{4}$ of a mile to the north, the Southern Crossing / Wal-Mart Supercenter shopping center located one (1) mile to the north, and the South Park Center shopping center located one (1) mile to the north.

From the standpoint of the proposed Firestone business, all other outparcel lots in Bixby Centennial Plaza have or may be expected to have an exclusive ground sign on their lots.

Further, there is a Use Unit 14 AutoZone automotive parts sales business to the east of the subject property in the Town and Country Shopping Center, which may be considered a competitor. To the north of the subject property there is a Jiffy Lube auto service business at 11800 S. Memorial Dr., a Robertson Tire auto repair and sales business at 11142 S. Memorial Dr., and several automotive repair, service, and sales businesses at the southeast corner of Memorial Dr. and 111th St. S., most of which may be considered competitors. Most of all of these mentioned potential competitors have a ground sign plus wall signage.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. 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 remainder of lot 6 combined with the remainder of lot 5 will provide a total of 200.58 feet of lot frontage. That lot cannot be split again. Therefore, only one additional pylon sign will be allowed in the future instead of two."

The subject property should be considered to have peculiar, extraordinary, and/or exceptional conditions or circumstances by virtue of the following facts, considered together:

- The City of Bixby approved the plat of Bixby Centennial Plaza [and BL-350 to create] six (6) 'outparcel' lots (and a small "handle" of Lot 3) fronting on Memorial Dr. This left an average of approximately 220 feet per lot, which would exceed the minimum 150' frontage requirement.
- Per BL-376, the southerly lot (for Firestone) will have 165.5' of frontage, which still exceeds the minimum requirement for the same in the CS district, and would normally allow for the 150' separation standard to be met; however,
- A 10' X 20' part of the subject property's frontage was reserved as a sign easement for the combined development sign, and its location on the lot will not allow for the minimum 150' of separation to be achieved, and
- The location of the sign easement was evidently determined based on the north half of the primary development entrance drive occupying the south side of the subject property within an 18' Mutual Access & Utility Easement.
- If the Bixby [Centennial Plaza] development was done as a PUD, an exception to allow for a second sign on the subject property (the combined development entrance sign) and the square footage limitation restriction issue could have been properly planned and resolved in advance.

These conditions, considered together, can be seen to have given rise to the subject property's unnecessary hardship.

Finding of No Substantial Detriment or Impairment and Minimum Necessary. 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 remainder of lot 6 combined with the remainder of lot 5 will provide adequate separation between pylon signs. Therefore by granting this variance we do not believe there is substantial detriment to the public good."

[T]he Zoning Code was intentionally written to have the 150' minimum lot width in the CS district correspond with the 150' minimum ground sign separation standard, the Zoning Code intended to allow each business to have one (1) ground business sign. The City of Bixby approved BL-376, creating the

subject property. With the lot-combinations required as Conditions of Approval of BL-350 and BL-351, there will ultimately be no more than six (6) Memorial Dr. frontage lots for all of Bixby Centennial Plaza, save for the 66.75'-wide "handle" of the flag-lot, Lot 3 Block 1, which cannot have a ground sign due to the 150' separation standard and does not appear to have a sign easement.

Per AC-08-06-05, the Santa Fe Cattle Co.'s exclusive ground sign was spaced to meet the 150' separation standard from the combined development entrance sign to be located in the southeast corner of that lot in another sign easement.

Per AC-08-07-01, IBC Bank originally proposed two (2) ground signs on its lot, but this number was reduced to one (1) in conformity to the 150' spacing standard during the review of that Detailed Site Plan. The Applicant in that case selected a southeast corner location for that one (1) permitted sign.

Based on all of the above information, including the sign easement on Lot 8, it appears that, if the Variance is approved, there would be no more than eight (8) ground signs for all of the Memorial Dr. frontage of Bixby Centennial Plaza. This presumes that there is adequate room for meeting the 150' standard on the yet undeveloped [north part Lot 6 + S. 46.08' of Lot 5 (which must be combined per BL-350/BL-376)] and the yet undeveloped [Lot 7 + N. 42' of Lot 8 (which must be combined per BL-351)], which is questionable in both cases. Even if those undeveloped/combined lots were also granted Variances to be allowed their own exclusive freestanding signs, at approximately 1321 feet of Memorial Dr. street frontage in Bixby Centennial Plaza, that means there would be a ratio of one (1) ground sign for each 165' (more or less).

According to the submitted "Sign Exhibit" No. A, there would be 122' separating both proposed ground signs. The Board should determine that this distance can be recognized as being adequate for fulfilling the intent to maintain the aesthetic quality of Bixby's commercial corridors and ensuring all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties. If it does, Staff believes that the spirit and intent of the 150' standard would not be compromised, and that the 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, and that the Variance would be the minimum necessary (one (1) exclusive Firestone sign and one (1) combined development entrance sign, each at three (3) square feet in display surface area, separated by 122' as proposed) to alleviate the unnecessary hardship.

Potential Precedents. Staff notes that the same or substantially similar arguments were advanced in the cases of BBOA-479 – Ben Holliday (Chick-fil-a), approved by the Board of Adjustment on July 07, 2008 and BBOA-504 – John Bass for TWB Enterprises, LLC d.b.a. Zudz Car Wash, approved by the Board of Adjustment July 06, 2009.

Both previous cases were similar, except that in those cases the properties were both originally platted with less than 150' of street frontage on Memorial Dr. The Board should consider these cases for precedent implications for the current application.

Staff Recommendation. If the Board agrees with Staff that the arguments presented in the application and the analysis above substantially meet most of the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for the Variance, Staff recommends Approval.

Acting/Vice-Chair Darrell Mullins asked if the Applicant was present and wished to speak on the item. Applicant Malek Elkhoury was present and stated that the lots in Bixby Centennial Plaza were platted larger than needed because the original development plan had three (3) restaurants with larger footprints, but because Target development didn't happen, the lots were sold to fast food-type, smaller lots.

Malek Elkhoury stated that his client needed a Variance from the 150' sign separation regulation so that a sign could be erected on the front lots to serve the large box stores behind.

Malek Elkhoury clarified with Erik Enyart that the Variance would approve three (3) square feet of display surface area per each sign per lineal foot of street frontage.

Malek Elkhoury stated that *Firestone* did not need the north part of the subject property, so it will be combined with the south part of the original *IBC* lot.

No one else was in attendance to speak on the item.

Acting/Vice-Chair Darrell Mullins asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-535, based on the reasons stated in the Staff Report. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 3:0:0

ADJOURNMENT

Dave Hill made a MOTION to ADJOURN. Acting/Vice-Chair Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King
NAY: None.
ABSTAIN: None.
MOTION CARRIED: 3:0:0

Meeting adjourned at 7:15 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary