

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 WEST NEEDLES  
BIXBY, OK 74008  
February 07, 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 Chair Jeff Wilson at 6:06 PM.

**ROLL CALL**

Members Present: Murray King, Darrell Mullins, Lonnie Jeffries, Jeff Wilson and Dave Hill.

Members Absent: None.

**MINUTES**

1. Approval of Minutes for January 03, 2011

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of January 03, 2011 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King

NAY: None.

ABSTAIN: Jeffries & Wilson.

MOTION CARRIED: 3:0:2

During the Roll Call, Lonnie Jeffries and Chair Jeff Wilson explained that they would Abstain as they were not present at the meeting.

**OLD BUSINESS**

None.

NEW BUSINESS

- 2. **BBOA-536 – Khoury Engineering, Inc.** Discussion and possible action to approve a Variance from the 150’ minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.9.a for property within the CS Commercial Shopping Center District.

Property located: The N. 154.5’ of Lot 6, and the S. 46.08’ of Lot 5, Block 1, *Bixby Centennial Plaza*; 11800-block of S. Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Monday, January 31, 2011*  
**RE:** *Report and Recommendations for:  
 BBOA-536 – Khoury Engineering, Inc.*

LOCATION: – *11800-block of S. Memorial Dr.*  
 – *The N. 154.5’ of Lot 6, and the S. 46.08’ of Lot 5, Block 1, Bixby Centennial Plaza*

LOT SIZE: *1.3 acres, more or less*

ZONING: *CS Commercial Shopping Center District*

EXISTING USE: *Vacant*

REQUEST: *Variance from the 150’ minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a 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.

BBOA-529 – Khoury Engineering, Inc. – Request for 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 Lot 6, Block 1, Bixby Centennial Plaza – BOA Approved 01/03/2011.

**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 Lot 6, Block 1, Bixby Centennial Plaza (includes the south 154.5' of the subject property).

On December 20, 2010, the Planning Commission Conditionally Approved BL-376, an application for Lot-Split to divide Lot 6, Block 1, Bixby Centennial Plaza into two (2) lots for commercial development. The proposed use of the southern lot would be a Firestone Complete Auto Care & Tire Store ("Firestone"), which provides automobile maintenance and repair, and tire and automotive parts sales. The future use of the northern 154.5' (the south 154.5' of the subject property) is not known at this time.

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 Lot 6, Block 1, Bixby Centennial Plaza. 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 deed for the northerly tract include a deed restriction correspondingly attaching that tract to the South 46.08' of Lot 5.

This application is quite similar to BBOA-529, a request for Variance from certain signage regulations for Lot 6, Block 1, Bixby Centennial Plaza, which the Board of Adjustment approved on January 03, 2011. That application will allow two (2) ground signs on the southerly portion of Lot 6, which is planned for the Firestone development.

ANALYSIS:

Subject Property Conditions. The subject property is vacant and zoned CS. It consists of the N. 154.5' of Lot 6, and the S. 46.08' of Lot 5, Block 1, Bixby Centennial Plaza. The two (2) parts are required to be combined per BL-350 and BL-376.

The subject property is toward the center 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 10-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 future business on the subject property, in addition to wall signage as may be proposed. The ground sign would be located towards the center of the lot's Memorial Dr. frontage.

Per the exhibit submitted with the application, the ground sign proposed for the subject property would be located 105.94' from the proposed Firestone sign to the south, and 105.94' from the existing IBC Bank sign to the north.

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.

The proposed sign would be prohibited by the strict application of the 150' standard, and would require a Variance of (150' - 105.94' =) 44.06'.

The shopping center developer also 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 Lot 6. The submitted "Sign

Exhibit” No. A indicates there would be 122’ of separation between this sign and the Firestone sign, which was approved per BBOA-535.

The Zoning Code currently does not have a provision exempting combined development entrance signs from the location restrictions, and the development was not processed as a PUD.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “The existing IBC bank sign at the [southeast corner] of their lot caused the remainder of Lot 5 & 6 to not have the benefit of a freestanding sign.”

The response to this test and standard implies that there would be a hardship if the subject property owner, and future commercial business, 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 121<sup>st</sup> 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 the future business would not be permitted an exclusive ground sign to advertise its business, as have most or all other surrounding businesses fronting on Memorial Dr., and so it would be at a competitive disadvantage.

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

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 City approved both lot splits. We believe that without a freestanding sign allowed on the remainder lot 5 & 6, it will be difficult to attract a potential developer, since a potential business will require its own exclusive ground sign.”

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 with 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.
- The City of Bixby allowed for the creation of the subject property per BL-350 and BL-376, which resulted in the subject property having (154.5’ + 46.08’ =) 200.58’ of frontage on Memorial Dr.
- 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, and
- Per BBOA-535, the shopping center developer is allowed to have an exclusive freestanding ground sign to advertise the Firestone business, which sign will be located 105.94’ from the center of the subject property frontage, and
- IBC Bank chose to install their ground sign at the southeast corner of that lot, which sign is located 105.94’ from the center of the subject property frontage.
- If the Bixby Commons development was done as a PUD, exceptions to allow for a combined development entrance signs and exclusive freestanding signs for each lot 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. In other words, the subject property would normally be allowed to have its own freestanding ground sign, but due to the Lot-Splits and the Firestone sign placement per BBOA-535, the otherwise allowable sign on the subject property has been "squeezed out."*

*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 "We don't believe that 106 feet of separation between signs is an unreasonable request considering items a and b above. If this sign is approved, we will only have a total of 8 ground signs on Memorial."*

*As the 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-350 and 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 easements, 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 [Lot 7 + N. 42' of Lot 8 (which must be combined per BL-351)], as indicated possible per the submitted exhibit. 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 exhibit there would be 105.94' separating the proposed ground sign from both the sign to the north and the proposed Firestone sign to the south (and so, a Variance of 44.06' would be required). The Board should determine that this 105.94' 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 ground sign) 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.*

*As stated in the Background Information section of this report, this application is substantially similar to BBOA-535, concerning the proposed Firestone development on the southern part of Lot 6 of this subdivision. It should also be recognized that substantially similar arguments were presented in that case as in this one, and were found adequate for approving a Variance in that case.*

*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.*

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Malek Elkhoury was present and stated that he agreed with Erik Enyart on his recommendation. Mr. Elkhoury stated that the original plan was for the IBC bank sign to be on [its] northeast corner, and that he would not be here today if they had not decided to locate it on the southeast

corner [of their lot]. Mr. Elkhoury stated that the [developer of *Bixby Centennial Plaza*] wants to market the land to a developer who will want its own ground sign.

Chair Jeff Wilson referenced the several Lot-Split applications cited in the Staff Report and asked Erik Enyart to clarify if the land included in this application was in existence. Mr. Enyart stated that he did not know if the deeds to the new lots had been executed and recorded yet, and looked to Malek Elkhoury. Mr. Elkhoury stated that the *Firestone* deal was still going through real estate approval, and that the developer and *Firestone* agreed to hold onto the deed until that was completed.

Chair Jeff Wilson asked what would happen to the Lot-Splits if the deal did not go through, and expressed concern that the Lot-Splits would be permanent no matter what. Malek Elkhoury stated that there will be two (2) users on the [two] lots [regardless of whether the *Firestone* deal went through].

Chair Jeff Wilson clarified with Malek Elkhoury that, if the *Firestone* deal did not go through, the internal lot lines may move a few feet from what was approved for Lot-Split.

Chair Jeff Wilson expressed concern that the Variance may be voided if the land as represented in the application is changed by a new Lot-Split. Erik Enyart stated that, based on the way the legal descriptions was written in the application and the way the Public Notice as written, he believed this would allow the approval to cover any future lot regardless of any movement of internal lot lines. Mr. Enyart stated that, [presuming approval], the Decision of Record would include the legal descriptions of the approved land.

Chair Jeff Wilson asked what would happen if Lot 6 was never split, and if there could be three (3) signs allowed. Erik Enyart stated that the two (2) signs permitted with the previous Variance would go with the *Firestone* lot, regardless of any changes to the internal lot line, and the new application would allow one (1) sign on the subject property. Malek Elkhoury indicated that he believed the applications would cover his clients' needs.

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

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-536, based on the reasons stated in the Staff Report. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Mullins, Hill, Wilson, Jeffries, & King
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	5:0:0

ADJOURNMENT

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

ROLL CALL:

AYE: Mullins, Hill, Wilson, Jeffries, & King  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 5:0:0

Meeting adjourned at 6:21 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Planner/Recording Secretary