

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
April 04, 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 6:05 PM.

ROLL CALL

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

Members Absent: Lonnie Jeffries.

MINUTES

1. Approval of Minutes for February 07, 2011

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of February 07, 2011 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Wilson, Hill, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

2. Approval of Minutes for March 07, 2011 (Record of No Meeting)

Chair Jeff Wilson introduced the item and asked to Erik Enyart about the item. Mr. Enyart stated that this would be a record placed in the file for the scheduled March meeting which one could go to to find that that meeting was cancelled and no action was taken on that date.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE the Minutes of March 07, 2011 (Record of No Meeting) as presented by Staff. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

None.

NEW BUSINESS

- 3. **BBOA-537 – Keith Taylor.** Discussion and possible action to approve a Variance from (1) the 5’ setback standard from the north side yard line for an existing accessory building per Zoning Code Section 11-7B-3.B.1.c and (2) any other Zoning Code restriction preventing the erection of exterior stairs to an existing accessory building, all for property within the RE Residential Estate District.

Property located: Lot 5 and part of Lot 11, Block 2, *Southwood*; 8171 E. 112th St. S.

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, March 28, 2011
RE: Report and Recommendations for:
BBOA-537 – Keith Taylor

LOCATION: – 8171 E. 112th St. S.
– Lot 5 and part of Lot 11, Block 2, *Southwood*
LOT SIZE: Approximately 0.9 acres
ZONING: RE Residential Estate District
REQUEST: Variance from (1) the 5’ setback standard from the north side yard line for an existing accessory building per Zoning Code Section 11-7B-3.B.1.c and (2) any other Zoning Code restriction preventing the erection of exterior stairs to an existing accessory building, all for property within the RE Residential Estate District.

SURROUNDING ZONING AND LAND USE: RE & CG; Residential single family houses zoned RE to the east, south, and west, and heavy commercial zoned CG to the north/northwest along 111th Pl. S. and 82nd E. Pl., all in *Southwood*.

COMPREHENSIVE PLAN: Low Intensity + Residential Area.

PREVIOUS/RELATED CASES:
BL-5 – William G. LaForge – Request for Lot-Split approval for Lot 11, Block 2, *Southwood* – PC Approved 08/27/1973.
BBOA-22 – Everett Forrest for L.C. Neel – Request for Special Exception to allow sales of autos, motorcycles, mobile homes, horse trailers, and campers for [all of] Lot 11, Block 2, *Southwood* – BOA Denied 11/10/1975.
BZ-43 – L.C. Neel – Request for rezoning from CS to CG for part of Lot 11, Block 2, *Southwood* for a nonconforming used car sales lot at 11121 / 11125 S. Memorial Dr. – PC recommended Denial 01/26/1976, Appealed, and not approved by City Council 02/17/1976.

BBOA-28 – Everett Forrest for L.C. Neel – Request for Special Exception for an existing nonconforming used car sales lot on part of Lot 11, Block 2, Southwood at 11121 / 11125 S. Memorial Dr. – BOA Conditionally Approved for one (1) year 04/13/1976.

BBOA-82 – Bill Ellis for L.C. Neel – Request for Special Exception for an existing nonconforming used car sales lot on part of Lot 11, Block 2, Southwood at 11121 / 11125 S. Memorial Dr. – BOA Conditionally Approved 01/12/1981.

BBOA-85 – L.C. Neel – Request for Special Exception to allow a Use Unit 17 auto wash on part of Lot 11, Block 2, Southwood at 11119 / 11121 S. Memorial Dr. – BOA Approved 02/09/1981.

BBOA-101 – George B. Suppes for L.C. Neel – Request for Appeal from the determination of the Building Inspector to recognize propane tanks as a Use Unit 16 and not Use Unit 25 on gas station property on part of Lot 11, Block 2, Southwood at 11115 S. Memorial Dr. – BOA Approved the Appeal 03/08/1982.

BBOA-123 – L.C. Neel – Request for Special Exception to allow a Use Unit 17 car wash on part of Lot 11, Block 2, Southwood, containing a gas station at 11115 S. Memorial Dr. and the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – BOA Approved 02/13/1984.

BBOA-164 – Condell Pollard for L.C. Neel – Request for Special Exception to allow a Use Unit 17 car sales and a Variance to allow open air storage and display of merchandise within 200' of an R District on the W. 448' of Lot 11, Block 2, Southwood, less and except the property containing a gas station at 11115 S. Memorial Dr. – BOA Conditionally Approved 04/14/1986.

BL-119 – Donnie Reed – Request for Lot-Split approval for Lot 11, Block 2, Southwood – PC Approved 01/26/1987.

BBOA-181 – Dennis Reed for L.C. Neel – Request for Special Exception to allow a Use Unit 17 car wash and a Variance to reduce the frontage requirement in CS from 150' to 125' to allow a Lot-Split on part of Lot 11, Block 2, Southwood, containing the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – BOA Approved 02/09/1987.

BBOA-204 – L.C. Neel – Request for Variance to reduce the frontage requirement in CS from 150' to 125' to allow a Lot-Split on part of Lot 11, Block 2, Southwood – BOA Approved 06/06/1988.

BBOA-205 – L.C. Neel – Request for Variance to reduce the frontage requirement in CS from 150' to 125' to allow a Lot-Split on part of Lot 11, Block 2, Southwood – BOA Approved 08/01/1988.

BBOA-257 – L.C. Neel – Request for Special Exception to allow a single family dwelling unit in a CS district and a Variance from the frontage requirement for a 0.5-acre part of Lot 11, Block 2, Southwood containing the Tune & Sons Auto Service business at 8104 E. 111th Pl. S. – BOA Conditionally Approved 11/02/1992.

BBOA-276 – L.C. Neel – Request for Variance to allow a Use Unit 17 auto lube service in a CS district for a 0.5-acre part of Lot 11, Block 2, Southwood containing the Same Day Auto Repair business at 11121 S. Memorial Dr. – Withdrawn by Applicant 03/24/1994 after determining with the City that it would not be necessary.

BL-140, 141, 166, 172, 173, 201, 202, 210, 219, & 227 – L.C. Neel – Request for Lot-Split approvals for Lot 11, Block 2, Southwood – PC Approved 05/31/1988, 08/15/1988, 11/16/1992, 08/16/1993, 08/16/1993, 10/16/1995, 11/20/1995, 02/20/1996, 04/21/1997, and 01/20/1998, respectively.

BZ-237 – Robert Cook – Request for rezoning from CS to CG for part of Lot 11, Block 2, Southwood for the N. 128.6' (should have been N. 228.6'), containing the Auto Pride Car Wash / Bixby Car Wash III at 8112 E. 111th St. S. – PC recommended Approval 01/20/1998 and City Council Approved 02/23/1998 (Ord. # 769 – not represented on Zoning Map – requested for representation 03/25/2011).

BZ-263 – Robert Kinyon – Request for rezoning from CS to CG for part of Lot 11, Block 2, Southwood for a 0.35-acre tract containing the automobile sales business at 8215 E. 111th Pl. S. – PC recommended Approval 01/18/2000 and City Council Approved 02/28/2000 (Ord. # 806 – misrepresented on Zoning Map – requested for correction 03/25/2011).

BL-252 – Jeffrey D. Lower for Home Ventures, Inc. – Request for Lot-Split approval for Lot 11, Block 2, Southwood to adjust property lines shared with Lots 3, 4, & 5, Block 2 based on existing fence lines – the subject property acquired a part of Lot 11, Block 2 – PC Approved 09/18/2000.

RELEVANT AREA CASE HISTORY: (not a complete list)

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property contains a single-family house on approximately 0.9 acres, and is zoned RE Residential Estate District. The property contains two (2) accessory buildings, the larger of which lies on the north/east side yard line. The smaller one is located about the northwest corner of the lot.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant has submitted a Building Permit application proposing to construct a stairwell on the west/south side of this building, which would be the side facing the interior of the lot. According to the Applicant's survey, this building encroaches four (4) inches over the north/east side yard line. Zoning Code Section 11-7B-3.B.1.c requires a minimum 5' setback for accessory buildings, and therefore this building is structurally nonconforming. Per Zoning Code Section 11-11-6, the accessory building is presently ineligible for improvement, as such would increase the nonconformity by extending the life of a nonconforming structure. Therefore, the Applicant requested a Variance from the 5' setback requirement.

Also, the Zoning Code allows up to 800 square feet in aggregate building floor area for accessory buildings in an R Residential district. The Applicant has measured and found the larger building to be 26' 2" X 22' 2" (580 square feet X 2 floors = approximately 1,160 square feet) and the smaller building to be 10' 4" X 12' 4" (127 square feet). Therefore, the accessory buildings on the subject property have an aggregate of approximately 1,287 square feet. The Applicant also requires a Variance from this nonconformity to allow the building improvement.

This information was not available when the Variance application was submitted, but Staff anticipated this possibility. The application was advertised to the Public including a second Variance, from "any other Zoning Code restriction preventing the erection of exterior stairs to an existing accessory building, all for property within the RE Residential Estate District." This "catch-all" Variance element would enable the Board of Adjustment to grant Variance from the accessory building maximum size exceedance.

The two (2) Variance requests are inextricably related with a common nexus: The proposal to construct an exterior stairwell to an existing, structurally nonconforming accessory building. Therefore, this report will not attempt to divide the remaining separate Variance components into different report sections.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the test and standard requiring finding the subject property has a Condition or Situation that is Peculiar, Extraordinary, and/or Exceptional by stating "Nothing peculiar, extraordinary, or exceptional, other similar requests." However, other statements made elsewhere in the narrative, which may be consanguine to this test and standard, include:

- "Current owner, Pamela Willis Taylor purchased this property in June 2009 with detached accessory buildings existing prior to purchase, circa 1996.
- According to mortgage inspection plat date 6/8/09, the detached building for which this variance is sought is situated four inches over the east lot line abutting 11134 S. 84th E. Ave., Bixby OK," and
- "[Easement], Book 6424 Page 669 affects this property – provides for encroachment of Building on east line as shown"

Per BL-252 and a letter from the attorney Jeffrey D. Lower for Home Ventures, Inc. dated 08/21/2000, the Lot-Split was intended to resolve a property line dispute between the abutting commercial tract in part of Lot 11, Block 2 and the residential property owners of Lots 3, 4, and 5, Block 2, all in Southwood. It appears, based on the survey from Professional Surveying, Inc. dated 06/30/2000, that the dispute may have been caused by both east-west and north-south discrepancies between the lot boundaries as described on the plat of Southwood and as measured in the field by the surveyor. It would require substantiation to be used for these purposes, but it appears possible that such discrepancies may have extended further into the subject property and may have been related to the misplacement of the

accessory building in relation to the property line. If this were the case, it could be argued that such Condition or Situation is Peculiar, Extraordinary, and/or Exceptional and gave rise to the hardship in this case.

According to Community Development Coordinator Donna Crawford, no building permit records were available for the subject property, due to the age of the buildings. According to Community Development Coordinator Donna Crawford, after seven (7) years, the City of Bixby has destroyed building permit records, as it is not required by law to keep them longer.

Staff was not able to conceive of any other arguments in support of this test and standard. The Board may wish to consider the arguments presented in the application and in the analysis above, 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 this test and standard.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "Literal enforcement would prevent issuance of building permit which would otherwise be appropriate."

On March 28, 2011, the Applicant advised Staff that the existing building has a stairwell within the building, but that it is too steep in terms of rise over run and is otherwise unusable for its intended purpose, and so the new exterior stairwell is intended to replace the old stairwell.

As claimed by the Applicant, the restriction from adding onto the subject property accessory building could be considered an Unnecessary Hardship.

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:

- "Project is minor in scope, and in rear yard
- Encroachment has existed prior to purchase by current owner
- Property owners abutting each side of property in question raise no objections"

Other statements made elsewhere in the narrative, which may be consanguine to the test and standard, include:

- "Project is for construction on exterior stairs on west side of building, on interior yard side of building," and
- "Neither property owner who shares side yard property line has objections to the project"

The Applicant has submitted letters from adjoining property owners to the east and west indicating they have "no concerns or objections," which letters are attached to this report. Also attached is a copy of the "Use Easement" recognizing the building's encroachment over the property line to the east and granting the subject property the right to use and maintain the building.

For all the other reasons set forth above, Staff believes that that approval of the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.

Finding of Minimum Necessary. Recognizing the larger accessory building on the subject property encroaches four (4) inches and the aggregate of the two (2) accessory buildings is 1,287 square feet, a Variance of 4" and $(1,287 - 800 =) 487$ square feet, respectively, would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. Staff believes that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code for all of them except, perhaps, the Peculiar, Exceptional, or Extraordinary standard. For this test and standard, the Board should consider the arguments presented in the application and in the analysis above, and any 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 this test and standard.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Keith Taylor stated that he had moved to this house about a year and a half ago, and that his kids use the upstairs of the [larger accessory building] for play. Mr. Taylor stated that the existing stairs within the building were not right, were too steep, and did not [coordinate with the] door

and the center beam of the building. Mr. Taylor stated that he wanted to put stairs on the outside of the building. Mr. Taylor stated that he worked for the City of Sand Springs in the permit department, and considered that he might need a building permit. Mr. Taylor stated that he found out that he did, but that it also required a Variance. Mr. Taylor stated that the stairs would be constructed on the side facing the interior of the lot. Mr. Taylor stated that he had letters from both neighbors [to the west and the east, indicating no objection to the application]. Mr. Taylor stated that all of the [buildings] were existing when he bought the property, and estimated that the house was built in the 1970s. Mr. Taylor stated that he would probably lose the stairs on the inside of the building, but that that area could be put to other use. Mr. Taylor stated that he had heard a rumor regarding the fence issue when the developer behind his house had built the commercial buildings some years ago. Mr. Taylor said that he was told that that on that lot, which is all concrete and metal building, the developer decided he wanted more room for parking, and that a neighbor had caught him moving the [surveying monument] pins.

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

There being no further discussion, Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-537, based on the reasons stated in the Staff Report. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Keith Taylor left at this time. No one else was in attendance. Erik Enyart informed Chair Jeff Wilson that he had advised Applicant Bill Bromley to attend the meeting, and had emailed him earlier that day. Mr. Wilson suggested Mr. Enyart might call Mr. Bromley to see if he planned to attend. Mr. Enyart called the cell phone number listed on the application form and spoke to Mrs. Bill Bromley, who said she would call Mr. Bromley and see if he could not attend.

After a time, Applicant Bill Bromley called back and agreed to come to the meeting. Chair Jeff Wilson and the Board members discussed the matter and agreed to wait for Mr. Bromley to arrive.

4. **BBOA-538 – Bill Bromley.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7B-3.A Table 2 to allow internet retail sales and limited trade show sales as a home occupation in the RS-3 Residential Single Family District.

Property located: Lot 7, Block 2, *WoodCreek*; 11225 S. 73rd E. Ave.

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: Wednesday, March 23, 2011

RE: Report and Recommendations for:
BBOA-538 – Bill Bromley

LOCATION: – 11225 S. 73rd E. Ave.
– Lot 7, Block 2, WoodCreek

LOT SIZE: Approximately 0.2 acres

ZONING: RS-3 Residential Single Family District

REQUEST: Special Exception per Zoning Code Section 11-7B-3.A Table 2 to allow internet retail sales and limited trade show sales as a home occupation in the RS-3 Residential Single Family District.

SURROUNDING ZONING AND LAND USE: RS-3; Residential single family houses in WoodCreek.

COMPREHENSIVE PLAN: Corridor.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-304 – Brumble Dodson Construction, LLC – Request for rezoning from AG to RS-3, RT, and CS for the WoodCreek (includes subject property) and Woodcreek Village Amended subdivisions – Recommended for Approval by PC 06/21/2004 Approved by City Council 07/12/2004 (Ord. # 891) (previously considered for lesser acreage and RS-3 only).

Preliminary Plat of WoodCreek – Request for Preliminary Plat approval for WoodCreek (includes subject property) – Approved by PC on 09/23/2004 and by the City Council on 09/27/2004.

Final Plat of WoodCreek – Request for Final Plat approval for WoodCreek (includes subject property) – Approved by PC 02/22/2005 and by the City Council on 04/25/2005.

BACKGROUND INFORMATION:

The Applicant has submitted a narrative explaining how the “internet retail sales and limited trade show sales” will comply with all of the use conditions for a home occupation per Zoning Code Section 11-7B-5.B. The narrative is attached to this report.

ANALYSIS:

Property Conditions. The subject property contains a single-family house on approximately 0.2 acres, and is zoned RS-3 Residential Single Family District.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-7B-3.A Table 2 to allow internet retail sales and limited trade show sales as a home occupation in the RS-3 Residential Single Family District.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Corridor. The proposed home occupation by Special Exception as an accessory use to the existing single-family dwelling would not be inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning and land use is RS-3 and single family residential in WoodCreek. The proposed home occupation by Special Exception as an accessory use to the existing single-family dwelling would not be incompatible with the surrounding Zoning and land use patterns, provided it maintains its residential character and complies with the use conditions of Zoning Code Section 11-7B-5.B.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff recommends Approval, with the use to be in full compliance with the use conditions of Zoning Code Section 11-7B-5.B as described in the submitted narrative, which includes an allowance of operating hours beyond 8:00 AM to 6:00 PM.

After a time, Applicant Bill Bromley arrived at 6:40 PM.

Chair Jeff Wilson asked if the Applicant wished to speak on the item. Applicant Bill Bromley stated that he knew he needed a [Special Exception] from the Zoning laws in order to run a business from his home. Mr. Bromley stated that he already had a full time job at ONEOK, and wanted to do this “in the appropriate way.”

Applicant Bill Bromley and the Board members discussed the nature of the business. Mr. Bromley indicated that the Federal agency having jurisdiction does background checks and would

check to see that the Homeowners Association was okay with the business and would be checking the local “Zoning issues as well.”

Chair Jeff Wilson clarified with Bill Bromley that no sales would be conducted at the residence, but incidental storage of sale items may be involved. Mr. Bromley stated that there would be deliveries, but that they would be no different than normal Fed Ex or UPS deliveries and that there would not be many at a time.

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

After further discussion regarding the nature of the business and its conduction within the dwelling and neighborhood, Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-538, subject to the use being in full compliance with the use conditions of Zoning Code Section 11-7B-5.B as described in the submitted narrative, which includes an allowance of operating hours beyond 8:00 AM to 6:00 PM. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 6:48 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary