

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
June 06, 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 6:02 PM.

ROLL CALL

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

Members Absent: Darrell Mullins and Lonnie Jeffries.

MINUTES

1. Approval of Minutes for April 04, 2011

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of April 04, 2011 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 3:0:0

2. Approval of Minutes for May 02, 2011 (Record of No Meeting)

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of May 02, 2011 (Record of No Meeting) as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

None.

NEW BUSINESS

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

Chair Jeff Wilson introduced the item. The Board members discussed nominating Darrell Mullins in absentia, and asked Murray King if he would be willing to serve instead. Mr. King indicated he would accept if nominated. Dave Hill made a MOTION to Nominate and Elect Jeff Wilson as Chair, Murray King as Vice-Chair, and Erik Enyart as Secretary. Erik Enyart stated that he would accept, and Jeff Wilson indicated his acceptance. Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

- 4. **BBOA-539 – Joseph Tierney.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow seasonal produce sales in the AG Agricultural District.
Property located: The N/2, N/2, SW/4, SW/4, Section 02, T17N, R13E; 12811 S. Sheridan Rd.

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: Tuesday, May 31, 2011
RE: Report and Recommendations for:
BBOA-539 – Joseph Tierney*

LOCATION: – 12811 S. Sheridan Rd.
– The N/2, N/2, SW/4, SW/4, Section 02, T17N, R13E;
LOT SIZE: Approximately 10 acres
ZONING: AG Agricultural District

REQUEST: Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow seasonal produce sales in the AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: RS-4; Vacant/wooded land in the 100-year Floodplain.

South: AG, & RD/CS/PUD 32; A 10-acre agricultural tract in the 100-year Floodplain and the Copperleaf residential subdivision zoned RD/CS/PUD 32.

East: RD & AG; The Fry Creek drainage channel.

North: (West of Sheridan Rd.) AG; Agricultural land in the City of Tulsa.

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

PREVIOUS/RELATED CASES:

BBOA-221 – Ben Prater, Jr. – Request for Special Exception to permit a mobile home in the AG District and a Variance to permit two (2) dwellings per lot of record on subject property – BOA Conditionally Approved 12/04/1989.

BZ-249 – Joseph M. Tierney – Request for rezoning from AG to CH for subject property to allow for the construction of a facility to be used for Use Unit 23 warehousing and wholesaling of farm produce – Advertised for the 11/16/1998 Planning Commission meeting. However, it was not mentioned in the Minutes of that meeting. Case notes on the application form state the Planning Commission meeting was “12-21-98,” but Staff found no record of there being or not being a meeting on that date. The Staff Report (incorrectly dated) states “[F]urthermore, [produce] warehousing and wholesaling is a permitted use in an Agricultural zone. WITHDRAWN STAFF EXPLAINED TO APPLICANT THAT THIS IS A PERMITTED USE.” It is not clear at which meeting this report was or would have been presented, but the application appears to have been Withdrawn.

RELEVANT AREA CASE HISTORY: (not a complete list)

BACKGROUND INFORMATION:

The subject property was approved for building permit for an additional agricultural building in or around August of 2010. The subject property was approved for a ground/identification sign permit (subject to placement off the projected right-of-way for Sheridan Rd.) in or around April of 2011. The sign advertises the current organic farm and the proposed seasonal produce sales requested by this Special Exception, and was permitted per Zoning Code Sections 11-7A-3.A Table 2 and 11-7A-3.B.2.

ANALYSIS:

Property Conditions. The subject property contains a single-family house and various agricultural buildings on approximately 10 acres, and is zoned AG Agricultural District.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-7A-3.A Table 2 to allow seasonal produce sales in the AG Agricultural District.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Low Intensity + Vacant, Agricultural, Rural Residences, and Open Land. AG zoning is consistent with the Comprehensive Plan, and the AG district allows “Accessory seasonal fruit and vegetable stands” as an accessory use by Special Exception. Therefore, it appears that the proposed seasonal produce sales would not be inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning and land use is a mixture of vacant and agricultural land, the Fry Creek channel, and the Copperleaf housing addition, variously zoned RS-4, AG, RD, & RD/CS/PUD 32. The proposed seasonal produce sales, as an accessory use to the existing farm, would not appear to be incompatible with the surrounding Zoning and land use patterns, provided it does not attract excessive traffic.

The subject property has a relatively large, fenced gravel parking lot in front of the agricultural buildings, with ample room for parking and for maneuvering the semi tractor-trailer(s), used for shipping produce. The Applicant has provided photographs of the existing farm operation, including one depicting the wooden portable sales building to be used.

The proposed accessory seasonal produce sales would not appear to substantially change the character of the subject property use.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff recommends Approval with the following Conditions of Approval:

1. The approved accessory use shall substantially comply with the scope outlined and described in this report.
2. Operating hours shall be limited to 8:00 AM to 8:00 PM weekly.

3. *If the operation fails to respect neighboring properties and the use and enjoyment of neighboring properties by their respective owners, due to excessive traffic, parking, or any other effect, or if it otherwise adversely affects the subject property or neighboring properties, the City of Bixby, at the direction of the City Council, may require the vacation of the Special Exception use, or other such remedies at law as deemed necessary and appropriate.*

Erik Enyart stated that he had not yet spoken with the Applicant about the recommended Conditions of Approval, and that the [hours of operation] may [need to be changed as reasonable].

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Joseph Tierney was present and introduced his daughter Molly. Mr. Tierney stated that he had bought the farm 21 years ago. Mr. Tierney stated that he supplied all the upper-scale restaurants and country clubs in the area, and some in Oklahoma City, Stillwater, Ponca City, and Arkansas. Mr. Tierney stated that he had supplied for the U.S. Open and PGA at Southern Hills. Mr. Tierney stated that he was not focused on getting bigger but on quality. Mr. Tierney stated that he had been growing organically for 20 years but got his certification in October. Mr. Tierney stated that Bixby had the top soil [quality] in the world. Mr. Tierney stated that people are used to coming to Bixby for produce. Mr. Tierney stated that his proposed sales would not [negatively] affect the other produce sellers in town, but would “add one more reason for people to come out here.” Mr. Tierney stated that he wanted to see if [the on-site produce sales] would be approved, and then do the other things such as signage, tax ID, etc.

Murray King confirmed with Joseph Tierney that he was now into wholesale but wanted to move into retail. Mr. Tierney stated that he was not making a whole lot of money on wholesale, and that there was a lot involved. Mr. Tierney expressed desire “to continue in a profitable way, [and] move into retail.” Mr. Tierney stated that people in Bixby now go to Tulsa if they want organic, and it was “better that they buy from me.” Mr. Tierney stated that he was probably the second largest organic grower, next to Peach Crest [Farm] in Stratford, Oklahoma.

Chair Jeff Wilson asked Joseph Tierney, “Is the sales building out there now?” Mr. Tierney clarified that the building was on the property but was under the shop. Mr. Tierney stated that he had attached an I-beam to the building to allow it to be picked up by a forklift and placed anywhere on the property.

Chair Jeff Wilson asked Joseph Tierney, “What about those hours [of operation]?” Mr. Tierney stated that he planned to have sales Thursday through Saturday from 9:00 [AM] to 6:00 [PM], and “never on Sunday.” Mr. Wilson asked Mr. Tierney to confirm that the recommended hours of operation, from 8:00 AM to 8:00 PM would “cover you know matter what.” Mr. Tierney indicated agreement. Mr. Tierney stated that he did not anticipate using that many hours for some time to come.

Chair Jeff Wilson clarified with Erik Enyart that he had also received a copy of the photographs [and “Grow List” handout] provided by Joseph Tierney to the Board members prior to the meeting, and that they would be made part of the record of this meeting.

Dave Hill asked Erik Enyart why he was recommending Conditions of Approval. Mr. Enyart stated that, for uses only allowed by Special Exception, he normally recommended Conditions of Approval as needed for the proposed use, to ensure it would not be detrimental to neighboring property owners. Mr. Hill asked how this was different from Carmichael's or Conrad Farms. Mr. Enyart stated that those other businesses were zoned Commercial, and this property was zoned Agricultural and was "off the beaten path." Mr. Enyart stated that the recommended Conditions of Approval were rather standard ones as he normally recommended to keep the use from being a nuisance. Mr. Hill asked what could be done if the neighbors have a problem. Mr. Enyart stated that the third recommended Conditions of Approval provided that, if the approved use became a problem, the City could shut it down or do something else. Mr. Enyart stated that this was necessary "because zoning is forever." Mr. Enyart stated that, if approved, this property may always have [seasonal] produce sales, including the next property owner, and the next one, etcetera.

Chair Jeff Wilson and the other Board members questioned whether the City Council could reverse the approval as per the recommended Condition of Approval. Erik Enyart agreed that it is normally not done that way, but would be allowable if "set up that way in the approval condition." The Board members indicated agreement.

Joseph Tierney stated that, evidently in the year 1998 as stated by Erik Enyart, "The City Council said to me that as long as it was ag related, I don't need to rezone."

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

There being no further discussion, Chair Jeff Wilson made a MOTION to APPROVE BBOA-539 with the following Conditions of Approval:

1. The approved accessory use shall substantially comply with the scope outlined and described in [the staff report presented at this June 06, 2011 meeting].
2. Operating hours shall be limited to 8:00 AM to 8:00 PM weekly.
3. If the operation fails to respect neighboring properties and the use and enjoyment of neighboring properties by their respective owners, due to excessive traffic, parking, or any other effect, or if it otherwise adversely affects the subject property or neighboring properties, the City of Bixby, at the direction of the City Council, may require the vacation of the Special Exception use, or other such remedies at law as deemed necessary and appropriate.

Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 6:30 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary