

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
July 05, 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 Murray King at 6:02 PM.

ROLL CALL

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

Members Absent: Jeff Wilson and Lonnie Jeffries.

MINUTES

1. Approval of Minutes for June 06, 2011

Acting/Vice-Chair Murray King confirmed with Erik Enyart that there were not enough members present at this meeting who attended the June meeting to have a quorum vote on the Minutes. Mr. King declared that the Minutes could not be approved and would be brought back at the next meeting.

OLD BUSINESS

None.

NEW BUSINESS

2. **BBOA-540 – Robert DeCelle.** Discussion and possible action to approve a Variance (1) from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, and (2) from any other Zoning Code restriction preventing the construction of a porch onto the back of an existing single family dwelling, all for property within the RS-1 Single Family Dwelling District.

Property located: Lot 5, Block 3, *North Heights Addition*; 11648 S. 74th E. Ave.

Acting/Vice-Chair Murray King introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, June 27, 2011
RE: Report and Recommendations for:
BBOA-540 – Robert DeCelle

LOCATION: – 11648 S. 74th E. Ave.
– Lot 5, Block 3, North Heights Addition
LOT SIZE: 0.6 acres, more or less
ZONING: RS-1 Single Family Dwelling District
REQUEST: A Variance (1) from the 35’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, and (2) from any other Zoning Code restriction preventing the construction of a porch onto the back of an existing single family dwelling, all for property within the RS-1 Single Family Dwelling District
SURROUNDING ZONING AND LAND USE: RS-1; Residential single family homes on large lots in North Heights Addition.
COMPREHENSIVE PLAN: Low Intensity + Residential Area.
PREVIOUS/RELATED CASES: None found.
RELEVANT AREA CASE HISTORY: (not necessarily a complete list)
BACKGROUND INFORMATION:

ANALYSIS:
Subject Property Conditions. The subject property consists of Lot 5, Block 3 in North Heights Addition, zoned RS-1 Single Family Dwelling District. It contains a single-family dwelling fronting east onto S. 74th E. Ave.
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 subject property is located within an RS-1 Single Family Dwelling District. Zoning Code Section 11-7B-4.A.1 Table 3 requires minimum setbacks as follows: 35’ front yard, 25’ rear yard, 10’ one side, and 5’ other side yard. According to the submitted Mortgage Inspection Report, the existing house appears to be nonconforming, encroaching ½ of a foot, or 5’ including the porch, onto the 35’ front yard setback. Zoning Code Section 11-11-6 prohibits the expansion of structurally nonconforming dwellings. The side and rear yard setbacks appear to be in order.

The Applicant has submitted a Building Permit application proposing to add a porch onto the rear of the house, and also to construct a detached accessory building. Due to the structural nonconformity, the house is presently ineligible for expansion, as such would increase the nonconformity by extending the life of a nonconforming structure. Therefore, the Applicant requested a Variance from the 35’ front yard setback in the RS-1 district.

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 “Seems similar to other homes in neighborhood.”

According to the Tulsa County Assessor’s records, the house was built in 1970. The City of Bixby did not adopt a Zoning ordinance until circa the original late 1960s or early 1970s Zoning Ordinance # 234 (or possibly an earlier ordinance), but certainly by the April 02, 1974 Zoning Ordinance # 272.

Zoning Code Section 11-8-9.D provides a certain exception for situations where there are existing, [legally-nonconforming] homes on the block which encroach on front yard Zoning setback, as is the case in this application. Said Section provides:

“D. If the proposed building is to be located within two hundred feet (200’) of an encroaching building on one side, but not both sides, and there are no intervening buildings, the front yard or building setback shall be the average of the otherwise required front yard or setback and the setback of the nearest front corner of the encroaching building.”

This situation applies to the present case, but the exception will not provide any relief, as the porte cochere house on the lot abutting to the south, per GIS rough measurements, has an approximately 27’ setback from the street, and the house to the north appears to comply with the 35’ setback. The average between a 27’ setback and the otherwise-applicable 35’ setback would be 31’.

Information is not readily available that would allow for the determination of (1) when this area was annexed by the City of Bixby and (2) made subject to 35’ front yard setback from a Zoning Ordinance, (3) if any such was then in existence. It is presumed that the house on the subject property became legally nonconforming at the point at which it became subject to the RS-1 district’s 35’ front yard Zoning setback, which was likely shortly after construction.

The subject property may be determined to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances by virtue of the combination of the following facts:

- According to an inspection of the plats, the North Heights Addition subdivision was platted on or around April 14, 1965, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.*
- Per County Assessor’s records, the house on the subject property was constructed in 1970.*
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.*
- As noted elsewhere in this report, other dwellings in the immediate area appear to encroach on the 35’ Zoning setback.*
- Most of the other dwellings in the immediate area appear to have been built in the same time frame, late 1960s and early 1970s, per Tulsa County Assessor’s records, and so would also appear to be legally nonconforming.*

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because “[The owner would be] unable to build proposed additions as is currently enforced.”

As claimed by the Applicant, the restriction from adding onto the subject property house 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 “In fact, will increase neighborhood’s quality.”

Of the several fundamental purposes for imposing front yard setback restrictions, the primary reasons are (1) so that future street and highway expansions will not require condemnation/removal of the structure, and (2) for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

South 74th East Avenue has a 50-foot-wide right-of-way, which meets current Bixby development standards for right-of-way width for the functional design of a minor local residential street. The TMAPC Major Street and Highway Plan does not designate it as a Major Street, and there are no other known plans to widen the right-of-way, nor does there appear to be current or projected need to do so. The first and principal reason for the front yard setback is thus not an issue in this case.

The fact that the house is only 30’ from the front lot line does not appear to be unique to the subject property. Several other dwellings appear to encroach on, not only the Zoning Code’s 35’ front yard setback, but also the 35’ (private) setback established by the plat of North Heights Addition. Of all of the properties touching the exterior boundaries of the subject property (when excluding intervening rights-of-ways), in clockwise order starting with the dwelling to the north, the following are approximate front yard setbacks per GIS rough measurements: 38’, 85’, 39’, 27’, 24’, 26’, and 27’.

Recognizing that the adjacent properties have approximate setbacks with a median of 27’, it would not appear that the continued existence of the subject property’s 30’ setback would compromise the aesthetic quality of the neighborhood.

Also, the proposed building addition would be in the rear of the dwelling, in the opposite direction of the encroachment.

Finally, Zoning Code Section 11-11-5.A provides exceptions to certain bulk and area standards for subdivisions platted prior to April 02, 1974. Although the subject property qualifies as a lot platted prior to April 02, 1974, this relief does not specifically provide an exception for the front yard setback situation, but does demonstrate legislative intent to provide flexibility for older, nonconforming subdivisions and lots.

Recognizing the setbacks of existing structures in the immediate area, and the visual/aesthetic conditions this presents, and 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 house on the subject property lacks only 1' of setback (Section 11-8-9.D), and recognizing the relative setbacks of adjoining structures of the surrounding properties, a Variance of 1' would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff 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, Staff recommends Approval.

Acting/Vice-Chair Murray King asked if the Applicant was present and wished to speak on the item. Applicant Bob DeCelle stated that he wanted to construct a porch the width of the back of the house, and needed a new garage, as the existing garage was located underneath the house and his truck did not fit in it. Mr. DeCelle stated that he had a lawn business and had a trailer. Mr. DeCelle stated that he had three (3) children and wanted to [finish out] the basement for family purposes.

Acting/Vice-Chair Murray King asked if anyone else wished to speak on the item. Lee Prall of 11702 S. 75th E. Ave. stated that he was a neighbor a couple houses down. Mr. Prall stated that his neighbor Bill Jenkins added onto their house, which was the same age, and that it enhanced the property value. Mr. Prall stated that Mr. Jenkins spent \$35,000 just to [build the addition to the house].

Lee Prall stated that page 88 of his abstract stated that the Town of Bixby annexed this area on November 24, 1964. Mr. Prall stated that the developers, Eugene and Norma Green, put covenants on [the lots in *North Heights Addition*], and that, in respect to what [the Applicant] is wanting to do, there is nothing [against that]. Mr. Prall stated that the developer turned over the addition to the City in April of 1965. Mr. Prall stated that the covenants stated that they would be in effect for 35 years, and be automatically renewed for successive periods of 10 years, and that any changes had to go to all of the neighbors.

Lee Prall stated that he had no problem [with the application], as it would enhance [the neighborhood's property values] more than anything else.

Harley Lundy of 11647 S. 73rd E. Ave. introduced himself as the president of the North Heights Addition Homeowners Association. Mr. Lundy stated that he was in favor [of the application] as long as [the improvements] look good. Mr. Lundy stated that the contour of the street dictated where the house was placed, not the Zoning Code.

There being no further discussion, Dave Hill made a MOTION to APPROVE BBOA-540. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart stated that Lonnie Jeffries had asked for personal reasons to be allowed to be replaced on the Board of Adjustment. Mr. Enyart stated that the Mayor wanted to nominate Larry Whiteley to replace him, and that this would be on the Monday, July 11, 2011 City Council agenda for approval. Mr. Enyart stated that Mr. Whiteley had attended because he wanted to sit in on the meeting tonight [and see how the meetings are conducted]. The Board members greeted Mr. Whiteley.

ADJOURNMENT

Acting/Vice-Chair Murray King asked to entertain a Motion to Adjourn. Dave Hill made a MOTION to ADJOURN. 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 6:15 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary