

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
August 01, 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 6:04 PM.

ROLL CALL

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

Members Absent: None.

MINUTES

1. Approval of Minutes for June 06, 2011

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of June 06, 2011 as presented by Staff. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, & King

NAY: None.

ABSTAIN: Mullins.

MOTION CARRIED: 3:0:1

Darrell Mullins noted that he Abstained as he was not present at this meeting.

2. Approval of Minutes for July 05, 2011

* In at 6:10 PM

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Dave Hill made a MOTION to APPROVE the Minutes of July 05, 2011 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Hill, & King
NAY: None.
ABSTAIN: Wilson.
MOTION CARRIED: 3:0:1

Chair Jeff Wilson noted that he Abstained as he was not present at this meeting.

OLD BUSINESS

None.

Chair Jeff Wilson declared a five (5) minute recess at 6:06 PM, to allow Larry Whiteley to return to the meeting as planned. Mr. Wilson noted that Mr. Whiteley had arrived before the meeting but had to return to his house momentarily but planned to return shortly.

Larry Whiteley in at 6:10 PM.

Meeting called back to order by Chair Jeff Wilson at 6:11 PM.

NEW BUSINESS

3. **BBOA-541 – Jean Frogge Butler.** Discussion and possible action to approve a Variance (1) Zoning Code Section 11-11-3 et seq., and (2) from any other Zoning Code restriction preventing the continued use of a recreational vehicle (RV) as a dwelling, all for property within the RS-3 Single Family Dwelling District.
Property located: Lot 6 less the E. 60' thereof, Block 11, [Original Town of] Bixby; 4 E. 5th St.

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, July 19, 2011
RE: Report and Recommendations for:
BBOA-541 – Jean Frogge Butler

LOCATION: – 4 E. 5th St.
– Lot 6 less the E. 60' thereof, Block 11, [Original Town of] Bixby
LOT SIZE: 0.2 acres, more or less
ZONING: RS-3 Single Family Dwelling District
REQUEST: A Variance from (1) Zoning Code Section 11-11-3 et seq., and (2) from any other Zoning Code restriction preventing the continued use of a recreational vehicle

(RV) as a dwelling, all for property within the RS-3 Single Family Dwelling District

SURROUNDING ZONING AND LAND USE:

North: RS-3, RM-3, and CH; Vacant land zoned RM-3 and CH and the Bixby US Post Office to the northwest zoned RS-3.

South: RS-3; Single family residential and the Midtown Laundry laundromat at 115 S. A Ave.

East: RS-3 & RD; Single family residential, a duplex zoned RD at the southwest corner of 5th St. and B Ave., and a vacant lot zoned RD at the northwest corner of 4th St. and B Ave.

West: RS-3; Single family residential.

COMPREHENSIVE PLAN: Development Sensitive + Residential Area.

PREVIOUS/RELATED CASES:

BBOA-156 – Jean Frogge Butler – Request for Variance approval for subject property to reduce the minimum lot width from 65’ to 60’ and minimum lot area from 6,900 to 6,000 sq. ft. and the side yard setback to permit a Lot-Split (BL-108) – BOA Approved 02/10/1986 subject to Lot-Split approval.

BL-108 – Tim Keim for Ted Butler – Request for Lot-Split approval for Lot 6, Block 11, [Original Town of] Bixby – separated the E. 60’ thereof from the subject property – PC Denied 02/24/1986 and City Council Approved on appeal 03/11/1986.

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

BZ-42 – Vela Moore – Request for rezoning from RS-3 to CH for property to the north at the southeast corner of Breckenridge & A Ave. (now Bixby Telephone Co.) – Approved in January 1975 (Ord. # 304).

BZ-110 – Bixby Telephone Co. – Request for rezoning from RS-3 to CH for property to the north, Lots 5 & 6, Block 2, [Original Town of] Bixby (now vacant land owned by Bixby Telephone Co.) – Approved in September 1981 (Ord. # 448).

BBOA-110 – George Brown – Request for Special Exception to allow a Use Unit 2 post office in the RS-3 district on property to the northwest (16 S. A Ave., All of Block 1, [Original Town of] Bixby) – Approved 11/08/1982.

BBOA-115 – Barry Whitelock – Request for Appeal from the Building Inspector to overrule a determination restricting a Use Unit 13 “style shop” from being conducted from the Midtown Laundry building at 115 S. A Ave., which contained a Use Unit 14 laundromat business as a legally nonconforming use in an RS-3 residential district (Lot 4, Block 11, [Original Town of] Bixby) – Board of Adjustment Approved 03/14/1983.

BZ-124 – Virginia Kemp – Request for rezoning from RS-3 to RMH for a mobile home on property to the east at the southwest corner of 5th St. & B Ave., Lot 1, Block 11, [Original Town of] Bixby – PC Recommended Denial 10/25/1982.

BZ-127 – Norman Ahrend – Request for rezoning from RS-3 to RM-3 for property to the north at the northwest corner of 5th St. & B Ave., Lots 1, 2, & 3, Block 2, [Original Town of] Bixby (now vacant land owned by Bixby Telephone Co.) – Approved in February 1983 (Ord. # 471).

BZ-180 – Norman Ahrend – Request for rezoning from RS-3 to RM-3 for property to the north at the northeast corner of 5th St. & A Ave., Lot 4, Block 2, [Original Town of] Bixby (now vacant land owned by Bixby Telephone Co.) – Approved in June 1987 (Ord. # 561).

BBOA-189 – Norman Ahrend – Request for Variance from bulk & area and parking requirements for a proposed “Town Square” apartment development for property to the east at the northwest corner of 5th St. & B Ave., Lots 1, 2, 3, & 4, Block 2, (now vacant land owned by Bixby Telephone Co.) and Lot 1, Block 11, [Original Town of] Bixby – Approved July 13, 1987.

BZ-288 – Jerry Kite for Bixby Real Estate Investments, LLC – Request for rezoning from RS-3 to RD for property to the east at 102 S. B Ave., E/2 of Lot 1, Block 11, [Original Town of] Bixby – PC Recommended Approval 11/18/2002 and City Council Approved 12/09/2002 (Ord. # 857).

BZ-293 – Raymond Pregler – Request for rezoning from RS-3 to RD for property to the southeast at 114 S. B Ave. – PC Recommended Approval 08/18/2003 and City Council Approved 09/08/2003 (Ord. # 992).

BZ-307 – Murrel Wilmoth for Erma & Raymond Pregler – Request for rezoning from RS-3 to RD for property to the southeast at 114 S. B Ave. – Withdrawn by Applicant after determining the land was already rezoned RD per BZ-293.

BZ-336 – Jill Hamilton – Request for rezoning from RS-3 to CS for property to the west at 8 W. 5th St. for a 'boutique' for sale of small household items, with upstairs office space – PC Recommended Denial 11/19/2007 (not appealed).

BZ-343 – Robert M. Hamilton – Request for rezoning from RS-3 to RM-2 for property to the west at 8 W. 5th St. for (5) attached 'townhouse-style' apartment buildings – Continued from PC meeting 09/21/2009 and Temporarily Withdrawn by Applicant prior to the PC meeting 12/21/2009.

BACKGROUND INFORMATION:

The subject property has previously been addressed 6 ½ E. 5th St. 6 E. 5th St. is the address of the house on the E. 60' of Lot Block 11, [Original Town of] Bixby, from which the subject property was separated pursuant to BL-108 in 1986.

ANALYSIS:

Subject Property Conditions. The subject property, rectangular in configuration, is composed of Lot 6 less the E. 60' thereof, Block 11, [Original Town of] Bixby, and is zoned RS-3. It contains a recreational vehicle (RV) being occupied as a permanent dwelling. The property has 80' of frontage on 5th St. and 100' of frontage on A Ave. The property contains 8,000 square feet (0.2 acres, more or less). The FEMA Floodplain maps designate most of the property in the 100-year (1% annual chance) Regulatory Floodplain.

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-3 Single Family Dwelling District. The RS-3 is primarily designed for, and allows by right, Use Unit 6 single family detached dwellings, as defined in Zoning Code Section 11-2-1.

In late May, 2011, the City of Bixby received complaint(s) alleging that the subject property has a recreational vehicle ("RV" / "fifth-wheel" / "motor-home") set up for permanent, year-round occupancy. The current RV replaced an older RV at some time in early 2011. It has since been connected to the necessary utilities (water, sewer, electric, etc.), and permits have been issued and modifications made to bring the utility connections into compliance with code requirements.

Per the Applicant, the RV occupant is the Applicant's daughter and husband, and the daughter is living in the RV to care for her mother and her husband. See the attached application for additional information regarding personal and family matters.

The Zoning Code provides that an RV park is a Use Unit 17, allowable only in certain Commercial and Industrial Districts, but it does not specifically address parking individual RVs on private lots or their occupancy on a year-round basis, as long as they are allowable accessory uses and parked on a paved surface as required. Therefore, an interpretation regarding compliance versus noncompliance must be inferred from the text.

Zoning Code Section 11-7B-2.A provides, in part, "Accessory uses customarily incident to a principal use permitted in a residential district are permitted in such district," and an RV parked on a residential property would normally be recognized as such. However, the subject property has no permanent dwelling unit and is vacant except for the RV and incidental storage materials. Therefore, the RV cannot be recognized as a permitted accessory use in an RS-3 district. Per the Applicant, the RV is intended to stay on the property for an undetermined period of time. This would appear to constitute a permanent, principal use of this lot, and such use is not listed as a permitted principal use in the RS-3 district per Zoning Code 11-7B-2.A Table 1.

The new RV replaced an older RV that may or may not have been occupied as a year-round dwelling. The Applicant claims that there has been an RV on the subject property since a Holiday Rambler model was placed on the property in 1992. Per the Applicant, that RV replaced a single-wide manufactured home that was on the property when the Applicant purchased it in 1972. This is corroborated by oldest available, relevant case maps, those for cases BBOA-15 (09/1974) and BZ-42 (11/1975), both of which represent a "D-T" ("Dwelling-Trailer") on the subject property at least as early as those times.

The Applicant claims that the subject property “has always been used for rental with mobile home R.V.s and motor homes.”

The Zoning Code, now and when first adopted, does not permit Use Unit 9 manufactured homes in the RS (or previous R-) districts, and requires RMH zoning. Based on the date information above, it would appear that the first single-wide manufactured home may have been legally nonconforming, or “grandfathered.” However, the nonconformity provisions of the Zoning Code specifically disallow the conversion of one nonconforming use to another (Zoning Code Section 11-11-3.F). Therefore, even if an RV has been occupied on site year-round since 1992, and replaced a single-wide manufactured home that had been occupied year-round since before the first Zoning Ordinance in the early 1970s, the dwelling unit use of the RV is not legally nonconforming. It appears to be, rather, illegal as to use, and so been at least since 1992.

By letter dated June 22, 2011, the Applicant was notified of the complaint(s) and the Zoning Code violation. Pursuant to the notification, the Applicant made application for Variance from the Zoning Code, to be permitted to maintain the RV as a dwelling. The requested Variance is from (1) Zoning Code Section 11-11-3 et seq., and (2) from any other Zoning Code restriction preventing the continued use of a recreational vehicle (RV) as a dwelling, all for property within the RS-3 Single Family Dwelling 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 “Since 60’s lot has had mobile homes + R.Vs on it People within 300 ft bought property knowing R.V. on it + people living there.”

Staff believes that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional due to the history of the property, having had a single-wide mobile home maintained on it likely since before the original Zoning Ordinance, which was replaced with an RV nearly 20 years ago and without evidence found of any complaint in this regard until the RV was replaced with a newer model early in 2011. The Applicant alludes, in the application, to the length of time and lack of neighborhood complaint conditions and situations.

Unnecessary Hardship. Under the unnecessary hardship question of the application, the Applicant describes family and personal hardships and the need to live in close proximity to family. See the application form for the Applicant’s specific response.

The Applicant’s response implies that it would be an Unnecessary Hardship if the literal enforcement of the Zoning Code required the complete removal of the RV from the property. Staff believes this would be an unnecessary hardship in satisfaction of Variance requirements. It should be noted that the property has had a dwelling unit of roughly proportional size likely since before the prohibition of manufactured homes by the original Zoning Ordinance in the early 1970s. To be deprived of a similar, albeit different format of a nonconforming dwelling unit would be a severe 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 “Has had mobile homes + R.Vs since in 60’s moved old R.V 1975 model Replaced with 1987 Keeping yard mowed and attractive.”

As one can infer from the Applicant’s response, the No Substantial Detriment claim is that the property has consistently had mobile homes and RVs since the 1960s without evidence of complaint during that time. Secondly, one can infer the Applicant is claiming No Substantial Detriment because the older RV, originally placed in 1992, has been replaced with a newer [thus better] model and the property owner is “keeping the yard mowed and attractive” as compared to its previous condition. Staff has observed that the property has been enclosed by a chain-link fence and there does appear to have been changes made consistent with owner-occupancy versus rental occupancy.

Staff believes that the primary for prohibiting the replacement of a legally nonconforming use with another nonconforming use is to ensure that nonconformities are abated in due course through attrition. As properties age, they typically suffer from sustained disrepair and/or become functionally obsolete, and the replacement to repair cost ratio shifts in favor of the former. Therefore, such properties tend to be redeveloped or, depending on real estate forces, abandoned.

In this case, from the City’s perspective, granting the Variance would be extending the life of a nonconforming use by allowing the replacement of an older RV unit with a newer one. Further, removal of the RV would be a necessary prerequisite for redevelopment with a conforming use (single-family home as per RS-3 zoning). The Board should consider balancing the public interest in the abatement of

a nonconforming use with the property owner's interest in preserving a partial property right, of which the tenure extends beyond the reach of the original Zoning Ordinance. This could be achieved by establishing a "sunset clause" on any approval given, terminating the Variance approval and requiring the abatement of the nonconformity upon certain time limits and/or situational changes.

It could also be argued that legally combining the subject property with the Applicant's residential property to the south (Lot 5, Block 1, 105 S. A Ave.) would render the RV on the subject property an accessory structure/use, as which it could be allowed absent specific Zoning Code provisions prohibiting same.

Recognizing the subject property has had a single-wide mobile home maintained on it likely since before the original Zoning Ordinance, which was replaced with an RV nearly 20 years ago and without evidence found of any complaint in this regard until the RV was replaced with a newer model early in 2011, with proper sunset conditions, 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. 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. 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 subject to the following Conditions of Approval:

- 1. Variance approval shall expire and be automatically vacated and the RV shall be removed upon the sooner of: Five (5) years from the date of Variance approval, or vacancy by all current occupants for a period of six (6) months, unless a new Variance is approved by the Board of Adjustment before the end of the initial, and any subsequent five (5) year periods.*
- 2. In considering any future Variance re-approval application, such re-approval shall be considered in light of changed development and land use conditions in the surrounding area as it pertains to the No Substantial Detriment test and standard.*
- 3. Variance approval shall expire and be automatically vacated if the structure is removed, and no RV shall be allowed to be returned.*
- 4. Variance approval shall expire and be automatically vacated and the RV shall be removed if the structure is rented to any person other than the current occupants.*
- 5. If any of the above conditions is violated, the City of Bixby, at the direction of the City Council, may require the immediate removal of the RV unit, or other such remedies at law as deemed necessary and appropriate.*

Erik Enyart noted that he had provided a copy of the Staff Report, including the recommended Conditions of Approval, to the Applicant the previous week.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Jean Frogge Butler of 105 S. A Ave. was present but stated that she could not hear. Mr. Wilson asked if anyone was present who could speak for her. Linda Stamper Monical of 4 E. 5th St. was present and stated that she was Ms. Butler's daughter. Ms. Stamper stated that she lived in the RV.

Larry Whiteley asked how old Ms. Butler was, and Ms. Stamper stated that she was 88, and that her husband was 80.

Linda Stamper stated that she did not like living in the RV. Ms. Stamper stated that she and her husband had moved out of a three-bedroom house in Muskogee, and had to move out of it to move here. Ms. Stamper stated her monthly income. Ms. Stamper stated that her husband was ill, and that her mother had very extreme high blood pressure, and that she had to have family near to take care of her. Ms. Stamper stated that she was the only family member that would take

care of her mother. Ms. Stamper stated that she was having to drive up from Muskogee to be with her mother, which meant leaving her husband by himself. Ms. Stamper stated that, on June 28, her husband was diagnosed with terminal cancer.

Larry Whiteley asked how old Ms. Stamper's husband was, and Ms. Stamper responded 80.

Linda Stamper stated that she had 15 acres in Muskogee. Ms. Stamper stated that her husband was now bedfast and could not get up without her. Ms. Stamper stated that she had thought nothing of it in putting her RV there because, since 1992, there was a motor home there, and before that there was a single-wide mobile home there.

Larry Whiteley noted that there were other motor homes in the area. Murray King stated that the others were not hooked up to utilities.

Larry Whiteley asked Erik Enyart if the Board could make changes to the recommended Conditions of Approval, and Mr. Enyart responded that they were only recommendations and the Board could adopt them or not, make changes, [and make other conditions]. Mr. Whiteley suggested the Board strike the five (5) year part of recommended Condition of Approval numbered 1. Mr. Enyart confirmed with Mr. Whiteley that his suggestion included retaining the balance of the item, pertaining to the current occupants.

Darrell Mullins asked Linda Stamper if her husband lived in the RV with her, and Ms. Stamper stated that he did, and that he was bedfast now.

Dave Hill asked Linda Stamper if she was able to keep the house in Muskogee, and Ms. Stamper stated that she was not, as it was owned by the company she worked for.

Chair Jeff Wilson asked if anyone else wished to speak on the item. Lindon Hogner of 4 W. 4th St. stated that there was an abandoned RV there, which this one replaced. Mr. Hogner stated that [the occupants] used PVC pipe to empty sewage into the ground, and had put up a chain link fence with a sign stating "beware of dog." Mr. Hogner stated that [the occupants] had moved a trailer into the back yard, and that the property now looked like a junkyard, as before there was only an RV and a brushpile. Mr. Hogner asserted, "The area was turning around" but now "it seems to be going back in time." Mr. Hogner stated that there was no way to tie down [the RV] and this area was in "Tornado Alley." Mr. Hogner stated that this was bad for property values.

Darrell Mullins asked if it was illegal to have a chain link fence, and Erik Enyart stated that it was not. Murray King asked if a permit was required to put up such a fence and Mr. Enyart stated that it was not.

Darrell Mullins asked if the sewage complaint was accurate. Erik Enyart stated that the City had received a separate complaint on an improper sewage connection, and that it had been resolved along with the requisite permit to connect to a City sewer.

Darrell Mullins clarified with Lindon Hogner that his family had owned the home for some decades, that he had lived in it since he purchased it in 1996.

Chair Jeff Wilson consulted the Sign-In Sheet and asked Vickie Robinson of 6440 E. 161st St. S. if she wanted to speak on the item. Ms. Robinson stated that she was employed by the City of Bixby when the first trailer was placed on the property. Ms. Robinson stated that [the Applicant] had had to canvass the neighborhood and that there was no problem with it at that time. Ms. Robinson stated that she was also here to speak on behalf of John Brown, who lived at the corner of S. A [Ave.] and Bixby [St.]. Ms. Robinson petitioned the Board, "With all compassion, use that to make your decision." Ms. Robinson stated, "The present RV is such an improvement over the one replaced, I'm surprised anyone complained." Ms. Robinson stated that there was a "decrepit mobile home around the corner," but that she wouldn't want to tell them they had to remove it.

One of the Board members asked Lindon Hogner if the "trailer" he mentioned was for hauling, such as behind a truck, and Mr. Hogner responded that it was but it was "just more junk."

Larry Whiteley stated that there had always been a trailer/mobile home/whatever on that corner.

One of the Board members clarified with Erik Enyart that, if the subject property was legally combined with the Applicant's property at 105 S. A Ave., the RV would become an accessory structure and would not be prohibited by the Zoning Code. Mr. Enyart stated that an RV occupying a lot absent another principal structure becomes the principal land use, and an RV was not an allowable principal use in the RS-3 district under the Zoning Code. Larry Whiteley confirmed with Erik Enyart that there were methods to legally combine two (2) lots.

Vickie Robinson stated that, before [the Applicant] got permission for the mobile home, they were asked to do a Lot-Split. Darrell Mullins clarified with Ms. Robinson that the Applicant was required by the City to do a Lot-Split for the mobile home.

Murray King expressed favor for retaining the five (5) year approval limitation. The Board members discussed the recommended Conditions of Approval. Larry Whiteley discussed how the recommended approval time period would pertain to the age and health of the Applicant and her family members. The Board members indicated favor for recommended Condition of Approval numbered 1 as written in the Staff Report.

One of the Board members asked the Applicant if they agreed with the recommended Conditions of Approval, and Linda Stamper stated that she agreed with them.

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-541 subject to the five (5) Conditions of Approval listed in the Staff Report. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

During the Roll Call, Chair Jeff Wilson stated that his “Yes” vote was based on the City Planner’s report, findings, and recommendation.

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Murray King made a MOTION to ADJOURN. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting adjourned at 6:38 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary